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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
In re: : Chapter 11  
: :  
Residential Capital, LLC, et al., : Case No. 12-12020 (MG)  
: :  
Debtors. : Jointly Administered  
: :  
----- X

**NOTICE OF FILING OF EXECUTION VERSIONS OF EXHIBIT 2 (LIQUIDATING TRUST AGREEMENT), EXHIBIT 3 (RMBS CLAIMS TRUST AGREEMENT), EXHIBIT 4 (BORROWER CLAIMS TRUST AGREEMENT), EXHIBIT 5 (PRIVATE SECURITIES CLAIMS TRUST AGREEMENT), AND EXHIBIT 11 (COOPERATION AGREEMENT BETWEEN LIQUIDATING TRUST AND THE KESSLER SETTLEMENT CLASS) TO THE PLAN SUPPLEMENT TO THE JOINT CHAPTER 11 PLAN PROPOSED BY RESIDENTIAL CAPITAL, LLC, ET AL. AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

PLEASE TAKE NOTICE that pursuant to the *Order (I) Approving Disclosure Statement, (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan Proponents' Joint Chapter 11 Plan, (III) Approving the Form of Ballots, (IV) Scheduling a Hearing on Confirmation of the Plan, (V) Approving Procedures for Notice of the Confirmation Hearing and for Filing Objections to Confirmation of the Plan, and (VI) Granting Related Relief* entered on August 23, 2013 [Docket No. 4809] (the "Disclosure Statement



Approval Order”), the Plan Proponents<sup>1</sup> hereby file execution versions of certain exhibits comprising the Plan Supplement in connection with the *Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors*, as amended, dated August 23, 2013 [Docket No. 4819, Ex. 1] (as may be modified or amended, the “Plan”):

- **Exhibit 2**: Liquidating Trust Agreement
- **Exhibit 3**: RMBS Claims Trust Agreement
- **Exhibit 4**: Borrower Claims Trust Agreement
- **Exhibit 5**: Private Securities Claims Trust Agreement
- **Exhibit 11**: Cooperation Agreement between the Liquidating Trust and the Kessler Settlement Class

**PLEASE TAKE FURTHER NOTICE** that blacklines of changed pages to Exhibit 2 (from the prior version filed with the Court on December 10, 2013), Exhibit 3 (from the prior version filed with the Court on October 11, 2013), Exhibit 4 (from the prior version filed with the Court on November 11, 2013), Exhibit 5 (from the prior version filed with the Court on October 11, 2013), and Exhibit 11 (from the prior version filed with the Court on October 11, 2013), are each appended to the clean copy of the exhibit.

**PLEASE TAKE FURTHER NOTICE** that the undersigned continue to reserve the right to alter, amend, modify or supplement any document in the Plan Supplement as provided by the Plan or in accordance with their terms, as applicable.

**PLEASE TAKE FURTHER NOTICE** that copies of the Plan and the Plan Supplement can be viewed and obtained for a fee via PACER at [www.pacer.gov](http://www.pacer.gov) or (without charge) on the Debtors’ restructuring website at [www.kccllc.net/rescap](http://www.kccllc.net/rescap).

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings set forth in the Disclosure Statement Approval Order or the Plan, as applicable.

Dated: December 17, 2013  
New York, New York

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**Exhibit 2**

**Liquidating Trust Agreement**

**AMENDED AND RESTATED  
RESCAP LIQUIDATING TRUST  
LIQUIDATING TRUST AGREEMENT  
BY AND AMONG  
THE LIQUIDATING TRUSTEES,  
WILMINGTON TRUST, NATIONAL ASSOCIATION,  
MANUFACTURERS AND TRADERS TRUST COMPANY,  
RESIDENTIAL CAPITAL, LLC  
AND  
THE OTHER DEBTORS LISTED ON THE SIGNATURE PAGES HERETO**

December 17, 2013

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**Exhibits**

Exhibit A – Form of Request for Securities Account Information

Exhibit B – Form of Access and Cooperation Agreement

**RESCAP LIQUIDATING TRUST  
AMENDED AND RESTATED LIQUIDATING TRUST AGREEMENT**

This Amended and Restated Liquidating Trust Agreement, dated as of December 17, 2013 (this "Liquidating Trust Agreement"), is entered into by and among Residential Capital, LLC ("ResCap"), AKA 13, LLC (f/k/a ditech, LLC), DOA Holding Properties, LLC, DOA Properties IX (Lots-Other), LLC, EPRE LLC, Equity Investment I, LLC, ETS of Virginia, Inc., ETS of Washington, Inc., Executive Trustee Services, LLC, GMAC-RFC Holding Company, LLC, GMAC Model Home Finance I, LLC, GMAC Mortgage USA Corporation, GMAC Mortgage, LLC, GMAC Residential Holding Company, LLC, GMAC RH Settlement Services, LLC, GMACM Borrower LLC, GMACM REO LLC, GMACR Mortgage Products, LLC, HFN REO SUB II, LLC, Home Connects Lending Services, LLC, Homecomings Financial Real Estate Holdings, LLC, Homecomings Financial, LLC, Ladue Associates, Inc., Passive Asset Transactions, LLC, PATI A, LLC, PATI B, LLC, PATI Real Estate Holdings, LLC, RAHI A, LLC, RAHI B, LLC, RAHI Real Estate Holdings, LLC, RCSFJV2004, LLC, Residential Accredited Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, Residential Consumer Services of Alabama, LLC, Residential Consumer Services of Ohio, LLC, Residential Consumer Services of Texas, LLC, Residential Consumer Services, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Exchange, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Funding Real Estate Holdings, LLC, Residential Mortgage Real Estate Holdings, LLC, RFC – GSAP Servicer Advance, LLC, RFC Asset Holdings II, LLC, RFC Asset Management, LLC, RFC Borrower LLC, RFC Construction Funding, LLC, RFC REO LLC and RFC SFJV-2002, LLC (each as a debtor and debtor-in-possession, and collectively, the "Debtors"), Wilmington Trust, National Association, or its successor, as Delaware Trustee, Manufacturers and Traders Trust Company, or its successor, as FHA Qualified Trustee, and the Liquidating Trustees whose names appear as such on the signature page to this Liquidating Trust Agreement.

**RECITALS**

A. On May 14, 2012, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court (the "Bankruptcy Case").

B. On or about July 26, 2013, John S. Dubel, as trustee, executed a Declaration of Trust providing for the formation of a predecessor common law trust (the "Original Trust") for the purposes set forth therein.

C. On or about August 23, 2013, the Debtors filed the Joint Chapter 11 Plan of Residential Capital, LLC, *et al.*, dated August 23, 2013 (as amended and supplemented and as confirmed, the "Plan"), and the related disclosure statement, the "Disclosure Statement").

D. On or about August 26, 2013, the Bankruptcy Court approved the Disclosure Statement.

E. On December 10, 2013, the Original Trust was converted to a trust formed pursuant to the Trust Act (as defined below) by filing of the Certificate of Conversion (as

defined below) and Certificate of Trust (as defined below), and the Interim Liquidating Trust Agreement (as defined below) was executed

F. On or about December 11, 2013, the Bankruptcy Court issued an order confirming the Plan.

G. On December 17, 2013, the Effective Date of the Plan occurred.

H. The Plan provides for a liquidating trust (as so formed and administered in accordance with the terms of this Liquidating Trust Agreement, the “Liquidating Trust”) to liquidate and distribute the Liquidating Trust Assets to holders of administrative, other priority, secured and unsecured Claims that are Allowed on the Effective Date or that become Allowed after the Effective Date.

I. This Liquidating Trust Agreement amends and restates the Interim Liquidating Trust Agreement and is being executed to establish and provide for the administration of the Liquidating Trust and the liquidation and distribution of Liquidating Trust Assets as contemplated by the Plan, and to otherwise facilitate the implementation of the Plan.

J. The Liquidating Trust (other than as relating to the Liquidating Trust Assets allocable to distributions and reserves described in Article III and to the Disputed LT Unsecured Claims) is intended to qualify as a Liquidating Trust, within the meaning of Treasury Regulations section 301.7701-4(d), to be treated as a “grantor trust” for federal income tax purposes, and to be exempt from the requirements of the Investment Company Act of 1940 pursuant to Section 3(c)(5) and Sections 7(a) and 7(b) thereof.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein, the parties hereto agree as follows:

## **ARTICLE I** **DEFINITIONS**

1.1 Definitions Incorporated from the Plan. Other than the terms defined below or elsewhere in this Liquidating Trust Agreement, capitalized terms shall have the meaning assigned to them in the Plan.

1.2 Other Definitions.

(a) “**Administrative Expenses Set Aside**” means an amount of Cash or other assets set aside from time to time by or under the direction of the Liquidating Trust Board for paying costs, fees and expenses, and reserving for liabilities, of the Liquidating Trust, as provided in Section 7.4, including costs, fees and expenses of the Estates payable at any time after the Effective Date.

(b) “**Administrative, Priority, Secured and Convenience Distribution Reserve**” means the reserve established for the purpose of maintaining Cash or other assets from time to time necessary to satisfy Priority Distributions and General Unsecured Convenience Claims in accordance with Section 3.6.

(c) “**Allowed LT Claims**” means Allowed Priority Claims, Allowed Unsecured Claims and Allowed General Unsecured Convenience Claims.

(d) “**Allowed Priority Claims**” means Administrative Claims, Priority Tax Claims, Other Priority Claims, Other Secured Claims and Junior Secured Notes Claims that are at any relevant time Allowed.

(e) “**Allowed Unsecured Claims**” means collectively, the GMACM Unsecured Claims, the ResCap Unsecured Claims and the RFC Unsecured Claims that are at any relevant time Allowed.

(f) “**Board Protocol**” means the protocols for the governance of the Liquidating Trust, as such protocols may be amended from time to time by Majority Consent of the Liquidating Trust Board; provided, however, that in the event of a conflict between this Liquidating Trust Agreement and the Board Protocol, the Liquidating Trust Agreement shall govern.

(g) “**Business Day**” means any day other than a Saturday, Sunday or legal holiday on which the banks in the City of New York, Borough of Manhattan, or Wilmington, Delaware are authorized to remain closed.

(h) “**Cause**” means, with respect to any Liquidating Trustee,

(i) such Liquidating Trustee’s conviction of a felony or any other crime involving moral turpitude; or

(ii) any act or failure to act by such Liquidating Trustee involving actual dishonesty, fraud, misrepresentation, theft or embezzlement; or

(iii) such Liquidating Trustee’s willful and repeated failure to substantially perform his/her duties under this Liquidating Trust Agreement and the Trust Act; or

(iv) such Liquidating Trustee’s incapacity, such that s/he is unable to substantially perform his/her duties under this Liquidating Trust Agreement and the Trust Act for more than ninety (90) consecutive days.

(i) “**Certificate of Conversion**” means the certificate of conversion required by section 3820 of the Trust Act filed in connection with the conversion of the Original Trust into a trust formed pursuant to the Trust Act.

(j) “**Certificate of Trust**” means the certificate of trust of the Liquidating Trust as required by sections 3810 and 3820 of the Trust Act filed in connection with the conversion of the Original Trust into a trust formed pursuant to the Trust Act.

(k) “**Confidentiality Parties**” has the meaning assigned in Section 13.8.

(l) “**Cooperation Agreements**” means, collectively, (i) the Access and Cooperation Agreement, dated the date hereof, by and between the Borrower Claims Trust and

the Liquidating Trust in the form attached as Exhibit B to this Liquidating Trust Agreement and (ii) the cooperation agreement, dated the date hereof, by and between the Liquidating Trust and the Kessler Settlement Class relating to insurance.

(m) “**Debtors**” has the meaning assigned in the Preamble.

(n) “**Delaware Trustee**” means Wilmington Trust, National Association, or its successor, which is appointed in accordance with this Liquidating Trust Agreement to comply with the requirement of section 3807 of the Trust Act.

(o) “**Disputed Claims Estimation Date**” means the date as of which the Disputed Claims are to be estimated pursuant to the Reserve Motion.

(p) “**Disputed Claims Reserve**” means the reserve of Units maintained by the Liquidating Trust, together with all Cash theretofore distributed in respect of such Units, for distribution to holders of Disputed LT Unsecured Claims that are subsequently Allowed, and including any non-Cash assets that at any time are held in the Disputed Claims Reserve as provided in Section 7.3(b).

(q) “**Disputed Claims Reserve Units**” means a number of Units equal to the sum of (x) the GMACM Debtors Unit Issuance Ratio multiplied by the Estimated Amount of all GMACM Unsecured Claims that are Disputed Claims as of the Initial Unit Distribution Record Date; plus (y) the ResCap Debtors Unit Issuance Ratio multiplied by the Estimated Amount of all ResCap Unsecured Claims that are Disputed Claims as of the Initial Unit Distribution Record Date; plus (z) the RFC Debtors Unit Issuance Ratio multiplied by the Estimated Amount of all RFC Unsecured Claims that are Disputed Claims as of the Initial Unit Distribution Record Date.

(r) “**Disputed LT Claims**” means the Disputed Priority Claims, General Unsecured Convenience Claims that are Disputed Claims, and the Disputed LT Unsecured Claims.

(s) “**Disputed LT Unsecured Claims**” means ResCap Unsecured Claims, GMACM Unsecured Claims and RFC Unsecured Claims that at any relevant time are Disputed Claims, but not including any ETS Unsecured Claims.

(t) “**Disputed Priority Claims**” means Administrative Claims, Priority Tax Claims, Other Priority Claims, Other Secured Claims and Junior Secured Notes Claims that at any relevant time are Disputed Claims.

(u) “**Distributable Cash**” means Cash of the Liquidating Trust available for distribution to Unitholders (including the Disputed Claims Reserve), after payment or reserving for the payment of Allowed Priority Claims, Allowed General Unsecured Convenience Claims, Allowed ETS Unsecured Claims and Allowed professional fees, and the funding of the Administrative, Priority, Secured and Convenience Distribution Reserve and the funding of the Administrative Expenses Set Aside.

(v) “**Distribution Date**” means any date, as determined by the Liquidating Trust Board, on which the Liquidating Trust makes a distribution of Distributable Cash to Unitholders (including the Disputed Claims Reserve).

(w) “**Distribution Record Date**” means a date selected by the Liquidating Trust Board preceding each Distribution Date (other than the Initial Distribution Date), as the record date for determining the holders of Units entitled to participate in the distribution on such Distribution Date.

(x) “**DOJ/AG Settlement Reserve**” has the meaning assigned in Section 7.5.

(y) “**DTC**” means the Depository Trust Company and any successor organization.

(z) “**Estimated Amount**” means the estimated amount of a Disputed LT Claim, as determined by the Liquidating Trust Board, which shall either be the filed amount of the Claim or such amount as estimated by the Bankruptcy Court at the request of the Debtors or the Liquidating Trust pursuant to Bankruptcy Code section 502(c) or such other estimated amount determined in accordance with the Plan, including Article VIII.A.4. thereof, and, in the case of any Disputed LT Claim the estimated amount of which cannot be determined in accordance with the foregoing, as determined in its good faith discretion by the Liquidating Trust Board.

(aa) “**ETS Distributable Cash**” means (i) all Cash held by ETS on the Effective Date less (ii) the sum of (x) the amount of Cash paid on or promptly following the Effective Date in respect of Allowed Priority Claims against ETS that are Allowed as of the Effective Date and (y) the amount of Cash reserved for payment of (A) Allowed Priority Claims against ETS that are Allowed as of the Effective Date but that cannot be paid on or promptly following the Effective Date and (B) the Estimated Amount of Disputed Priority Claims against ETS as of the Effective Date.

(bb) “**ETS Distribution Ratio**” means the ratio that is equal to (i) the ETS Distributable Cash divided by (ii) the sum of (x) the Allowed amount of all ETS Unsecured Claims that are Allowed as of the Effective Date plus (y) an amount necessary in order to reserve, in the discretion of the Liquidating Trust Board, for all ETS Unsecured Claims that are Disputed Claims as of the Effective Date.

(cc) “**FDIC**” means the Federal Deposit Insurance Corporation or any successor institution.

(dd) “**FGIC**” means Financial Guaranty Insurance Corporation.

(ee) “**FHA**” means the Federal Housing Administration of the United States Department of Housing and Urban Development, or any successor thereto.

(ff) “**FHA-Approved Mortgagee**” means a mortgagee approved under the FHA Title II Mortgage Approval Handbook 4060.1.

(gg) “**FHA Guidelines**” means any statute, law or regulation currently in effect relating to mortgage loans pursuant to Title 45 of the United States Code (the Fair Housing Act) as well as any requirements under the FHA connect program.

(hh) “**FHA Insurance Contract**” means the contractual obligation of FHA respecting the insurance of a mortgage on a single or multifamily home pursuant to the National Housing Act, as amended.

(ii) “**FHA Mortgage Loan**” means a mortgage loan that is the subject of an FHA Insurance Contract.

(jj) “**FHA Qualified Trustee**” means Manufacturers and Traders Trust Company, or its successor, which is an FHA-Approved Mortgagee that is a national banking association or otherwise authorized to exercise trust or fiduciary powers in one or more jurisdictions and that is appointed as a trustee in accordance with this Liquidating Trust Agreement.

(kk) “**FHA Qualified Co-Trustee**” means an FHA-Approved Mortgagee that is a national banking association or otherwise authorized to exercise trust or fiduciary powers in one or more jurisdictions and that is appointed as a co-trustee in accordance with this Liquidating Trust Agreement.

(ll) “**Fiscal Year**” means any fiscal year of the Liquidating Trust, as provided in Section 2.9 hereof.

(mm) “**Global Unit Certificate**” has the meaning assigned in Section 4.4(a).

(nn) “**GAAP**” means generally accepted accounting principles in the United States.

(oo) “**GMACM Debtors Unit Issuance Ratio**” means a ratio obtained by dividing (x) the number of Units in the GMACM Debtors Unit Distribution by (y) the sum of (I) the amount of the GMACM Unsecured Claims that are Allowed (other than Allowed ETS Unsecured Claims) plus (II) the Estimated Amount of the GMACM Unsecured Claims that are Disputed Claims, in each case as of the Initial Unit Distribution Record Date.

(pp) “**HUD**” means the United States Department of Housing and Urban Development, or any federal agency or official thereof which may from time to time succeed to the functions thereof with regard to FHA Insurance. The term “HUD” is also deemed to include subdivisions thereof.

(qq) “**Initial Distribution Date**” means the date determined by the Liquidating Trust Board occurring as soon as reasonably practicable on or after the Initial Unit Distribution Date, but in no event more than five (5) Business Days after the Initial Unit Distribution Date, on which the Liquidating Trust makes, or causes to be made, the initial distribution of Distributable Cash to Unitholders (including the Disputed Claims Reserve).

(rr) “**Initial Nominating Party**” means a party entitled under Article VI.E. of the Plan to appoint a member of the Liquidating Trust Board, which parties specifically include (1) MBIA, (2) FGIC, (3) Paulson, (4) the RMBS Trustees that are members of the Creditors’ Committee, the Steering Committee Consenting Claimants and the Talcott Franklin Consenting Claimants, jointly, and (5) the holders of the Private Securities Claims.

(ss) “**Initial Unit Distribution Date**” means the date determined by the Liquidating Trust Board occurring as soon as reasonably practicable after the entry by the Bankruptcy Court of the Reserve Order, but in no event prior to the Effective Date, on which the Liquidating Trust makes or causes to be made the initial distribution of Units to holders of Allowed Unsecured Claims entitled to receive Units hereunder as of the Initial Unit Distribution Record Date, the Private Securities Claims Trust and the RMBS Claims Trust.

(tt) “**Initial Unit Distribution Record Date**” means the Disputed Claims Estimation Date, which is the record date for determining the Liquidating Trust Unit Beneficiaries holding Allowed Claims that are entitled to receive a distribution of Units on the Initial Unit Distribution Date, provided that to the extent the allowance of a Claim as of the Initial Unit Distribution Record Date is contingent only upon the effectiveness of the Plan, such Claim shall be deemed to be Allowed as of the Initial Unit Distribution Record Date.

(uu) “**Initial Unit Estimation**” means the number of Units that would have been distributed to an Initial Nominating Party on the Initial Unit Distribution Date if it beneficially owned, on the Initial Unit Distribution Record Date, the same claims as the Initial Nominating Party beneficially owned on October 11, 2013.

(vv) “**Interim Liquidating Trust Agreement**” means the Interim Liquidating Trust Agreement for the Liquidating Trust, dated as of December 10, 2013, executed by the Delaware Trustee and John S. Dubel, as Liquidating Trustee.

(ww) “**Liquidating Trust**” has the meaning assigned in the Recitals.

(xx) “**Liquidating Trust Agents**” means the advisors, professionals and other agents, including any disbursement agent, of the Liquidating Trust appointed or engaged by the Liquidating Trust Board or by Liquidating Trust Management in accordance with the provisions of this Liquidating Trust Agreement.

(yy) “**Liquidating Trust Agreement**” has the meaning assigned in the Recitals.

(zz) “**Liquidating Trust Assets**” means all property held from time to time by the Liquidating Trust, including the Available Assets transferred to the Liquidating Trust on or after the Effective Date, and including all Cash and non-Cash assets held in the Disputed Claims Reserve, the Administrative Expenses Set Aside and the Administrative, Priority, Secured and Convenience Distribution Reserve, but not including the assets excluded from Available Assets pursuant to Section 2.5(a).

(aaa) “**Liquidating Trust Beneficiaries**” means (i) the holders of Units and (ii) any holder of a Disputed LT Unsecured Claim that may in the future be entitled to receive a distribution of the Units from the Disputed Claims Reserve.

(bbb) “**Liquidating Trust Board**” means the board consisting of the Liquidating Trustees appointed to administer and oversee the affairs of the Liquidating Trust, as provided in this Liquidating Trust Agreement.

(ccc) “**Liquidating Trust Budget**” has the meaning assigned in Section 2.10(a).

(ddd) “**Liquidating Trust Management**” has the meaning assigned in Section 7.7(a).

(eee) “**Liquidating Trust Manager**” means the officer having primary executive responsibility for the Liquidating Trust, as provided in Section 7.7(c).

(fff) “**Liquidating Trust Website**” means an internet website maintained by the Liquidating Trust in accordance with this Liquidating Trust Agreement.

(ggg) “**Majority Consent**” means the affirmative consent of a majority of the members constituting the whole Liquidating Trust Board, given at a meeting called for that purpose, or by a written consent in lieu of a meeting in accordance with this Liquidating Trust Agreement.

(hhh) “**MERS**®” means the proprietary system of recording transfers of mortgages electronically, which was created and is maintained by Mortgage Electronic Registration Systems, Inc., a corporation organized and existing under the laws of the State of Delaware.

(iii) “**Nominating Party**” means an Initial Nominating Party and a Successor Nominating Party.

(jjj) “**Original Trust**” has the meaning assigned in the Recitals.

(kkk) “**Paulson**” means funds and accounts managed by Paulson & Co. Inc.

(lll) “**Plan**” has the meaning assigned in the Recitals.

(mmm) “**Plan Documents**” means, collectively, the Plan, the Confirmation Order and this Liquidating Trust Agreement.

(nnn) “**Priority Distributions**” means the Cash distributions made by the Liquidating Trust, in its capacity as Disbursing Agent, to holders of Allowed Priority Claims.

(ooo) “**Private Securities Claims Trust**” means the trust established for the benefit of the holders of the Private Securities Claims, in accordance with the terms of the Plan.

(ppp) “**Pro Rata**” means, with respect to any Units, the fraction (which may be expressed as a percentage) obtained by dividing (x) such number of Units by (y) the total number of Units at the time outstanding, including the Units held in the Disputed Claims Reserve.

(qqq) “**Qualified Purchaser**” means an entity that is the single purchaser in a Qualified Sale.

(rrr) “**Qualifying Sale**” means a Nominating Party’s transfer of Units to a single purchaser through one or more sale transactions in an amount equal to more than fifty percent (50%) of (x) the Initial Unit Estimation of the Nominating Party, in the case of a transfer by an Initial Nominating Party; or (y) the Initial Unit Estimation of the Initial Nominating Party that is the transferring Nominating Party’s direct or indirect predecessor in interest, in the case of a transfer by a Successor Nominating Party.

(sss) “**ResCap Debtors Unit Issuance Ratio**” means a ratio obtained by dividing (x) the number of Units in the ResCap Debtors Unit Distribution by (y) the sum of (I) the amount of the ResCap Unsecured Claims that are Allowed plus (II) the Estimated Amount of the ResCap Unsecured Claims that are Disputed Claims, in each case as of the Initial Unit Distribution Record Date.

(ttt) “**Reserve Motion**” means a motion for an order establishing the Disputed Claims Reserve with respect to unliquidated and/or Disputed Claims.

(uuu) “**Reserve Order**” means the order establishing the Disputed Claim Reserve filed in accordance with Article VIII.D. of the Plan.

(vvv) “**RFC Debtors Unit Issuance Ratio**” means a ratio obtained by dividing (x) the number of Units in the RFC Debtors Unit Distribution by (y) the sum of (I) the amount of the RFC Unsecured Claims that are Allowed plus (II) the Estimated Amount of the RFC Unsecured Claims that are Disputed Claims, in each case as of the Initial Unit Distribution Record Date.

(www) “**Servicer**” means any master servicer, servicer, sub-servicer, or special servicer of the FHA Mortgage Loans appointed as such, provided, however, that any such master servicer, servicer, sub-servicer or special servicer shall be approved to service the FHA Mortgage Loans under the applicable FHA Guidelines.

(xxx) “**Specified Liquidating Trustee**” has the meaning assigned in Section 6.2(e).

(yyy) “**Successor Nominating Party**” means a Qualified Purchaser that elects to succeed to an Initial Nominating Party’s or a Successor Nominating Party’s rights hereunder, as provided in Section 6.2(h).

(zzz) “**Supermajority Consent**” means the affirmative consent of at least four-fifths (4/5) of the members constituting the whole Liquidating Trust Board, given at a meeting called for that purpose or by written consent in lieu of a meeting in accordance with

this Liquidating Trust Agreement; provided that, for purposes of the removal of a member of the Liquidating Trust Board in accordance with Section 6.2 hereof, Supermajority Consent means the affirmative consent of all of the members of the Liquidating Trust Board not including the Specified Liquidating Trustee; provided, further that in the event the Liquidating Trust Board is at any time comprised of less than five members, any act otherwise requiring Supermajority Consent shall require only Majority Consent.

(aaaa) “**Supplementary Case Management Procedures**” means the Order Approving Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a) and (d), Bankruptcy Rules 1015(c), 2002(m), 7016, and 9007 and Local Bankruptcy Rule 2002-2 for Entry of an Order Approving (A) Supplement to Case Management Order Establishing Mandatory Procedures for Management of Adversary Proceedings Commenced by Borrowers and Former Borrowers and (B) Related Relief [Docket No. 3304], as amended by the Amended Order Approving Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a) and (d), Bankruptcy Rules 1015(c), 2002(m), 7016, and 9007 and Local Bankruptcy Rule 2002-2 for Entry of an Order Approving (A) Supplemental to Case Management Order Establishing Mandatory Procedures for Management of Adversary Proceedings Commenced by Borrowers and Former Borrowers and (B) Related Relief [Docket No. 3490].

(bbbb) “**Tax Authority**” means a federal, state, local, or foreign government, or agency, instrumentality, or employee thereof, court or other body (if any) charged with the administration of any law relating to Taxes.

(cccc) “**Tax Code**” means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

(dddd) “**Taxes**” means all (a) federal, state, local, or foreign taxes, including, without limitation, all net income, alternative minimum, net worth or gross receipts, capital, value added, franchise, profits, estimated, property, transfer and sales or use taxes, and (b) interest, penalties, fines, additions to tax or additional amounts imposed by any Tax Authority or paid in connection with any item described in clause (a) hereof.

(eeee) “**Tax Return**” means a return, declaration, form, election, letter, report, statement, estimate, information return, or other information filed or required to be filed with respect to any Taxes, including any schedule or attachment thereto or amendment thereof, including any claim for a Tax refund.

(ffff) “**Title 24**” means Title 24 of the Code of Federal Regulations.

(gggg) “**Trust Act**” means, the Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq., as the same may from time to time be amended, or any successor statute.

(hhhh) “**Trustee**” means any of the Liquidating Trustees, the Delaware Trustee and the FHA Qualified Trustee.

(iiii) “**Unit Distribution Date**” means a date, as determined from time to time by the Liquidating Trust Board, on which Units shall be distributed from the Disputed Claims Reserve to holders of Disputed LT Unsecured Claims that have become Allowed in the

period between the second preceding Unit Distribution Record Date (or in the case of the first Unit Distribution Date, from the Initial Unit Distribution Record Date) and the first preceding Unit Distribution Record Date.

(jjjj) “**Unit Distribution Record Date**” means a date, as determined from time to time by the Liquidating Trust Board, for the determination of the holders of Disputed LT Unsecured Claims that have become Allowed since the preceding Unit Distribution Record Date (or in the case of the first Unit Distribution Date, from the Initial Unit Distribution Record Date) to receive a distribution of Units from the Disputed Claims Reserve on the following Unit Distribution Date.

(kkkk) “**Units**” means units of beneficial interest issued by the Liquidating Trust, which entitle the holders thereof to receive from the Liquidating Trust a Pro Rata share of Distributable Cash.

(llll) “**Unit Certificate**” has the meaning assigned in Section 4.4(b).

(mmmm) “**Unitholder**” means a holder of one or more Units, including the Disputed Claims Reserve.

(nnnn) “**Unit Register**” has the meaning assigned in Section 4.4(b).

(oooo) “**VA**” means the United States Department of Veterans Affairs, or any successor thereto.

(pppp) “**VA Loan Guaranty Agreement**” means the obligation of the United States to pay a specific percentage of a mortgage loan (subject to a maximum amount) upon default of the mortgagor pursuant to the Servicemen’s Readjustment Act, as amended.

(qqqq) “**VA Mortgage Loan**” means a mortgage loan that is the subject of a VA Loan Guaranty Agreement.

1.3 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code; the Bankruptcy Rules; or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Liquidating Trust Agreement, and the word “herein” and words of similar import refer to this Liquidating Trust Agreement as a whole and not to any particular Article, Section or subdivision of this Liquidating Trust Agreement. The term “including” shall mean “including, without limitation.”

## **ARTICLE II**

### **CREATION OF LIQUIDATING TRUST**

#### 2.1 Creation of Trust; Conversion.

(a) The Liquidating Trust shall be deemed to have been created effective as of the time of creation of the Original Trust. The Certificate of Conversion and the Certificate of Trust have been filed to reflect the conversion of the Original Trust to the Liquidating Trust. This Liquidating Trust Agreement amends and restates the Interim Trust Agreement and provides for the continuation of the Liquidating Trust.

(b) The Liquidating Trust shall bear the name “ResCap Liquidating Trust,” and the Liquidating Trust Board may, in connection with the exercise of its powers and duties hereunder, either use this name or such variation thereof as the Liquidating Trust Board may from time to time approve.

## 2.2 Purpose of Liquidating Trust.

(a) The Liquidating Trust is established for the purpose of liquidating and distributing the Liquidating Trust Assets in accordance with Treasury Regulations Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, its liquidating purpose hereunder. The Liquidating Trust shall perform the obligations under the DOJ/AG Settlement, the Consent Order, and the Order of Assessment, other than Ocwen’s rights and obligations under the Ocwen APA, in accordance with the terms of the Plan.

(b) This Liquidating Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Liquidating Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall any of the Trustees or the Unitholders, for any purpose be, or be deemed to be or be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Unitholders to the Trustees shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Liquidating Trust Agreement.

(c) From and after the Effective Date, the Liquidating Trust, acting through the Liquidating Trust Board, the Liquidating Trust Management, and the Liquidating Trust Agents, shall wind down the affairs of, and dissolve the Debtors and their subsidiaries, including the Non-Debtor Subsidiaries, under applicable laws, notwithstanding any applicable consent requirements or other restrictions contained in any financing agreements or other debt documents to which any Debtor is or was a party; provided that any Debtor required to hold Available Assets after the Effective Date pursuant to Section 2.5(b) shall not be dissolved at a time while it holds Available Assets and shall be authorized to take such actions at the direction of the Liquidating Trust as may be necessary or advisable to implement the purpose and provisions of the Plan with respect to such Available Assets. The Liquidating Trust shall pay all reasonable costs and expenses in connection with such dissolutions. The Liquidating Trust Board, the Liquidating Trust Management and the Liquidating Trust Agents shall not have any liability on account of the Liquidating Trust Board’s use of its discretion to dissolve or not dissolve any of the Debtors or their subsidiaries; provided, however, this section shall not be interpreted to preclude the Liquidating Trust from asserting any malpractice, negligence

or similar claims against the Liquidating Trust Agents for their actions or omissions with respect to corporate dissolutions.

### 2.3 Status of Liquidating Trust and the Liquidating Trust Board.

(a) Subject to the terms of the Confirmation Order, the Liquidating Trust shall be the successor-in-interest to the Debtors with respect to any Liquidating Trust Cause of Action (but not, for the avoidance of doubt, including any Causes of Action released under the Plan or Borrower-Related Causes of Action) that was or could have been commenced by any of the Debtors prior to the Effective Date and shall be deemed substituted for each such Debtor as the party in any such litigation.

(b) From and after the Effective Date, the Liquidating Trust, acting through Liquidating Trust Management under the supervision of the Liquidating Trust Board, will be the representative of the Estates as that term is used in section 1123(b)(3)(B) of the Bankruptcy Code and shall have the rights and powers provided in the Bankruptcy Code in addition to any rights and powers granted in the Plan Documents, including but not limited to the right to object to Administrative Claims, Priority Claims, Other Priority Claims, Other Secured Claims, Junior Secured Note Claims, GMACM Unsecured Claims, ResCap Unsecured Claims, RFC Unsecured Claims and Professional Claims.

(c) All Liquidating Trust Causes of Action are preserved and retained and may be enforced by the Liquidating Trust pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

### 2.4 Retention of Professionals.

(a) The Liquidating Trust shall have the right to retain such professionals as are necessary and proper to discharge its functions in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court.

(b) The Liquidating Trust Board shall adopt reasonable policies regarding the billing practices, hourly rates, discounts and required budget practices of professionals retained to provide services to the Liquidating Trust to ensure the Liquidating Trust receives cost-effective, efficient representation in the best interest of the Liquidating Trust's Unitholders.

(c) The Liquidating Trust shall not retain any professional who has a conflict of interest without a finding by the Liquidation Trust Manager, as affirmed by the Majority Consent of the Liquidating Trust Board, that: (i) the professional has unique knowledge or specialized skills that warrant retention of the conflicted professional, and (ii) even though such retention may require the retention of a second, unconflicted professional, the Liquidating Trust's interest would be affected adversely if the conflicted professional was not retained.

2.5 Transfer of Available Assets.

(a) On the Effective Date, the Debtors shall transfer all of the Available Assets, in the form existing on such date, to the Liquidating Trust, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other persons and entities to the maximum extent contemplated by and permissible under section 1141 of the Bankruptcy Code. The Liquidating Trust shall have such incidents of ownership in the Available Assets as are necessary to undertake the actions and transactions authorized in the Plan Documents. The transfer of the Available Assets shall be exempt from any stamp, real estate transfer, mortgage recording, sales, use or other similar Tax pursuant to section 1146 of the Bankruptcy Code. Upon the transfer of Available Assets to the Liquidating Trust, such assets shall become Liquidating Trust Assets. For the avoidance of doubt, Available Assets shall include (i) the FHA Mortgage Loans and any related servicing advances, receivables, and claims; (ii) the VA Mortgage Loans and any related servicing advances, receivables, and claims; (iii) any servicing advances, receivables, claims and real estate owned property relating to FHA or VA Mortgage Loans liquidated prior to the Effective Date; (iv) any licenses and approvals received or held by GMACM Mortgage, LLC from HUD, the FHA, and the VA; and (iv) GMAC Mortgage, LLC and Residential Funding Company, LLC's membership interest and stock ownership in MERS<sup>®</sup>, including all related rights and interests. For the avoidance of doubt, Available Assets shall not include any Borrower-Related Cause of Action or any assets or rights excluded pursuant to Articles IV.G.2. and IV.G.3. of the Plan. In addition, if the Kessler Settlement Approval Orders shall have been entered, and after the Effective Date the Liquidating Trust discovers any additional insurance policies under which any of the Debtors are an insured and that provide coverage for the Debtors' liability to the Kessler Settlement Class, then the Liquidating Trust shall assign to the Kessler Settlement Class the insurance rights under such policies with respect to the liability of the Debtors to the Kessler Settlement Class, as provided in Article IV.G. of the Plan, and such insurance rights shall not constitute Liquidating Trust Assets.

(b) Notwithstanding the foregoing, if on the Effective Date, any of the Available Assets cannot be transferred to the Liquidating Trust, or it is deemed impractical or inadvisable to do so by the Liquidating Trust Board or the Liquidating Trust Manager, for any reason, for example, because the Liquidating Trust has not yet established accounts for the purpose of holding Cash or because of a restriction on transferability under applicable non-bankruptcy law that is not superseded by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, the Debtors shall continue to hold such Liquidating Trust Assets, as bailee for the account of the Liquidating Trust, until such time as the Liquidating Trust informs the Debtors that the Liquidating Trust may receive such Available Assets, whereupon such assets shall be promptly transferred to the Liquidating Trust and become Liquidating Trust Assets; provided that the proceeds of the sale or other disposition of any such assets retained by the Debtors (or any successors thereto) shall nevertheless be deemed to constitute Available Assets, and to likewise be held by the Debtors as bailee, and be turned over as soon as practicable to the Liquidating Trust pursuant to this Liquidating Trust Agreement as if such transfer had not been restricted under applicable non-bankruptcy law. The Liquidating Trust may commence an action in the Bankruptcy Court to resolve any dispute regarding the allocation of the proceeds of any Available Assets retained by the Debtors (or any successors thereto) pursuant to the Plan Documents.

(c) On or prior to the Effective Date, the Debtors shall deliver or cause to be delivered to the Liquidating Trust any and all books and records that relate primarily to or that may be reasonably required in connection with the Available Assets, whether held by the Debtors, their agents, representatives, advisors, attorneys, accountants and any other professionals hired by the Debtors and provide access to such employees, agents, advisors, attorneys, accountants or any other Debtor professionals with knowledge of matters relevant to the Available Assets. Without limiting the foregoing, the Debtors shall deliver to the Liquidating Trust all records of the Debtors relating to Professional Claims and Accrued Professional Compensation through the Effective Date reasonably necessary for the payment of Professional Claims in accordance with Section 3.1.

(d) On or prior to the Effective Date, the Debtors shall deliver, or cause to be delivered, to the Liquidating Trust a complete list of all Allowed LT Claims and Disputed LT Claims, reflected on the claims registry as of the Effective Date, in the case of Allowed Priority Claims, Allowed General Unsecured Convenience Claims and Disputed Priority Claims, and as of Initial Unit Distribution Record Date, in the case of Allowed Unsecured Claims and Disputed LT Unsecured Claims. The list shall include the names and addresses of the holders of such Claims and, in the case of Allowed LT Claims, the amounts thereof, and in the case of Disputed LT Claims, the amounts thereof as filed and the Estimated Amounts thereof. For the avoidance of doubt, such list may include the Senior Unsecured Notes Indenture Trustee with respect to the Claims of the Senior Unsecured Noteholders, until such time as it has distributed such Units to the Senior Unsecured Noteholders or the paying agent with respect to the Senior Unsecured Notes denominated in British pounds or Euros. It shall also state for Claims of the RMBS Trusts, whether such Claims are Recognized RMBS Claims. The list of Disputed LT Claims shall include the details of all objections (whether asserted or not) in respect of such the Claims. On or as soon as practicable following the Effective Date, the Debtors shall also deliver or cause to be delivered to the Liquidating Trust a list of all changes to the foregoing information regarding the Allowed Unsecured Claims and Disputed LT Unsecured Claims between the Initial Unit Distribution Record Date and the Effective Date.

(e) The Liquidating Trust, as successor in interest to the Estates, may (i) execute and deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) take, or cause to be taken, all such further action in order to evidence, vest, perfect or effectuate the transfer of all of the Available Assets to the Liquidating Trust and consummate transactions contemplated by and to otherwise carry out the intent of the Plan Documents. Any power of attorney or other grant or delegation of authority granted by any Debtor to a third party prior to the Effective Date shall continue in effect following the Effective Date until revoked or terminated in accordance with its terms, with the same effect as if such power of attorney or other grant or delegation of authority had been granted by the Liquidating Trust. In addition, the Liquidating Trust, as successor in interest to the Estates, shall be entitled to receive and collect all tax refunds to which the Debtors or the Estates would otherwise be entitled, and all such tax refunds shall be added to the Administrative Expenses Set Aside or made available for distribution as Distributable Cash, as determined by the Liquidating Trust Board.

2.6 Title to Liquidating Trust Assets. Subject to Sections 2.5(a) and 9.2(a), upon the transfer of Available Assets, the Liquidating Trust shall succeed to all of the Debtors' right, title and interest in the Available Assets, and the Debtors will have no further rights or interest in or with respect to the Available Assets, nor shall they have any rights or interest in any other Liquidating Trust Assets or the Liquidating Trust.

2.7 Valuation. As soon as possible after the Effective Date, but in no event later than one hundred and twenty (120) days thereafter, the Liquidating Trust Board shall cause to be made, by the Liquidating Trust Management or, at the sole discretion of the Liquidating Trust Board, a third-party, a good faith valuation of the Liquidating Trust Assets (and related liabilities) held by or on behalf of the Liquidating Trust as of the Effective Date. Such aggregate valuation shall be posted on the Liquidating Trust Website, and shall be in such detail and including such supporting information as determined by the Liquidating Trust Board, in reliance on its professionals, to be reasonably necessary or appropriate for the use and understanding thereof, and shall be used consistently by all parties (including, without limitation, the Debtors, the Liquidating Trust and the Unitholders) for all federal, state and other income tax purposes.

2.8 No Reversion to Debtors; Distribution of Remaining Assets.

(a) In no event shall any part of the Liquidating Trust Assets revert to or be distributed to or for the benefit of any Debtor.

(b) To the extent that after satisfaction in full of all of the costs and expenses of the administration of the Liquidating Trust, after all Disputed LT Claims have been either Allowed or disallowed, after all Allowed LT Claims have been paid pursuant to the Plan Documents, after satisfaction of all other obligations or liabilities of the Liquidating Trust incurred or assumed in accordance with the Plan Documents, after the Liquidating Trust has made the maximum distribution of Distributable Cash in respect of the Units to the extent reasonably practicable, and after the affairs of the Liquidating Trust have been finally wound up and concluded in accordance with the provisions of Section 12.1 hereof and section 3808 of the Trust Act, there shall remain any Liquidating Trust Assets, the Liquidating Trust shall distribute such remaining Liquidating Trust Assets to an organization, selected by the Liquidating Trust Board, described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code that is unrelated to the Debtors, the Liquidating Trust or any member of the Liquidating Trust Board.

2.9 Fiscal Year. Except for the first and last years of the Liquidating Trust, the Fiscal Year of the Liquidating Trust shall be the calendar year. For the first and last years of the Liquidating Trust, the Fiscal Year of the Liquidating Trust shall be such portion of the calendar year that the Liquidating Trust is in existence. The terms fiscal quarter, or similar references, as used in this Liquidating Trust Agreement, shall have a correlative meaning.

2.10 Liquidating Trust Budget.

(a) There shall be prepared a reasonably detailed annual plan and budget for the Liquidating Trust (any such plan and budget, as it may be amended from time to time in

accordance with the terms hereof, the “Liquidating Trust Budget”) for each Fiscal Year, except that the Liquidating Trust Budget for the first Fiscal Year, if less than six calendar months, may be combined with the Liquidating Trust Budget for the next succeeding Fiscal Year, and the Liquidating Trust Budget for the last Fiscal Year, if less than six calendar months, may be combined with the Liquidating Trust Budget for the immediate prior Fiscal Year. The Liquidating Trust Budget shall set forth (on an annual basis) in reasonable detail: (i) the assumptions underlying the projected recoveries and expenses associated with the administration of the Liquidating Trust for the annual budget and the funding of the Administrative Expenses Set Aside in respect thereof, and (ii) the anticipated distributions to the Unitholders.

(b) Except as otherwise approved by the Liquidating Trust Board, the form of each Liquidating Trust Budget shall be substantially the same as the form of the initial Liquidating Trust Budget.

(c) Not less than thirty (30) days before the beginning of each Fiscal Year (other than the first Fiscal Year and other than the second Fiscal Year, if the initial Liquidating Trust Budget covers such Fiscal Year, and other than the last Fiscal Year, if the Liquidating Trust Budget for the next preceding Fiscal Year covers such Fiscal Year), the Liquidating Trust Management shall submit to the Liquidating Trust Board a proposed Liquidating Trust Budget for such Fiscal Year, together with a comparison to the Liquidating Trust Budget then in effect and an explanation of the differences between the two in reasonable detail. The Liquidating Trust Budget for such Fiscal Year shall not become effective until approved by Majority Consent of the Liquidating Trust Board, and until so approved, the Liquidating Trust Budget for the prior year shall constitute the Liquidating Trust Budget for the subsequent year on an interim basis.

(d) Amendments, if any, to the Liquidating Trust Budget shall not become effective unless and until approved by Majority Consent of the Liquidating Trust Board.

(e) Except as otherwise approved by Majority Consent of the Liquidating Trust Board, the amount expended in any Fiscal Year (or, if the initial or final Liquidating Trust Budget shall cover a combined period as provided above, in such combined period) on any item of expense set forth in the Liquidating Trust Budget shall not exceed by more than fifteen percent (15%) the budgeted amount therefor set forth in the Liquidating Trust Budget for the relevant Fiscal Year.

2.11 Insurance. The Liquidating Trust shall maintain customary insurance coverage, including any appropriate tail coverage, for the protection of the Trustees and Liquidating Trust Management (which coverage shall be primary to any other coverage potentially available to such persons) and may procure insurance coverage for such employees as the Liquidating Trust Board may determine in its discretion, and the cost thereof shall be reflected in the Liquidating Trust Budget.

2.12 Books and Records.

(a) The Liquidating Trust Board shall cause to be stored and maintained

books and records for the period commencing on the date hereof through the termination of the Liquidating Trust, containing such information concerning the Liquidating Trust Assets, the conduct of the affairs of the Liquidating Trust and rights and treatment of the Unitholders, in such detail and for such periods of time as may be necessary to enable the Liquidating Trust to make full and proper accounting in respect thereof and to comply with applicable provisions of law. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Liquidating Trust.

(b) The Liquidating Trust shall have the responsibility of storing and maintaining books and records of the Debtors with respect to the Claims of the respective beneficiaries of the RMBS Claims Trust, the Borrower Claims Trust and Private Securities Claims Trust, and the Liquidating Trust shall enter into agreements or protocols with the respective Plan Trusts, or, in the case of the Private Securities Claims Trust, the Private Securities Claimants, with respect to access to such books and records, as provided in Article XIII.E. of the Plan.

(c) The Liquidating Trust shall be authorized without further application to the Bankruptcy Court or notice to any party, to abandon or otherwise destroy books and records (whether in electronic or paper format) in accordance with Section 12.3.

(d) Anything in the Trust Act to the contrary notwithstanding, no Unitholder shall have the right to obtain from the Liquidating Trust any of its books or records except as expressly provided in this Liquidating Trust Agreement or as may otherwise be expressly permitted by the Liquidating Trust Board.

2.13 No Interest or Accruals. Except as otherwise may be expressly provided in the Plan Documents, holders of Claims shall not be entitled to interest on the distributions provided for in this Liquidating Trust Agreement, regardless of whether such distributions are deliverable on or at any specified time after the Effective Date.

### **ARTICLE III**

#### **PRIORITY AND OTHER DISTRIBUTIONS AND RESERVES**

3.1 Professional Claims. The amount of Allowed Professional Claims owing to the Professionals, as approved by an order of the Bankruptcy Court, shall be paid in Cash to such Professionals by the Liquidating Trust, without interest or other earnings therefrom, when such Claims are Allowed by an order of the Bankruptcy Court.

#### 3.2 Borrower Claims Trust; NJ Carpenters Claims Distribution.

(a) On or as soon as practicable after the Effective Date, the Liquidating Trust, in its capacity as Disbursing Agent, if such payment is not otherwise being made by the Debtors, shall fund the Borrower Claims Trust with (i) \$57.6 million in Cash, (x) less any amounts paid by the Debtors to or on behalf of the holders of Borrower Claims prior to the Effective Date pursuant to the Supplementary Case Management Procedures or any other order of the Bankruptcy Court, and (y) plus the amount of the Borrower Trust True-up, if any; and

(ii) the amount of the administrative costs and expenses of the Borrower Claims Trust to be funded as of the Effective Date by the Liquidating Trust.

(b) Subject to receipt of the NJ Carpenters Approval, within ten (10) business days after the Effective Date, the Liquidating Trust, if such payment is not otherwise being made by the Debtors, shall make the NJ Carpenters Claims Distribution.

3.3 Allowed Priority Claims. On or as soon as practicable after the Effective Date, the Liquidating Trust, in its capacity as Disbursing Agent, if such payment is not otherwise being made by the Debtors, shall pay to the holders of the Allowed Priority Claims (or, in the case of Allowed Junior Secured Notes Claims, to the Junior Secured Notes Indenture Trustee) as of the Effective Date the amounts payable in respect of such Claims. The Liquidating Trust, in its capacity as Disbursing Agent, shall from time to time pay the holders of Allowed Priority Claims that become Allowed after the Effective Date the amounts payable in respect of such Claims as soon as practicable after such Claims become Allowed, but in no event less frequently than on a quarterly basis to the extent of any Allowed Priority Claims that have not been previously satisfied. Such Claims shall be satisfied out of the Administrative, Priority, Secured and Convenience Distribution Reserve, or if the funds in such reserve are insufficient to satisfy the Allowed Priority Claims, from other Cash of the Liquidating Trust, and allowance therefor shall be made prior to the distribution of Distributable Cash to Unitholders.

3.4 Allowed General Unsecured Convenience Claims. The Liquidating Trust, in its capacity as Disbursing Agent, shall from time to time, as determined by the Liquidating Trust Board, pay the holders of General Unsecured Convenience Claims that are Allowed as of the Effective Date or become Allowed thereafter, but in no event less frequently than on a quarterly basis to the extent of any Allowed General Unsecured Convenience Claims that have not been previously satisfied, the Cash amounts payable to such holders under the terms of the Plan. Such Claims shall be satisfied out of the Administrative, Priority, Secured and Convenience Distribution Reserve, or if the funds in such reserve are insufficient to satisfy the Allowed General Unsecured Convenience Claims, from other Cash of the Liquidating Trust, and allowance therefor shall be made prior to the distribution of Distributable Cash to Unitholders.

3.5 ETS Unsecured Claims.

(a) On or as soon as practicable after the Effective Date, the Liquidating Trust, in its capacity as Disbursing Agent, if such payment is not otherwise being made by the Debtors, shall pay to each holder of an Allowed ETS Unsecured Claim as of the Effective Date an amount equal to the Allowed amount of such Claim multiplied by the ETS Distribution Ratio.

(b) Subject to the last sentence of this subsection (b), if and to the extent that an ETS Unsecured Claim becomes Allowed following the Effective Date, the Liquidating Trust in its capacity as Disbursing Agent, shall thereafter pay to the holder thereof an amount equal to the Allowed amount of such Claim multiplied by the ETS Distribution Ratio. The Liquidating Trust shall make such payments periodically following the time that such ETS

Unsecured Claims become Allowed, at such time as determined by the Liquidating Trust Board, but such payments shall be made no less frequently than quarterly. In no event, however, shall the amount paid in respect of all ETS Unsecured Claims, in the aggregate, exceed the amount of the ETS Distributable Cash.

(c) The Liquidating Trust shall reserve Cash for the payment of ETS Unsecured Claims that are Allowed as of the Effective Date but are not paid on or promptly following the Effective Date, or that are Disputed Claims as of the Effective Date, in the amount of (i) ETS Distributable Cash less (ii) the amount of Cash distributed to holders of Allowed ETS Unsecured Claims on or promptly following the Effective Date. Such Cash shall be paid out of the Administrative Expenses Set Aside.

(d) After all Disputed Priority Claims against ETS and all ETS Unsecured Claims that were Disputed Claims as of the Effective Date have been resolved, and all Allowed Priority Claims against ETS and all Allowed ETS Unsecured Claims have been satisfied, there shall be distributed to the holders of Allowed ETS Unsecured Claims (i) any Cash remaining in the Administrative, Priority, Secured and Convenience Distribution Reserve in respect of Disputed Priority Claims against ETS that are disallowed and (ii) any Cash remaining in the Administrative Expenses Set Aside held in accordance with subsection (c) above. Such Cash shall be distributed to the holders of Allowed ETS Unsecured Claims pro rata in accordance with the Allowed amounts of the Allowed ETS Unsecured Claims held by each of them.

### 3.6 Administrative, Priority, Secured and Convenience Distribution Reserve.

(a) On the Effective Date, the Liquidating Trust, in its capacity as Disbursing Agent, shall establish an Administrative, Priority, Secured and Convenience Distribution Reserve for the purpose of satisfying Allowed Priority Claims and General Unsecured Convenience Claims that are Allowed as of the Effective Date but that cannot be paid on or promptly following the Effective Date, Disputed Priority Claims that may become Allowed after the Effective Date, and General Unsecured Convenience Claims that are Allowed or that may become Allowed on or after the Effective Date. At its discretion, the Liquidating Trust Board may reserve non-Cash assets in satisfaction of the aforesaid reserve requirements as provided for in the Board Protocol, which non-Cash assets may be monetized from time to time by the Administrative, Priority, Secured and Convenience Distribution Reserve; provided, however, that in connection with any such reservation of non-Cash assets, the Liquidating Trust Board shall give due consideration to the timing and amount of scheduled and anticipated payments and both the fair market value and the timing of monetization of such non-Cash assets, so as to enable the Liquidating Trust to pay its obligations as they become due.

(b) Subject to Section 3.6(a), on the Effective Date, the Liquidating Trust shall deposit into the Administrative, Priority, Secured and Convenience Distribution Reserve, an amount in Cash equal to (x) the amount of all Allowed Priority Claims that are Allowed as of the Effective Date and are not paid in accordance with Section 3.3, and the Estimated Amount of all Disputed Priority Claims as of the Effective Date, and (y) the amount of all General Unsecured Convenience Claims that are Allowed as of the Effective Date and the

Estimated Amount of all General Unsecured Convenience Claims that are disputed as of the Effective Date.

(c) All Cash held in the Administrative, Priority, Secured and Convenience Distribution Reserve shall be maintained with a United States FDIC insured financial institution, and may be maintained in an interest-bearing account, as the Liquidating Trust Board may from time to time determine. The Cash in the Administrative, Priority, Secured and Convenience Distribution Reserve shall be held separately and shall not be commingled with any other Cash constituting Liquidating Trust Assets.

(d) After all Disputed Priority Claims and all General Unsecured Convenience Claims that were Disputed Claims as of the Effective Date have been resolved and all Allowed Priority Claims and General Unsecured Convenience Claims that are Allowed have been satisfied, and if at such time there is Cash or other assets remaining in the Administrative, Priority, Secured and Convenience Distribution Reserve, then such remaining Cash shall be unreserved and unrestricted, and may be added to the Administrative Expenses Set Aside or made available for distribution as Distributable Cash to the Unitholders, as determined by the Liquidating Trust Board, and any other assets released from the Administrative, Priority, Secured and Convenience Distribution Reserve shall become general, unrestricted assets of the Liquidating Trust..

(e) If the Liquidating Trust Board at any time shall determine that Cash or other assets in the Administrative, Priority, Secured and Convenience Distribution Reserve is insufficient to satisfy all Disputed Priority Claims and all General Unsecured Convenience Claims that have or may become Allowed after the Effective Date, Cash or other assets shall be added to the Administrative, Priority, Secured and Convenience Distribution Reserve in such amount as the Liquidating Trust Board shall determine is necessary to provide for such satisfaction as such Claims become due. If the Liquidating Trust Board at any time shall determine that it is not necessary to hold in the Administrative, Priority, Secured and Convenience Distribution Reserve all of the Cash or other assets, if any, contained therein in order to satisfy all of Disputed Priority Claims and all General Unsecured Convenience Claims that have or may become Allowed, Cash may be released from the Administrative, Priority, Secured and Convenience Distribution Reserve in such amount as the Liquidating Trust Board determines is not necessary for such purposes. Such released Cash shall be unreserved and unrestricted, and may be added to the Administrative Expenses Set Aside or made available for distribution as Distributable Cash to the Unitholders, as determined by the Liquidating Trust Board, and any other assets released from the Administrative, Priority, Secured and Convenience Distribution Reserve shall become general, unrestricted assets of the Liquidating Trust.

3.7 Minimum Distributions; Other Limitations. Other than with respect to Allowed General Unsecured Convenience Claims and Allowed ETS Unsecured Claims, no Cash payment of less than \$50 shall be made by the Liquidating Trust, as Disbursing Agent, to a holder of an Allowed Claim on account of such Allowed Claim. If a holder of an Allowed Claim would be entitled to receive less than \$50 as of the time of a particular distribution, but would be entitled to receive more than \$50 in combination with later distributions, the Liquidating Trust, as Disbursing Agent, will combine such distributions with later distributions

to such holder of an Allowed Claim so that such holder may eventually be entitled to a distribution of at least \$50 in value. Whenever any payment of Cash of a fraction of a dollar would otherwise be required, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or less being rounded down.

#### **ARTICLE IV** **ISSUANCE OF UNITS**

4.1 Number of Units. Subject to increase in order to satisfy any applicable legal or regulatory requirement, the aggregate number of Units that the Liquidating Trust shall be authorized to issue is one hundred million (100,000,000).

4.2 Unit Issuance Percentages. If the adjustment to the Unit Issuance Percentages has not theretofore been made and communicated to the Liquidating Trust, then following the later of the Effective Date and the entry of the Reserve Order, the Liquidating Trust shall cause the adjustment to the Unit Issuance Percentages provided for in Article IV.J. of the Plan to be calculated. Based on the adjusted Unit Issuance Percentages, the Liquidating Trust shall cause to be calculated the GMACM Debtors Unit Distribution and the GMACM Debtors Unit Issuance Ratio; the ResCap Debtors Unit Distribution and the ResCap Debtors Unit Issuance Ratio; the RFC Debtors Unit Distribution and the RFC Debtors Unit Issuance Ratio; and the Private Securities Claims Trust Unit Distribution.

4.3 Issuance and Distribution of Units.

(a) All Units issued in accordance with the provisions of this Article IV to the Private Securities Claim Trust shall be in full and final satisfaction of all Private Securities Claims; all Units so issued to the RMBS Claims Trust shall be in full and final satisfaction of all RMBS Trust Claims; and all Units issued or distributed to holders of Allowed Unsecured Claims entitled to receive Units hereunder, including Units issued but held in accordance with the provisions of Section 4.5(b) or withheld in accordance with the provisions of Section 4.5(c), shall be in full and final satisfaction of such Allowed Unsecured Claims.

(b) On the Initial Unit Distribution Date, there shall be issued—

(i) to the Private Securities Claims Trust, the Private Securities Claims Trust Unit Distribution;

(ii) to each holder of one or more Allowed ResCap Unsecured Claims as of the Initial Unit Distribution Record Date, a number of Units equal to (x) the Allowed amount of such Claims, multiplied by (y) the ResCap Debtors Unit Issuance Ratio;

(iii) to each holder of one or more Allowed GMACM Unsecured Claims (other than the RMBS Trusts and holders of Allowed ETS Unsecured Claims) as of the Initial Unit Distribution Record Date, a number of Units equal to (x) the Allowed amount of such Claims, multiplied by (y) the GMACM Debtors Unit Issuance Ratio;

(iv) to each holder of one or more Allowed RFC Unsecured Claims (other than the RMBS Trusts) as of the Initial Unit Distribution Record Date, a number of

Units equal to (x) the Allowed amount of such Claims, multiplied by (y) the RFC Debtors Unit Issuance Ratio;

(v) to the Disputed Claims Reserve, the Disputed Claims Reserve Units; and

(vi) to the RMBS Claims Trust, a number of Units equal to the number of Units that would otherwise be issuable to the RMBS Trusts but for the provisos in clauses (iii) and (iv) of this Section 4.3(b);

provided that, in accordance with the terms of the Plan, (x) five and seven-tenths percent (5.7%) of the Units that would otherwise be issuable to the RMBS Claims Trust shall be issued to counsel for the Institutional Investors in satisfaction of the Allowed Fee Claim; and (y) all Units otherwise issuable to the Senior Unsecured Noteholders shall be issued to the Senior Unsecured Notes Indenture Trustee, for distribution by the Senior Unsecured Notes Indenture Trustee in accordance with Article VII.G. of the Plan.

(c) Each holder of one or more Disputed LT Unsecured Claims that was not Allowed, in whole or in part, as of the Initial Unit Distribution Record Date and that are subsequently Allowed, in whole or in part, shall be issued from the Disputed Claims Reserve on the Unit Distribution Date next following the date that the Claim becomes Allowed, or if such date occurs in the period between a Unit Distribution Record Date and the corresponding Unit Distribution Date, on the next following Unit Distribution Date, a number of Units equal to—

(i) with respect to a ResCap Debtors Unsecured Claim, (x) the amount of the portion of such Claim that is Allowed multiplied by (y) the ResCap Debtors Unit Issuance Ratio;

(ii) with respect to a GMACM Debtors Unsecured Claim, (x) the amount of the portion of such Claim that is Allowed multiplied by (y) the GMACM Debtors Unit Issuance Ratio; and

(iii) with respect to a RFC Debtors Unsecured Claim, (x) the amount of the portion of such Claim that is Allowed multiplied by (y) the RFC Debtors Unit Issuance Ratio;

as applicable, together with Cash as provided in Section 5.4(b).

(d) No fractional Units will be issued or distributed. Instead, the number of Units shall be rounded up or down as follows: (i) fractions less than one-half (1/2) shall be rounded to the next lower whole number and (ii) fractions equal to or greater than one-half (1/2) shall be rounded to the next higher whole number. For the purposes of determining the number of Units to which a holder of Allowed Unsecured Claims is entitled, all Allowed Unsecured Claims of such holder shall be aggregated. The total amount of Units to be distributed pursuant to this Liquidating Trust Agreement shall be adjusted as necessary to account for such rounding. No consideration shall be provided in lieu of fractional Units that are rounded down.

(e) The issuance or distribution of Units in accordance with this Section 4.3 shall be subject to the provisions of Section 4.5(b).

#### 4.4 Evidence of Units.

(a) Except as otherwise provided in this Liquidating Trust Agreement, Units will be issued in the form of a global unit certificate (the "Global Unit Certificate") only, registered in the name of DTC or its nominee (or the successor of either of them), and interests in the Global Unit Certificate will be held only through participants (including securities brokers and dealers, banks, trust companies, clearing corporations and other financial organizations) of DTC, as depository. The Global Unit Certificate shall bear such legend as may be required by DTC. The aggregate number of Units issued may from time to time be increased, if required by any legal or regulatory requirements, by adjustments made on the records of the Liquidating Trust and a corresponding increase in the number of Units evidenced by such Global Unit Certificate (as shall be specified in the schedule included as part of the Global Unit Certificate or the issuance of further Global Unit Certificates in respect of such additional Units). Units will not be issued in definitive form, except in the limited circumstances described in Section 4.4(b). For so long as DTC serves as depository for the Units, the Liquidating Trust may rely on the information and records of DTC to make distributions and send communications to the holders of Units and, in so doing, any persons participating in the management of the Liquidating Trust, including the Liquidating Trust Board and the Liquidating Trust Management, shall be fully protected and incur no liability to any holder of Units, any transferee (or purported transferee) of Units, or any other person or entity.

(b) If DTC is unwilling or unable to act, or to continue to act, as a depository for the Units, the Liquidating Trust shall issue Units in the form of certificates ("Unit Certificates"), or, if one or more Global Unit Certificates representing the Units has previously been issued, exchange the Units represented by Global Unit Certificate(s) for Unit Certificates. In such event, the Liquidating Trust shall maintain or cause to be maintained a Unit register (the "Unit Register") on which the ownership of each Unit Certificate shall be recorded, and on which the transfer of such Unit Certificates shall be reflected. The Liquidating Trust shall be entitled to treat the Person in whose name a Unit Certificate is registered on such Unit Register as the owner of such Unit Certificate and the Units represented thereby for all purposes, including the right to receive distributions of Distributable Cash in respect thereof. The Liquidating Trust shall also in such event establish or cause to be established customary procedures for the transfer and exchange of Unit Certificates and the replacement of lost, stolen or mutilated Unit Certificates.

#### 4.5 Manner of Distribution of Units.

(a) Except in the circumstances described in Section 4.4(b), in order to receive their Units, holders of Allowed Unsecured Claims entitled to receive Units (other than (i) the holders of RMBS Trust Claims, whose Units will be issued to the RMBS Claims Trust and (ii) Senior Unsecured Noteholders, whose Units will be issued to the Senior Unsecured Notes Indenture Trustee) must designate a direct or indirect participant in DTC with whom such holder has a securities account and take such other ministerial actions as Liquidating

Trust Management shall from time to time reasonably require by written communication to such holders, in the form of Exhibit A or otherwise. The Liquidating Trust shall communicate with the Private Securities Claims Trust, the RMBS Claims Trust and with the Senior Unsecured Notes Indenture Trustee to obtain from them account information for the respective DTC participants through which the Units distributed to them will be held.

(b) If and for so long as a holder of an Allowed Unsecured Claim (other than (i) the holders of RMBS Trust Claims, whose Units will be issued to the RMBS Claims Trust and (ii) Senior Unsecured Noteholders, whose Units will be issued to the Senior Unsecured Notes Indenture Trustee) does not designate a direct or indirect participant in DTC and take such other actions required by Section 4.5(a), the Liquidating Trust shall, except as otherwise provided by Section 4.5(c), hold the Units such holder is otherwise entitled to receive, together with any Cash distributed in respect of such Units, until such time as such holder complies with the requirements of Section 4.5(a). At any time following the date on which the Liquidating Trust determines, in its sole discretion, that a holder of an Allowed Unsecured Claim complies in full with the requirements of Section 4.5(a), but in any event, as soon as practicable following the beginning of the fiscal quarter next following such date, the Liquidating Trust shall distribute to such holder the Units and any distributions thereon to which such holder is entitled. Any Cash held by the Liquidating Trust on account of Units that remain undistributed pending compliance with the provisions of Section 4.5(a) as aforesaid shall be separately recorded by the Liquidating Trust.

(c) If a holder of an Allowed Unsecured Claim otherwise entitled to receive Units has not complied with the requirements of Section 4.5(a) or Section 5.6 prior to the final Distribution Date, then as of the date immediately before the final Distribution Date (i) the Units otherwise distributable to such holder shall be deemed cancelled and not outstanding, and (ii) the Cash distributed or distributable in respect of such Units shall be distributed Pro Rata to all holders of Units outstanding on the final Distribution Date. Notwithstanding the foregoing, if such holder is a beneficiary of the Private Securities Claims Trust whose Units were returned by the Private Securities Claims Trust to the Liquidating Trust, the Liquidating Trust shall hold such Units and any Cash distributed in respect thereof until such time as such beneficiary complies with the requirements of Section 4.5(a) hereof; provided that in the event such beneficiary has not complied with the requirements of Section 4.5(a) of this Liquidating Trust Agreement by the date that is ten (10) days before the final Distribution Date, (i) the Units otherwise distributable to such beneficiary shall be deemed cancelled and not outstanding, and (ii) the Cash distributed or distributable in respect of such Units shall be distributed pro rata (in accordance with the Private Securities Claims Allocation Agreement, dated as of August 16, 2013, a copy of which shall be provided by the trustee for the Private Securities Claims Trust) to the other original beneficiaries of the Private Securities Claims Trust, on the final Distribution Date.

(d) The Liquidating Trust shall also be authorized to withhold and retain Units otherwise issuable to holders of Allowed Unsecured Claims that are subject to tax withholding to the extent required by applicable Tax laws, and any Units so withheld shall be deemed issued in satisfaction of such Claims for all purposes of the Plan and this Liquidating Trust Agreement. The Liquidating Trust shall also be authorized to apply Cash and other

Liquidating Trust Assets allocable to amounts distributed in respect of any such retained Units to satisfy such Tax withholding obligations in accordance with Section 5.6.

(e) If the Private Securities Claims Trust shall distribute any Units to any of its beneficiaries, such beneficiaries shall be deemed Unitholders and Liquidating Trust Beneficiaries from and after the date of any such distribution.

4.6 Transfers of Units; Absence of Market for Units.

(a) Units shall be freely negotiable and transferable to the extent provided herein and the provisions of applicable securities laws. For so long as DTC continues to serve as depository for the Units, the transferability of the Units shall also be subject to the requirements of DTC's electronic book-entry system.

(b) The Units shall not be listed by the Liquidating Trust on a national securities exchange or interdealer quotation system. Neither the Liquidating Trust nor anyone acting on its behalf shall, directly or indirectly, engage in any activity designed to facilitate or promote trading in the Units, including by placing advertisements, distributing marketing materials, or collecting or publishing information regarding prices at which the interests may be transferred; provided that no activity undertaken by the Liquidating Trust in compliance with the terms of the Plan Documents shall be deemed to facilitate or promote trading in the Units for these purposes.

4.7 Rights of Unitholders. Each Unitholder shall be entitled to participate in the rights and benefits due to it hereunder on account of its Units. Each Unitholder shall take and hold the same, subject to all the terms and conditions of the Plan Documents. The interest of a Unitholder is hereby declared and shall be, in all respects, personal property.

4.8 Interest Beneficial Only. Except as expressly provided hereunder (including Section 10.1(b)), a Unitholder shall have no title to, right to, possession of, management of or control of the Liquidating Trust or the Liquidating Trust Assets. The ownership of Units in the Liquidating Trust shall not entitle any Unitholder to any title in or to the Liquidating Trust Assets or to any right to call for a partition or division of such assets or to require an accounting, except as may be specifically provided herein.

4.9 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to one or more Units, or a beneficial interest therein, the Liquidating Trust (as determined by the Liquidating Trust Board at its sole election, or by Liquidating Trust Management pursuant to delegated authority of the Liquidating Trust Board) shall be entitled to refuse to comply with any such conflicting claims or demands. In so refusing, the Liquidating Trust may elect to make no payment or distribution with respect to the Units at issue subject to the claims or demands involved, or any part thereof, and the Liquidating Trust shall be entitled to refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive and continuing jurisdiction over resolution of such conflicting claims or demands. Neither the Liquidating Trust, the Liquidating Trust Board, the Liquidating Trust Management nor the Liquidating Trust Agents shall be or become liable to any party for either (i) the election to continue making distributions pursuant to its books and records and/or the

books and records of DTC, as applicable, without regard to the conflicting claims or demands; or (ii) the election to cease payments or distributions with respect to the subject Unit or Units. In the event that the Liquidating Trust elects to cease payments, it shall be entitled to refuse to act until either (x) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court (or such other court of proper jurisdiction) or (y) all differences have been resolved by a written agreement among all of such parties and the Liquidating Trust, which agreement shall include a complete release of the Liquidating Trust, the Liquidating Trust Board and the Liquidating Trust Management in form and substance reasonably satisfactory to the Liquidating Trust.

4.10 Unitholder Liability to Third Persons. No Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Liquidating Trust Assets or the affairs of the Liquidating Trust, to the fullest extent provided by section 3803(a) of the Trust Act.

4.11 Actions in the Right of the Liquidating Trust. No Unitholder or Unitholders shall have the right to bring an action in the right of the Liquidating Trust to recover a judgment pursuant to section 3816 of the Trust Act unless such Unitholder or Unitholders individually or collectively own ten percent (10%) or more of the outstanding Units.

## **ARTICLE V**

### **CASH DISTRIBUTIONS TO UNITHOLDERS**

#### 5.1 Distributions Generally.

(a) A Unit shall entitle the holder thereof to receive a Pro Rata share of the Distributable Cash distributed by the Liquidating Trust, when and as such distributions are made pursuant to this Liquidating Trust Agreement.

(b) On each Distribution Date, the Liquidating Trust (i) shall distribute to each Unitholder of record on the next preceding Distribution Record Date (or, in the case of the Initial Distribution Date, the Initial Unit Distribution Record Date) an amount equal to its respective Pro Rata share of the Distributable Cash to be distributed on such Distribution Date, and (ii) shall deposit into the Disputed Claims Reserve the Pro Rata share of such Distributable Cash allocable to the Units held in the Disputed Claims Reserve.

#### 5.2 Timing of Distributions.

(a) The initial distribution of Distributable Cash to the Unitholders shall be made by the Liquidating Trust on the Initial Distribution Date.

(b) Subsequent Distribution Dates shall be determined by the Liquidating Trust Board from time to time, but such Distribution Dates shall occur no less frequently than semi-annually; provided, however, that the Liquidating Trust shall not be required to make a semi-annual distribution if the aggregate Distributable Cash at the time is such as would make the distribution impracticable, as determined by the Liquidating Trust Board, in which case such Cash will be included in the Distributable Cash on a subsequent Distribution Date.

(c) In the event that any distribution is required to be made under this Liquidating Trust Agreement on a date that is not a Business Day, then the making of such distribution may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

5.3 Distribution Record Date; Distributable Cash.

(a) In advance of each Distribution Date (other than the Initial Distribution Date), the Liquidating Trust Board shall establish a Distribution Record Date for purposes of determining the Unitholders entitled to receive a distribution of Distributable Cash on such Distribution Date, which Distribution Date shall be no less than fifteen (15) and no more than thirty (30) days prior to the corresponding Distribution Date.

(b) Except with respect to the Initial Distribution Date, the Liquidating Trust Board shall, in advance of the corresponding Distribution Record Date, make a determination of the Distributable Cash distributable on any Distribution Date, giving due regard for the Cash anticipated to be held by the Liquidating Trust as of such Distribution Date (not including Cash held in the Disputed Claims Reserve or any other reserve maintained by the Liquidating Trust or withheld in accordance with Section 4.5(b)), and the sufficiency of the Cash held in or that may be required to be added to the Administrative Expenses Set Aside or the Administrative, Priority, Secured and Convenience Distribution Reserve or that may be available to be released from the Administrative Expenses Set Aside or the Administrative, Priority, Secured and Convenience Distribution Reserve as no longer necessary for the purposes thereof.

(c) Following its determination of the Distributable Cash to be distributed on any Distribution Date, but no later than five (5) Business Days in advance of the corresponding Distribution Record Date, unless otherwise determined by the Liquidating Trust Board for good reason shown, the Liquidating Trust shall issue a press release and post to the Liquidating Trust Website disclosure regarding the distribution on such Distribution Date, including the Distribution Record Date, the Distribution Date and the Distributable Cash to be distributed, in the aggregate and on a per Unit basis (and shall provide the RMBS Claims Trust Trustee with written notice of such disclosure).

(d) Subject to the treatment of the Units for the Senior Unsecured Noteholders as described in Article VII.G of the Plan, the distribution on the Initial Distribution Date shall be made to holders of Units of record as of the Initial Unit Distribution Record Date. The amount of Distributable Cash to be distributed on the Initial Distribution Date shall be as determined by the Liquidating Trust Board and shall be publicly disclosed in the manner described in Section 5.3(c), as promptly as practicable following the Effective Date.

(e) For purposes of making any distribution of Distributable Cash, the term “of record” or any similar term means, if the Units are at the relevant time held through DTC, the determination of the beneficial holders of the Units entitled to receive such distribution in accordance with the practices and procedures of DTC and its direct and indirect participants; and if the Units at the relevant time are represented by Unit Certificates, the holders of the Units as reflected on the Unit Register.

5.4 Distributions in Respect of Disputed LT Unsecured Claims.

(a) The Liquidating Trust shall resolve or cause to be resolved Disputed LT Unsecured Claims, as provided in Section 7.2.

(b) If a Disputed LT Unsecured Claim is Allowed, in whole or in part, there shall be released to the holder from the Disputed Claims Reserve, on the Unit Distribution Date next following the date that such Claim is Allowed, (i) a number of Units corresponding to such Claim, or the Allowed portion thereof, as the case may be, as provided in Section 4.3(c); and (ii) Cash in the amount of all distribution made to the Disputed Claims Reserve in respect of such Units since the Effective Date.

(c) Subject to Section 5.5(b), if a Disputed LT Unsecured Claim is disallowed, in whole or in part, then, on the Unit Distribution Date next following the date of the determination not to Allow such Claim, in whole or in part, there shall be released from the Disputed Claims Reserve (i) a number of Units equal to (x) the Estimated Amount of the Claim to the extent that it has been disallowed, multiplied by (y) (A) if such Disputed LT Unsecured Claim is a ResCap Unsecured Claim, the ResCap Debtors Unsecured Unit Issuance Ratio, (B) if such Disputed LT Unsecured Claim is a GMACM Unsecured Claim, the GMACM Debtors Unsecured Unit Issuance Ratio, or (C) if such Disputed LT Unsecured Claim is a RFC Debtors Unsecured Claim, the RFC Debtors Unsecured Unit Issuance Ratio, as applicable, which Units shall be cancelled and retired; and (ii) Cash or other assets in the amount of all distributions made to the Disputed Claims Reserve in respect of such Units since the Effective Date which Cash shall become unreserved and unrestricted, and shall be added to the Administrative Expenses Set Aside or made available for distribution to Unitholders as Distributable Cash, as determined by the Liquidating Trust Board, and any such non-Cash assets shall become general, unrestricted assets of the Liquidating Trust; provided that the Liquidating Trust Board, may in its sole discretion, retain such number of Units and such Cash or other assets in the Disputed Claims Reserve that would otherwise have been cancelled, retired or made unreserved or unrestricted, as applicable, pursuant to this Section 5.4(c), if it determines that such Units and Cash or other assets may be necessary to satisfy Disputed LT Unsecured Claims that may become Allowed in the future.

(d) If any Units shall be cancelled and retired as provided in Section 5.4(c), then from and after the Unit Distribution Date on which such cancellation occurs, all determinations of Pro Rata share amounts shall be made excluding such Units.

(e) At such time as all Disputed LT Unsecured Claims have been resolved, any remaining Units in the Disputed Claims Reserve shall be cancelled and any remaining Cash in the Disputed Claims Reserve shall become unreserved and unrestricted, and shall be added to the Administrative Expenses Set Aside or shall be available for distribution to the Unitholders as Distributable Cash, as determined by the Liquidating Trust Board. Any non-Cash assets remaining in the Disputed Claims Reserve shall become general, unrestricted assets of the Liquidating Trust.

5.5 Adjustments to Estimated Amounts.

(a) The Liquidating Trust Board from time to time may make immaterial technical adjustments, or seek an adjusted determination from the Bankruptcy Court of, the Estimated Amounts of the Disputed LT Unsecured Claims.

(b) If there shall be an increase in the Estimated Amounts of the Disputed LT Unsecured Claims in accordance with Section 5.5(a), no additional Units or Cash or other assets shall be added to the Disputed Claims Reserve. In such a case, however, the Liquidating Trust Board may determine to retain in the Disputed Claims Reserve such number of Units and such Cash or other assets as would be necessary to satisfy the increase in Estimated Amounts, as provided in Section 5.4(c).

(c) If there shall be a decrease in the Estimated Amounts of the Disputed LT Unsecured Claims in accordance with Section 5.5(a), the Liquidating Trust Board may, but shall not be required to, determine to release from the Disputed Claims Reserve (i) a number of Units equal to the sum of (x) (A) the decrease in the Estimated Amounts of the Disputed LT Unsecured Claims attributable to ResCap Unsecured Claims, multiplied by (B) the ResCap Debtors Unsecured Unit Issuance Ratio, (y) (A) the decrease in the Estimated Amounts of the Disputed LT Unsecured Claims attributable to GMACM Unsecured Claims, multiplied by (B) the GMACM Debtors Unsecured Unit Issuance Ratio, and (z) (A) the decrease in the Estimated Amounts of the Disputed LT Unsecured Claims attributable to RFC Unsecured Claims, multiplied by (B) the RFC Debtors Unsecured Unit Issuance Ratio, which Units shall be cancelled and retired; and (ii) Cash or other assets in the amount of all distributions made to the Disputed Claims Reserve in respect of such Units since the Effective Date, which Cash shall then be unreserved and unrestricted, and which may be added to the Administrative Expenses Set Aside or be made available for distribution to Unitholders, in such amounts as determined by the Liquidating Trust Board, and any such non-Cash assets shall become general, unrestricted assets of the Liquidating Trust; provided that the Liquidating Trust Board may, in its sole discretion, determine to retain such number of Units and such Cash or other assets in the Disputed Claims Reserve that would otherwise have been cancelled, retired or made unreserved or unrestricted, as applicable, pursuant to this Section 5.5(c), if it determines that such Units and Cash or other assets may be necessary to satisfy Disputed LT Unsecured Claims that may become Allowed in the future.

5.6 Withholding and Reporting Requirements. The Liquidating Trust may withhold and pay to the appropriate Tax Authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or distribution to the Unitholders. All such amounts withheld and paid to the appropriate Tax Authority shall be treated as amounts distributed to such holders for all purposes of the Plan and this Liquidating Trust Agreement. To the extent an amount has been placed in escrow pending resolution of the need to withhold, and the Liquidating Trust determines that no withholding is required, such amounts shall be distributed to the Unitholders with respect to whom such amounts were previously withheld. The Liquidating Trust shall be authorized to collect such tax information from the Unitholders (including social security numbers or other tax identification information) as it in its sole discretion deems necessary to effectuate the Plan and this Liquidating Trust Agreement. To that end, the Liquidating Trust may send to Unitholders a written communication requesting that the Unitholder provide certain tax information and the specifics of their holdings to the extent the

Liquidating Trust or any disbursing agent deems appropriate (including completing the appropriate Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9, as applicable to each holder). The Liquidating Trust may refuse to make a distribution to any Unitholder that fails to furnish such information in a timely fashion, until such information is delivered; provided, however, that, upon the delivery of such information by a Unitholder, the Liquidating Trust shall make such distribution(s) to which the Unitholder is entitled, without interest; provided further that, if the holder fails to comply with such a request within one (1) year, (i) any pending distribution(s) allocated to such Unitholder shall be deemed an unclaimed distribution to be treated as the Liquidating Trust Board determines in its discretion; and (ii) the Liquidating Trust shall not be required to allocate any future distributions to such holder unless and until the holder provides the requested tax information; and provided further that, if the Liquidating Trust fails to withhold in respect of amounts received or distributable with respect to any such holder and the Liquidating Trust is later held liable for the amount of such non-allocated future distributions, such holder shall reimburse the Liquidating Trust for such liability including interest, penalties, fines and other additional amounts with respect thereto. Notwithstanding the foregoing, each Unitholder that receives a distribution under the Plan shall have the sole and exclusive responsibility for the payment of any Taxes imposed by any governmental unit, including income, withholding and other Taxes, on account of such distribution.

5.7 Disbursing Agent. The Liquidating Trust may engage one or more agents to make distributions, including distributions of Units. References in this Liquidating Trust Agreement to distributions by the Liquidating Trust shall include distributions made by a disbursing agent.

## **ARTICLE VI** **BOARD OF TRUSTEES**

6.1 General. The affairs of the Liquidating Trust shall be managed by, or under the direction, of the Liquidating Trust Board, which shall have such powers and authority as are provided in this Article VI and as elsewhere set forth in this Liquidating Trust Agreement and in the Trust Act.

### 6.2 Membership.

(a) As of the Effective Date, the Liquidating Trust Board shall consist of five (5) Liquidating Trustees. The Liquidating Trustees comprising the Liquidating Trust Board are set forth on the signature page to this Liquidating Trust Agreement, and by execution hereof, each Liquidating Trustee accepts his or her trusteeship of the Liquidating Trust, on the terms set forth herein.

(b) Each Liquidating Trustee shall be a natural person at least 18 years of age. Each Person appointed as a Liquidating Trustee shall be deemed a trustee under the Trust Act, with all privileges and immunities appurtenant thereto, and, as necessary or applicable, shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

(c) Each Liquidating Trustee shall hold office until the earlier of (i) the termination of the Liquidating Trust, (ii) the resignation, death or disability of such Liquidating Trustee or (iii) the removal of such Liquidating Trustee in accordance with this Liquidating Trust Agreement.

(d) Any Liquidating Trustee may resign upon thirty (30) days' prior written notice to the other members of the Liquidating Trust Board.

(e) Any Liquidating Trustee may be removed for Cause in accordance with the following procedures. For purposes of these procedures, references to the Liquidating Trust Board shall mean the members of the Liquidating Trust Board other than the Liquidating Trustee whose removal is being sought (the "Specified Liquidating Trustee").

(i) The Liquidating Trust Board shall give written notice to the Specified Liquidating Trustee and the Nominating Party that selected the Specified Liquidating Trustee (or any Successor Nominating Party that succeeded to that Nominating Party's rights hereunder), which notice shall describe in reasonable detail the actions or inactions on the basis of which the other members of the Liquidating Trust Board have determined that Cause exists for the removal of such Liquidating Trustee.

(ii) The Specified Liquidating Trustee shall have thirty (30) days from the date of his/her receipt of the notice from the Liquidating Trust Board to respond to the determination of the Liquidating Trust Board that Cause exists for removal and to cure such Cause, if a cure is possible. If the Specified Liquidating Trustee so requests, s/he shall be given the opportunity to appear in person before the Liquidating Trust Board to respond to the Liquidating Trust Board's determination.

(iii) Following such thirty (30) day period, whether or not the Specified Liquidating Trustee has made any response to the notice of the Liquidating Trust Board, if the Cause forming the basis for removal has not been cured, the Liquidating Trust Board by unanimous consent of all Liquidating Trustees other than the Specified Liquidating Trustee may remove the Specified Liquidating Trustee from office.

(iv) If the Liquidating Trust Board does not vote to remove the Specified Liquidating Trustee within sixty (60) days from the date notice is first given to the Liquidating Trustee, the Liquidating Trust Board shall repeat these procedures if it determines thereafter to remove such Specified Liquidating Trustee.

(v) Notice of removal of a Liquidating Trustee shall promptly be posted to the Liquidating Trust Website.

(f) [RESERVED]

(g) In the event of a vacancy on the Liquidating Trust Board, whether as a result of the resignation, death, disability or removal of a Liquidating Trustee, the Nominating Party that had the right, pursuant to Article VI.E of the Plan, to select the Liquidating Trustee that has resigned, died, become disabled or has been removed, or the direct or indirect predecessor of such Liquidating Trustee, shall for a period of sixty (60) days have an exclusive

right to appoint a replacement Liquidating Trustee. If the applicable Nominating Party fails to appoint a replacement Liquidating Trustee within sixty (60) days of such vacancy as aforesaid, or if there is no Nominating Party that at the time has such right of appointment, the remaining Liquidating Trustees shall, by Majority Consent, either (x) promptly appoint a replacement Liquidating Trustee or (y) determine to reduce the board size and thereby eliminate the vacancy; provided, however, that if there shall subsequently be a vacancy on the Liquidating Trust Board as a result of the resignation, death, disability or removal of the replacement Liquidating Trustee appointed by Majority Consent of the remaining Liquidating Trustees, the applicable Nominating Party shall once again have the right to appoint a replacement Liquidating Trustee, subject to the terms of this Section 6.2; provided further that if the Liquidating Trustees shall have reduced the size of the Liquidating Trust Board following the failure of the applicable Nominating Party to appoint a replacement Liquidating Trustee as aforesaid, such Nominating Party shall thereafter have no further right of appointment. Notice of the appointment of any replacement Liquidating Trustee shall be posted to the Liquidating Trust Website as promptly as practicable after such appointment.

(h) The Liquidating Trust Board may act at any time, in its sole and exclusive discretion, to reduce the number of Liquidating Trustees to a number less than that required initially by Section 6.2(a); provided, however, that if at the time a Nominating Party shall have a right of appointment as provided in Section 6.2(f), the Liquidating Trust Board shall not reduce the number of Liquidating Trustees so as to eliminate that right of appointment without such Nominating Party's consent.

(i) Upon a Qualified Sale by a Nominating Party, the Qualified Purchaser shall, at its election by written notice from such Nominating Party and the Qualified Purchaser to the Liquidating Trust Board, succeed to rights of appointment of such Nominating Party under this Section 6.2; and thereafter the original Nominating Party shall cease to have any right of appointment hereunder; provided, however, that notwithstanding the foregoing, no purchaser (even if such purchaser would otherwise qualify as a Qualified Purchaser) shall succeed to the right of appointment of the Initial Nominating Parties identified in clauses (4) and (5) of the definition thereof, and the right of appointment shall instead remain with such Initial Nominating Party.

(j) A Nominating Party shall cease to have any right of appointment, replacement, or consent under this Section 6.2 (including any right to transfer such rights) if (i) at any time the Nominating Party holds an amount of Units that is less than twenty-five percent (25%) of (x) the Initial Unit Estimation of the Nominating Party, in the case of an Initial Nominating Party; or (y) the Initial Unit Estimation of the Initial Nominating Party that is the Nominating Party's direct or indirect predecessor in interest, in the case of a Successor Nominating Party; provided, however, that the foregoing shall not apply to the Initial Nominating Parties identified in clauses (4) and (5) of the definition thereof and such parties shall not cease to have their right of appointment for so long as such parties hold Units; or (ii) a Nominating Party provides written notice to the Liquidating Trust Board that it irrevocably surrenders its rights as a Nominating Party under this Section 6.2.

(k) A Nominating Party shall be required to provide evidence satisfactory to the Liquidating Trust Board of its ownership of Units, as from time to time may be requested

by the Liquidating Trust Board. If a Qualified Purchaser elects to become a Successor Nominating Party as provided in Section 6.2(h), the respective transferring Nominating Party and the Qualified Purchaser shall provide to the Liquidating Trust Board such evidence as the Liquidating Trust Board may require to confirm that transfer of Units to the Qualified Purchaser by such Nominating Party constitutes a Qualifying Sale.

(l) No Nominating Party or its respective affiliates shall ever have the right to appoint more than one Liquidating Trustee to the Liquidating Trust Board.

(m) No person designated by a Successor Nominating Party shall serve as a Liquidating Trustee if the Liquidating Trust Board, acting by Supermajority Consent, shall affirmatively determine, and shall provide written notice to the Successor Nominating Party to the effect, that such person has conflicts such that such person will not act in the best interests of the Liquidating Trust and the Liquidating Trust Beneficiaries.

(n) Each Nominating Party shall be required to provide written notice to the Liquidating Trust of the person or entity such Nominating Party designates as its point of contact for all purposes hereunder, which notice shall contain contact information for such person or entity and may be updated by such Nominating Party from time to time in writing.

6.3 Compensation. The Liquidating Trust Board shall have the authority to fix by unanimous consent the compensation of the Liquidating Trustees, which may include their expenses, if any, of attendance at meetings of the Liquidating Trust Board or any committee thereof, which compensation shall be included in the Liquidating Trust Budget. Any increases in the compensation of the Liquidating Trustees following the Effective Date will be subject to the entire fairness standard of review. Any changes in the compensation of the Liquidating Trustees following the Effective Date will be summarized timely by the Liquidating Trust on the Liquidating Trust Website.

#### 6.4 Authority.

(a) The Liquidating Trust Board shall be responsible for exercising the authority and performing the obligations of the Liquidating Trust expressly provided for in this Liquidating Trust Agreement, otherwise giving effect to the intents and purposes of this Liquidating Trust Agreement, and exercising the rights of trustees under the Trust Act.

(b) Without limiting the generality of the preceding subsection, and in furtherance thereof, the Liquidating Trust Board shall be expressly authorized and empowered to undertake, acting as appropriate through the Liquidating Trust Management and Liquidating Trust Agents, the following actions on behalf of the Liquidating Trust, without the need for any additional approvals, authorization, or consents and without any further notice to or action, order or approval of the Bankruptcy Court; provided, that all such actions are undertaken in a manner consistent with the purposes of the Liquidating Trust:

(i) to hold, manage, dispose of, sell, convert to Cash, and distribute the Liquidating Trust Assets, including investigating, prosecuting and resolving the Liquidating Trust Causes of Action included therein;

- (ii) to hold the Liquidating Trust Assets for the benefit of Liquidating Trust Beneficiaries and, in its capacity as a Disbursing Agent, the holders of Allowed Priority Claims and Allowed General Unsecured Convenience Claims, whether such beneficiaries' and holders' Claims are Allowed on or after the Effective Date;
- (iii) to establish and administer the Administrative Expenses Set Aside;
- (iv) to establish and administer the Disputed Claims Reserve;
- (v) to establish and administer the Administrative, Priority, Secured and Convenience Distribution Reserve;
- (vi) to establish and administer the DOJ/AG Settlement Reserve;
- (vii) to appoint, engage, review, supervise, remove, replace and determine the compensation payable to Liquidating Trust Management and Liquidating Trust Agents;
- (viii) to settle or otherwise resolve Disputed LT Claims in accordance with the terms of the Plan Documents;
- (ix) to the extent consistent with the terms of the Plan, to investigate, prosecute, settle, liquidate, dispose of, and/or abandon the Liquidating Trust Assets, including rights, Avoidance Actions, other Liquidating Trust Causes of Action or litigation previously held by the Debtors or their Estates;
- (x) to monitor and enforce the implementation of the Plan insofar as relating to the Liquidating Trust Assets;
- (xi) to file all Tax Returns and regulatory forms, returns, reports and other documents and financial information required to be filed with respect to the Liquidating Trust, including filing Tax Returns as a grantor trust pursuant to Treasury Regulation section 1.671-4(a);
- (xii) to reconcile, object to, and resolve Claims against the Debtors or the Liquidating Trust, and manage, control, prosecute and/or settle on behalf of the Estates or the Liquidating Trust objections to Claims;
- (xiii) to fund the Borrower Claims Trust, make the NJ Carpenters Claims Distribution in Cash and pay amounts owed in respect of the Allowed ETS Unsecured Claims, in each case, in accordance with the Plan and this Liquidating Trust Agreement;
- (xiv) to perform under the Cooperation Agreements;
- (xv) to pay or reserve for payment in the Administrative, Priority, Secured and Convenience Distribution Reserve, amounts payable to satisfy the Allowed Priority Claims and Allowed General Unsecured Convenience Claims;

- (xvi) to make distributions of Distributable Cash to Unitholders;
- (xvii) to maintain and dispose of the books and records transferred to the Liquidating Trust, as provided in Section 2.12 and Section 12.3;
- (xviii) to prepare and disseminate reports, as provided in Section 7.6;
- (xix) to enter into and exercise rights under contracts that are necessary or desirable to the administration of the Liquidating Trust and execute any documents or pleadings related to the liquidation of the Liquidating Trust Assets or other matters related to the Liquidating Trust;
- (xx) to establish and maintain bank accounts and terminate such accounts;
- (xxi) to set off amounts owed to the Debtors against distributions to Unitholders;
- (xxii) to bring suits or defend itself against such suits, if any, in connection with any matter arising from or related to the Plan Documents that affects in any way the rights or obligations of the Liquidating Trust, the Liquidating Trust Beneficiaries or, in its capacity as a Disbursing Agent, the holders of Allowed Priority Claims and Allowed General Unsecured Convenience Claims (whether such Claims are Allowed as of the Effective Date or become Allowed at any subsequent time), in their capacities as such;
- (xxiii) to obtain and maintain insurance coverage (including tail insurance) with respect to the liabilities and obligations of the Liquidating Trust Board and the Liquidating Trust Management, and, if so determined by the Liquidating Trust Board, such other insurance as the Liquidating Trust Board determines as appropriate for the circumstances from time to time;
- (xxiv) to invest Liquidating Trust Assets (including any earnings thereon or proceeds therefrom) in the manner permitted to be made by a Liquidating Trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable Internal Revenue Service guidelines, rulings, or other controlling authorities, including Revenue Procedure 94-45, 1994-2 C.B. 684; provided, however, that the Liquidating Trust Board shall only authorize investments that are temporary investments in short-term government securities, time deposits, certificates of deposit, bankers' acceptances, commercial paper and money market funds or similar temporary, liquid, short-term investments.
- (xxv) to take all actions necessary and appropriate to minimize any adverse Tax consequences to the holders of Allowed Unsecured Claims; provided that such actions do not result in an adverse Tax consequence to the Liquidating Trust and are consistent with and are not contrary to the treatment of the Liquidating Trust as a "grantor trust" for United States federal income Tax purposes;

(xxvi) to remove and replace the Delaware Trustee or the FHA Qualified Trustee;

(xxvii) to act as a signatory on behalf of the Debtors for all purposes, including those associated with the novation of contracts or other obligations arising out of the sale or other disposition of the Debtors' assets;

(xxviii) to take all actions necessary, and create any documents necessary, to wind up the affairs of the Debtors in accordance or consistent with the terms of the Plan;

(xxix) to take all necessary action and file all appropriate motions to obtain an order closing the Chapter 11 Cases;

(xxx) to issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions, as determined by the Liquidating Trust Board to be necessary or appropriate to effectuate the terms of the Plan following the Effective Date; and

(xxxi) to take such other and further actions, including conversions, dissolutions, transfers, liquidations, or other corporate transactions, as determined by the Liquidating Trust Board to be necessary or appropriate, in furtherance of the purposes of the Plan Documents in respect of the Debtors and their Estates as are not inconsistent with this Liquidating Trust Agreement or the other Plan Documents.

(c) The Liquidating Trust Board shall comply with all applicable laws, shall act to maximize the distributions to Unitholders to the extent reasonably possible under the circumstances and in furtherance of the purposes of this Liquidating Trust.

#### 6.5 Action of the Liquidating Trust Board.

(a) Unless otherwise specified in this Liquidating Trust Agreement, the Liquidating Trust Board shall act by Majority Consent.

(b) Anything to the contrary in this Liquidating Trust Agreement notwithstanding, the following actions shall require the Supermajority Consent of the Liquidating Trust Board:

(i) the delegation to a committee of the Liquidating Trust Board or to any single Trustee, including the Chairman of the Liquidating Trust Board, of any rights or responsibilities of the Liquidating Trust Board, except as may otherwise be provided in the Board Protocol;

(ii) the approval of any material change or amendment to the Liquidating Trust Agreement, as provided in Section 13.11; and

(iii) any other action prescribed by the Liquidating Trust Board as requiring Supermajority Consent.

6.6 Meetings.

(a) The Liquidating Trust Board shall hold regular meetings, at such time and at such place as shall from time to time be determined by the Liquidating Trustees. No notice of regular meetings need be given.

(b) Special meetings of the Liquidating Trust Board may be called by the Chairman of the Liquidating Trust Board, any two (2) Liquidating Trustees or the Liquidating Trust Manager.

(c) Written notice of the time and place of special meetings of the Liquidating Trust Board shall be given to each Liquidating Trustee by either personal delivery, facsimile or other means of electronic communication at least two (2) Business Days prior to such meeting. Notice of a meeting of the Liquidating Trust Board need not be given to any Liquidating Trustee who signs a waiver of notice either before or after the meeting. Attendance of a Liquidating Trustee at a meeting shall constitute a waiver of notice of such meeting, except when a Liquidating Trustee states, at the beginning of the meeting, any objection to the transaction of business because the meeting has not been convened or called in accordance with applicable law or this Liquidating Trust Agreement.

(d) A majority of the members constituting the whole Liquidating Trust Board shall constitute a quorum for the transaction of business at such meeting of the Liquidating Trust Board, but if less than a majority is present at a meeting, a majority of the Liquidating Trustees present may adjourn the meeting from time to time. When a meeting is adjourned to another time or place (whether or not a quorum is present), prompt notice shall be given of the adjourned meeting and the time and place thereof will be announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Liquidating Trustees may transact any business which might have been transacted at the original meeting.

(e) Meetings may be held in person within or without the State of Delaware, telephonically or electronically, and upon such notice as may be determined from time to time in accordance with the rules and procedures adopted by the Liquidating Trust Board, and any member of the Liquidating Trust Board who participates by such means shall be deemed to be present for purposes of quorum under Section 6.6(d). Members of the Liquidating Trust Board may also act by written consent in lieu of a meeting, which consent may be less than unanimous, provided each of the Liquidating Trustees shall have received notice of the action to be taken by written consent in lieu of a meeting at least two (2) Business Days in advance of the effectiveness thereof. Any such written consents shall be filed with the minutes of the proceedings of the Liquidating Trust Board.

6.7 Chairman of the Liquidating Trust Board.

(a) The Liquidating Trust Board shall elect from among its members a Chairman of the Liquidating Trust Board. The Chairman of the Liquidating Trust Board may be removed and replaced as Chairman at any time by Majority Consent of the Liquidating Trust Board.

(b) The Chairman of the Liquidating Trust Board shall preside at all meetings of the Liquidating Trust Board at which he or she shall be present and shall exercise such other functions, authorities and duties as may be prescribed by the Liquidating Trust Board. If the Chairman of the Liquidating Trust Board is not present for a meeting, a Liquidating Trustee chosen by a majority of the members of the Liquidating Trust Board present, shall act as chairman at such meeting of the Liquidating Trust Board. The Chairman of the Liquidating Trust Board shall not be considered an officer of the Liquidating Trust solely by virtue of serving in such capacity.

6.8 Committees. The Liquidating Trust Board may designate one or more committees, each committee to consist of one or more Liquidating Trustees. Any such committee shall have and may exercise such powers as the Liquidating Trust Board may determine and specify in the resolution designating such committee in a manner not inconsistent with the other provisions of this Liquidating Trust Agreement. Each committee shall keep a record of proceedings and report the same to the Liquidating Trust Board to such extent and in such form as the Liquidating Trust Board may require. Unless otherwise provided in the resolution designating a committee, a majority of all the members of any such committee may select its Chairman, fix its rules of procedure, fix the time and place of its meetings and specify what notice of meetings, if any, shall be given.

6.9 Fiduciary Duty and Standard of Conduct.

(a) Each Liquidating Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Liquidating Trust and not otherwise, and in accordance with applicable law, including the Trust Act. No Liquidating Trustee in a personal capacity shall have the authority to bind the Liquidating Trust, but shall for all purposes hereunder be acting in the capacity as a member of the Liquidating Trust Board or a committee thereof.

(b) Each Liquidating Trustee in the exercise of his or her duties hereunder shall act in accordance with principles of good faith and fair dealing.

**ARTICLE VII**  
**OPERATION OF THE LIQUIDATING TRUST**

7.1 Prohibited Activities.

(a) The Liquidating Trust Board, the Liquidating Trust Management and the Liquidating Trust Agents shall hold the Liquidating Trust out as a trust in the process of liquidation, whose activities are limited to the liquidation of the Liquidating Trust Assets on behalf, and for the benefit, of the Liquidating Trust Beneficiaries and, in the Liquidating Trust's capacity as Disbursing Agent, the holders of Allowed Priority Claims and Allowed General Unsecured Convenience Claims (whether such Claims are Allowed as of the Effective Date or become Allowed at any subsequent time) and the other purposes set forth in this Liquidating Trust Agreement. Without limiting the foregoing, the Liquidating Trust shall not hold itself out as an investment company, and no part of the Liquidating Trust Assets shall be

caused by the Liquidating Trust Board to be used or disposed of in furtherance of any trade or business.

(b) The Liquidating Trust shall not engage in any investments or activities inconsistent with the treatment of the Liquidating Trust as a liquidation trust within the meaning of Treasury Regulations section 301.7701-4(d) or under applicable Internal Revenue Service guidelines, rulings or other controlling authorities, including Revenue Procedure 94-45, 1994-2 C.B. 684.

#### 7.2 Resolution of Disputed LT Claims.

(a) The Liquidating Trust Board shall authorize the Liquidating Trust Management or one or more Liquidating Trust Agents to resolve, on behalf of the Liquidating Trust, all Disputed LT Claims without further Bankruptcy Court order. If the Liquidating Trust and the holder of a Disputed LT Claim are unable to reach a settlement on a Disputed LT Claim, or if the Liquidating Trust determines to disallow a Disputed LT Claim, such Disputed LT Claim shall be submitted to the Bankruptcy Court for resolution. If it is determined that the Bankruptcy Court does not have jurisdiction to resolve any Disputed LT Claim, then such Disputed LT Claim shall be submitted to the District Court for resolution. The Liquidating Trust shall file with the Bankruptcy Court a quarterly notice of Disputed LT Claims resolved and/or settled during the prior quarter following the end of each fiscal quarter, starting with the first complete fiscal quarter after the Effective Date.

(b) Disputed LT Unsecured Claims that become Allowed, in whole or in part, shall be satisfied exclusively out of the Disputed Claims Reserve, in the manner provided in Article IV and Article V, and in the order in which such Disputed LT Unsecured Claims are Allowed. In the event the Units, and the Cash distributed with respect thereto (including the value of any non-Cash assets substituted therefor), remaining in the Disputed Claims Reserve shall be insufficient to satisfy all the Disputed LT Unsecured Claims that have become Allowed, in the manner such Claims would have been satisfied had such Disputed Claims been Allowed on the Initial Unit Distribution Record Date, and are due to be satisfied with distributions from the Disputed Claims Reserve on any Unit Distribution Date, such Disputed LT Unsecured Claims shall be satisfied Pro Rata in proportion to their respective Allowed Claim amounts. After all Units, and the Cash distributed with respect thereto, have been distributed from the Disputed Claims Reserve, no further distributions shall be made in respect of Disputed LT Unsecured Claims.

(c) Disputed Priority Claims and General Unsecured Convenience Claims that become Allowed, in whole or in part, shall be satisfied exclusively out of the Administrative, Priority, Secured and Convenience Distribution Reserve, in the manner provided in Article III, and in the order in which such Disputed Priority Claims are Allowed.

#### 7.3 Disputed Claims Reserve.

(a) On or as soon as practicable following the Effective Date, the Liquidating Trust shall establish the Disputed Claims Reserve, into which there shall be deposited the number of Units determined in accordance with Section 4.3(c). All Units and

other assets in the Disputed Claims Reserve shall be the property of the Liquidating Trust and not of the holder of any Claim or any other person.

(b) All Cash held in the Disputed Claims Reserve shall be maintained with a United States FDIC insured financial institution, and may be maintained in an interest-bearing account, as the Liquidating Trust Board may from time to time determine. The Cash in the Disputed Claims Reserve shall be held separately and shall not be commingled with any other Cash constituting Liquidating Trust Assets. In its discretion, the Liquidating Trust Board may substitute non-Cash assets for cash distributed in respect of Units held in the Disputed Claims Reserve as provided for in the Board Protocols, which non-Cash assets may be monetized from time to time by the Disputed Claims Reserve; provided, however, that distributions from the Disputed Claims Reserve shall only be made in Units and Cash; and provided further that in connection with any such substitution of non-Cash assets, due consideration shall be given to the timing and amount of scheduled and anticipated payments and both the fair market value and the timing of monetization of such non-Cash assets, so as to enable the Liquidating Trust to distribute Cash in respect of Units that are released from the Disputed Claims Reserve as such Cash distributions are due.

#### 7.4 Administrative Expenses Set Aside.

(a) On the Effective Date, there shall be established an Administrative Expenses Set Aside for the purpose of maintaining Cash allocated and retained by the Liquidating Trust from time to time in an amount necessary (subject to the Liquidating Trust Budget) to satisfy reasonable costs and expenses of the Liquidating Trust and other obligations and liabilities incurred, assumed or reasonably anticipated by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with the Plan Documents, including without limitation (i) fees and costs incurred in connection with the protection, preservation, liquidation and distribution of the Liquidating Trust Assets; (ii) the fees and costs incurred in connection with investigating, prosecuting and resolving Disputed LT Claims, Avoidance Actions, and other Liquidating Trust Causes of Action; (iii) the fees and costs of maintaining the Disputed Claims Reserve, the Administrative Expenses Set Aside, the Administrative, Priority, Secured and Convenience Distribution Reserve and the DOJ/AG Settlement Reserve; (iv) the fees and costs of winding down of the Estates and the affairs of the Debtors; (v) reserves for any judgments, settlements or other Cash liabilities or potential liabilities that are or may be payable by the Liquidating Trust, as determined by the Liquidating Trust Board; (vi) the compensation of the Delaware Trustee, the FHA Qualified Trustee, the Liquidating Trustees and the Liquidating Trust Management, and the expenses that may be incurred by them in the performance of their duties hereunder; (vii) any Taxes imposed on the Liquidating Trust or in respect of the Liquidating Trust Assets or otherwise, including the Disputed Claims Reserve; (viii) the fees and expenses of the Liquidating Trust Agents, the fees of the United States Trustee and professional fees; (ix) any statutory fees not otherwise satisfied by the Debtors and (x) such other costs, fees and expenses as shall be provided for in the Liquidating Trust Budget and as may be incurred in carrying out the purposes and intents of this Liquidating Trust Agreement. The amount of Cash held in the Administrative Expenses Set Aside may be increased or released from time to time by or at the direction of the Liquidating Trust Board, as necessary or appropriate in furtherance of the purposes thereof; provided that in no event may the Liquidating Trust receive or retain cash or cash equivalents

in excess of a reasonable amount to meet claims and contingent liabilities of the Liquidating Trust or to maintain the value of the Liquidating Trust Assets. Any Cash released from the Administrative Expenses Set Aside shall be available for distribution in accordance with the provisions of Article V.

(c) Except as determined by the Liquidating Trust Manager, the Administrative Expenses Set Aside shall not be required to be held separately and may be commingled with unrestricted funds of the Liquidating Trust. In its discretion, the Liquidating Trust Board may permit non-Cash assets to be applied to the Administrative Expenses Set Aside as provided for in the Board Protocol, which non-Cash assets may be monetized from time to time and the Cash so realized included in the Administrative Expenses Set Aside; provided, however that in connection with any such application, due consideration shall be given to the timing and amount of scheduled and anticipated payment obligations and both the fair market value and the timing of monetization of such non-Cash assets, so as to enable the Liquidating Trust to pay its obligations as they become due.

#### 7.5 DOJ/AG Settlement Reserve.

(a) On the Effective Date, there shall be established a reserve of \$55 million in Cash for the purpose of maintaining Cash allocated and retained by the Liquidating Trust to satisfy the Liquidating Trust's obligations under the DOJ/AG Settlement as set forth in the Plan (the "DOJ/AG Settlement Reserve"); provided that the Liquidating Trust's liability for such obligations shall not be limited nor be deemed to be limited to the funds available from the DOJ/AG Settlement Reserve.

(b) The amount of Cash held in the DOJ/AG Settlement Reserve may be increased or decreased from time to time by or at the direction of the Liquidating Trust Board, as necessary or appropriate in furtherance of the purposes thereof; provided that the DOJ/AG Settlement Reserve may not be decreased from its initial \$55 million except through the application of such funds in satisfaction of the Liquidating Trust's obligations under the DOJ/AG Settlement as set forth in the Plan. Until the termination of the DOJ/AG Settlement Reserve, as provided in subsection (c) below, the DOJ/AG Settlement Reserve shall at all times contain no less than \$20 million in Cash; provided that, if the DOJ/AG Settlement Reserve continues after April 5, 2016, the maximum amount required to be maintained thereafter in the DOJ/AG Settlement Reserve shall be the lesser of (x) \$20 million and (y) the amount of any liability that may be imposed against the Liquidating Trust by the District Court following the submission of the final report by the Monitor under the DOJ/AG Settlement.

(c) The DOJ/AG Settlement Reserve shall terminate upon the date as of which all of the Liquidating Trust's obligations under the DOJ/AG Settlement shall have been performed or satisfied; provided the DOJ/AG Settlement Reserve shall terminate on April 5, 2016 unless the Monitor's final report finds the existence of one or more potential violations as to which a liability exists or may be imposed against the Liquidating Trust under the DOJ/AG Settlement, in which case the DOJ/AG Settlement Reserve shall terminate on the date that such additional monetary amount has been satisfied or otherwise resolved. After termination of the DOJ/AG Settlement Reserve, the Cash remaining therein, if any, shall be unreserved and

unrestricted, and shall be added to the Administrative Expenses Set Aside or made available for distribution as Distributable Cash, as determined by the Liquidating Trust Board.

7.6 Reporting.

(a) The Liquidating Trust shall cause to be prepared, and shall post to the Liquidating Trust Website, financial reports on a quarterly and annual basis as provided in this Section 7.6(a). Unless otherwise required by applicable law, such reports need not be prepared in accordance with GAAP (and need not be prepared using the liquidation basis of accounting), but in any event shall fairly present the assets, liabilities, income and expenses of the Liquidating Trust for and as of the end of each reporting period. The financial reports shall be prepared on a consistent basis, except as may be disclosed in the notes to the financial statements. The financial reports shall include:

(i) Quarterly financial statements, which shall be prepared and posted no later than forty (40) days after the end of each of the first three (3) quarters of the Fiscal Year; and

(ii) Annual financial statements, which shall be prepared and posted no later than sixty (60) days after the end of each Fiscal Year, except that no such annual financial statements shall be required to be prepared and posted for the Fiscal Year ended December 31, 2013, as it will consist of less than thirty (30) days.

(b) In addition to the financial reports required by Section 7.6(a), the Liquidating Trust shall cause to be prepared, and shall post to the Liquidating Trust Website, no later than forty (40) days after the end of each of the first three (3) quarters for the Fiscal Year and no later than sixty (60) days after the end of each Fiscal Year, reports containing the following information regarding the activity of the Liquidating Trust during the most recently completed fiscal quarter, and in the report prepared after the end of each Fiscal Year, the most recently completed quarter, the most recently completed Fiscal Year and since the Effective Date:

(i) the material Liquidating Trust Assets disposed of during the relevant period and the material Liquidating Trust Assets remaining as of the end of such period;

(ii) the Distributable Cash distributed during the relevant period, in the aggregate and on a per Unit basis;

(iii) Cash added to or withdrawn from the Administrative Expenses Set Aside during the relevant period, and Cash held in the Administrative Expenses Set Aside as of the end of such period;

(iv) Cash added to or withdrawn from the Administrative, Priority, Secured and Convenience Distribution Reserve during the relevant period, and Cash held in the Administrative, Priority, Secured and Convenience Distribution Reserve as of the end of such period;

(v) Cash added to or withdrawn from the DOJ/AG Settlement Reserve during the relevant period, and Cash held in the DOJ/AG Settlement Reserve as of the end of such period;

(vi) the amount of Disputed LT Claims resolved by the Liquidating Trust during the relevant period, including, separately, the amounts of the Claims that were Allowed, in whole or in part, including both the Estimated Amounts thereof and amounts in which such Claims were Allowed, and the Estimated Amounts of the Claims that were not Allowed, in whole or in part, the amounts of the Disputed LT Claims remaining to be resolved as of the end of such period;

(vii) the Units and Cash distributed to holders of Disputed LT Unsecured Claims that were Allowed, in whole or in part, during the relevant period, the number of Units in the Disputed Claim Reserve that were cancelled, and the Cash in respect thereof released from the Disputed Claims Reserve, during the relevant period, and the Units and Cash held in the Disputed Claims Reserve as of the end of such period; and

(viii) such other information as the Liquidating Trust Board may determine to include from time to time.

(c) The Liquidating Trust Board shall also cause to be timely prepared, filed and distributed such additional statements, reports and submissions (x) as may be necessary to cause the Liquidating Trust to be in compliance with applicable law, including, if required pursuant to the Securities Exchange Act of 1934, as amended, or to the extent otherwise necessary to allow the Units to be transferrable and tradable in accordance with applicable law or (y) as may be otherwise required from time to time by the Bankruptcy Court.

#### 7.7 Liquidating Trust Management.

(a) The officers of the Liquidating Trust shall consist of a Liquidating Trust Manager, a secretary and such other officers as the Liquidating Trust Board shall deem appropriate (all such officers being collectively referred to as the "Liquidating Trust Management").

(b) The officers of the Liquidating Trust shall be appointed by the Liquidating Trust Board and shall hold office until their successors are appointed and qualified or until their earlier death, resignation or removal from office. Any officer may resign at any time by communicating notice of such resignation to the Liquidating Trust Board. Any officer may be removed at any time by the Liquidating Trust Board with or without cause. The compensation of such officers shall be as determined by the Liquidating Trust Board. Such compensation shall be paid out of the Administrative Expenses Set Aside, and shall be consistent with the Liquidating Trust Budget.

(c) The Liquidating Trust Manager shall have the general executive responsibility for the conduct of the affairs of the Liquidating Trust, and shall have such other

functions, authority and duties as customarily appertain to the office of the chief executive of a liquidation trust or as may be prescribed by the Liquidating Trust Board.

(d) The secretary of the Liquidating Trust shall keep a record of all proceedings of the Liquidating Trust Board and its committees, if any. The secretary shall have such other functions, authority and duties as customarily appertain to the office of secretary of a commercial entity or as may be prescribed by the Liquidating Trust Board.

(e) Any officer who is appointed from time to time by the Liquidating Trust Board and whose duties are not specified in this Liquidating Trust Agreement shall perform such duties and have such functions, authority and duties as may be prescribed by the Liquidating Trust Board.

#### 7.8 Liquidating Trust Agents; Employees.

(a) The Liquidating Trust may employ such Liquidating Trust Agents, including counsel (which may be the same counsel employed by the Debtors, the Creditors' Committee or any member thereof), advisors (which may be the same advisors formerly employed by the Debtors, the Creditors' Committee or any member thereof (subject to Section 2.4)), administrators and other professionals, as deemed reasonably necessary or desirable by the Liquidating Trust Board to carry out the intents and purposes of the Liquidating Trust, without further order from the Bankruptcy Court. Liquidating Trust Agents shall be appointed, and their appointment may be terminated, by the Liquidating Trust Board or, if authority in respect thereof is delegated by the Liquidating Trust Board to the Liquidating Trust Manager, the Liquidating Trust Manager. Liquidating Trust Agents shall be compensated on such basis as approved by the Liquidating Trust Board and shall be paid without further motion, application, notice or other order of the Bankruptcy Court. The fees and expenses of Liquidating Trust Agents shall be satisfied out of the Administrative Expenses Set Aside, and shall be consistent with the Liquidating Trust Budget.

(b) The officers of the Liquidating Trust shall be authorized to hire such employees as such officers, or any of them deem appropriate, subject to such limitations, conditions and qualifications as may be imposed by the Liquidating Trust Board. The compensation of such employees, together with all related costs, fees and expenses, shall be paid out of the Administrative Expenses Set Aside, and shall be consistent with the Liquidating Trust Budget.

### **ARTICLE VIII** **DELAWARE TRUSTEE**

8.1 Appointment. The Delaware Trustee shall act solely for the purpose of complying with the requirement of section 3807 of the Trust Act, and its powers and obligations hereunder shall have become effective upon its execution of the Interim Liquidating Trust Agreement.

8.2 Powers.

(a) Notwithstanding any provision hereof to the contrary, the duties and responsibilities of the Delaware Trustee shall be limited solely to (i) accepting legal process served on the Liquidating Trust in the State of Delaware and (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Delaware Trustee is required to execute under section 3811 of the Trust Act (including without limitation the Certificate of Trust and the Certificate of Conversion). Except as provided in the foregoing sentence, the Delaware Trustee shall have no management responsibilities or owe any fiduciary duties to the Liquidating Trust, the Liquidating Trust Board, the Liquidating Trust Beneficiaries or any other distributee of the Liquidating Trust hereunder. The filing of the Certificate of Conversion and the Certificate of Trust with the Secretary of State of the State of Delaware as provided under the Trust Act is hereby ratified.

(b) By its execution hereof, the Delaware Trustee accepts the trusteeship of the Liquidating Trust on the terms set forth herein. The Delaware Trustee shall not have any duty or liability with respect to the administration of the Liquidating Trust (except as otherwise expressly set forth in Section 8.2(a)), the investment of the Liquidating Trust Assets or the distribution of the Liquidating Trust Assets to the Unitholders, and no such duties shall be implied. The Delaware Trustee shall not be liable for the acts or omissions of the Liquidating Trust Board or the Liquidating Trust Management, nor shall the Delaware Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Liquidating Trust Board or the Liquidating Trust Management under this Liquidating Trust Agreement. The Delaware Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The Delaware Trustee shall not be personally liable under any circumstances, except for its own gross negligence, bad faith or willful misconduct in the performance of its express duties under this Liquidating Trust Agreement. Without limiting the foregoing:

(i) the Delaware Trustee shall not be personally liable for any error of judgment made in good faith, except to the extent such error of judgment constitutes willful misconduct, bad faith or gross negligence in the performance of its express duties under this Liquidating Trust Agreement;

(ii) the Delaware Trustee shall not have any duty or obligation to manage or deal with the Liquidating Trust Assets, or to otherwise take or refrain from taking any action under the Liquidating Trust Agreement except as expressly provided in Section 8.2(a), and no implied trustee duties or obligations shall be deemed to be imposed on the Delaware Trustee;

(iii) no provision of this Liquidating Trust Agreement shall require the Delaware Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder if the Delaware Trustee has reasonable grounds to believe that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it;

(iv) the Delaware Trustee shall not be personally liable for the validity or sufficiency of this Liquidating Trust Agreement, the value or sufficiency of the Liquidating Trust Assets or for the due execution hereof by the other parties hereto;

(v) the Delaware Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect;

(vi) the Delaware Trustee may request the Liquidating Trust Board to provide a certificate with regard to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vii) in the exercise of its duties hereunder, the Delaware Trustee (I) may act directly or through agents or attorneys pursuant to agreements entered into with any of them and shall not be liable for the acts or omissions of any agents or attorneys selected by it in good faith, and (II) may consult with counsel selected by it in good faith and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel; and

(viii) the Delaware Trustee acts solely as Delaware Trustee hereunder and not in its individual capacity, and all persons having any claim against the Delaware Trustee by reason of the transactions contemplated by this Liquidating Trust Agreement shall look only to the Liquidating Trust Assets for payment or satisfaction thereof;

(ix) the Delaware Trustee shall not be personally liable for any representation, warranty, covenant, agreement, or indebtedness of the Liquidating Trust;

(x) the Delaware Trustee shall not incur liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. The Delaware Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any entity party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Delaware Trustee may for all purposes hereof rely on a certificate, signed by an officer of the Liquidating Trust, as to such fact or matter, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon; and

(xi) the Delaware Trustee shall not be liable for punitive, exemplary, consequential, special or other damages for a breach of this Agreement under any circumstances.

8.3 Compensation. The Delaware Trustee shall be entitled to receive compensation out of the Administrative Expenses Set Aside for the services that the Delaware Trustee performs in accordance with this Liquidating Trust Agreement in accordance with such fee schedules as shall be agreed from time to time by the Delaware Trustee and the Liquidating Trust Board, and if so required by the Plan Documents or applicable law, as approved by the Bankruptcy Court. The Delaware Trustee may also consult with counsel (who may be counsel for the Liquidating Trust Board) with respect to those matters that relate to the Delaware Trustee's role as the Delaware Trustee of the Liquidating Trust, and the reasonable legal fees incurred in connection with such consultation and any other reasonable out-of-pocket expenses of the Delaware Trustee shall be reimbursed out of the Administrative Expenses Set Aside.

8.4 Duration and Replacement. The Delaware Trustee shall serve for the duration of the Liquidating Trust or until the earlier of (i) the effective date of the Delaware Trustee's resignation, or (ii) the effective date of the removal of the Delaware Trustee. The Delaware Trustee may resign at any time by giving thirty (30) days' written notice to the Liquidating Trust Board; provided, however, that such resignation shall not be effective until such time as a successor Delaware Trustee has accepted appointment. The Delaware Trustee may be removed with the Majority Consent of the Liquidating Trust Board, by providing thirty (30) days' written notice to the Delaware Trustee; provided, however, that such removal shall not be effective until such time as a successor Delaware Trustee has accepted appointment. Upon the resignation or removal of the Delaware Trustee, the Liquidating Trust Board shall appoint a successor Delaware Trustee. If no successor Delaware Trustee shall have been appointed and shall have accepted such appointment within forty-five (45) days after the giving of such notice of resignation or removal, the Delaware Trustee may petition the Bankruptcy Court for the appointment of a successor Delaware Trustee. Any successor Delaware Trustee appointed pursuant to this Section shall be eligible to act in such capacity in accordance with this Liquidating Trust Agreement and, following compliance with this Section, shall become fully vested with the rights, powers, duties and obligations of its predecessor under this Liquidating Trust Agreement, with like effect as if originally named as Delaware Trustee. Any such successor Delaware Trustee shall notify the Delaware Trustee of its appointment by providing written notice to the Delaware Trustee and upon receipt of such notice, the Delaware Trustee shall be discharged of its duties herein. Any such successor Delaware Trustee shall also file an amendment to the Certificate of Trust as required by the Trust Act.

## **ARTICLE IX**

### **FHA QUALIFIED TRUSTEE**

9.1 Appointment. For so long as the Debtors or the Liquidating Trust shall own any FHA Mortgage Loans, there shall be an FHA Qualified Trustee that is an FHA-Approved Mortgagee serving as a trustee of the Liquidating Trust. By its execution hereof, the FHA Qualified Trustee accepts the trusteeship of the Liquidating Trust on the terms set forth herein.

9.2 Powers, Authority and Responsibilities.

(a) Legal title to the FHA Mortgage Loans and the corresponding FHA Insurance Contracts shall be vested in the FHA Qualified Trustee (or one or more FHA Qualified Co-Trustees) on behalf of the Liquidating Trust, which shall be the mortgagee of record for the FHA Mortgage Loans owned by the Liquidating Trust. Pursuant to section 3805(f) of the Trust Act, such FHA Mortgage Loans shall be the property of the Liquidating Trust.

(b) Notwithstanding anything to the contrary set forth in this Liquidating Trust Agreement, the FHA Qualified Trustee shall (i) be responsible for any actions required to be taken by the mortgagee of record of any FHA Mortgage Loan owned by the Liquidating Trust and (ii) use commercially reasonable efforts to provide the Liquidating Trust Board (or any person authorized by the Liquidating Trust Board) with any information requested with respect to the FHA Mortgage Loans. For the avoidance of doubt, clause (i) of the preceding sentence shall not be deemed to include any servicing actions and the FHA Qualified Trustee shall have no liability to the Liquidating Trust for servicing actions performed by the Servicer or regarding the compliance with any foreclosure, consumer credit or debt collection laws.

(c) Upon transfer by a Debtor of an FHA Mortgage Loan to the Liquidating Trust, the Liquidating Trust shall succeed to all the rights and become bound by all the obligations of such Debtor under the FHA Insurance Contract applicable to such FHA Mortgage Loan, and such Debtor shall be released from its obligations under the FHA Insurance Contract; provided that such Debtor shall not be relieved of its obligation to pay mortgage insurance premiums until the notice required by §203.431 of Title 24 is received by HUD.

(d) Within fifteen (15) days of the date on which any FHA Mortgage Loan is transferred to the Liquidating Trust by a Debtor, such Debtor shall provide an electronic notice to HUD, which notice shall state that such FHA Mortgage Loan has been transferred to the FHA Qualified Trustee on behalf of the Liquidating Trust.

(e) If, upon the dissolution of the Liquidating Trust, the FHA Qualified Trustee shall continue to be the holder of record of any FHA Mortgage Loans, the FHA Qualified Trustee shall transfer such FHA Mortgage Loans to an FHA-Approved Mortgagee.

(f) In the event that the Liquidating Trust shall sell, transfer or assign any FHA Mortgage Loan, the Liquidating Trust and the FHA Qualified Trustee, as holder of record, shall take such action so as to comply with (i) Sections 203.430 through 203.435 of Title 24 and (ii) any and all laws, rules, regulations and policies applicable to FHA Mortgage Loans.

9.3 Servicing of FHA Mortgage Loans.

(a) For so long as the Liquidating Trust shall own any FHA Mortgage Loans, the Liquidating Trust shall at all times have a Servicer of the FHA Mortgage Loans, and the Servicer of the FHA Mortgage Loans shall at all times be an FHA-Approved Mortgagee.

(b) The Liquidating Trust Board shall not consent to the appointment of any successor Servicer, and shall not permit any successor Servicer to be appointed, unless such successor Servicer (i) certifies in writing that it is an FHA-Approved Mortgagee and (ii) has agreed, within fifteen (15) days of the transfer of servicing, to provide, or cause to be provided, an electronic notice to HUD stating that the servicing of the FHA Mortgage Loans has been transferred to such successor Servicer.

9.4 NO RIGHTS AGAINST HUD OR THE FHA. EACH HOLDER OF A UNIT (BY VIRTUE OF ITS OWNERSHIP THEREOF) ACKNOWLEDGES AND AGREES THAT IT DOES NOT HAVE ANY DIRECT RIGHTS AGAINST HUD OR THE FHA WITH RESPECT TO THE FHA INSURANCE CONTRACT APPLICABLE TO ANY FHA MORTGAGE LOAN OR AGAINST THE VA WITH RESPECT TO ANY GUARANTY APPLICABLE TO ANY VA MORTGAGE LOAN.

9.5 Certain Limitations with Respect to the FHA Qualified Trustee.

(a) Except as otherwise expressly set forth in this Article IX, the FHA Qualified Trustee shall not have any duty or liability with respect to the administration of the Liquidating Trust, the investment of the Liquidating Trust Assets or the distribution of the Liquidating Trust Assets to the Unitholders, and no such duties shall be implied. The FHA Qualified Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The FHA Qualified Trustee shall not be personally liable under any circumstances, except for its own gross negligence, bad faith or willful misconduct in the performance of its express duties under this Liquidating Trust Agreement.

(b) Without limiting the foregoing:

(i) the FHA Qualified Trustee shall not be personally liable for any error of judgment made in good faith, except to the extent such error of judgment constitutes willful misconduct, bad faith or gross negligence in the performance of its express duties under this Liquidating Trust Agreement;

(ii) the FHA Qualified Trustee shall not have any duty or obligation to manage or deal with the Liquidating Trust Assets, or to otherwise take or refrain from taking any action under the Liquidating Trust Agreement except as expressly provided in Section 9.5(a), and no implied trustee duties or obligations shall be deemed to be imposed on the FHA Qualified Trustee;

(iii) no provision of this Liquidating Trust Agreement shall require the FHA Qualified Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder if the FHA Qualified Trustee has reasonable grounds to believe that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it;

(iv) the FHA Qualified Trustee shall not be personally liable for the validity or sufficiency of this Liquidating Trust Agreement, the value or

sufficiency of the Liquidating Trust Assets or for the due execution hereof by the other parties hereto;

(v) the FHA Qualified Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any entity party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect;

(vi) the FHA Qualified Trustee may request the Liquidating Trust Board to provide a certificate with regard to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, and such certificate shall constitute full protection to the FHA Qualified Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vii) in the exercise of its duties hereunder, the FHA Qualified Trustee (I) may act directly or through agents or attorneys pursuant to agreements entered into with any of them and shall not be liable for the acts or omissions of any agents or attorneys selected by it in good faith, and (II) may consult with counsel selected by it in good faith and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel;

(viii) the FHA Qualified Trustee acts solely as FHA Qualified Trustee hereunder and not in its individual capacity, and all persons having any claim against the FHA Qualified Trustee by reason of the transactions contemplated by this Liquidating Trust Agreement shall look only to the Liquidating Trust Assets for payment or satisfaction thereof;

(ix) the FHA Qualified Trustee shall not be personally liable for any representation, warranty, covenant, agreement, or indebtedness of the Liquidating Trust and shall not be liable for any action or inaction of the Servicer or for monitoring its activities;

(x) the FHA Qualified Trustee shall not incur liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. The FHA Qualified Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any entity party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the FHA Qualified Trustee may for all purposes hereof rely on a certificate, signed by an officer of the Liquidating Trust, as to such fact or matter, and such certificate shall constitute full protection to the FHA Qualified Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon; and

(xi) the FHA Qualified Trustee shall not be liable for punitive, exemplary, consequential, special or other damages for a breach of this Agreement under any circumstances.

9.6 Duration and Replacement.

(a) Subject to subsection (f) below, the FHA Qualified Trustee shall serve for the duration of the Liquidating Trust or until the earlier of (i) the effective date of the FHA Qualified Trustee's resignation and (ii) the effective date of the removal of the FHA Qualified Trustee.

(b) The FHA Qualified Trustee may resign at any time by giving thirty (30) days' written notice to the Liquidating Trust Board; provided, however, that such resignation shall not be effective until such time as a successor FHA Qualified Trustee has accepted appointment.

(c) The FHA Qualified Trustee may be removed with the Majority Consent of the Liquidating Trust Board, by providing thirty (30) days' written notice to the FHA Qualified Trustee; provided, however, that such removal shall not be effective until such time as a successor FHA Qualified Trustee has accepted appointment.

(d) In case at any time FHA Qualified Trustee shall cease to be eligible in accordance with the provisions of this Article IX, such FHA Qualified Trustee shall resign and the Liquidating Trust Board shall promptly appoint a successor FHA Qualified Trustee that meets the requirements of this Article IX.

(e) Upon the resignation or removal of the FHA Qualified Trustee, the Liquidating Trust Board shall appoint a successor FHA Qualified Trustee. If no successor FHA Qualified Trustee shall have been appointed and shall have accepted such appointment within forty-five (45) days after the giving of such notice of resignation or removal, the FHA Qualified Trustee may petition the Bankruptcy Court for the appointment of a successor FHA Qualified Trustee. Any successor FHA Qualified Trustee appointed pursuant to this Section shall be eligible to act in such capacity in accordance with this Liquidating Trust Agreement and, following compliance with this Section, shall become fully vested with the rights, powers, duties and obligations of its predecessor under this Liquidating Trust Agreement, with like effect as if originally named as FHA Qualified Trustee. Any such successor FHA Qualified Trustee shall notify the FHA Qualified Trustee of its appointment by providing written notice to the predecessor FHA Qualified Trustee and upon receipt of such notice, the FHA Qualified Trustee shall be discharged of its duties herein. Any such successor FHA Qualified Trustee shall also file an amendment to the Certificate of Trust as required by the Trust Act.

(f) Anything to the contrary in this Article IX or elsewhere in this Liquidating Trust Agreement notwithstanding, at such time as the neither the Debtors nor the Liquidating Trust shall own any FHA Mortgage Loans, the FHA Qualified Trustee shall resign, and there shall no further appointment of any FHA Qualified Trustee.

9.7 Compensation of the FHA Qualified Trustee. The FHA Qualified Trustee shall be entitled to receive compensation out of the Administrative Expenses Set Aside

for the services that the FHA Qualified Trustee performs in accordance with this Liquidating Trust Agreement in accordance with such fee schedules as shall be agreed from time to time by the FHA Qualified Trustee and the Liquidating Trust Board, and if so required by the Plan Documents or applicable law, as approved by the Bankruptcy Court. The FHA Qualified Trustee may also consult with counsel (who may be counsel for the Liquidating Trust Board) with respect to those matters that relate to the FHA Qualified Trustee's role as the FHA Qualified Trustee of the Liquidating Trust, and the reasonable legal fees incurred in connection with such consultation and any other reasonable out-of-pocket expenses of the FHA Qualified Trustee shall be reimbursed out of the Administrative Expenses Set Aside.

9.8 Appointment of FHA Qualified Co-Trustees.

(a) The Liquidating Trust Board, at any time and from time to time, may appoint one or more FHA Qualified Co-Trustees, who shall be authorized to act, as determined by the Liquidating Trust Board, with respect to all or any part of the FHA Mortgage Loans owed by the Liquidating Trust in the same manner as the FHA Qualified Trustee. All provisions of this Article IX applicable to the FHA Qualified Co-Trustee shall apply, *mutatis mutandis*, to an FHA Qualified Co-Trustee, except that an FHA Qualified Co-Trustee may be removed by the Liquidating Trust Board by providing five (5) Business Days' written notice to the FHA Co-Qualified Trustee, and such removal shall be immediately effective provided that there is then an FHA Qualified Trustee then in office.

(b) Without limiting the provisions of Section 9.8(a), an FHA Qualified Co-Trustee may be appointed to act as provided in this Article IX in any jurisdiction in which the FHA Qualified Trustee is not competent, qualified or eligible to perform any act required or permitted by the provisions of this Article IX to be performed by the FHA Qualified Trustee.

(c) The appointment of an FHA Qualified Co-Trustee shall be evidenced by such instrument as shall be authorized by the Liquidating Trust Board, which shall be maintained with the books and records of the Liquidating Trust.

(d) The FHA Qualified Trustee shall not be liable for any act or omission of any FHA Qualified Co-Trustee, and no FHA Qualified Co-Trustee shall be liable for any act or omission of the FHA Qualified Trustee or of any other FHA Qualified Co-Trustee.

9.9 VA Mortgage Loans.

(a) Within fifteen (15) days of the date on which any VA Mortgage Loan is transferred to the Liquidating Trust by a Debtor, such Debtor shall provide an electronic notice to the VA, which notice shall state that such VA Mortgage Loan has been transferred to the FHA Qualified Trustee on behalf of the Liquidating Trust.

(b) Within fifteen (15) days of the transfer of servicing of the VA Mortgage Loans owned by the Liquidating Trust to a successor servicer, the Liquidating Trust shall provide, or cause to be provided, an electronic notice to the VA stating that the servicing of the VA Mortgage Loans has been transferred to such successor servicer who shall be an approved VA servicer.

(c) EACH HOLDER OF A UNIT (BY VIRTUE OF ITS OWNERSHIP THEREOF) ACKNOWLEDGES AND AGREES THAT IT DOES NOT HAVE ANY DIRECT RIGHTS AGAINST THE VA WITH RESPECT TO ANY GUARANTY APPLICABLE TO ANY VA MORTGAGE LOAN.

## **ARTICLE X** **TAX MATTERS**

### 10.1 Tax Treatment.

(a) For all United States federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidating Trust Board and the Unitholders) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust as:

(i) a transfer of the Liquidating Trust Assets (subject to any obligations relating to those assets) directly to Unitholders, other than Liquidating Trust Assets that will be distributed pursuant to Article III (with respect to which the Liquidating Trust shall be deemed to be acting in the capacity of a Disbursing Agent) or that are allocable to Disputed LT Unsecured Claims (which shall be treated as a transfer of such assets to the Disputed Claims Reserve based on the number of Units held in the Disputed Claims Reserve), followed by

(ii) the transfer by such Unitholders to the Liquidating Trust of such Liquidating Trust Assets in exchange for the Units.

(b) Accordingly, those holders of Allowed Unsecured Claims receiving Units, the Private Securities Claims Trust and the RMBS Claims Trust shall be treated for United States federal income tax purposes as the grantors and owners of their respective shares of the Liquidating Trust Assets (other than Liquidating Trust Assets that will be distributed pursuant to Article III or that are allocable to Disputed LT Unsecured Claims). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

### 10.2 Tax Reporting.

(a) The Liquidating Trust shall file Tax Returns treating the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with the Plan. The Liquidating Trust also shall annually send (or otherwise make available) to each holder of a beneficial interest in the Liquidating Trust a separate statement setting forth the holder's share of items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their United States federal income tax returns or to forward the appropriate information to their respective beneficial holders with instructions to report such items on their United States federal income tax returns. The Liquidating Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit or Tax Authority.

(b) Allocation of Liquidating Trust taxable income and loss among the Unitholders shall be made Pro Rata (including Units held in the Disputed Claims Reserve).

(c) The Liquidating Trust shall (A) treat the Disputed Claims Reserve, and the Liquidating Trust Assets allocable thereto, as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9 by timely making an election, (B) file such Tax Returns and pay such Taxes as may be required consistent with such treatment, and (C) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

(d) The Liquidating Trust may (A) treat the Administrative, Priority, Secured and Convenience Distribution Reserve, and the Liquidating Trust Assets allocable thereto, as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9 by timely making an election and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

(e) The Liquidating Trust may request an expedited determination of Taxes of the Liquidating Trust, including the Disputed Claims Reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust.

10.3 Tax Payment. The Liquidating Trust shall be responsible for the payment, out of the Administrative Expenses Set Aside, of any Taxes imposed on the Liquidating Trust or the Liquidating Trust Assets, including the Disputed Claims Reserve. In the event, and to the extent, that any Cash retained on account of Disputed LT Unsecured Claims in the Disputed Claims Reserve is insufficient to pay any portion of such Taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, such respective classes of Disputed LT Unsecured Claims, such Taxes shall be (x) reimbursed from any subsequent Cash amounts retained on account of the respective classes of Disputed LT Unsecured Claims or (y) to the extent such Disputed LT Unsecured Claims subsequently have been resolved, deducted from any amounts distributable by the Liquidating Trust as a result of the resolutions of such Disputed LT Unsecured Claims.

10.4 Liquidating Trust’s Tax Powers.

(a) Following the Effective Date, the Liquidating Trust Board shall be authorized to prepare and file (or cause to be prepared and filed) on behalf of the Debtors all Tax Returns required to be filed or that the Liquidating Trust Board otherwise deems appropriate, including the filing of amended Tax Returns or requests for refunds.

(b) For all taxable periods ending on or prior to the Effective Date, the Liquidating Trust Board shall have full and exclusive authority in respect of all Taxes of the Debtors to the same extent as if the Liquidating Trust Board was the debtor in possession.

(c) In furtherance of the Liquidating Trust Board’s authority hereunder, each of the Debtors shall execute, a power of attorney authorizing the Liquidating Trust to correspond with any Tax Authority on behalf of such Debtor and to sign, collect, negotiate, settle, and administer Tax payments, Tax refunds and Tax Returns.

(d) Following the Effective Date, the Liquidating Trust shall be entitled to the entire amount of any refunds and credits (including interest thereon) with respect to or otherwise relating to any Taxes of the Debtors to the same extent as the Debtors would otherwise be entitled with respect to any taxable period.

**ARTICLE XI**  
**LIMITATION OF LIABILITY AND INDEMNIFICATION**

11.1 Limitation of Liability.

(a) None of the Delaware Trustee, the FHA Qualified Trustee, any FHA Qualified Co-Trustee, the Liquidating Trustees, the Liquidating Trust Management, or any Nominating Party or their respective principals, advisors or professionals, shall be liable to the Liquidating Trust or any Unitholder for any damages arising out of the creation, operation or termination of the Liquidating Trust, including actions taken or omitted in fulfillment of his, her or its duties with respect to the Liquidating Trust, except as may be determined by Final Order to have arisen out of such party's gross negligence, bad faith or willful misconduct (and, in the case of the Delaware Trustee, the FHA Qualified Trustee and any FHA Qualified Co-Trustee, in the performance of its express duties under this Liquidating Trust Agreement); provided, that in no event will any such party be liable for punitive, exemplary, consequential or special damages under any circumstances. Furthermore, neither the Delaware Trustee, the FHA Qualified Trustee, any FHA Qualified Co-Trustee nor any Liquidating Trustee shall be liable to the Liquidating Trust or any Unitholder for any action taken in good faith reliance upon the advice of Liquidating Trust Management.

(b) None of the Delaware Trustee, the FHA Qualified Trustee, any FHA Qualified Co-Trustee, the Liquidating Trustees, the Liquidating Trust Management or the Liquidating Trust Agents, when acting in such capacities, shall be subject to any personal liability whatsoever, whether in tort, contract or otherwise, to any person, other than the Liquidating Trust or the Liquidating Trust Beneficiaries, in connection with the affairs of the Liquidating Trust to the fullest extent provided under section 3803 of the Trust Act, and all persons claiming against any of the Delaware Trustee, the FHA Qualified Trustee, any FHA Qualified Co-Trustee, the Liquidating Trustees, the Liquidating Trust Management or Liquidating Trust Agent, or otherwise asserting claims of any nature in connection with affairs of the Liquidating Trust, shall look solely to the Liquidating Trust Assets for satisfaction of any such claims.

(c) Nothing contained in the Plan Documents shall be deemed to be an assumption by the Delaware Trustee, the FHA Qualified Trustee, any FHA Qualified Co-Trustee, any Liquidating Trustee, the Liquidating Trust Management or any Liquidating Trust Agent of any of the liabilities, obligations or duties of the Debtors or shall be deemed to be or contain a covenant or agreement by any of them to assume or accept any such liability, obligation or duty.

(d) The exercise by a Nominating Party of its rights hereunder shall not, in any way, cause such Nominating Party to become, or result in such Nominating Party becoming, a fiduciary to the Debtors, their estates, creditors or equity holders, to the

Liquidating Trust, the Liquidating Trust Board or to any other person or constituency. Neither a Nominating Party nor any of its subsidiaries, affiliates, successors and assigns and its present or former employees, agents, officers, directors or principals shall have or incur any liability, nor shall any of them be subject to any claim or cause of action, of any kind in connection with, arising out of, or related to, the exercise by the applicable Nominating Party of its rights hereunder, or any act taken or omitted to be taken in connection therewith.

#### 11.2 Indemnification.

(a) The Delaware Trustee, the FHA Qualified Trustee, any FHA Qualified Co-Trustee, the Liquidating Trustees, the Liquidating Trust Management and their respective affiliates, and the officers, directors, partners, managers, members, and employees of each of them, as the case may be (all persons so entitled to indemnification, collectively, the “Covered Parties”), shall be indemnified and held harmless, to the fullest extent permitted by law by the Liquidating Trust from and against any and all losses, claims, taxes, damages, reasonable expenses and liabilities (including liabilities under state or federal securities laws) of any kind and nature whatsoever (“Liabilities”), to the extent that such expenses arise out of or are imposed upon or asserted against such indemnified persons with respect to the creation, operation or termination of the Liquidating Trust or the execution, delivery or performance of this Liquidating Trust Agreement or the transactions contemplated hereby and shall not be liable for actions taken or omitted in their capacity, as Delaware Trustee, FHA Qualified Trustee, FHA Qualified Co-Trustee, Liquidating Trustee or Liquidating Trust Management, on behalf of, or in fulfillment of their duties with respect to, the Liquidating Trust, except those acts or omissions that are determined by Final Order to have arisen out of such party’s gross negligence, bad faith or willful misconduct (and, in the case of the Delaware Trustee, the FHA Qualified Trustee and any FHA Qualified Co-Trustee, in the performance of its express duties under this Liquidating Trust Agreement), and each shall be entitled to be indemnified, held harmless, and reimbursed for fees and expenses including, without limitation, reasonable attorney’s fees, which such persons and entities may incur or may become subject to or in connection with any action, suit, proceeding or investigation that is brought or threatened against such persons or entities regarding the implementation or administration of the Plan Documents or the discharge of their respective duties hereunder or thereunder or in respect thereof, except for any actions or inactions that are determined by Final Order to have arisen out of their own gross negligence, bad faith, or willful misconduct (and, in the case of the Delaware Trustee, the FHA Qualified Trustee and any FHA Qualified Co-Trustee, in the performance of its express duties under this Liquidating Trust Agreement). Without limiting the foregoing, the Liquidating Trust Manager in its capacity as trustee of the Private Securities Claims Trust and its related Covered Parties shall be indemnified by the Liquidating Trust against Liabilities relating to or arising out of the operation of the Private Securities Claims Trust in the manner set forth in this Section 11.2 *mutatis mutandis*.

(b) The Covered Parties shall be entitled to obtain advances from the Liquidating Trust to cover their reasonable expenses of defending themselves in any action threatened or brought against them as a result of the acts or omissions, actual or alleged, of any such party in its capacity as such; provided, however, that the Covered Parties receiving such advances shall repay the amounts so advanced to the Liquidating Trust immediately upon the

entry of a Final Order finding that such parties were not entitled to any indemnity under the provisions of this Section 11.2.

(c) Any claim of the Covered Parties to be indemnified, held harmless, or reimbursed shall be satisfied solely from the Liquidating Trust Assets, bonds (if any) or any applicable insurance that the Liquidating Trust has purchased, as provided in Section 2.11. The rights of the Covered Parties under this Section 11.2 shall survive the resignation or removal of any Liquidating Trustee, the Delaware Trustee, the FHA Qualified Trustee, and any FHA Qualified Co-Trustee, and the termination of this Liquidating Trust Agreement.

(d) The Liquidating Trust may also determine to provide indemnification to Liquidating Trust Agents and their respective officers, directors, partners, managers, members and employees, on such terms as the Liquidating Trust Board may determine, provided that any claim for indemnification shall be satisfied solely from the Liquidating Trust Assets or insurance.

11.3 Prior to the Effective Date. All the provisions of this Article XI shall apply equally to the Original Trust, *mutatis mutandis*, and, for the avoidance of doubt, to the Liquidating Trust prior to the Effective Date.

## **ARTICLE XII** **DURATION OF LIQUIDATING TRUST**

### 12.1 Duration.

(a) The Liquidating Trust shall dissolve upon the date that is the earliest to occur of: (i) the distribution of all Liquidating Trust Assets pursuant to the Plan Documents, (ii) the determination of the Liquidating Trust Board that the administration of the Liquidating Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit, or (iii) all the distributions required to be made under this Liquidating Trust Agreement have been completed; provided, however, that in no event shall the Liquidating Trust dissolve later than three (3) years from the Effective Date, unless the Bankruptcy Court, upon motion within the six (6) months prior to the third (3<sup>rd</sup>) anniversary of the Effective Date (or within six (6) months prior to the end of an extension period), determines that a fixed-period extension is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets (without the need for a favorable private letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the trust as a Liquidating Trust for United States federal income tax purposes). Upon dissolution, the Liquidating Trustee shall wind up and liquidate the Liquidating Trust in accordance with section 3808 of the Trust Act and, at the direction of the Liquidating Trustee, the Delaware Trustee shall file a Certificate of Cancellation in accordance with section 3810(d) of the Trust Act and thereupon the Liquidating Trust Agreement shall terminate.

(b) If at any time the Liquidating Trust Board determines, in reliance upon its professionals, that the expense of administering the Liquidating Trust, including the making of a final distribution to the Unitholders, is likely to exceed the value of the assets remaining in

the Liquidating Trust, the Liquidating Trust Board may apply to the Bankruptcy Court for authority to (i) reserve any amounts necessary to dissolve the Liquidating Trust, (ii) donate any balance to an organization selected by the Liquidating Trust Board which is described in section 501(c)(3) of the Tax Code and exempt from United States federal income tax under section 501(a) of the Tax Code, as provided in Section 2.8(b) hereof, and (iii) dissolve the Liquidating Trust.

12.2 Post-Termination. After the dissolution of the Liquidating Trust and solely for the purpose of liquidating and winding up the affairs of the Liquidating Trust, the Trustees shall continue to act as such until their duties have been fully performed. Upon distribution of all the Liquidating Trust Assets, the Liquidating Trust Board shall designate a Liquidating Trust Agent to retain all books and records pertaining to the Debtors or the Liquidating Trust that have been delivered to or created by the Liquidating Trust, subject to the provisions of Section 12.3.

12.3 Destruction of Books and Records. If so determined by the Liquidating Trust Board, or absent such determination, in the discretion of the Liquidating Trust Agent appointed pursuant to Section 12.2, all books and records pertaining to the Debtors or the Liquidating Trust that have been delivered to or created by the Liquidating Trust may be destroyed at any time following (x) the date that is six (6) years after the final distribution of Liquidating Trust Assets (unless such records and documents are necessary to fulfill the Liquidating Trust's remaining obligations) subject to the terms of any joint prosecution and common interests agreement(s) to which the Liquidating Trust may be a party, or (y) such earlier date as may be approved by order of the Bankruptcy Court on application of the Liquidating Trust; provided, however, that the Liquidating Trust shall obtain an order of the Bankruptcy Court before disposing of any books and records that are reasonably likely to pertain to pending litigation in which the Debtors or their current or former officers or directors are a party.

12.4 Discharge. Except as otherwise specifically provided herein, upon the final distribution of Liquidating Trust Assets and the filing by the Delaware Trustee of a Certificate of Cancellation with the Secretary of State of the State of Delaware, the Delaware Trustee, the FHA Qualified Trustee and the Liquidating Trustees shall be deemed discharged and have no further duties or obligations hereunder, the Units shall be cancelled and the Liquidating Trust will be deemed to have been dissolved. In the event that there are Liquidating Trust Assets at the termination of the Liquidating Trust, the Liquidating Trust Board shall cause to be donated such Liquidating Trust Assets to a charitable organization of the Liquidating Trust Board's choice described in section 501(c)(3) of the Tax Code and exempt from United States federal income tax under section 501(a) of the Tax Code, as provided in Section 2.8(b).

### **ARTICLE XIII** **MISCELLANEOUS PROVISIONS**

13.1 Governing Law. This Liquidating Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (without reference to conflicts of law).

13.2 Jurisdiction. Subject to the proviso below, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Liquidating Trust, including, without limitation, the administration and activities of the Liquidating Trust, provided, however, (a) the Bankruptcy Court shall retain non-exclusive jurisdiction to the extent permissible under applicable law to hear and determine matters relating to the GM Policies and the GM Insurers, including rights under the GM Policies and (b) that notwithstanding the foregoing or anything to the contrary set forth in the Plan, the Liquidating Trust Board shall have power and authority to bring (or cause to be brought) any action in any court of competent jurisdiction to prosecute any Liquidating Trust Causes of Action.

13.3 Severability. In the event that any provision of this Liquidating Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Liquidating Trust Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Liquidating Trust Agreement shall be valid and enforceable to the fullest extent permitted by law.

13.4 Notices. Any notice or other communication required or permitted to be made under this Liquidating Trust Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by facsimile, sent by nationally recognized overnight delivery service, or mailed by first-class mail:

- (i) if to the Delaware Trustee, to:

Wilmington Trust, National Association  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
Attention: Corporate Trust Administration

- (ii) if to the FHA Qualified Trustee, to:

Manufacturers and Traders Trust Company  
c/o Wilmington Trust, National Association  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
Attention: Corporate Trust Administration

- (iii) if to the Liquidating Trust, to:

ResCap Liquidating Trust  
c/o Quest Turnaround Advisors, LLC  
800 Westchester Avenue, Suite S-520  
Rye Brook, NY 10573  
Fax: 914-253-8103  
Email: jbrodsky@qtadvisors.com

- (iv) if to any Unitholder, to the last known address of such Unitholder according to the records of the Liquidating Trust, if the Units are held in the form of Unit Certificates, and otherwise in accordance with the practices and procedures of DTC;
- (v) if to any other distributee of the Liquidating Trust, to the last known address of such distributee according to the records of the Liquidating Trust; and
- (vi) if to a Nominating Party, to such person at such address as provided to the Liquidating Trust by such Nominating Party in accordance with Section 6.2(n).

13.5 Headings. The headings contained in this Liquidating Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Liquidating Trust Agreement or of any term or provision hereof.

13.6 Plan Documents. Nothing contained herein shall modify the terms of any other Plan Document, which are intended to be supplemented by the terms of this Liquidating Trust Agreement. However, to the extent that the terms of any of the other Plan Documents are inconsistent with the terms set forth in this Liquidating Trust Agreement with respect to the Liquidating Trust, then the terms of this Liquidating Trust Agreement shall govern.

13.7 Control Over Debtors. Following the Effective Date, for so long as any Debtor has not been legally dissolved in accordance with applicable provisions of law, the Liquidating Trust shall have complete and exclusive control over, and rights of management in respect of, such Debtor and its assets in accordance with the Plan, irrespective of whether the equity interests of such Debtor continue to subsist or have been formally transferred to the Liquidating Trust, and no other person shall have the right to control, manage, or direct the affairs or enforce any rights of such Debtor, or any of its assets, for any reason or purpose.

13.8 Confidentiality. The Trustees, the Liquidating Trust Management and the Liquidating Trust Agents, and their respective officers, directors, partners, managers, members and employees (the "Confidentiality Parties"), shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidentiality Party of or pertaining to the Debtors, the Liquidating Trust, the Unitholders or the Liquidating Trust Assets; provided, however, that such information may be disclosed if—

- (i) it is now or in the future becomes generally available to the public other than as a result of a disclosure by any of the Confidentiality Parties;
- (ii) such disclosure is required of any of the Confidentiality Parties pursuant to legal process, including subpoena or other court order or other applicable laws or regulations; or
- (iii) the Liquidating Trust Board determines that such disclosure is in the interests of the Liquidating Trust or the Unitholders.

13.9 Entire Liquidating Trust Agreement. This Liquidating Trust Agreement, including the Exhibits attached hereto, the Plan and the Confirmation Order contain the entire agreement between the parties and supersede all prior and contemporaneous agreements or understandings between the parties with respect to the subject matter hereof. For the avoidance of doubt, to the extent holders of Allowed Claims that would otherwise be entitled to receive Units have established or in the future establish trusts or other entities or vehicles to facilitate the implementation of the Plan with respect to their Units or for other purposes, the agreements governing such trusts or other entities or vehicles shall not limit or impose requirements in any way on the Liquidating Trust, the Liquidating Trustees, the Liquidating Trust Board, the Liquidating Trust Manager or any other employee, agent or representative of the Liquidating Trust, and to the extent there is any conflict between the provisions of such agreements and this Liquidating Trust Agreement, this Liquidating Trust Agreement shall have controlling effect.

13.10 Named Party. In pursuing any Avoidance Actions, and/or other Liquidating Trust Causes of Action, or in disposing of any Liquidating Trust Assets, or otherwise administering the Liquidating Trust or any Liquidating Trust Assets, including, without limitation, the execution of documents, such as bills of sale, releases, and agreements, the Liquidating Trust Board may authorize the pursuit of such matters and/or execution of any such documents in the name of “ResCap Liquidating Trust” or in such other names or such representative capacities as necessary or appropriate.

13.11 Amendment. This Liquidating Trust Agreement may be amended with the Supermajority Consent of the Liquidating Trust Board; provided, however, that Bankruptcy Court approval shall be required for any changes or amendments to this Liquidating Trust Agreement that are inconsistent with the terms of the Plan or the Confirmation Order. Notwithstanding this Section 13.11 no amendments to this Liquidating Trust Agreement shall be inconsistent with the purpose and intention of the Liquidating Trust to liquidate in an orderly manner the Liquidating Trust Assets (which will maximize the value of such assets) in accordance with Treasury Regulations section 301.7701-4(d). In the event that the Liquidating Trust shall fail or cease to qualify as a Liquidating Trust in accordance with Treasury Regulations section 301.7701-4(d), this Liquidating Trust Agreement may be amended with the Majority Consent of the Liquidating Trust Board, to the extent necessary to take such action as the Liquidating Trust Board deem appropriate to have the Liquidating Trust classified as a partnership for federal tax purposes under Treasury Regulations section 301.7701-3 (but not a publicly traded partnership under section 7704 of the Tax Code), including, if necessary, creating or converting it into a Delaware limited liability partnership or limited liability company that is so classified. Any amendment to this Liquidating Trust Agreement shall be posted on the Liquidating Trust Website as promptly as practicable after the adoption thereof.

13.12 Counterparts. This Liquidating Trust Agreement may be executed in any number of counterparts, each of which shall be deemed original, but such counterparts shall together constitute one and the same instrument. A facsimile or portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

**IN WITNESS WHEREOF**, the parties hereto have executed this Liquidating Trust Agreement or caused this Liquidating Trust Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

Residential Capital, LLC

By: /s/ William Thompson

Name: William Thompson

Title: General Counsel

By: /s/ Jill Horner

Name: Jill Horner

Title: Chief Finance Executive

AKA 13, LLC (f/k/a ditech, LLC), DOA Holding Properties, LLC, DOA Properties IX (Lots-Other), LLC, EPRE LLC, Equity Investment I, LLC, ETS of Virginia, Inc., ETS of Washington, Inc., Executive Trustee Services, LLC, GMAC-RFC Holding Company, LLC, GMAC Model Home Finance I, LLC, GMAC Mortgage USA Corporation, GMAC Mortgage, LLC, GMAC Residential Holding Company, LLC, GMAC RH Settlement Services, LLC, GMACM Borrower LLC, GMACM REO LLC, GMACR Mortgage Products, LLC, HFN REO SUB II, LLC, Home Connects Lending Services, LLC, Homecomings Financial Real Estate Holdings, LLC, Homecomings Financial, LLC, Ladue Associates, Inc., Passive Asset Transactions, LLC, PATI A, LLC, PATI B, LLC, PATI Real Estate Holdings, LLC, RAHI A, LLC, RAHI B, LLC, RAHI Real Estate Holdings, LLC, RCSFJV2004, LLC, Residential Accredit Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, Residential Consumer Services of Alabama, LLC, Residential Consumer Services of Ohio, LLC, Residential Consumer Services of Texas, LLC, Residential Consumer Services, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Exchange, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Funding Real Estate Holdings, LLC, Residential Mortgage Real Estate Holdings, LLC, RFC – GSAP Servicer Advance, LLC, RFC Asset Holdings II, LLC, RFC Asset Management, LLC, RFC Borrower LLC, RFC Construction Funding, LLC, RFC REO LLC and RFC SFJV-2002, LLC

By: /s/ William Thompson

Name: William Thompson

Title: General Counsel

By: /s/ Jill Horner

Name: Jill Horner

Title: Chief Financial Officer

Wilmington Trust, National Association, as Delaware  
Trustee

By: /s/ David A. Vanaskey, Jr.  
Name: David A. Vanaskey, Jr.  
Title: Vice President

Manufacturers and Traders Trust Company, as FHA  
Qualified Trustee

By: /s/ William J. Farrell II  
Name: William J. Farrell II  
Title: Executive Vice President

/s/ John S. Dubel  
John S. Dubel, as Liquidating Trustee

/s/ Mitchell Sonkin  
Mitchell Sonkin, as Liquidating Trustee

/s/ Mathew Doheny  
Mathew Doheny, as Liquidating Trustee

/s/ Paul J. Weber  
Paul J. Weber, as Liquidating Trustee

/s/ Samuel L. Molinaro  
Samuel L. Molinaro, Jr., as Liquidating Trustee

**EXHIBIT A**

**RESCAP LIQUIDATING TRUST**

**REQUEST FOR SECURITIES ACCOUNT INFORMATION**

December \_\_, 2013

**To:** The Holders of Allowed ResCap Unsecured Claims (Class R-4), GMACM Unsecured Claims (Class GS-4A) and RFC Unsecured Claims (Class RS-4) in the Bankruptcy Case of Residential Capital, LLC et al., Case No. 12-12010 (MG) (S.D.N.Y.)

**Introduction**

On December 11, 2013, the United States Bankruptcy Court for the Southern District of New York entered an order confirming the Joint Chapter 11 Plan of Residential Capital, LLC, *et al.* and the Official Committee of Unsecured Creditors. In accordance with the Plan, the ResCap Liquidating Trust (the "Liquidating Trust") will be making a distribution to holders of Allowed ResCap Unsecured Claims (Class R-4), GMACM Unsecured Claims (Class GS-4A) and RFC Unsecured Claims (Class RS-4) consisting of Units of beneficial interest in the Liquidating Trust.<sup>1</sup> Each Unit will entitle its holder to a pro rata share of all cash distributions made by the Liquidating Trust to the holders of Units. An initial distribution of Units is expected to occur within 15 days after the effective date of the Plan. It is anticipated that an initial distribution of cash will be made to holders of Units at the time of or shortly after the initial distribution of the Units. Additional cash distributions will be made as non-cash assets in the Liquidating Trust are sold or otherwise monetized.

The Plan has not yet become effective. As a prerequisite to your receipt of Units, the Plan must become effective and other conditions described in the order confirming the Plan must be fully satisfied.<sup>2</sup> We are asking for certain information at this time, so that you will be able to receive your Units, and the subsequent initial distribution of cash on your Units, soon after the effective date of the Plan as described above.

**To receive your Units on the date of the initial Unit distribution, and the cash distribution on those Units that will be made shortly thereafter, you must provide the information requested in this letter so that it is actually received no later 5:00 p.m. (Eastern time) on December 19, 2013.**

If you do not provide the information requested in this letter so that it is actually received by **5:00 p.m. (Eastern time) on December 19, 2013**, or if the information you have sent is incomplete or illegible, you will not receive your Units or the cash distributed on those Units until a later distribution date, after you have provided the required information. As a result your receipt of distributions from the Liquidating Trust will be delayed until a later distribution date.

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<sup>1</sup> Units will also be issued to a trust for the benefit of holders Private Securities Claims (Classes R-6, GS-6 and RS-6).

<sup>2</sup> If the Plan does not become effective and/or the other conditions described in the order confirming the Plan are not satisfied, you may not be entitled to receive the Units described in this letter.

The Liquidating Trust's Claims Officer is collecting the information requested by this letter on behalf of the Liquidating Trust.

### **Required Actions to Receive Your Units**

Listed on the accompanying Schedule A is—

- your name as it appears on the records of the Debtors;
- the identification number that has been assigned to you;
- the class or classes to which your claim belongs; and
- the amount of your claim in each class.

To receive the Units to which you are entitled under the Plan, please review Schedule A and then continue with the steps below.

#### ***Step 1***

If you are a U.S. person, you must provide the Claims Officer with your social security number or other taxpayer identification number. Accordingly, please fill out the attached Internal Revenue Service Form W-9 Request for Taxpayer Identification Number and Certification.

If you are not a U.S. person, instead please fill out the attached Internal Revenue Service Form W-8BEN Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (or other applicable Internal Revenue Service Form W-8).

#### ***Step 2***

You must designate a broker, bank or other financial institution with which you maintain a securities account to receive your Units on your behalf. You will not receive a distribution of Units unless and until you designate a broker in accordance with the instructions below.

***If you DO have a securities account with a broker, bank or other financial institution.*** If you currently have a securities account with a broker, bank or other financial institution, you must provide the broker, bank or other financial institution account information requested on the attached Schedule A to the Liquidating Trust.

***If you DO NOT have a securities account with a broker, bank or other financial institution.*** If you do not currently have a securities account with a broker, bank or other financial institution, you must open such an account before you can receive your Units. Once you have opened a securities account, you must provide the broker, bank or other financial institution account information requested on the attached Schedule A to the Liquidating Trust.

***Step 3***

Send (i) the fully completed Internal Revenue Service Form W-9 or Internal Revenue Service Form W-8BEN (or other applicable Internal Revenue Service Form W-8) and (ii) the fully completed Schedule A to the Claims Officer either—

By E-Mail: ResCapLiquidatingTrust@ResCapEstate.com

or

Mail: ResCap Liquidating Trust  
P.O. Box 385220  
Bloomington, Minnesota 55438

**Other Information**

If the Claims Officer determines, in its sole discretion, that the information you have sent is incomplete or illegible, your submission may be rejected by the Claims Officer, and you may not receive your Units and the cash distributed on those units until a later distribution date. The information you provide, including your social security or taxpayer identification number, will be held on a confidential basis. Once the Claims Officer has received your information, she will contact you or your broker, bank or other financial institution with instructions to enable the Liquidating Trust to issue Units to you and deposit them to your securities account.

If the Liquidating Trust is unable to issue and deposit your Units a securities account that you designate, the Liquidating Trust may issue the Units to you by reserving them, and all cash distributions on the Units, on your behalf. Once you have completed the actions described in this letter, and all other required conditions have been satisfied, the Liquidating Trust will transfer the securities from that account to your securities account.

If you do not take the actions required by this letter and any further instructions provided by the Liquidating Trust, you could forfeit your interest in the Units to which you would otherwise be entitled.

Receipt of the Units may have tax consequence for you, and you are encouraged to consult with your tax advisor.

If you have any questions about your distribution, or for more information, you may contact Peggi Fossil by calling the following number: (952) 857-7485 or emailing the Claims Officer to ResCapLiquidatingTrust@ResCapEstate.com.

Sincerely,

***Deanna Horst***

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On behalf of the ResCap Liquidating Trust

**SCHEDULE A<sup>3</sup>**

CLAIMANT NAME: \_\_\_\_\_ [PRE POPULATED]

CLAIM NUMBER(S): \_\_\_\_\_ [PRE POPULATED]

CLASS	ALLOWED CLAIM AMOUNT
Class R-4	\$ _____ [PRE POPULATED]
Class GS-4A	\$ _____ [PRE POPULATED]
Class RS-4	\$ _____ [PRE POPULATED]

**BROKER, BANK OR OTHER FINANCIAL INSTITUTION INFORMATION**

Name of Broker, Bank or Other Financial Institution:	
Contact Name:	
Contact Email:	
Contact Phone:	
Account Number:	
DTC Participant (if different from Financial Institution above):	
DTC Participant Number:	
Wire Instructions:  <div style="margin-left: 40px;">                     Financial Institution:                      SWIFT or ABA No.                      Account Name:                      Account Number:                      Other:                 </div>	

This form must be completed and returned to the Claims Officer with a completed Internal Revenue Service Form W-9 or Internal Revenue Service Form W-8BEN (or other applicable Form W-8).

<sup>3</sup> Claim information is provided solely for reference purposes and shall not be binding on the Debtors or the Liquidating Trust in any respects.

**EXHIBIT B**

**FORM OF ACCESS AND COOPERATION AGREEMENT**

THIS ACCESS AND COOPERATION AGREEMENT, dated as of December 17, 2013 (this "Agreement"), is by and between the ResCap Borrower Claims Trust (the "Borrower Claims Trust") the ResCap Liquidating Trust (the "Liquidating Trust").

**RECITALS**

WHEREAS, Residential Capital, LLC and certain of its affiliates (the "Debtors") filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101-1330 (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, on August 23, 2013 the Debtors filed the Joint Chapter 11 Plan of Residential Capital, LLC, *et al.*, dated August 23, 2013 (as amended and supplemented and as confirmed, the "Plan"), which has been confirmed by an order of the Bankruptcy Court dated December 11, 2013 (the "Confirmation Order");

WHEREAS, on December 17, 2013, the Effective Date of the Plan occurred;

WHEREAS, pursuant to the Plan, on the Effective Date the Borrower Claims Trust Agreement was executed to establish and provide for the administration of the Borrower Claims Trust and the distribution of Borrower Claims Trust Assets to holders of Borrower Claims that are Allowed on the Effective Date or that become Allowed after the Effective Date as contemplated by the Plan, and the Borrower Claims Trustee (as defined in the Borrower Claims Trust Agreement) has been appointed to act as trustee of the Borrower Claims Trust Assets, in furtherance of and consistent with the purpose of the Plan and the Borrower Claims Trust Agreement, with the power and authority to prosecute, compromise and settle objections to Disputed Borrower Claims, to discharge Allowed Borrower Claims, and to perform such other duties as may be vested in the Borrower Claims Trustee pursuant to the Plan and the Borrower Claims Trust Agreement (the "Borrower Claims Trust Functions");

WHEREAS, pursuant to the Plan, certain books and records that the Borrower Claims Trustee may need to access in order to discharge the Borrower Claims Trust Functions have been transferred to the Liquidating Trust and the Borrower Claims Trust may require from the Liquidating Trust access to such books and records in order to facilitate satisfaction of the Borrower Claims Trust Functions and administration of the Borrower Claims Trust as contemplated by the Plan.

NOW THEREFORE, in consideration of the above-stated premises, the mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows:

**ARTICLE 1**

**DEFINITIONS**

Section 1.1 Defined Terms. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Plan, the Borrower Claims Trust Agreement or in the Bankruptcy Code. The words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer to this Agreement as a whole and not to any particular article, section, subsection, or clause contained in this Agreement. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter.

## ARTICLE 2

### ACCESS TO RECORDS AND PERSONNEL

#### Section 2.1 Access.

(a) On and after the Effective Date and during the Term of this Agreement (as hereafter defined), the Liquidating Trust shall cooperate with the Borrower Claims Trust and the Borrower Claims Trustee by:

(i) affording reasonable access, upon reasonable advance notice, during regular business hours unless otherwise agreed by the parties, to such employees of the Liquidating Trust as the Borrower Claims Trustee deems reasonably necessary to assist in the resolution of Disputed Borrower Claims. For purposes of the foregoing, (i) access shall include, access by telephone, periodic meetings, interviews and appearance of such employees as witnesses (by affidavits, at depositions and at trials, as necessary) and their availability for preparation as a witness or deponent in proceedings and (ii) “employees of the Liquidating Trust” means individuals that are employed by the Liquidating Trust at the time such access is requested to be afforded; and

(ii) in accordance with Article XIII.E of the Plan, affording access to the Borrower Claims Trustee to books and records reasonably required to fulfill the Borrower Claims Trust Functions, including computer generated or computer maintained books and records and computerized data, as well as electronically generated or maintained books and records or data, along with books and records of the Debtors maintained by or in possession of third parties (the “Books and Records”), which Books and Records shall include mortgage loan files, mortgage loan servicing notes, Borrower litigation files, e-mail records, contracts, financial records, reports and any and all other work product generated by or on behalf of the Debtors, and any and all communications with Debtors’ agents and professionals, and documents and other instruments relating to the Debtors’ origination and servicing of mortgage loans; provided, however, that the Liquidating Trust shall not be responsible for such Books and Records that may have been lost (notwithstanding reasonable good faith efforts to locate such Books and Records), damaged or destroyed prior to the Effective Date.

(b) Notwithstanding the access afforded by the Liquidating Trust to the Books and Records under subsection (a) above, such Books and Records shall at all times during the Term remain in the custody and under the control of the Liquidating Trust; provided, however, that the

Borrower Claims Trust shall be permitted to make copies of the Books and Records, or any portion thereof, or request the Liquidating Trust to make such copies, including electronic copies, at the expense of the Liquidating Trust to the extent reasonable under the circumstances.

(c) In determining whether any request of the Borrower Claims Trust for access to employees of the Liquidating Trust or the Books and Records is reasonable in the circumstances, there shall be taken into account whether the relevant information could otherwise be obtained from documents already in the custody, possession or control of the Borrower Claims Trust or professionals or agents otherwise employed or retained by the Borrower Claims Trust.

(d) The Liquidating Trust shall use reasonable efforts to afford the access provided for in subsection (a) above in a timely manner, so as to enable the Borrower Claims Trustee to timely pursue the resolution of any Disputed Borrower Claims and otherwise timely fulfill the Borrower Claims Trust Functions, it being understood that time may be of the essence in certain instances in order to comply with court hearing or filing deadlines or to avoid the application of statutes of limitation; provided, however, that in all cases such access shall not unduly interfere with the conduct of the operations and affairs of the Liquidating Trust upon the reasonable determination of the Liquidating Trust Manager; and provided further that the Liquidating Trust shall not be required to (i) afford such access to the extent that it would result in a waiver of any privilege, including attorney-client privilege, available to the Liquidating Trust where, in the reasonable judgment of the Liquidating Trust, such waiver would materially and adversely affect the ability of the Liquidating Trust to conduct its operations and affairs, to preserve or prosecute any claims that are or that may be available to it or to defend any claims or actions which have or may be asserted against it or (ii) continue to employ any individual (whether access to such employee has been provided in the manner contemplated by this Section 2.1 or otherwise).

(e) The Liquidating Trust shall from time to time designate by written notice to the Borrower Claims Trust (i) an employee (the "Coordinator") for the purpose of receiving requests for access to employees of the Liquidating Trust and Books and Records and coordinating the response of the Liquidating Trust to such requests and (ii) an employee to receive such requests in the event the Coordinator is unavailable (the "Alternate Coordinator"). The initially designated Coordinator and Alternate Coordinator are set forth on Schedule I to this Agreement. In the event that the Coordinator and Alternate Coordinator are for any reason unavailable or the Borrower Claims Trustee believes that the Borrower Claims Trust has not been provided access in the manner contemplated by this Section 2.1, the Borrower Claims Trustee shall also be permitted to communicate with the Liquidating Trust Manager for such purposes.

(f) All requests for access, as contemplated by this Section 2.1, shall be delivered to the Liquidating Trust, and all communications in respect of such request shall be conducted on behalf of the Borrower Claims Trust by the Borrower Claims Trustee or an employee or agent of the Borrower Claims Trust designated by written notice to the Liquidating Trust. At the request of the Borrower Claims Trustee, the Liquidating Trust shall also afford access to employees of the Liquidating Trust and Books and Records, as provided in subsection (a), to those professionals and agents of the Borrower Claims Trust (including, without limitation, counsel, accountants and financial advisors) who have been identified to the Liquidating Trust in each instance by the Borrower Claims Trustee.

(g) The access to employees of the Liquidating Trust and Books and Records contemplated by this Section 2.1 shall be given by the Liquidating Trust at its own expense, including as provided in subsection (b) above; provided, however, that the Liquidating Trust shall not be responsible for any costs and expenses incurred by the Borrower Claims Trust with respect to such access, including the costs and expenses of any agents, professionals or contractors retained by the Borrower Claims Trust for the purpose of obtaining access to the employees of the Liquidating Trust or the Books and Records or performing any Borrower Claims Trust Functions in respect thereof; provided further that nothing herein shall require the Borrower Claims Trust to hire any professional or agent, or to incur any particular cost or expense, in order to gain access to the employees of the Liquidating Trust or any Books and Records as contemplated by this Section 2.1.

### ARTICLE 3

#### OTHER AGREEMENTS

Section 3.1 Preservation of Privilege and Defenses. To the maximum extent permitted by law, neither this Agreement nor the performance by the parties under the provisions of Article 2 or otherwise pursuant to this Agreement shall constitute the waiver of any attorney-client privilege, work-product privilege or other privilege, immunity or defense attaching to or existing with respect to the Books and Records or any other documents or communications (whether written or oral) constituting Liquidating Trust Assets, and to the extent relating to the Borrower Claims Trust Functions and appropriate in the circumstances, any such privilege, immunity or defense may be asserted by the Borrower Claims Trustee, or any authorized agent or professional on behalf of the Borrower Claims Trust.

Section 3.2 Confidentiality.

(a) In the course of the performance by the parties under this Agreement, each party may become aware of confidential or proprietary information of the other party ("Confidential Information"). All Confidential Information disclosed by a party in connection with the performance of this Agreement shall remain the property of the disclosing party, shall be held in confidence by the receiving party and shall be used by the receiving party only in accordance with the provisions of this Agreement.

(b) The obligations of confidentiality under this Section 3.2 shall not apply with respect to Confidential Information which (i) is or becomes publicly known through no wrongful act of the receiving party. (ii) was known by the receiving party prior to disclosure or is developed by the receiving party independently of such disclosure; (iii) was disclosed to the receiving party by a third party who is not known by the receiving party after due inquiry to be under any confidentiality obligations; (iv) is approved for release by written authorization of the disclosing party; or (v) is disclosed pursuant to a requirement of law or by court order, provided that the receiving party shall provide notice to the disclosing party as far in advance of disclosure as is reasonably practicable in the circumstances and shall cooperate with the disclosing party, at the disclosing party's expense, in attempting to prevent or limit such legally required disclosure.

Section 3.3 Professionals and Agents. To the extent that any information or expertise required by the Borrower Claims Trustee for the performance of the Borrower Claims Trust Functions may be in the possession of professionals and other agents of the Liquidating Trust, nothing in this Agreement shall preclude the Borrower Claims Trust from engaging such professionals or agents, at its sole cost and expense, to the extent consistent with applicable standards of professional responsibility, compliance with the confidentiality provisions of Section 3.2 and the preservation of the privileges, including the attorney-client privilege of the Liquidating Trust.

Section 3.1 Limitation of Liability. None of the Liquidating Trust, the Liquidating Trustees, the Liquidating Trust Management, Liquidating Trust Agent, or any of their respective principals, advisors or professionals, shall be liable to the Borrower Claims Trust for any damages arising out of this Agreement or the performance of the Liquidating Trust's obligations hereunder, including actions taken or omitted in fulfillment of his, her or its duties with respect to the Liquidating Trust, except in the case of such party's gross negligence, bad faith or willful misconduct; provided, that in no event will any such party be liable for punitive, exemplary, consequential or special damages under any circumstances.

Section 3.2 Further Assurances. Each party agrees to perform, or cause to be performed, all such further acts, and to execute and deliver all such other agreements and instruments, as the other party may reasonably request in order to carry out the purposes and intents of this Agreement, and consistent with the other provisions hereof.

#### **ARTICLE 4**

##### **TERM OF THIS AGREEMENT**

The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate on the earlier to occur of (i) the dissolution of the Borrower Claims Trust in accordance with the Borrower Claims Trust Agreement or (ii) the dissolution of the Liquidating Trust in accordance with the Liquidating Trust Agreement.

#### **ARTICLE 5**

##### **MISCELLANEOUS**

Section 5.1 Notices. Any notice or other communication required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by facsimile, sent by nationally recognized overnight delivery service, or mailed by first-class mail:

- (i) if to the Borrower Claims Trust, to:

The ResCap Borrower Claims Trust  
Peter S. Kravitz, Esq., Trustee  
Solution Trust  
29209 Canwood Street

Agoura Hills, CA 91301  
Phone: 310-974-6350  
Email: PKravitz@SolutionTrust.com

(iii) if to the Liquidating Trust, to:

ResCap Liquidating Trust  
c/o Quest Turnaround Advisors, LLC  
800 Westchester Avenue, Suite S-520  
Rye Brook, NY 10573  
Fax: 914-253-8103  
Email: jbrodsky@qtadvisors.com

Section 5.2 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be taken together to constitute one and the same instrument.

Section 5.3 Governing Law. Except to the extent governed by the Bankruptcy Code, this Agreement shall be governed by, construed under and interpreted in accordance with, the internal laws of the State of New York, without regard to principles of conflicts of laws.

Section 5.4 Exclusive Jurisdiction and Standing. As provided in Article XII of the Plan, the Bankruptcy Court has exclusive jurisdiction over all controversies, suits and disputes that may arise under this Agreement.

Section 5.5 Severability. The terms and provisions of this Agreement shall be deemed severable, and in the event any term or provision hereof or any portion thereof is deemed or held to be invalid, illegal or unenforceable, the remaining terms and provisions hereof and portions thereof shall nevertheless continue and be deemed to be in full force and effect. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable any such provision in any other jurisdiction.

Section 5.6 Independent Contractor Status. The Liquidating Trust shall be deemed to be an independent contractor of the Borrower Claims Trust and employees of the Liquidating Trust shall at all times be regarded as employees of the Liquidating Trust. Nothing contained in this Agreement shall create or be deemed to create an employment, agency, joint venture or partnership relationship between the Borrower Claims Trust on the one hand, and the Liquidating Trust or any of its employees, on the other hand.

Section 5.7 No Waiver. No failure or delay by any party in exercising any right, power or privilege hereunder will operate as a waiver thereof, and that no single or partial exercise thereof will preclude any other or further exercise thereof or the exercise of any right, power and privilege hereunder.

Section 5.8 Plan Documents. Nothing contained herein shall modify the terms of any other Plan Document, which are intended to be supplemented by the terms of this Agreement.

Section 5.9 Entire Agreement. This Agreement contains the entire agreement of the parties concerning the subject matter hereof, and no modification of this Agreement or waiver of the terms and conditions hereof will be binding upon the parties unless approved in writing by the parties.

Section 5.10 Amendment. This Agreement may be amended with the consent in writing of the parties; provided, however, that, without approval of the Bankruptcy Court, no amendment to this Agreement shall be effective to the extent that it is inconsistent with the terms of the Plan, the Confirmation Order, the Liquidating Trust Agreement or the Borrower Claims Trust Agreement.

Section 5.11 Titles. The section titles used herein are for convenience only and shall not be considered in construing or interpreting any of the provisions of this Agreement.

Section 5.12 Binding Effect. This Agreement is for the benefit of and shall be binding upon the parties and their respective representatives, transferees, successors and assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be duly executed by their respective representatives thereunto duly authorized as of the day and year first above written.

THE RESCAP BORROWER CLAIMS TRUST

By: \_\_\_\_\_, as Trustee

RESCAP LIQUIDATING TRUST

By: Quest Turnaround Advisors, LLC, as Liquidating  
Trust Manager

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

Name: Jeffrey Brodsky

Title: Member

SCHEDULE I

Coordinator: Deanna Horst

Alternative Coordinator: Nick Kosinski

**Blackline**

**AMENDED AND RESTATED  
RESCAP LIQUIDATING TRUST  
LIQUIDATING TRUST AGREEMENT  
BY AND AMONG  
THE LIQUIDATING TRUSTEES,  
WILMINGTON TRUST, NATIONAL ASSOCIATION,  
MANUFACTURERS AND TRADERS TRUST COMPANY,  
RESIDENTIAL CAPITAL, LLC  
AND  
THE OTHER DEBTORS LISTED ON THE SIGNATURE PAGES HERETO**

 [December 17](#), 2013

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**Exhibits**

Exhibit A —~~Summary Forecast~~

Exhibit B — Form of Request for Securities Account Information

Exhibit C — Form of Access and Cooperation Agreement

**RESCAP LIQUIDATING TRUST  
AMENDED AND RESTATED LIQUIDATING TRUST AGREEMENT**

This Amended and Restated Liquidating Trust Agreement, dated as of ~~December 17~~, December 17, 2013 (this “Liquidating Trust Agreement”), is entered into by and among Residential Capital, LLC (“ResCap”), AKA 13, LLC (f/k/a ditech, LLC), DOA Holding Properties, LLC, DOA Properties IX (Lots-Other), LLC, EPRE LLC, Equity Investment I, LLC, ETS of Virginia, Inc., ETS of Washington, Inc., Executive Trustee Services, LLC, GMAC-RFC Holding Company, LLC, GMAC Model Home Finance I, LLC, GMAC Mortgage USA Corporation, GMAC Mortgage, LLC, GMAC Residential Holding Company, LLC, GMAC RH Settlement Services, LLC, GMACM Borrower LLC, GMACM REO LLC, GMACR Mortgage Products, LLC, HFN REO SUB II, LLC, Home Connects Lending Services, LLC, Homecomings Financial Real Estate Holdings, LLC, Homecomings Financial, LLC, Ladue Associates, Inc., Passive Asset Transactions, LLC, PATI A, LLC, PATI B, LLC, PATI Real Estate Holdings, LLC, RAHI A, LLC, RAHI B, LLC, RAHI Real Estate Holdings, LLC, RCSFJV2004, LLC, Residential Accredited Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, Residential Consumer Services of Alabama, LLC, Residential Consumer Services of Ohio, LLC, Residential Consumer Services of Texas, LLC, Residential Consumer Services, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Exchange, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Funding Real Estate Holdings, LLC, Residential Mortgage Real Estate Holdings, LLC, RFC – GSAP Servicer Advance, LLC, RFC Asset Holdings II, LLC, RFC Asset Management, LLC, RFC Borrower LLC, RFC Construction Funding, LLC, RFC REO LLC and RFC SFJV-2002, LLC (each as a debtor and debtor-in-possession, and collectively, the “Debtors”), Wilmington Trust, National Association, or its successor, as Delaware Trustee, Manufacturers and Traders Trust Company, or its successor, as FHA Qualified Trustee, and the Liquidating Trustees whose names appear as such on the signature page to this Liquidating Trust Agreement.

**RECITALS**

- A. On May 14, 2012, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court (the “Bankruptcy Case”).
- B. On or about July 26, 2013, John S. Dubel, as trustee, executed a Declaration of Trust providing for the formation of a predecessor common law trust (the “Original Trust”) for the purposes set forth therein.
- C. On or about August 23, 2013, the Debtors filed the Joint Chapter 11 Plan of Residential Capital, LLC, *et al.*, dated August 23, 2013 (as amended and supplemented and as confirmed, the “Plan”, and the related disclosure statement, the “Disclosure Statement”).
- D. On or about August 26, 2013, the Bankruptcy Court approved the Disclosure Statement.
- E. On December 10, 2013, the Original Trust was converted to a trust formed pursuant to the Trust Act (as defined below) by filing of the Certificate of Conversion (as

defined below) and Certificate of Trust (as defined below), and the Interim Liquidating Trust Agreement (as defined below) was executed

F. On or about December 11, 2013, the Bankruptcy Court issued an order confirming the Plan.

G. On December 17, 2013, the Effective Date of the Plan occurred.

H. The Plan provides for a liquidating trust (as so formed and administered in accordance with the terms of this Liquidating Trust Agreement, the “Liquidating Trust”) to liquidate and distribute the Liquidating Trust Assets to holders of administrative, other priority, secured and unsecured Claims that are Allowed on the Effective Date or that become Allowed after the Effective Date.

I. This Liquidating Trust Agreement amends and restates the Interim Liquidating Trust Agreement and is being executed to establish and provide for the administration of the Liquidating Trust and the liquidation and distribution of Liquidating Trust Assets as contemplated by the Plan, and to otherwise facilitate the implementation of the Plan.

J. The Liquidating Trust (other than as relating to the Liquidating Trust Assets allocable to distributions and reserves described in Article III and to the Disputed LT Unsecured Claims) is intended to qualify as a Liquidating Trust, within the meaning of Treasury Regulations section 301.7701-4(d), to be treated as a “grantor trust” for federal income tax purposes, and to be exempt from the requirements of the Investment Company Act of 1940 pursuant to Section 3(c)(5) and Sections 7(a) and 7(b) thereof.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein, the parties hereto agree as follows:

## **ARTICLE I** **DEFINITIONS**

1.1 Definitions Incorporated from the Plan. Other than the terms defined below or elsewhere in this Liquidating Trust Agreement, capitalized terms shall have the meaning assigned to them in the Plan.

1.2 Other Definitions.

(a) “**Administrative Expenses Set Aside**” means an amount of Cash or other assets set aside from time to time by or under the direction of the Liquidating Trust Board for paying costs, fees and expenses, and reserving for liabilities, of the Liquidating Trust, as provided in Section 7.4, including costs, fees and expenses of the Estates payable at any time after the Effective Date.

(b) “**Administrative, Priority, Secured and Convenience Distribution Reserve**” means the reserve established for the purpose of maintaining Cash or other assets from time to time necessary to satisfy Priority Distributions and General Unsecured Convenience Claims in accordance with Section 3.6.

the Liquidating Trust in the form attached as [Exhibit CB](#) to this Liquidating Trust Agreement and (ii) the cooperation agreement, dated the date hereof, by and between the Liquidating Trust and the Kessler Settlement Class relating to insurance.

(m) “**Debtors**” has the meaning assigned in the Preamble.

(n) “**Delaware Trustee**” means Wilmington Trust, National Association, or its successor, which is appointed in accordance with this Liquidating Trust Agreement to comply with the requirement of section 3807 of the Trust Act.

(o) “**Disputed Claims Estimation Date**” means the date as of which the Disputed Claims are to be estimated pursuant to the Reserve Motion.

(p) “**Disputed Claims Reserve**” means the reserve of Units maintained by the Liquidating Trust, together with all Cash theretofore distributed in respect of such Units, for distribution to holders of Disputed LT Unsecured Claims that are subsequently Allowed, and including any non-Cash assets that at any time are held in the Disputed Claims Reserve as provided in [Section 7.3\(b\)](#).

(q) “**Disputed Claims Reserve Units**” means a number of Units equal to the sum of (x) the GMACM Debtors Unit Issuance Ratio multiplied by the Estimated Amount of all GMACM Unsecured Claims that are Disputed Claims as of the Initial Unit Distribution Record Date; plus (y) the ResCap Debtors Unit Issuance Ratio multiplied by the Estimated Amount of all ResCap Unsecured Claims that are Disputed Claims as of the Initial Unit Distribution Record Date; plus (z) the RFC Debtors Unit Issuance Ratio multiplied by the Estimated Amount of all RFC Unsecured Claims that are Disputed Claims as of the Initial Unit Distribution Record Date.

(r) “**Disputed LT Claims**” means the Disputed Priority Claims, General Unsecured Convenience Claims that are Disputed Claims, and the Disputed LT Unsecured Claims.

(s) “**Disputed LT Unsecured Claims**” means ResCap Unsecured Claims, GMACM Unsecured Claims and RFC Unsecured Claims that at any relevant time are Disputed Claims, but not including any ETS Unsecured Claims.

(t) “**Disputed Priority Claims**” means Administrative Claims, Priority Tax Claims, Other Priority Claims, Other Secured Claims and Junior Secured Notes Claims that at any relevant time are Disputed Claims.

(u) “**Distributable Cash**” means Cash of the Liquidating Trust available for distribution to Unitholders (including the Disputed Claims Reserve), after payment or reserving for the payment of Allowed Priority Claims, Allowed General Unsecured Convenience Claims, Allowed ETS Unsecured Claims and Allowed professional fees, and the funding of the Administrative, Priority, Secured and Convenience Distribution Reserve and the funding of the Administrative Expenses Set Aside.

(rr) “**Initial Nominating Party**” means a party entitled under Article VI.E. of the Plan to appoint a member of the Liquidating Trust Board, which parties specifically include (1) MBIA, (2) FGIC, (3) Paulson, (4) the RMBS Trustees that are members of the Creditors’ Committee, the Steering Committee Consenting Claimants and the Talcott Franklin Consenting Claimants, jointly, and (5) the holders of the Private Securities Claims.

(ss) “**Initial Unit Distribution Date**” means the date determined by the Liquidating Trust Board occurring as soon as reasonably practicable after the entry by the Bankruptcy Court of the Reserve Order, but in no event prior to the Effective Date, on which the Liquidating Trust makes or causes to be made the initial distribution of Units to holders of Allowed Unsecured Claims entitled to receive Units hereunder as of the Initial Unit Distribution Record Date, the Private Securities Claims Trust and the RMBS Claims Trust.

(tt) “**Initial Unit Distribution Record Date**” means the Disputed Claims Estimation Date, which is the record date for determining the Liquidating Trust Unit Beneficiaries holding Allowed Claims that are entitled to receive a distribution of Units on the Initial Unit Distribution Date, provided that to the extent the allowance of a Claim as of the Initial Unit Distribution Record Date is contingent only upon the effectiveness of the Plan, such Claim shall be deemed to be Allowed as of the Initial Unit Distribution Record Date.

(uu) “**Initial Unit Estimation**” means the number of Units that would have been distributed to an Initial Nominating Party on the Initial Unit Distribution Date if it beneficially owned, on the Initial Unit Distribution Record Date, the same claims as the Initial Nominating Party beneficially owned on October 11, 2013.

(vv) “**Interim Liquidating Trust Agreement**” means the Interim Liquidating Trust Agreement for the Liquidating Trust, dated as of December ~~11~~<sup>10</sup>, 2013, executed by the Delaware Trustee and John S. Dubel, as Liquidating Trustee.

(ww) “**Liquidating Trust**” has the meaning assigned in the Recitals.

(xx) “**Liquidating Trust Agents**” means the advisors, professionals and other agents, including any disbursement agent, of the Liquidating Trust appointed or engaged by the Liquidating Trust Board or by Liquidating Trust Management in accordance with the provisions of this Liquidating Trust Agreement.

(yy) “**Liquidating Trust Agreement**” has the meaning assigned in the Recitals.

(zz) “**Liquidating Trust Assets**” means all property held from time to time by the Liquidating Trust, including the Available Assets transferred to the Liquidating Trust on or after the Effective Date, and including all Cash and non-Cash assets held in the Disputed Claims Reserve, the Administrative Expenses Set Aside and the Administrative, Priority, Secured and Convenience Distribution Reserve, but not including the assets excluded from Available Assets pursuant to Section 2.5(a).

2.5 Transfer of Available Assets.

(a) On the Effective Date, the Debtors shall transfer all of the Available Assets, in the form existing on such date, to the Liquidating Trust, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other persons and entities to the maximum extent contemplated by and permissible under section 1141 of the Bankruptcy Code. The Liquidating Trust shall have such incidents of ownership in the Available Assets as are necessary to undertake the actions and transactions authorized in the Plan Documents. The transfer of the Available Assets shall be exempt from any stamp, real estate transfer, mortgage recording, sales, use or other similar Tax pursuant to section 1146 of the Bankruptcy Code. Upon the transfer of Available Assets to the Liquidating Trust, such assets shall become Liquidating Trust Assets. For the avoidance of doubt, Available Assets shall include (i) the FHA Mortgage Loans and any related servicing advances, receivables, and claims; (ii) the VA Mortgage Loans and any related servicing advances, receivables, and claims; (iii) any servicing advances, receivables, claims and real estate owned property relating to FHA or VA Mortgage Loans liquidated prior to the Effective Date; (iv) any licenses and approvals received or held by GMACM Mortgage, LLC from HUD, the FHA, and the VA; and (v) GMAC Mortgage, LLC and Residential Funding Company, LLC's membership interest and stock ownership in MERS®, including all related rights and interests. For the avoidance of doubt, Available Assets shall not include any Borrower-Related Cause of Action or any assets or rights excluded pursuant to Articles IV.G.2. and IV.G.3. of the Plan. In addition, if the Kessler Settlement Approval Orders shall have been entered, and after the Effective Date the Liquidating Trust discovers any additional insurance policies under which any of the Debtors are an insured and that provide coverage for the Debtors' liability to the Kessler Settlement Class, then the Liquidating Trust shall assign to the Kessler Settlement Class the insurance rights under such policies with respect to the liability of the Debtors to the Kessler Settlement Class, as provided in Article IV.G. of the Plan, and such insurance rights shall not constitute Liquidating Trust Assets.

(b) Notwithstanding the foregoing, if on the Effective Date, any of the Available Assets cannot be transferred to the Liquidating Trust, or it is deemed impractical or inadvisable to do so by the Liquidating Trust Board or the Liquidating Trust Manager, for any reason, for example, because the Liquidating Trust has not yet established accounts for the purpose of holding Cash or because of a restriction on transferability under applicable non-bankruptcy law that is not superseded by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, the Debtors shall continue to hold such Liquidating Trust Assets, as bailee for the account of the Liquidating Trust, until such time as the Liquidating Trust informs the Debtors that the Liquidating Trust may receive such Available Assets, whereupon such assets shall be promptly transferred to the Liquidating Trust and become Liquidating Trust Assets; provided that the proceeds of the sale or other disposition of any such assets retained by the Debtors (or any successors thereto) shall nevertheless be deemed to constitute Available Assets, and to likewise be held by the Debtors as bailee, and be turned over as soon as practicable to the Liquidating Trust pursuant to this Liquidating Trust Agreement as if such transfer had not been restricted under applicable non-bankruptcy law. The Liquidating Trust may commence an action in the Bankruptcy Court to resolve any dispute regarding the allocation of the proceeds of any Available Assets retained by the Debtors (or any successors thereto) pursuant to the Plan Documents.

accordance with the terms hereof, the “Liquidating Trust Budget”) for each Fiscal Year, except that the Liquidating Trust Budget for the first Fiscal Year, if less than six calendar months, may be combined with the Liquidating Trust Budget for the next succeeding Fiscal Year, and the Liquidating Trust Budget for the last Fiscal Year, if less than six calendar months, may be combined with the Liquidating Trust Budget for the immediate prior Fiscal Year. The Liquidating Trust Budget shall set forth (on an annual basis) in reasonable detail: (i) the assumptions underlying the projected recoveries and expenses associated with the administration of the Liquidating Trust for the annual budget and the funding of the Administrative Expenses Set Aside in respect thereof, and (ii) the anticipated distributions to the Unitholders.

(b) Except as otherwise approved by the Liquidating Trust Board, the form of each Liquidating Trust Budget shall be substantially the same as the form of the initial Liquidating Trust Budget.

(c) Not less than thirty (30) days before the beginning of each Fiscal Year (other than the first Fiscal Year and other than the second Fiscal Year, if the initial Liquidating Trust Budget covers such Fiscal Year, and other than the last Fiscal Year, if the Liquidating Trust Budget for the next preceding Fiscal Year covers such Fiscal Year), the Liquidating Trust Management shall submit to the Liquidating Trust Board a proposed Liquidating Trust Budget for such Fiscal Year, together with a comparison to the Liquidating Trust Budget then in effect and an explanation of the differences between the two in reasonable detail. The Liquidating Trust Budget for such Fiscal Year shall not become effective until approved by Majority Consent of the Liquidating Trust Board, and until so approved, the Liquidating Trust Budget for the prior year shall constitute the Liquidating Trust Budget for the subsequent year on an interim basis.

(d) Amendments, if any, to the Liquidating Trust Budget shall not become effective unless and until approved by Majority Consent of the Liquidating Trust Board.

(e) Except as otherwise approved by Majority Consent of the Liquidating Trust Board, the amount expended in any Fiscal Year (or, if the initial or final Liquidating Trust Budget shall cover a combined period as provided above, in such combined period) on any item of expense set forth in the Liquidating Trust Budget shall not exceed by more than fifteen percent (15%) the budgeted amount therefor set forth in the Liquidating Trust Budget for the relevant Fiscal Year.

~~(f) A summary of the forecasted recoveries, expenses and potential distributions is attached as Exhibit A to this Liquidating Trust Agreement.~~

2.11 Insurance. The Liquidating Trust shall maintain customary insurance coverage, including any appropriate tail coverage, for the protection of the Trustees and Liquidating Trust Management (which coverage shall be primary to any other coverage potentially available to such persons) and may procure insurance coverage for such employees as the Liquidating Trust Board may determine in its discretion, and the cost thereof shall be reflected in the Liquidating Trust Budget.

and (ii) Senior Unsecured Noteholders, whose Units will be issued to the Senior Unsecured Notes Indenture Trustee) must designate a direct or indirect participant in DTC with whom such holder has a securities account and take such other ministerial actions as Liquidating Trust Management shall from time to time reasonably require by written communication to such holders, in the form of Exhibit BA or otherwise. The Liquidating Trust shall communicate with the Private Securities Claims Trust, the RMBS Claims Trust and with the Senior Unsecured Notes Indenture Trustee to obtain from them account information for the respective DTC participants through which the Units distributed to them will be held.

(b) If and for so long as a holder of an Allowed Unsecured Claim (other than (i) the holders of RMBS Trust Claims, whose Units will be issued to the RMBS Claims Trust and (ii) Senior Unsecured Noteholders, whose Units will be issued to the Senior Unsecured Notes Indenture Trustee) does not designate a direct or indirect participant in DTC and take such other actions required by Section 4.5(a), the Liquidating Trust shall, except as otherwise provided by Section 4.5(c), hold the Units such holder is otherwise entitled to receive, together with any Cash distributed in respect of such Units, until such time as such holder complies with the requirements of Section 4.5(a). At any time following the date on which the Liquidating Trust determines, in its sole discretion, that a holder of an Allowed Unsecured Claim complies in full with the requirements of Section 4.5(a), but in any event, as soon as practicable following the beginning of the fiscal quarter next following such date, the Liquidating Trust shall distribute to such holder the Units and any distributions thereon to which such holder is entitled. Any Cash held by the Liquidating Trust on account of Units that remain undistributed pending compliance with the provisions of Section 4.5(a) as aforesaid shall be separately recorded by the Liquidating Trust.

(c) If a holder of an Allowed Unsecured Claim otherwise entitled to receive Units has not complied with the requirements of Section 4.5(a) or Section 5.6 prior to the final Distribution Date, then as of the date immediately before the final Distribution Date (i) the Units otherwise distributable to such holder shall be deemed cancelled and not outstanding, and (ii) the Cash distributed or distributable in respect of such Units shall be distributed Pro Rata to all holders of Units outstanding on the final Distribution Date. Notwithstanding the foregoing, if such holder is a beneficiary of the Private Securities Claims Trust whose Units were returned by the Private Securities Claims Trust to the Liquidating Trust, the Liquidating Trust shall hold such Units and any Cash distributed in respect thereof until such time as such beneficiary complies with the requirements of Section 4.5(a) hereof; provided that in the event such beneficiary has not complied with the requirements of Section 4.5(a) of this Liquidating Trust Agreement by the date that is ten (10) days before the final Distribution Date, (i) the Units otherwise distributable to such beneficiary shall be deemed cancelled and not outstanding, and (ii) the Cash distributed or distributable in respect of such Units shall be distributed pro rata (in accordance with the Private Securities Claims Allocation Agreement, dated as of August 16, 2013, a copy of which shall be provided by the trustee for the Private Securities Claims Trust) to the other original beneficiaries of the Private Securities Claims Trust, on the final Distribution Date.

(d) The Liquidating Trust shall also be authorized to withhold and retain Units otherwise issuable to holders of Allowed Unsecured Claims that are subject to tax withholding to the extent required by applicable Tax laws, and any Units so withheld shall be

unrestricted, and shall be added to the Administrative Expenses Set Aside or made available for distribution as Distributable Cash, as determined by the Liquidating Trust Board.

#### 7.6 Reporting.

(a) The Liquidating Trust shall cause to be prepared, and shall post to the Liquidating Trust Website, financial reports on a quarterly and annual basis as provided in this Section 7.6(a). Unless otherwise required by applicable law, such reports need not be prepared in accordance with GAAP (and need not be prepared using the liquidation basis of accounting), but in any event shall fairly present the assets, liabilities, income and expenses of the Liquidating Trust for and as of the end of each reporting period. The financial reports shall be prepared on a consistent basis, except as may be disclosed in the notes to the financial statements. The financial reports shall include:

(i) Quarterly financial statements, which shall be prepared and posted no later than forty (40) days after the end of each of the first three (3) quarters of the Fiscal Year; and

(ii) Annual financial statements, which shall be prepared and posted no later than sixty (60) days after the end of each Fiscal Year, except that no such annual financial statements shall be required to be prepared and posted for the Fiscal Year ended December 31, 2013, as it will consist of less than thirty (30) days.

(b) In addition to the financial reports required by Section 7.6(a), the Liquidating Trust shall cause to be prepared, and shall post to the Liquidating Trust Website, no later than forty (40) days after the end of each of the first three (3) quarters for the Fiscal Year and no later than sixty (60) days after the end of each Fiscal Year, reports containing the following information regarding the activity of the Liquidating Trust during the most recently completed fiscal quarter, and in the report prepared after the end of each Fiscal Year, the most recently completed quarter, the most recently completed Fiscal Year and since the Effective Date:

(i) the material Liquidating Trust Assets disposed of during the relevant period and the material Liquidating Trust Assets remaining as of the end of such period;

(ii) the Distributable Cash distributed during the relevant period, in the aggregate and on a per Unit basis;

(iii) Cash added to or withdrawn from the Administrative Expenses Set Aside during the relevant period, and Cash held in the Administrative Expenses Set Aside as of the end of such period;

(iv) Cash added to or withdrawn from the Administrative, Priority, Secured and Convenience Distribution Reserve during the relevant period, and Cash held in the Administrative, Priority, Secured and Convenience Distribution Reserve as of the end of such period;

**IN WITNESS WHEREOF**, the parties hereto have executed this Liquidating Trust Agreement or caused this Liquidating Trust Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

Residential Capital, LLC;

By /s/ William Thompson  
Name: William Thompson  
Title: General Counsel

By: /s/ Jill Horner  
Name: Jill Horner  
Title: Chief Finance Executive

AKA 13, LLC (f/k/a ditech, LLC), DOA Holding Properties, LLC, DOA Properties IX (Lots-Other), LLC, EPRE LLC, Equity Investment I, LLC, ETS of Virginia, Inc., ETS of Washington, Inc., Executive Trustee Services, LLC, GMAC-RFC Holding Company, LLC, GMAC Model Home Finance I, LLC, GMAC Mortgage USA Corporation, GMAC Mortgage, LLC, GMAC Residential Holding Company, LLC, GMAC RH Settlement Services, LLC, GMACM Borrower LLC, GMACM REO LLC, GMACR Mortgage Products, LLC, HFN REO SUB II, LLC, Home Connects Lending Services, LLC, Homecomings Financial Real Estate Holdings, LLC, Homecomings Financial, LLC, Ladue Associates, Inc., Passive Asset Transactions, LLC, PATI A, LLC, PATI B, LLC, PATI Real Estate Holdings, LLC, RAHI A, LLC, RAHI B, LLC, RAHI Real Estate Holdings, LLC, RCSFJV2004, LLC, Residential Accredit Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, Residential Consumer Services of Alabama, LLC, Residential Consumer Services of Ohio, LLC, Residential Consumer Services of Texas, LLC, Residential Consumer Services, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Exchange, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Funding Real Estate Holdings, LLC, Residential Mortgage Real Estate Holdings, LLC, RFC – GSAP Servicer Advance, LLC, RFC Asset Holdings II, LLC, RFC Asset Management, LLC, RFC Borrower LLC, RFC Construction Funding, LLC, RFC REO LLC and RFC SFJV-2002, LLC

By:-  
- /s/ William Thompson  
Name:-  
- William Thompson  
Title: General Counsel

By: /s/ Jill Horner  
Name:-  
- Jill Horner  
Title: Chief Financial Officer

Wilmington Trust, National Association, as Delaware  
~~Trustee~~

~~By: \_\_\_\_\_~~  
~~Name: Trus tee~~

By: /s/ David A. Vanaskey, Jr.  
Name: David A. Vanaskey, Jr.  
Title: Vice President

Manufacturers and Traders Trust Company, as FHA  
Qualified Trustee

By: \_\_\_\_\_ /s/ William J.  
Farrell II  
Name: William J. Farrell II  
Title: Executive Vice President

\_\_\_\_\_  
/s/ John S. Dubel  
John S. Dubel, as Liquidating Trustee

\_\_\_\_\_  
/s/ Mitchell Sonkin  
\_\_\_\_\_  
Mitchell Sonkin, as Liquidating Trustee

/s/ Mathew Doheny  
Mathew Doheny, as Liquidating Trustee

\_\_\_\_\_  
J. Weber  
Paul J. Weber, as Liquidating Trustee

\_\_\_\_\_  
/s/ Samuel L. Molinaro  
Samuel L. Molinaro, Jr., as Liquidating Trustee

**EXHIBIT A**

**SUMMARY OF FORECASTED RECOVERIES, EXPENSES AND POTENTIAL  
DISTRIBUTIONS**

{To come}

~~EXHIBIT B~~

RESCAP LIQUIDATING TRUST

REQUEST FOR SECURITIES ACCOUNT INFORMATION

~~\_\_\_\_\_~~ December \_\_, 2013

**To:** The Holders of Allowed ResCap Unsecured Claims (Class R-4), GMACM Unsecured Claims (Class GS-4A) and RFC Unsecured Claims (Class RS-4) in the Bankruptcy Case of Residential Capital, LLC et al., Case No. 12-12010 (MG) (S.D.N.Y.)

**Introduction**

On ~~\_\_\_\_\_~~ December 11, 2013, the United States Bankruptcy Court for the Southern District of New York entered an order confirming the Joint Chapter 11 Plan of Residential Capital, LLC, *et al.* and the Official Committee of Unsecured Creditors. In accordance with the Plan, the ResCap Liquidating Trust (the "Liquidating Trust") will be making a distribution to holders of Allowed ResCap Unsecured Claims (Class R-4), GMACM Unsecured Claims (Class GS-4A) and RFC Unsecured Claims (Class RS-4) consisting of Units of beneficial interest in the Liquidating Trust.<sup>1</sup> Each Unit will entitle its holder to a pro rata share of all cash distributions made by the Liquidating Trust to the holders of Units. An initial distribution of Units ~~will~~ is expected to occur within 15 days after the effective date of the Plan. It is anticipated that an initial distribution of cash will be made to holders of Units at the time of or shortly after the initial distribution of the Units. Additional cash distributions will be made as non-cash assets in the Liquidating Trust are sold or otherwise monetized.

The Plan has not yet become effective. As a prerequisite to your receipt of Units, the Plan must become effective and other conditions described in the order confirming the Plan must be fully satisfied.<sup>2</sup> We are asking for certain information at this time, so that you will be able to receive your Units, and the subsequent initial distribution of cash on your Units, soon after the effective date of the Plan as described above.

**~~In order to~~ To receive your Units on the date of the initial Unit distribution, and the cash distribution on those Units that will be made shortly thereafter, you must provide the information requested in this letter so that it is actually received no later 5:00 p.m. (Eastern time) on \_\_\_\_\_, December 19, 2013.**

If you do not provide the information requested in this letter so that it is actually received by **5:00 p.m. (Eastern time) on \_\_\_\_\_, December 19, 2013**, or if the information you have sent is incomplete or illegible, you will not receive your Units or the cash distributed on those Units until a later distribution date, after you have provided the required information. As a result your

<sup>1</sup> Units will also be issued to a trust for the benefit of holders Private Securities Claims (Classes R-6, GS-6 and RS-6).

<sup>2</sup> If the Plan does not become effective and/or the other conditions described in the order confirming the Plan are not satisfied, you may not be entitled to receive the Units described in this letter.

receipt of distributions from the Liquidating Trust will be delayed until a later distribution date, ~~which may not occur before \_\_\_\_\_, 2014.~~

The Liquidating Trust's Claims Officer is collecting the information requested by this letter on behalf of the Liquidating Trust.

### **Required Actions to Receive Your Units**

Listed on the accompanying Schedule A is—

- your name as it appears on the records of the ~~ResCap debtors~~ Debtors;
- the identification number that has been assigned to you;
- the class or classes to which your claim belongs; and
- the amount of your claim in each class.

~~In order to~~ To receive the Units to which you are entitled under the Plan, please review Schedule A and then continue with the steps below.

#### ***Step 1***

If you are a U.S. person, you must provide the Claims Officer with your social security number or other taxpayer identification number. Accordingly, please fill out the attached Internal Revenue Service Form W-9 Request for Taxpayer Identification Number and Certification.

If you are not a U.S. person, instead please fill out the attached Internal Revenue Service Form W-8BEN Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (or other applicable Internal Revenue Service Form W-8).

#### ***Step 2***

You must designate a broker, bank or other financial institution with which you maintain a securities account to receive your Units on your behalf. You will not receive a distribution of Units unless and until you designate a broker in accordance with the instructions below.

***If you DO have a securities account with a broker, bank or other financial institution.*** If you currently have a securities account with a broker, bank or other financial institution, you must provide the broker, bank or other financial institution account information requested on the attached Schedule A to the Liquidating Trust.

***If you DO NOT have a securities account with a broker, bank or other financial institution.*** If you do not currently have a securities account with a broker, bank or other financial institution, you must open such an account before you can receive your Units. Once you have opened a securities account, you must provide the broker, bank or other financial institution account information requested on the attached Schedule A to the Liquidating Trust.

***Step 3***

Send (i) the fully completed Internal Revenue Service Form W-9 or Internal Revenue Service Form W-8BEN (or other applicable Internal Revenue Service Form W-8) and (ii) the fully completed Schedule A to the Claims Officer either—

By E-Mail: ResCapLiquidatingTrust@ResCapEstate.com

or

Mail: ResCap Liquidating Trust  
P.O. Box 385220  
Bloomington, Minnesota 55438

**Other Information**

If the Claims Officer determines, in its sole discretion, that the information you have sent is incomplete or illegible, your submission may be rejected by the Claims Officer, and you may not receive your Units and the cash distributed on those units until a later distribution date. The information you provide, including your social security or taxpayer identification number, will be held on a confidential basis. Once the Claims Officer has received your information, ~~it~~[she](#) will contact you or your broker, bank or other financial institution with instructions to enable the Liquidating Trust to issue Units to you and deposit them to your securities account.

If the Liquidating Trust is unable to issue and deposit your Units a securities account that you designate, the Liquidating Trust may issue the Units to you by reserving them, and all cash distributions on the Units, on your behalf. Once you have completed the actions described in this letter, and all other required conditions have been satisfied, the Liquidating Trust will transfer the securities from that account to your securities account.

If you do not take the actions required by this letter and any further instructions provided by the Liquidating Trust, you could forfeit your interest in the Units to which you would otherwise be entitled.

Receipt of the Units may have tax consequence for you, and you are encouraged to consult with your tax advisor.

If you have any questions about your distribution, or for more information, you may contact ~~the Claims Officer~~[Peggi Fossel](#) by calling the following number: (952) 857-7485 or emailing the Claims Officer to ResCapLiquidatingTrust@ResCapEstate.com.

Sincerely,

[Deanna Horst](#)

**SCHEDULE A<sup>3</sup>**

CLAIMANT NAME: \_\_\_\_\_ [PRE POPULATED]

CLAIM NUMBER(S): \_\_\_\_\_ [PRE POPULATED]

~~CLASS~~ \_\_ ALLOWED ~~CLAIMS:~~ \_\_\_\_\_ ~~[PRE POPULATED]~~ CLASS CLAIM AMOUNT

Class R-4 \$ \_\_\_\_\_ [PRE POPULATED]

Class GS-4A \$ \_\_\_\_\_ [PRE POPULATED]

Class RS-4 \$ \_\_\_\_\_ [PRE POPULATED]

**BROKER, BANK OR OTHER FINANCIAL INSTITUTION INFORMATION**

Name of Broker, Bank or Other Financial Institution:	
Contact Name:	
Contact Email:	
Contact Phone:	
Account Number:	
DTC Participant (if different from Financial Institution above):	
DTC Participant Number:	
Wire Instructions: Financial Institution: SWIFT or ABA No. Account Name: Account Number: Other:	

<sup>3</sup> Claim information is provided solely for reference purposes and shall not be binding on the Debtors or the Liquidating Trust in any respects.

**EXHIBIT CB**

**FORM OF ACCESS AND COOPERATION AGREEMENT**

THIS ACCESS AND COOPERATION AGREEMENT, dated as of December 17, 2013 (this "Agreement"), is by and between the ResCap Borrower Claims Trust (the "Borrower Claims Trust") the ResCap Liquidating Trust (the "Liquidating Trust").

**RECITALS**

WHEREAS, Residential Capital, LLC and certain of its affiliates (the "Debtors") filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101-1330 (as amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, on August 23, 2013 the Debtors filed the Joint Chapter 11 Plan of Residential Capital, LLC, et al., dated August 23, 2013 (as amended and supplemented and as confirmed, the "Plan"), which has been confirmed by an order of the Bankruptcy Court dated December 11, 2013 (the "Confirmation Order");

WHEREAS, on December 17, 2013, the Effective Date of the Plan occurred;

WHEREAS, pursuant to the Plan, on the Effective Date the Borrower Claims Trust Agreement was executed to establish and provide for the administration of the Borrower Claims Trust and the distribution of Borrower Claims Trust Assets to holders of Borrower Claims that are Allowed on the Effective Date or that become Allowed after the Effective Date as contemplated by the Plan, and the Borrower Claims Trustee (as defined in the Borrower Claims Trust Agreement) has been appointed to act as trustee of the Borrower Claims Trust Assets, in furtherance of and consistent with the purpose of the Plan and the Borrower Claims Trust Agreement, with the power and authority to prosecute, compromise and settle objections to Disputed Borrower Claims, to discharge Allowed Borrower Claims, and to perform such other duties as may be vested in the Borrower Claims Trustee pursuant to the Plan and the Borrower Claims Trust Agreement (the "Borrower Claims Trust Functions");

WHEREAS, pursuant to the Plan, certain books and records that the Borrower Claims Trustee may need to access in order to discharge the Borrower Claims Trust Functions have been transferred to the Liquidating Trust and the Borrower Claims Trust may require from the Liquidating Trust access to such books and records in order to facilitate satisfaction of the Borrower Claims Trust Functions and administration of the Borrower Claims Trust as contemplated by the Plan.

NOW THEREFORE, in consideration of the above-stated premises, the mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows:

**ARTICLE 1**

**DEFINITIONS**

Section 1.1 Defined Terms. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Plan, the Borrower Claims Trust Agreement or in the Bankruptcy Code. The words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer to this Agreement as a whole and not to any particular article, section, subsection, or clause contained in this Agreement. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter.

## ARTICLE 2

### ACCESS ~~AND COOPERATION AGREEMENT~~ TO RECORDS AND PERSONNEL

#### Section 2.1 Access.

(a) On and after the Effective Date and during the Term of this Agreement (as hereafter defined), the Liquidating Trust shall cooperate with the Borrower Claims Trust and the Borrower Claims Trustee by:

(i) affording reasonable access, upon reasonable advance notice, during regular business hours unless otherwise agreed by the parties, to such employees of the Liquidating Trust as the Borrower Claims Trustee deems reasonably necessary to assist in the resolution of Disputed Borrower Claims. For purposes of the foregoing, (i) access shall include, access by telephone, periodic meetings, interviews and appearance of such employees as witnesses (by affidavits, at depositions and at trials, as necessary) and their availability for preparation as a witness or deponent in proceedings and (ii) “employees of the Liquidating Trust” means individuals that are employed by the Liquidating Trust at the time such access is requested to be afforded; and

(ii) in accordance with Article XIII.E of the Plan, affording access to the Borrower Claims Trustee to books and records reasonably required to fulfill the Borrower Claims Trust Functions, including computer generated or computer maintained books and records and computerized data, as well as electronically generated or maintained books and records or data, along with books and records of the Debtors maintained by or in possession of third parties (the “Books and Records”), which Books and Records shall include mortgage loan files, mortgage loan servicing notes, Borrower litigation files, e-mail records, contracts, financial records, reports and any and all other work product generated by or on behalf of the Debtors, and any and all communications with Debtors’ agents and professionals, and documents and other instruments relating to the Debtors’ origination and servicing of mortgage loans; provided, however, that the Liquidating Trust shall not be responsible for such Books and Records that may have been lost (notwithstanding reasonable good faith efforts to locate such Books and Records), damaged or destroyed prior to the Effective Date.

(b) Notwithstanding the access afforded by the Liquidating Trust to the Books and Records under subsection (a) above, such Books and Records shall at all times during the Term remain in the custody and under the control of the Liquidating Trust; provided, however, that the

Borrower Claims Trust shall be permitted to make copies of the Books and Records, or any portion thereof, or request the Liquidating Trust to make such copies, including electronic copies, at the expense of the Liquidating Trust to the extent reasonable under the circumstances.

(c) In determining whether any request of the Borrower Claims Trust for access to employees of the Liquidating Trust or the Books and Records is reasonable in the circumstances, there shall be taken into account whether the relevant information could otherwise be obtained from documents already in the custody, possession or control of the Borrower Claims Trust or professionals or agents otherwise employed or retained by the Borrower Claims Trust.

(d) The Liquidating Trust shall use reasonable efforts to afford the access provided for in subsection (a) above in a timely manner, so as to enable the Borrower Claims Trustee to timely pursue the resolution of any Disputed Borrower Claims and otherwise timely fulfill the Borrower Claims Trust Functions, it being understood that time may be of the essence in certain instances in order to comply with court hearing or filing deadlines or to avoid the application of statutes of limitation; provided, however, that in all cases such access shall not unduly interfere with the conduct of the operations and affairs of the Liquidating Trust upon the reasonable determination of the Liquidating Trust Manager; and provided further that the Liquidating Trust shall not be required to (i) afford such access to the extent that it would result in a waiver of any privilege, including attorney-client privilege, available to the Liquidating Trust where, in the reasonable judgment of the Liquidating Trust, such waiver would materially and adversely affect the ability of the Liquidating Trust to conduct its operations and affairs, to preserve or prosecute any claims that are or that may be available to it or to defend any claims or actions which have or may be asserted against it or (ii) continue to employ any individual (whether access to such employee has been provided in the manner contemplated by this Section 2.1 or otherwise).

(e) The Liquidating Trust shall from time to time designate by written notice to the Borrower Claims Trust (i) an employee (the "Coordinator") for the purpose of receiving requests for access to employees of the Liquidating Trust and Books and Records and coordinating the response of the Liquidating Trust to such requests and (ii) an employee to receive such requests in the event the Coordinator is unavailable (the "Alternate Coordinator"). The initially designated Coordinator and Alternate Coordinator are set forth on Schedule I to this Agreement. In the event that the Coordinator and Alternate Coordinator are for any reason unavailable or the Borrower Claims Trustee believes that the Borrower Claims Trust has not been provided access in the manner contemplated by this Section 2.1, the Borrower Claims Trustee shall also be permitted to communicate with the Liquidating Trust Manager for such purposes.

(f) All requests for access, as contemplated by this Section 2.1, shall be delivered to the Liquidating Trust, and all communications in respect of such request shall be conducted on behalf of the Borrower Claims Trust by the Borrower Claims Trustee or an employee or agent of the Borrower Claims Trust designated by written notice to the Liquidating Trust. At the request of the Borrower Claims Trustee, the Liquidating Trust shall also afford access to employees of the Liquidating Trust and Books and Records, as provided in subsection (a), to those professionals and agents of the Borrower Claims Trust (including, without limitation, counsel, accountants and financial advisors) who have been identified to the Liquidating Trust in each instance by the Borrower Claims Trustee.

(g) The access to employees of the Liquidating Trust and Books and Records contemplated by this Section 2.1 shall be given by the Liquidating Trust at its own expense, including as provided in subsection (b) above; provided, however, that the Liquidating Trust shall not be responsible for any costs and expenses incurred by the Borrower Claims Trust with respect to such access, including the costs and expenses of any agents, professionals or contractors retained by the Borrower Claims Trust for the purpose of obtaining access to the employees of the Liquidating Trust or the Books and Records or performing any Borrower Claims Trust Functions in respect thereof; provided further that nothing herein shall require the Borrower Claims Trust to hire any professional or agent, or to incur any particular cost or expense, in order to gain access to the employees of the Liquidating Trust or any Books and Records as contemplated by this Section 2.1.

### ARTICLE 3

#### OTHER AGREEMENTS

Section 3.1 Preservation of Privilege and Defenses. To the maximum extent permitted by law, neither this Agreement nor the performance by the parties under the provisions of Article 2 or otherwise pursuant to this Agreement shall constitute the waiver of any attorney-client privilege, work-product privilege or other privilege, immunity or defense attaching to or existing with respect to the Books and Records or any other documents or communications (whether written or oral) constituting Liquidating Trust Assets, and to the extent relating to the Borrower Claims Trust Functions and appropriate in the circumstances, any such privilege, immunity or defense may be asserted by the Borrower Claims Trustee, or any authorized agent or professional on behalf of the Borrower Claims Trust.

#### Section 3.2 Confidentiality.

(a) In the course of the performance by the parties under this Agreement, each party may become aware of confidential or proprietary information of the other party ("Confidential Information"). All Confidential Information disclosed by a party in connection with the performance of this Agreement shall remain the property of the disclosing party, shall be held in confidence by the receiving party and shall be used by the receiving party only in accordance with the provisions of this Agreement.

(b) The obligations of confidentiality under this Section 3.2 shall not apply with respect to Confidential Information which (i) is or becomes publicly known through no wrongful act of the receiving party, (ii) was known by the receiving party prior to disclosure or is developed by the receiving party independently of such disclosure; (iii) was disclosed to the receiving party by a third party who is not known by the receiving party after due inquiry to be under any confidentiality obligations; (iv) is approved for release by written authorization of the disclosing party; or (v) is disclosed pursuant to a requirement of law or by court order, provided that the receiving party shall provide notice to the disclosing party as far in advance of disclosure as is reasonably practicable in the circumstances and shall cooperate with the disclosing party, at the disclosing party's expense, in attempting to prevent or limit such legally required disclosure.

Section 3.3 Professionals and Agents. To the extent that any information or expertise required by the Borrower Claims Trustee for the performance of the Borrower Claims Trust Functions may be in the possession of professionals and other agents of the Liquidating Trust, nothing in this Agreement shall preclude the Borrower Claims Trust from engaging such professionals or agents, at its sole cost and expense, to the extent consistent with applicable standards of professional responsibility, compliance with the confidentiality provisions of Section 3.2 and the preservation of the privileges, including the attorney-client privilege of the Liquidating Trust.

Section 3.1 Limitation of Liability. None of the Liquidating Trust, the Liquidating Trustees, the Liquidating Trust Management, Liquidating Trust Agent, or any of their respective principals, advisors or professionals, shall be liable to the Borrower Claims Trust for any damages arising out of this Agreement or the performance of the Liquidating Trust's obligations hereunder, including actions taken or omitted in fulfillment of his, her or its duties with respect to the Liquidating Trust, except in the case of such party's gross negligence, bad faith or willful misconduct; provided, that in no event will any such party be liable for punitive, exemplary, consequential or special damages under any circumstances.

Section 3.2 Further Assurances. Each party agrees to perform, or cause to be performed, all such further acts, and to execute and deliver all such other agreements and instruments, as the other party may reasonably request in order to carry out the purposes and intents of this Agreement, and consistent with the other provisions hereof.

#### ARTICLE 4

##### TERM OF THIS AGREEMENT

The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate on the earlier to occur of (i) the dissolution of the Borrower Claims Trust in accordance with the Borrower Claims Trust Agreement or (ii) the dissolution of the Liquidating Trust in accordance with the Liquidating Trust Agreement.

#### ARTICLE 5

##### MISCELLANEOUS

Section 5.1 Notices. Any notice or other communication required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by facsimile, sent by nationally recognized overnight delivery service, or mailed by first-class mail:

(i) if to the Borrower Claims Trust, to:

The ResCap Borrower Claims Trust  
Peter S. Kravitz, Esq., Trustee  
Solution Trust  
29209 Canwood Street

Agoura Hills, CA 91301  
Phone: 310-974-6350  
Email: PKravitz@SolutionTrust.com

(iii) if to the Liquidating Trust, to:

ResCap Liquidating Trust  
c/o Quest Turnaround Advisors, LLC  
800 Westchester Avenue, Suite S-520  
Rye Brook, NY 10573  
Fax: 914-253-8103  
Email: jbrodsky@qtadvisors.com

Section 5.2 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be taken together to constitute one and the same instrument.

Section 5.3 Governing Law. Except to the extent governed by the Bankruptcy Code, this Agreement shall be governed by, construed under and interpreted in accordance with, the internal laws of the State of New York, without regard to principles of conflicts of laws.

Section 5.4 Exclusive Jurisdiction and Standing. As provided in Article XII of the Plan, the Bankruptcy Court has exclusive jurisdiction over all controversies, suits and disputes that may arise under this Agreement.

Section 5.5 Severability. The terms and provisions of this Agreement shall be deemed severable, and in the event any term or provision hereof or any portion thereof is deemed or held to be invalid, illegal or unenforceable, the remaining terms and provisions hereof and portions thereof shall nevertheless continue and be deemed to be in full force and effect. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable any such provision in any other jurisdiction.

Section 5.6 Independent Contractor Status. The Liquidating Trust shall be deemed to be an independent contractor of the Borrower Claims Trust and employees of the Liquidating Trust shall at all times be regarded as employees of the Liquidating Trust. Nothing contained in this Agreement shall create or be deemed to create an employment, agency, joint venture or partnership relationship between the Borrower Claims Trust on the one hand, and the Liquidating Trust or any of its employees, on the other hand.

Section 5.7 No Waiver. No failure or delay by any party in exercising any right, power or privilege hereunder will operate as a waiver thereof, and that no single or partial exercise thereof will preclude any other or further exercise thereof or the exercise of any right, power and privilege hereunder.

Section 5.8 Plan Documents. Nothing contained herein shall modify the terms of any other Plan Document, which are intended to be supplemented by the terms of this Agreement.

Section 5.9 Entire Agreement. This Agreement contains the entire agreement of the parties concerning the subject matter hereof, and no modification of this Agreement or waiver of the terms and conditions hereof will be binding upon the parties unless approved in writing by the parties.

Section 5.10 Amendment. This Agreement may be amended with the consent in writing of the parties; provided, however, that, without approval of the Bankruptcy Court, no amendment to this Agreement shall be effective to the extent that it is inconsistent with the terms of the Plan, the Confirmation Order, the Liquidating Trust Agreement or the Borrower Claims Trust Agreement.

Section 5.11 Titles. The section titles used herein are for convenience only and shall not be considered in construing or interpreting any of the provisions of this Agreement.

Section 5.12 Binding Effect. This Agreement is for the benefit of and shall be binding upon the parties and their respective representatives, transferees, successors and assigns.

[~~To come~~Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be duly executed by their respective representatives thereunto duly authorized as of the day and year first above written.

THE RESCAP BORROWER CLAIMS TRUST

By: \_\_\_\_\_, as Trustee

RESCAP LIQUIDATING TRUST

By: Quest Turnaround Advisors, LLC, as Liquidating Trust Manager

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

Name: Jeffrey Brodsky

Title: Member

[SCHEDULE I](#)

[Coordinator: Deanna Horst](#)

[Alternative Coordinator: Nick Kosinski](#)

**Exhibit 3**

**RMBS Claims Trust Agreement**

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AMENDED AND RESTATED TRUST AGREEMENT

among

**RESIDENTIAL CAPITAL, LLC,  
CERTAIN AFFILIATES OF RESIDENTIAL CAPITAL, LLC  
SIGNATORY HERETO**

and

**U.S. BANK TRUST NATIONAL ASSOCIATION**  
as Trustee,

DATED AS OF

December 17, 2013

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SCHEDULE 1: QSF BENEFICIARIES CONTACT INFORMATION

AMENDED AND RESTATED TRUST AGREEMENT

THIS AMENDED AND RESTATED TRUST AGREEMENT, dated as of December 17, 2013 (this "Agreement"), is hereby executed by and among Residential Capital, LLC ("ResCap"), certain affiliates signatory hereto (together with ResCap, the "Debtors"), and U.S. BANK TRUST NATIONAL ASSOCIATION, as trustee (the "Trustee") in order to establish a qualified settlement trust within the meaning of Code Section 468B and the Treasury Regulations promulgated thereunder (the "QSF Trust") for the benefit of the holders of residential mortgage backed securities claims against the Debtors and Ally Financial, Inc. and its non-Debtor affiliates.

WITNESSETH

WHEREAS, on May 14, 2012, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") commencing jointly administered cases under the caption *In re Residential Capital, LLC*, Case No. 12-12020 (the "Bankruptcy Cases");

WHEREAS, on December 6, 2013, the Debtors and the Official Committee of Unsecured Creditors of Residential Capital, LLC, et al. filed that certain Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors (Dkt. No.6030-1) (together with any amendments or modifications thereto required or permitted by the Bankruptcy Court or as otherwise permitted pursuant to the terms of the Plan, the "Plan"); and

WHEREAS, on December 11, 2013, the Bankruptcy Court entered an Order confirming the Plan (Dkt. No. 6065) (the "Confirmation Order");

WHEREAS, pursuant to the Plan and the Liquidating Trust Agreement, dated December 17, 2013 (the "Liquidating Trust Agreement"), by and among the Liquidating Trustees (as such term is defined in the Liquidating Trust Agreement), the Delaware Trustee (as such term is defined in the Liquidating Trust Agreement), ResCap and the other parties signatory thereto, a liquidating trust (the "Liquidating Trust") has been established for the purpose of liquidating and distributing the Liquidating Trust Assets (as such term is defined in the Liquidating Trust Agreement);

WHEREAS, pursuant to the Plan, the QSF Trust has been established for the benefit of the QSF Beneficiaries on behalf of the RMBS Trusts;

WHEREAS, pursuant to the Plan and the Liquidating Trust Agreement, on the Initial Unit Distribution Date, the Liquidating Trust will issue units of beneficial interests (the "Liquidating Trust Units") to unsecured creditors of the Debtors and/or their designated recipients, including the QSF Trust;

WHEREAS, as set forth in, and subject to, the Plan and the Liquidating Trust Agreement, the QSF Trust will receive a number of Liquidating Trust Units that will entitle the holders thereof to periodic distributions of cash from the Liquidating Trust;

WHEREAS, the parties hereto are entering into this Agreement for purposes of amending and restating the trust agreement which established the QSF Trust and to facilitate implementation of the Plan in respect of the RMBS Trusts;

WHEREAS, the QSF Trust is established for the sole purpose of distributing the Trust Assets to the QSF Beneficiaries, with no objective or authority to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the QSF Trust and the Plan;

WHEREAS, for federal income tax purposes, the QSF Trust is intended to be treated as a “qualified settlement fund” within the meaning of Treasury Regulation Section 1.468 B-2; and

WHEREAS, this Agreement is subject to the approval of the Bankruptcy Court in the Confirmation Order.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Debtors and the Trustee, intending to be legally bound, agree as follows:

## ARTICLE I

### DEFINITIONS

#### Section 1.01 Defined Terms.

The terms defined in this section are specific to this Agreement. Capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to those terms in the Plan. For the purposes of this Agreement, the following terms (which appear in this Agreement with initial capitalized letters) shall have the meanings set forth below:

“Affected RMBS Trusts” shall have the meaning specified in Section 7.02.

“Affiliate” shall mean: (i) with respect to the Trustee, any person or entity controlling, controlled by or under common control with the Trustee, and (ii) with respect to any other Person, any person or entity controlling, controlled by or under common control with such Person. “Control” means the power to direct the management and policies of a person or entity, directly or indirectly, whether through ownership of voting securities, by contract or otherwise. “Controlling” and “controlled” shall have meanings correlative to the foregoing.

“Agreement” shall have the meaning ascribed to it in the preamble.

“Ally” shall have the meaning specified in Section 2.09(a).

“Available Funds” shall mean all collected funds held in the Collection Account less any reasonable reserves established by the Trustee for payment of taxes relating to such distribution or otherwise potentially owed by the QSF Trust.

“Bankruptcy Cases” shall have the meaning ascribed to it in the recitals.

“Bankruptcy Code” shall have the meaning ascribed to it in the recitals.

“Bankruptcy Court” shall have the meaning ascribed to it in the recitals.

“Business Day” shall mean any day that is not a Saturday, Sunday, holiday, or other day on which commercial banking institutions in the City of New York or the State of Delaware or, if different, the city and state in which the Corporate Trust Office is located are authorized or obligated by law or executive order to be closed.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Collection Account” shall have the meaning specified in Section 4.01(a)(i).

“Confirmation Order” shall have the meaning ascribed to it in the recitals.

“Corporate Trust Office” shall mean the principal corporate trust office of the Trustee at which at any particular time its corporate trust business shall be administered.

“Debtors” shall have the meaning ascribed to it in the preamble.

“Distribution Date” shall mean, except as otherwise provided in Section 4.02 with respect to the initial Distribution Date, the fifth Business Day following any receipt of funds from the Liquidating Trust. If in the reasonable judgment of the Trustee it shall question the appropriateness, propriety or correctness of any distribution, then the Trustee may delay such distribution until such time after which the Trustee has obtained further guidance or direction in accordance with the terms of this Agreement.

“Effective Date” shall mean the date on which the Plan becomes effective, in accordance with its terms.

“Eligible Accounts” shall mean either (a) a segregated account or accounts maintained with a federal or state chartered depository institution or trust company the long-term or short-term unsecured debt obligations of which (or, in the case of a depository institution or trust company that is the principal subsidiary of a holding company, the long-term or short-term unsecured debt obligations of such holding company) are rated by any Rating Agency in one of its two highest long-term rating categories or one of its two highest short-term ratings with respect to obligations maturing in less than thirty (30) days or in highest short-term rating with respect to obligations maturing in more than thirty (30) days at the time any amounts are held in deposit therein, or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company, acting in the capacity of a trustee. Eligible Accounts need not be interest-bearing accounts provided the funds therein may be invested in Permitted Investments. All accounts maintained with the Trustee shall constitute Eligible Accounts.

“Final Distribution Date” shall have the meaning specified in Section 8.02.

“Indemnified Parties” shall have the meaning specified in Section 6.04.

“IRS” shall mean the United States Internal Revenue Service.

“Letter Ruling” shall mean a written statement issued by the Internal Revenue Service to a taxpayer (or the taxpayer's authorized representatives) in response to a written inquiry from the taxpayer, or its representatives, about the tax effects of acts or proposed transactions, as set forth in Rev. Proc. 2013-1, Sec. 2.01, 2013-1 IRB 1.

“Liquidating Trust” shall have the meaning ascribed to it in the recitals.

“Liquidating Trust Agreement” shall have the meaning ascribed to it in the recitals.

“Liquidating Trust Units” shall have the meaning ascribed to it in the recitals.

“Majority Beneficiaries” shall mean two (2) or more QSF Beneficiaries who collectively hold at least 51% of the QSF Representative Shares.

“Officer” shall mean: (i) when used with respect to the Trustee, any senior vice president or vice president in the Corporate Trust Office of the Trustee, and (ii) when used with respect to any other Person, the chairman of the board, the president, a vice president (however designated), the treasurer or controller.

“Opinion of Counsel” shall mean a written opinion of legal counsel delivered to the Trustee or any QSF Beneficiary, as the case may be, in each case in form and substance reasonably acceptable to the parties to whom it is delivered; provided, however, that any opinion with respect to tax matters shall be made by a law firm having a national reputation for expertise in such matters.

“Permitted Investments” shall consist of money market funds that have a credit rating of at least “Aa3” by Moody’s and “AA-” by Standard & Poor’s; *provided, however*, that no such investment shall constitute a Permitted Investment unless such investment matures no later than the Business Day immediately preceding the Distribution Date on which the funds invested therein are required to be distributed (or, in the case of an investment that is an obligation of the institution in which the account is maintained, no later than such Distribution Date); and *provided further*, that no such investment shall constitute a Permitted Investment if it gives rise to payments that would be subject to U.S. federal withholding tax if held by a Person that is not a U.S. Person and that has provided applicable U.S. federal tax forms. Permitted Investments may include such investments for which the Trustee or any of its Affiliates is investment manager or advisor. The Trustee or its respective Affiliates are permitted to receive additional compensation that could be deemed to be in their respective economic self interest for (i) serving as an investment advisor, administrator, shareholder, servicing agent, custodian or sub-custodian with respect to Permitted Investments, (ii) using Affiliates to effect transactions in Permitted Investments, and (iii) effecting transactions in Permitted Investments.

“Person” shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or government or any agency or political subdivision thereof.

“Plan” shall have the meaning ascribed to it in the recitals.

“QSF Beneficiaries” means each of the entities listed on Schedule 1 attached hereto and any such successor to such entities, each of whom has an interest in the Trust Estate in their respective capacities as trustees of each of the RMBS Trusts for which they serve in such capacity.

“QSF Interests” shall mean an uncertificated beneficial interest in the QSF Trust.

“QSF Representative Share” shall mean a QSF Beneficiary’s representative share of the total QSF Interests in the QSF Trust, which is held from time to time in its respective capacities as trustee of each of the RMBS Trusts for which it serves as trustee, which will initially be reflected on the Representative Share Schedules and shall be adjusted from time to time on the books and records of Trustee in accordance with Article VII.

“QSF Trust” shall have the meaning ascribed to it in the preamble.

“Rating Agency” shall mean any nationally recognized statistical rating agency, or its successor. Except as otherwise specified herein, references to any long-term rating category of a Rating Agency shall mean such rating category without regard to any plus or minus or numerical designation.

“Record Date” shall mean the last Business Day of the month preceding the month of such Distribution Date.

“Representative Share Schedules” shall mean the schedules reflecting the initial QSF Representative Share and the initial RMBS Representative Share filed with the Bankruptcy Court, a copy of which will be provided to the Trustee by or on behalf of the QSF Beneficiaries, it being understood and agreed that the Trustee shall have conclusive reliance thereon and shall have no obligation to make any distributions hereunder in the absence of receipt of such Representative Share Schedules.

“Required Reserve Amount” shall mean \$1,000,000.

“ResCap” shall have the meaning ascribed to it in the preamble.

“Reserve Account” shall have the meaning specified in Section 4.01(a)(ii).

“RMBS Claims Units” shall mean any and all Liquidating Trust Units issued to the QSF Trust on account of the claims of the RMBS Trusts (as such term is defined in the Plan) under the Liquidating Trust Agreement. For the avoidance of doubt, “RMBS Claims Units” shall not include the five and seven-tenths percent (5.7%) of the Liquidating Trust Units that would otherwise be issuable to the QSF Trust that shall be issued to counsel for the Institutional Investors in satisfaction of the Allowed Fee Claim, in accordance with the terms of the Plan.

“RMBS Representative Share” shall mean each RMBS Trust’s representative share of the total QSF Interests allocable to its applicable QSF Beneficiary, which will initially be reflected on the Representative Share Schedules and shall be adjusted from time to time on the books and records of the Trustee in accordance with Article VII.

“RMBS Trusts” shall mean the RMBS Trusts listed on the Representative Share Schedules.

“Termination Event” shall have the meaning specified in Section 8.01.

“Transferee” shall have the meaning specified in Section 7.02.

“Treas. Reg.” shall have the meaning specified in Section 2.09(a).

“Trust Accounts” shall mean the Collection Account and the Reserve Account.

“Trust Estate” shall mean: (a) the RMBS Claims Units together with all payments due thereon, (b) all present and future claims, demands, causes and choses in action in respect of payments or distributions on the RMBS Claims Units including all rights of beneficiaries under the Liquidating Trust Agreement based thereon, (c) all funds held in the Trust Accounts from time to time, and (d) all proceeds of the foregoing of every kind and nature whatsoever, including, without limitation, all proceeds of the conversion thereof, voluntary or involuntary, into cash or other liquid property, all cash proceeds, accounts receivable, notes, drafts, acceptances, chattel paper, checks, deposit accounts, rights to payment of any and every kind and other forms of obligations and receivables, instruments and other property that at any time constitute all or part of or are included in the proceeds of the foregoing.

“Trustee” shall have the meaning ascribed to it in the preamble and any successor trustee appointed in accordance with this Agreement.

### **Section 1.02 Interpretation.**

In this Agreement:

- (a) “or” is not exclusive;
- (b) “including” means “including without limitation”;
- (c) any reference to the singular includes reference to the plural and vice versa and reference to the masculine gender includes reference to the feminine and neuter genders and *vice versa*;
- (d) unless otherwise expressly stated to the contrary herein, any reference to any Section, sub-section, paragraph or sub-paragraph is to a Section, sub-section, paragraph or sub-paragraph (as the case may be) of this Agreement;
- (e) the headings are inserted for convenience of reference only and shall not in any way form part of or affect or be taken into account in the construction or interpretation of any provision of this Agreement or the Schedule hereto; and
- (f) the recitals and Schedule form part of this Agreement and shall have the same force and effect as if they were expressly set out in the body of this Agreement and any references to this Agreement shall include the recitals and Schedule.

## ARTICLE II

### ESTABLISHMENT OF THE QSF TRUST

#### **Section 2.01 Name.**

The trust created hereby shall be known as the "RMBS Claims Trust", in which name the Trustee may conduct the affairs of the QSF Trust. It is the intention of the parties hereto that the QSF Trust hereby created constitutes a statutory trust under Chapter 38 of Title 12 of the Delaware Code, 12 Del. C., §3801 et seq. and that this Agreement constitutes the governing instrument of the QSF Trust. The Trustee, pursuant to the original trust agreement, filed a certificate of trust with the Delaware Secretary of State.

#### **Section 2.02 Office.**

The office of the QSF Trust shall be in care of the Trustee at its corporate trust office or at any other address that the Trustee may designate by written notice to the QSF Beneficiaries.

#### **Section 2.03 Declaration of Trust.**

Upon the Effective Date, the Trustee shall have all the rights, powers and duties set forth herein and pursuant to applicable law for accomplishing the purposes of the QSF Trust. The Trustee is hereby authorized to file with any governmental authority any documents necessary to establish the QSF Trust.

#### **Section 2.04 Issuance of RMBS Claims Units and Related Distributions.**

On the Initial Unit Distribution Date (as such term is defined in the Plan), the QSF Trust shall accept the RMBS Claims Units issued to the QSF Trust on such date pursuant to the Liquidating Trust Agreement and thereafter the QSF Trust shall accept any distributions made by the Liquidating Trust in respect of any Liquidating Trust Units held by the QSF Trust from time to time pursuant to the Liquidating Trust Agreement, in all cases in trust for the benefit of the QSF Beneficiaries.

#### **Section 2.05 Appointment of Trustee.**

U.S. Bank Trust National Association is hereby appointed as trustee of the QSF Trust effective as of the date hereof, and shall have the rights, powers, and duties set forth herein.

#### **Section 2.06 Acceptance of Trust.**

The Trustee agrees to accept and hold the Trust Estate in trust for the QSF Beneficiaries, subject to the terms of this Agreement.

#### **Section 2.07 Activities of the Trust.**

It is the intention of the parties hereto that the QSF Trust shall not engage in any business or activities other than in connection with, or relating to the following:

- (a) to register on its books and records uncertificated beneficial interests to the QSF Beneficiaries;
- (b) to accept distributions of RMBS Claims Units and related cash distributions from the Liquidating Trust and make distributions to the QSF Beneficiaries from time to time;
- (c) to hold, transfer and/or invest the assets included in the Trust Estate and take such other actions with respect to the RMBS Claims Units as are permitted to be taken by the holders of the RMBS Claims Units pursuant to the Liquidating Trust Agreement, in accordance with this Agreement, or by the Trustee to enforce its rights under this Agreement;
- (d) to engage in those activities that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith; and
- (e) to seek a Letter Ruling from the IRS regarding the status of the QSF Trust as a qualified settlement fund within the meaning of Section 468B of the Code and Treasury Regulations promulgated thereunder, and to grant powers of attorney in connection therewith.

**Section 2.08 Purpose, Limitations of the Trust.**

- (a) Except as otherwise expressly provided herein, the business and affairs of the QSF Trust will be managed by or under the direction of the Trustee.
- (b) The QSF Trust will conduct its business under names or tradenames so as not to mislead others as to the separate identity of the QSF Trust. Without limiting the generality of the foregoing, all oral and written communications, including letters, invoices, contracts, statements and applications, will be made solely in the name of the QSF Trust or in the name of the QSF Trustee in its capacity as such if related to the Trust.
- (c) There will not be any indebtedness relating to borrowings or loans between the QSF Trust and the Liquidating Trust or its Affiliates.
- (d) The QSF Trust will act solely in its name through the Trustee's duly authorized officers or agents in the conduct of its business. The QSF Trust will not: (i) operate or purport to operate as an integrated, single economic unit with respect to the Liquidating Trust or any other Affiliated or unaffiliated entity or any other Person; (ii) seek or obtain credit or incur any obligation to any third party based upon the assets of the Liquidating Trust or its Affiliates; or (iii) induce any such third party to reasonably rely on the creditworthiness of the Liquidating Trust or any other Affiliated or unaffiliated entity.
- (e) The QSF Trust will maintain a Delaware trustee with a principal place of business in the State of Delaware.

(f) The QSF Trust will keep its funds and other assets separate from the Liquidating Trust and will not commingle such funds and other assets with those of any other Affiliates thereof.

(g) Any financial statements prepared by the QSF Trust shall be separate from those of the Liquidating Trust and any other Affiliates.

**Section 2.09 Section 468B Qualified Settlement Fund.**

(a) It is intended and it is contemplated in the Plan that the QSF Trust established hereunder will qualify as, and remain, a "Qualified Settlement Fund" within the meaning of Section 468B of the Code, and the Regulations promulgated pursuant thereto and codified at 26 C.F.R. Sections 1.468B-1 through 1.468B-5. For income tax purposes, Ally Financial Inc. ("Ally") shall be classified as a "transferor" within the meaning of Regulation Section 1.468B-1(d)(1), 26 C.F.R. ("Treas. Reg.") Section 1.468B-1(d)(1). The Trustee, shall be classified as the "administrator" within the meaning of Treas. Reg. Section 1.468B-2(k)(3).

(b) It is further intended that all transfers to the QSF Trust will satisfy the "all events test" and the "economic performance" requirement of Section 461(h)(1) of the Code and Treas. Reg. Section 1.461-1(a)(2). As such, Ally shall not be taxed on the income of the QSF Trust. The QSF Trust shall be taxed on its modified gross income, excluding the sums, or cash equivalents of items, transferred to it. All computations of the QSF Trust's modified gross income, as well as any exclusions or deductions thereto, shall be compliant and consistent with Treas. Reg. Sections 1.468B-2(b)(1)-(4).

(c) Subject to the applicable provisions of the Code, the Trustee shall cause to be filed, on behalf of the QSF Trust, all required federal, state, and local tax returns pursuant to the provisions of Treas. Reg. Section 1.468B-2(k). Furthermore, pursuant to the provisions of Treas. Reg. Section 1.468B-2(1), the Trustee shall cause to be filed all required federal, state, and local information returns and ensure compliance with withholding and reporting requirements. The Trustee may retain an independent, certified public accountant to consult with and advise the Trustee with respect to the preparation of any and all appropriate income tax returns, information returns, or compliance with withholding requirements. Ally shall supply to the Trustee and to the IRS the statement described in Treas. Reg. Section 1.468B-3(e)(2) no later than February 15th of the year following each calendar year in which Ally is treated for federal income tax purposes as making a transfer to the QSF Trust.

(d) The Trustee shall be authorized to take all such actions, including such actions as may be consistent with those expressly set forth above, as may be necessary to ensure that the QSF Trust is treated as a Qualified Settlement Fund under Section 468B of the Code, and the Regulations promulgated pursuant thereto.

(e) Notwithstanding anything herein to the contrary, in the event that any portion of this Agreement shall at any time be considered not to be in compliance with Code Section 468B, as amended, together with any and all Treasury Regulations and IRS Notices, Announcements and directives thereunder, such offending Section of this Agreement shall be considered null, void, and of no effect, without any action by any court or by the Trustee. The

overarching purpose of this Agreement is to at all times be in compliance with Code Section 468B and all administrative authority and announcements thereunder. In the event that this Section 2.09 applies to render an offending Section null, void, or of no effect, Section 9.05 of this Agreement shall still apply with respect to the remaining non-offending Sections of this Agreement.

### ARTICLE III

#### QSF INTERESTS

##### **Section 3.01 Rights of QSF Beneficiaries.**

Each QSF Beneficiary will be entitled to participate in the rights due to a QSF Beneficiary hereunder. Each QSF Beneficiary shall take and hold its QSF Interest subject to all of the terms and provisions of this Agreement. No QSF Beneficiary shall have any title to, right to, possession of, management of or control of, the QSF Trust or the Trust Estate except as herein expressly provided. The QSF Interests shall not be certificated.

##### **Section 3.02 No Legal Title in QSF Beneficiaries.**

No QSF Beneficiary shall have legal title to any part of the Trust Estate. No transfer by operation of law or otherwise, of the right, title and interest of any QSF Beneficiary in and to the Trust Estate or hereunder shall operate to terminate this QSF Trust or entitle any successor or transferee of such QSF Beneficiary to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

##### **Section 3.03 Identification of QSF Beneficiaries.**

The initial QSF Beneficiaries are set forth on Schedule 1 hereto and shall be adjusted from time to time on the books and records of Trustee in accordance with the terms of Article VII. Except as otherwise required by law, references in this Agreement to the identification of QSF Beneficiaries and the providing of information to QSF Beneficiaries shall be read to mean QSF Beneficiaries of record as set forth on Schedule 1 hereto, as modified from time to time in accordance with the terms of Article VII. Unless expressly provided herein, the Trustee may establish a record date, which it deems practicable for determining the QSF Beneficiaries for a particular purpose.

##### **Section 3.04 Deemed Majority Consent.**

The Majority Beneficiaries shall have the right to cause the institution of and to direct the time, manner, method and place of conducting any proceeding or exercising any power conferred on the Trustee hereunder; *provided, however*, that: (i) such direction shall not conflict with any rule of law, the Plan or this Agreement (ii) the Trustee shall not be required to undertake any action that might involve it in personal liability or require the expenditure of funds not available to it in the Reserve Account, unless the Trustee shall have been indemnified to its satisfaction, and (iii) the Trustee shall be entitled to condition its compliance with any such direction upon the receipt of an Opinion of Counsel that the directed action is authorized or permitted by this Agreement.

Notwithstanding anything contained herein to the contrary, with respect to any provision of this Agreement which permits or requires the consent of, or direction from, the Majority Beneficiaries prior to the Trustee acting hereunder, such consent of, or direction from, the Majority Beneficiaries shall be deemed to have been given if: (i) the Trustee sends written notice to all QSF Beneficiaries of such proposed action or omission, (ii) within sixty (60) days after delivery of such written notice to the QSF Beneficiaries, the Trustee does not receive the consent of or direction from the Majority Beneficiaries, (iii) after such sixty (60) day period has expired, the Trustee receives the consent of, or direction from, at least one QSF Beneficiary with respect to such proposed action or omission, and (iv) the Trustee does not receive written notice from QSF Beneficiaries holding at least fifty-one percent (51%) of the QSF Representative Shares opposing such proposed action or omission; *provided, however*, that no deemed direction shall be effective hereunder to the extent that it has the effect of denying an RMBS Trust the right to receive payments in respect of its RMBS Representative Share unless the Trustee shall have also received the consent of the QSF Beneficiary for such affected RMBS Trust. The Trustee shall incur no liability to any QSF Beneficiary, any RMBS Trust or any other Person for acting or omitting to act based upon the foregoing deemed consent. The Trustee shall have no duties or responsibility with respect to the compliance by the QSF Beneficiaries with respect to their duties with respect to the RMBS Trusts, including without limitation relating to their authority to act with respect to any RMBS Trusts.

#### ARTICLE IV

##### ACCOUNTS, DEPOSITS AND DISTRIBUTIONS

###### Section 4.01 Establishment of Trust Accounts.

(a) The Trustee shall establish and maintain the following trust accounts in the name of the Trustee on behalf of the QSF Trust for the QSF Beneficiaries as provided in this Agreement:

- (i) the collection account (the "Collection Account"); and
- (ii) the reserve account (the "Reserve Account").

The trust accounts will be non-interest bearing but collected funds therein will be invested in accordance with Section 4.04 hereof.

(b) The Trustee shall have the right to create one or more sub-accounts, as needed, for operation purposes.

(c) The Trust Accounts shall be Eligible Accounts.

###### Section 4.02 Collection Account.

(a) Deposits. Within one (1) Business Day of receipt, the Trustee shall deposit into the Collection Account the amounts received as distributions or payments on the RMBS Claims Units.

(b) Withdrawal. On each Distribution Date, the Trustee shall withdraw all Available Funds in the Collection Account to be distributed as follows:

(i) First, to the Trustee for payment of any fees, expenses, indemnities or other amounts due to the Trustee under this Agreement;

(ii) Second, to the Reserve Account until the balance in the Reserve Account equals the Required Reserve Amount;

(iii) Third, ratably to each QSF Beneficiary in accordance with such QSF Beneficiary's QSF Representative Share, for further distribution by each QSF Beneficiary to its applicable RMBS Trusts in accordance with such RMBS Trusts' RMBS Representative Share.

The Trustee shall have no duties to the RMBS Trusts and responsibility for distributions by the QSF Beneficiaries to the RMBS Trusts or any investors of any RMBS Trust. Notwithstanding the forgoing and without limiting any other rights of the Trustee hereunder, the first Distribution Date shall, subject to Section 4.05 hereof, occur on the fifteenth Business Day following the date that the Trustee receives a distribution from the Liquidating Trust.

#### **Section 4.03 Reserve Account.**

(a) Deposits. On each Distribution Date, the Trustee shall deposit funds into the Reserve Account in accordance with Section 4.02 until funds in the Reserve Account equal the Required Reserve Amount.

(b) Withdrawal. The Trustee may withdraw amounts held on deposit in the Reserve Account at any time for payment of any fees, expenses, indemnities or other amounts due to the Trustee under this Agreement. So long as there are no claims, causes of actions, suits or other similar litigation proceedings commenced, asserted or threatened against the Trustee related to, connected with or directly or indirectly arising out of this Agreement, then upon the third anniversary of the Final Distribution Date, the Trustee shall distribute any amounts then held in the Reserve Account ratably to each QSF Beneficiary (as of the Record Date related to the Final Distribution Date) in accordance with such QSF Beneficiary's QSF Representative Share (as of the Record Date related to the Final Distribution Date), for further distribution by each QSF Beneficiary to its applicable RMBS Trusts in accordance with such RMBS Trusts' RMBS Representative Share.

#### **Section 4.04 Investments.**

The Trustee shall invest funds held in the Trust Accounts in Permitted Investments. In no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity.

**Section 4.05 Payments to QSF Beneficiaries.**

Any and all distributions from the Trust Accounts to be made by the Trustee to the QSF Beneficiaries shall be made by wire transfer pursuant to the respective wire transfer details for such QSF Beneficiaries as provided in writing by the respective QSF Beneficiary prior to the initial Distribution Date (it being understood and agreed that any distribution by the Trustee to a QSF Beneficiary may be delayed up to ten (10) days after the receipt of such wire transfer instructions and further that it is currently contemplated that no more than three (3) separate wire transfers per QSF Beneficiary would be made on each Distribution Date), which such wire transfer instructions may be amended from time to time in writing provided to the Trustee in a timely manner.

**Section 4.06 Record Date.**

Payments to the QSF Beneficiaries on any Distribution Date will be made to the QSF Beneficiaries of record of the respective QSF Interests on the related Record Date.

**ARTICLE V**

**[ RESERVED ]**

**ARTICLE VI**

**CONCERNING THE TRUSTEE**

**Section 6.01 Duties of the Trustee.**

Every provision of this Agreement relating to the conduct of, affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article VI. The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Agreement and no implied covenants or obligations shall be read into this Agreement against the Trustee. Except as provided in Section 6.02, no provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct; *provided, however*, that:

(a) the Trustee shall not be liable for an error of judgment made in good faith by an Officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(b) with respect to any trust or power conferred upon the Trustee under this Agreement, the Trustee shall not be personally liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of the Majority Beneficiaries (including, without limitation, any deemed direction pursuant to Section 3.04 of this Agreement) or such other percentage as may be specified herein;

(c) any determination of negligence or willful misconduct of the Trustee shall be made only upon the rendering of a final judgment of a court of competent jurisdiction no longer subject to appeal or review;

(d) the Trustee shall be deemed to be acting solely in its capacity as Trustee in connection with the administration of the QSF Trust and not in its individual capacity, and as such, shall not be individually responsible for the payment of any obligations or liabilities of the QSF Trust, including, without limitation, liabilities of the QSF Trust for the payment of taxes; and

(e) the Trustee shall forward a copy of any notice it receives in respect of the RMBS Claims Units or this Agreement to each of the QSF Beneficiaries.

**Section 6.02 Certain Matters Affecting the Trustee.**

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) The Trustee may, in the absence of bad faith on its part, rely upon a certificate of an Officer of the appropriate Person whenever in the administration of this Agreement the Trustee shall deem it desirable that a matter be proved or established (unless other evidence be herein specifically prescribed) prior to taking, suffering or omitting any action hereunder.

(c) The Trustee may consult with counsel of its own selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel.

(d) The Trustee shall be under no obligation to exercise any of the trusts or powers vested in it by this Agreement or to institute, conduct or defend any litigation hereunder or in relation hereto at the request, order or direction of any or all of the QSF Beneficiaries, pursuant to the provisions of this Agreement, unless such QSF Beneficiaries shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby.

(e) The Trustee shall not be personally liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document.

(g) The Trustee may execute any of the trusts or powers under this Agreement or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees and the Trustee shall not be responsible for the supervision of or any misconduct or negligence on the part of any agent or attorney appointed with due care by it under this Agreement.

(h) Whenever the Trustee is authorized herein to require acts or documents in addition to those required to be provided in any matter, it shall be under no obligation to make any determination whether or not such additional acts or documents should be required.

(i) The Trustee shall not be deemed to have notice of any matter unless one of its Officers has actual knowledge thereof or unless written notice thereof is received by the Trustee at the Corporate Trust Office and such notice references the QSF Interests, the Liquidating Trust, the QSF Trust or this Agreement.

(j) None of the provisions of this Agreement shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(k) Notwithstanding anything herein to the contrary, in no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(l) Before the Trustee acts or refrains from acting, it may require an Opinion of Counsel and the Trustee may conclusively rely on and shall not be liable to any Person for any action it takes or omits to take in good faith in reliance upon such Opinion of Counsel.

(m) The permissive rights of the Trustee to perform any discretionary act enumerated in this Agreement shall not be construed as a duty or obligation, and the Trustee shall not be answerable in the performance of such act other than for its negligence or willful misconduct.

(n) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian, co-trustee and other Person employed to act hereunder.

(o) Except as otherwise instructed pursuant to the express requirements of this Agreement, the Trustee shall have no duty (i) to see to any recording, filing, or depositing of the this Agreement or any agreement referred to herein or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of any such recording or filing or depositing or to any re-recording, re-filing or re-depositing of any thereof, (ii) to see to any insurance, (iii) to see to the payment or discharge of any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Trust Estate, or (iv) to confirm or verify the contents of any reports or certificates delivered to the Trustee pursuant to this Agreement believed by the Trustee to be genuine and to have been signed or presented by the proper party or parties.

(p) The Trustee shall have no liability or responsibility for the acts or omissions of any other party to any this Agreement or any related document.

(q) The Trustee shall have no duty or obligation to obtain or solicit any collateral or any funds to be remitted in any of the accounts established under this Agreement, and shall have a duty only to accept such funds delivered to it in accordance with this Agreement.

(r) The Trustee shall have no duties to any Person or entity other than to the QSF Beneficiaries of record to the extent expressly set forth herein, and without limitation, shall have no other duties to any RMBS Trust or any investor or other party in interest in such RMBS Trust.

(s) The Trustee shall have no duty to investigate, monitor or challenge any action of the Liquidating Trustees (as such term is defined in the Liquidating Trust Agreement) relating to the administration of the Liquidating Trust, and shall not be responsible for any failure of the Liquidating Trustees to carry out any of its duties thereunder, whether or not the Trustee is aware of such failure.

(t) Without limitation of any of the foregoing, the Trustee is not responsible for the REMIC status or any other tax consequence related to any RMBS Trust, and shall have no obligation to seek or obtain any rulings from the IRS with respect thereto in the Letter Ruling or otherwise except as specified in Section 2.07(e).

(u) The Trustee is authorized to seek a judicial instruction with respect to any action or omission that is the subject of this Agreement.

### **Section 6.03 Trustee Not Liable for QSF Interests or RMBS Claims Units.**

The recitals and factual statements contained in this Agreement shall be taken as the statements of the Debtors, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations or warranties as to the validity or sufficiency of this Agreement or of any RMBS Claims Units or related document, including the correctness of the initial amounts and percentages set forth on the Representative Share Schedules. The Trustee shall not be accountable for the use or application of any funds in respect of the RMBS Claims Units or deposited into or withdrawn from the Trust Accounts in accordance with this Agreement. The Trustee shall have no responsibility or obligation to monitor any other Person's compliance with the Liquidating Trust Agreement. The Trustee makes no representations or warranties whatsoever with respect to the tax status or consequences of this QSF Trust to any person or entity, and all QSF Beneficiaries and each RMBS Trust shall rely solely upon their own tax advice with respect thereto.

### **Section 6.04 Trustee's Fees and Expenses.**

(a) Fees.

The Trustee from time to time shall be entitled to reasonable compensation for its services which shall not be limited by any law on compensation of a trustee of an express trust. Such fees shall be set forth on a fee schedule to be provided by the Trustee to the QSF Beneficiaries prior to the date of this Agreement.

(b) Expenses.

The Trustee shall be entitled to the payment of all expenses incurred or made by the Trustee hereunder, including, but not limited to, costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to QSF Beneficiaries and costs of counsel, in addition to the compensation for its services. Such expenses shall include the compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts.

(c) QSF Trust Indemnity; Limited Recourse.

The QSF Trust shall indemnify, defend and hold harmless the Trustee or any predecessor Trustee in each of its capacities hereunder and in any other document related thereto, and each of its officers, directors, employees, representatives, counsel and agents (collectively, the "Indemnified Parties") from and against, and reimburse the Indemnified Parties for, any and all claims, losses, liabilities, obligations, damages, injuries, penalties, stamp or other similar taxes, actions, suits, judgments, costs and expenses (including, but not limited to, attorneys' fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against an Indemnified Party directly or indirectly relating to or arising from, claims against an Indemnified Party by reason of its participation in the transactions contemplated hereby, the administration of this trust and the performance of its duties hereunder and any related document, as the case may be, including the costs and expenses of enforcing this Agreement (including this Section 6.04), or any related document and of defending itself against any claims (whether asserted by any QSF Beneficiary or otherwise); *provided, however*, that the QSF Trust need not indemnify against any loss, liability or expense incurred by an Indemnified Party as a result of its own negligence or willful misconduct, as conclusively determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review.

Any fees, expenses and indemnities due to the Trustee pursuant to this Section 6.04 shall be payable to the Trustee from funds held in the Collection Account and the Reserve Account pursuant to Section 4.02(b).

(d) Survival of Payment Obligations.

The payment obligations contained in this Section 6.04 shall survive the satisfaction and discharge of this Agreement, the rejection or termination of this Agreement under bankruptcy law and/or resignation or removal of the Trustee.

**Section 6.05 Eligibility Requirements for the Trustee.**

The Trustee shall at all times be a corporation or national banking association that is organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by federal or state authority, and has a principal place of business in the State of Delaware. If such corporation publishes reports of its conditions at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as

set forth in its most recent report of conditions so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 6.06.

**Section 6.06 Resignation or Removal of Trustee.**

(a) The Trustee may resign at any time by notifying the QSF Beneficiaries. The Majority Beneficiaries may remove the Trustee for cause by providing the Trustee with thirty (30) days prior written notice thereof. The status of the Trustee's Affiliate being a QSF Beneficiary shall not be considered cause for removal hereunder. All QSF Beneficiaries (other than any QSF Beneficiary that is an Affiliate of the Trustee) may remove the Trustee without cause by providing the Trustee with thirty (30) days prior written notice thereof.

(b) If the Trustee resigns or is removed, the Majority Beneficiaries shall promptly appoint a successor Trustee. If a successor Trustee does not take office within sixty (60) days after the retiring Trustee resigns or is removed, the retiring Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Agreement. The successor Trustee shall mail a notice of its succession to the QSF Beneficiaries. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 6.04. All costs incurred in connection with any resignation or removal hereunder shall be paid from the Reserve Account.

(d) Notwithstanding the replacement of the Trustee pursuant to this Section 6.06, the obligations under Section 6.04 shall continue for the benefit of the retiring Trustee.

**Section 6.07 Merger or Consolidation of Trustee.**

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the business of the Trustee, shall be the successor of the Trustee under this Agreement provided such corporation shall be eligible under the provisions of Section 6.05, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

## ARTICLE VII

### TRANSFERS OF QSF INTERESTS

#### Section 7.01 Transfers by RMBS Trust.

An RMBS Trust may not transfer its interest in the RMBS Claims Units.

#### Section 7.02 Transfers by QSF Beneficiaries.

(a) Solely in connection with its resignation or removal as trustee of one or more RMBS Trusts (such affected RMBS Trusts are referred to herein as the “Affected RMBS Trusts”), a QSF Beneficiary may transfer its QSF Representative Shares related to such Affected RMBS Trusts to an entity or entities that will act as successor trustee (such entity or entities, collectively the “Transferees”) of such Affected RMBS Trusts.

(b) The transferring QSF Beneficiary shall provide at least ten (10) days prior written notice to the Trustee of such transfer, which notice shall contain the name, contact details and wiring instructions of the Transferees. The QSF Beneficiary shall also provide the Trustee with such other information as the Trustee may reasonably request in connection with such transfer.

(c) In connection with any transfer contemplated by this Article VII, the Trustee shall modify Schedule 1 in respect of any such Transferees and shall adjust each QSF Beneficiary’s QSF Representative Share and each RMBS Trust’s RMBS Representative Share set forth on the Representative Share Schedules, respectively, to reflect any such transfer. The Trustee shall provide a copy of such modified Representative Share Schedules to each QSF Beneficiary.

## ARTICLE VIII

### TERMINATION OF QSF TRUST

#### Section 8.01 Termination.

The QSF Trust shall terminate and the obligations and responsibilities of the Trustee created hereby shall terminate upon the earlier to occur of: (i) its receipt of written notice from the Liquidating Trust of the sale, liquidation or other disposition of all of the Liquidating Trust Assets (as such term is defined in the Liquidating Trust Agreement) and the disposition of any remaining Trust Assets held hereunder (other than those held in the Reserve Account), or (ii) the written consent of all QSF Beneficiaries and the Trustee (such event, a “Termination Event”).

#### Section 8.02 Procedure For Termination.

(a) Upon a Termination Event, notice of the Distribution Date on which a final distribution (subject to Section 4.03(b)) shall occur (the “Final Distribution Date”) shall be given promptly by the Trustee to the QSF Beneficiaries mailed during the month of such final distribution on or before the Distribution Date next following the Termination Event, specifying

the Final Distribution Date and the amount of any such final payment; *provided, however*, that the QSF Trust shall continue for the limited purposes of Section 4.03(b).

(b) Upon dissolution, wind up and termination of the QSF Trust and this Agreement, the Trustee is authorized to execute and file a certificate of cancellation with the Secretary of State; *provided, however*, that the Trustee shall not be required to execute or file a certificate of cancellation unless it receives confirmation that the QSF Trust has complied with Section 3308 of the Delaware Trust Statute.

## ARTICLE IX

### MISCELLANEOUS PROVISIONS

#### Section 9.01 Amendment of Trust Agreement.

(a) Amendments.

Subject to Section 9.01(b), this Agreement may be amended or supplemented from time to time with the consent of the Trustee and the Majority Beneficiaries; *provided, however*, that no amendment shall be made to this Agreement that makes it inconsistent with the Plan or the Confirmation Order. No amendment shall alter the rights of a QSF Beneficiary without the consent of the affected QSF Beneficiary.

(b) Amendments Affecting RMBS Trusts.

Notwithstanding Section 9.01(a), any amendment or supplement to this Agreement that shall affect any RMBS Trust shall also require the consent of the QSF Beneficiary for such RMBS Trust.

(c) Rights of Trustee.

Prior to executing any amendment permitted by this Section 9.01, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel opining that the execution and delivery of such amendment is authorized or permitted by this Agreement. The Trustee may, but shall not be obligated to, enter into any such amendment that affects the Trustee's own rights, duties, liabilities, indemnities or immunities under this Agreement or otherwise.

(d) Miscellaneous.

The manner of obtaining such consents and of evidencing the authorization of the execution thereof by QSF Beneficiaries shall be subject to such reasonable regulations as the Trustee may prescribe.

**Section 9.02 Counterparts.**

This Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. Delivery of a counterpart of this Agreement by facsimile or email in portable document format (pdf) shall be deemed to be delivery of original signatures for all purposes hereof.

**Section 9.03 Limitation on Rights of QSF Beneficiaries.**

(a) No QSF Beneficiary shall have any right to vote or in any manner otherwise control the operation and management of the QSF Trust or the obligations of the parties hereto except as expressly provided for in this Agreement, and nothing herein set forth shall be construed so as to constitute the QSF Beneficiaries from time to time as partners or members of an association.

(b) No QSF Beneficiary shall have any right by virtue of any provision of this Agreement to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Agreement, unless the Majority Beneficiaries shall have made written request upon the QSF Trust or the Trustee on behalf of the QSF Trust to institute such action, suit or proceeding in the name of the QSF Trust under this Agreement and shall have offered to the Trustee such indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee on behalf of the QSF Trust, for sixty (60) days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding. For the protection and enforcement of the provisions of this Section, each and every QSF Beneficiary and the Trustee shall be entitled to such relief as can be given either at law or in equity.

**Section 9.04 Notices.**

(a) All directions, demands and notices hereunder shall be in writing and shall be deemed to have been duly given when sent by facsimile transmission, first class mail or delivered to:

(i) in the case of the Trustee, 300 East Delaware Avenue, 8<sup>th</sup> Floor, Wilmington, Delaware 19801-1515, Attention: Corporate Trust Officer – Re: ResCap RMBS Claims Trust,

with a copy to: Maslon Edelman Borman & Brand, LLP, 3300 Wells Fargo Center, 90 South 7<sup>th</sup> Street, Minneapolis, MN 55402, Attention: Clark Whitmore and Brian Klein; and

(ii) in the case of any QSF Beneficiary, at the address of such QSF Beneficiary as shown on Schedule 1 hereto.

(b) Notice may also be delivered by email in accordance with such other side letter agreement entered into between the parties. Any notice so mailed within the time prescribed in this Agreement shall be conclusively presumed to have been duly given, whether or not a QSF Beneficiary receives such notice. A copy of any notice required to be telecopied

hereunder also shall be mailed to the appropriate party in the manner set forth above. A copy of any notice given hereunder to any other party shall be delivered to the Trustee.

**Section 9.05 Severability of Provisions.**

If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be for any reason whatsoever held invalid, then, to the fullest extent permitted by law, such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement or the rights of the QSF Beneficiaries thereof.

**Section 9.06 Third Party Beneficiaries.**

Nothing in this Agreement, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the QSF Beneficiaries and the Indemnified Parties with respect to Section 6.04(c), any benefit or any legal or equitable right, remedy or claim under this Agreement.

**Section 9.07 Acts of QSF Beneficiaries.**

Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Agreement to be given or taken by QSF Beneficiaries may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such QSF Beneficiaries in person or by agents duly appointed in writing; and except as herein otherwise expressly provided such action shall become effective when such instrument or instruments are delivered to the Trustee. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Agreement and conclusive in favor of the Trustee. The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner that the Trustee deems sufficient. The ownership of QSF Interests shall be proved by the Representative Share Schedules as the same may be modified from time to time in accordance with the terms of Article VII.

**Section 9.08 Headings.**

Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

**Section 9.09 No Waiver; Cumulative Remedies.**

No failure to exercise and no delay in exercising, on the part of any party of any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exhaustive of any rights, remedies, powers and privileges provided by law.

**Section 9.10 Merger and Integration.**

Subject to the Plan and Confirmation Order, this Agreement sets forth the entire understanding of the parties relating to the subject matter hereof and thereof, and all prior understandings, written or oral, are superseded by this Agreement.

**Section 9.11 Governing Law; Venue; Jury Waiver.**

(a) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

(b) THE TRUSTEE AND EACH QSF BENEFICIARY HEREBY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, OR (ii) IN ANY WAY IN CONNECTION WITH OR PERTAINING TO OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES WITH RESPECT TO THIS AGREEMENT OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT, TORT OR OTHERWISE.

(c) THE TRUSTEE AND EACH QSF BENEFICIARY HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY FEDERAL OR STATE COURTS SITTING IN THE STATE OF DELAWARE IN RESPECT OF ANY ACTION OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

(d) THE TRUSTEE AND EACH QSF BENEFICIARY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH PROCEEDINGS IN ANY SUCH COURT AND ANY CLAIM THAT ANY PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

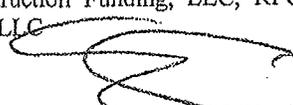
IN WITNESS WHEREOF, ResCap, the other Debtors and the Trustee have caused this Trust Agreement to be duly executed by their respective officers thereunto duly authorized and all as of the day and year first above written.

Residential Capital, LLC

By:   
Name: William Thompson  
Title: General Counsel

By: \_\_\_\_\_  
Name: Jill Horner  
Title: Chief Finance Executive

AKA 13, LLC (f/k/a ditech, LLC), DOA Holding Properties, LLC, DOA Properties IX (Lots-Other), LLC, EPRE LLC, Equity Investment I, LLC, ETS of Virginia, Inc., ETS of Washington, Inc., Executive Trustee Services, LLC, GMAC-RFC Holding Company, LLC, GMAC Model Home Finance I, LLC, GMAC Mortgage USA Corporation, GMAC Mortgage, LLC, GMAC Residential Holding Company, LLC, GMAC RH Settlement Services, LLC, GMACM Borrower LLC, GMACM REO LLC, GMACR Mortgage Products, LLC, HFN REO SUB II, LLC, Home Connects Lending Services, LLC, Homecomings Financial Real Estate Holdings, LLC, Homecomings Financial, LLC, Ladue Associates, Inc., Passive Asset Transactions, LLC, PATI A, LLC, PATI B, LLC, PATI Real Estate Holdings, LLC, RAHI A, LLC, RAHI B, LLC, RAHI Real Estate Holdings, LLC, RCSFJV2004, LLC, Residential Accredited Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, Residential Consumer Services of Alabama, LLC, Residential Consumer Services of Ohio, LLC, Residential Consumer Services of Texas, LLC, Residential Consumer Services, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Exchange, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Funding Real Estate Holdings, LLC, Residential Mortgage Real Estate Holdings, LLC, RFC - GSAP Servicer Advance, LLC, RFC Asset Holdings II, LLC, RFC Asset Management, LLC, RFC Borrower LLC, RFC Construction Funding, LLC, RFC REO LLC and RFC SFJV-2002, LLC

By:   
Name: William Thompson  
Title: General Counsel

By: \_\_\_\_\_  
Name: Jill Horner  
Title: Chief Financial Officer

**IN WITNESS WHEREOF**, ResCap, the other Debtors and the Trustee have caused this Trust Agreement to be duly executed by their respective officers thereunto duly authorized and all as of the day and year first above written.

Residential Capital, LLC

By: \_\_\_\_\_  
Name: William Thompson  
Title: General Counsel

By: Jill Horner  
Name: Jill Horner  
Title: Chief Finance Executive

AKA 13, LLC (f/k/a ditech, LLC), DOA Holding Properties, LLC, DOA Properties IX (Lots-Other), LLC, EPRE LLC, Equity Investment I, LLC, ETS of Virginia, Inc., ETS of Washington, Inc., Executive Trustee Services, LLC, GMAC-RFC Holding Company, LLC, GMAC Model Home Finance I, LLC, GMAC Mortgage USA Corporation, GMAC Mortgage, LLC, GMAC Residential Holding Company, LLC, GMAC RH Settlement Services, LLC, GMACM Borrower LLC, GMACM REO LLC, GMACR Mortgage Products, LLC, HFN REO SUB II, LLC, Home Connects Lending Services, LLC, Homecomings Financial Real Estate Holdings, LLC, Homecomings Financial, LLC, Ladue Associates, Inc., Passive Asset Transactions, LLC, PATI A, LLC, PATI B, LLC, PATI Real Estate Holdings, LLC, RAHI A, LLC, RAHI B, LLC, RAHI Real Estate Holdings, LLC, RCSFJV2004, LLC, Residential Accredited Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, Residential Consumer Services of Alabama, LLC, Residential Consumer Services of Ohio, LLC, Residential Consumer Services of Texas, LLC, Residential Consumer Services, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Exchange, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Funding Real Estate Holdings, LLC, Residential Mortgage Real Estate Holdings, LLC, RFC - GSAP Servicer Advance, LLC, RFC Asset Holdings II, LLC, RFC Asset Management, LLC, RFC Borrower LLC, RFC Construction Funding, LLC, RFC REO LLC and RFC SFJV-2002, LLC

By: \_\_\_\_\_  
Name: William Thompson  
Title: General Counsel

By: Jill Horner  
Name: Jill Horner  
Title: Chief Financial Officer

U.S. BANK TRUST NATIONAL  
ASSOCIATION, not in its individual capacity, but  
solely as Trustee

By:   
Name: MAMITA K. SCOTT  
Title: VICE PRESIDENT

Acknowledged and Agreed  
Solely with Respect to  
Section 2.09 Hereof:

ALLY FINANCIAL INC.

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

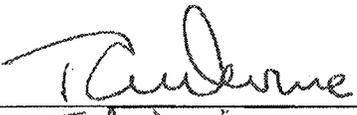
ASSOCIATION  
solely as Trustee

**U.S. BANK TRUST NATIONAL  
ASSOCIATION**, not in its individual capacity, but  
solely as Trustee

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

Acknowledged and Agreed  
Solely with Respect to  
Section 2.09 Hereof:

ALLY FINANCIAL INC.

By:   
Name: T.A. Devine  
Title: Chief Counsel, Litigation

**SCHEDULE 1**

**QSF BENEFICIARIES CONTACT INFORMATION**

<b>QSF BENEFICIARY</b>
The Bank of New York Mellon 6525 West Campus Oval New Albany, Ohio 43054 Attn.: Robert H. Major, Vice President Telephone No.: 614-775-5278 Fax No.: 614-775-5636 Email: <a href="mailto:robert.major@bnymellon.com">robert.major@bnymellon.com</a>
The Bank of New York Mellon Trust Company, N.A. Global Trust-Mortgage Backed Securities 525 William Penn Place, 7 <sup>th</sup> Floor Pittsburgh, PA 15259 Attn.: Jennifer J. Provenzano, Vice President Telephone No. 412-236-3140 Fax No.: 412-234-9019 Email No. <a href="mailto:Jennifer.j.provenzano@bnymellon.com">Jennifer.j.provenzano@bnymellon.com</a>
Deutsche Bank Trust Company Americas 1761 East St. Andrew Place Santa Ana, CA 92705-4934 Attn: Residential Capital LLC/Ronaldo Reyes Telephone No. 714-247-6320 Fax No.: 714-247-6478 Email: <a href="mailto:ronaldo.r.reyes@db.com">ronaldo.r.reyes@db.com</a>
And
Harborside Financial Center 100 Plaza One MS: JCY03-0699 Jersey City, NJ 07311-3901 Attn: Brendan Meyer Telephone No.: 201-593-8545 Fax No.: 646-502-4546 Email: <a href="mailto:brendan.meyer@db.com">brendan.meyer@db.com</a>
Deutsche Bank National Trust Company 1761 East St. Andrew Place Santa Ana, CA 92705-4934

<p>Attn: Residential Capital LLC/Ronaldo Reyes Telephone No. 714-247-6320 Fax No.: 714-247-6478 Email: <a href="mailto:ronaldo.r.reyes@db.com">ronaldo.r.reyes@db.com</a></p> <p>And</p> <p>Harborside Financial Center 100 Plaza One MS: JCY03-0699 Jersey City, NJ 07311-3901 Attn: Brendan Meyer Telephone No.: 201-593-8545 Fax No.: 646-502-4546 Email: <a href="mailto:brendan.meyer@db.com">brendan.meyer@db.com</a></p>
<p>U.S. Bank National Association Corporate Trust Services Division One Federal Street 3rd Floor Boston, MA 02110 Mail Station: EX-MA-FED Attention: Laura L. Moran, Vice President Telephone No.: 617-603-6429 Facsimile No.:: 617-603-6644 Email: <a href="mailto:Laura.Moran@USBank.com">Laura.Moran@USBank.com</a></p>
<p>Wells Fargo Bank, N.A. Sixth and Marquette MAC N9311-161 Minneapolis, MN 55479 Attn: Mary L. Sohlberg, Structured Products Group – Default and Restructuring (Rescap) Telephone No.: 612-316-0737 Fax No.: 612-667-3464 Email: <a href="mailto:mary.l.sohlberg@wellsfargo.com">mary.l.sohlberg@wellsfargo.com</a></p>
<p>HSBC Bank USA, National Association 8 East 40<sup>th</sup> Street, 6<sup>th</sup> Floor New York, NY 10016 Attn: Fernando Acebedo Telephone No.: 212-525-1309 Fax No.: 212-525-1300 Email: <a href="mailto:fernando.acebedo@us.hsbc.com">fernando.acebedo@us.hsbc.com</a></p>
<p>Citibank, N.A. 388 Greenwich Street, 14<sup>th</sup> Floor</p>

New York, New York 10013 Attention: Louis Piscitelli Telephone No.: 212-816-5805 Fax No.: 212-816-5527 Email: <a href="mailto:Louis.A.Piscitelli@citigroup.com">Louis.A.Piscitelli@citigroup.com</a>
Wilmington Trust Company Rodney Square North 1100 North Market Street Wilmington, DE 19890-1605 Attention: Adam Scozzafava Telephone No.: 302-636-6196 Fax No.: 302-636-4140 Email: <a href="mailto:ascozzafava@wilmingtontrust.com">ascozzafava@wilmingtontrust.com</a>
Wilmington Trust, National Association Rodney Square North 1100 North Market Street Wilmington, DE 19890-1605 Attention: Adam Scozzafava Telephone No.: 302-636-6196 Fax No.: 302-636-4140 Email: <a href="mailto:ascozzafava@wilmingtontrust.com">ascozzafava@wilmingtontrust.com</a>

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AMENDED AND RESTATED TRUST AGREEMENT

among

**RESIDENTIAL CAPITAL, LLC,  
CERTAIN AFFILIATES OF RESIDENTIAL CAPITAL, LLC  
SIGNATORY HERETO**

and

**~~{~~U.S. BANK TRUST NATIONAL ASSOCIATION~~}~~<sup>1</sup>,  
as Trustee,**

DATED AS OF

~~{~~December 17~~}~~, 2013

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<sup>1</sup>~~-Pending internal approvals.~~

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SCHEDULE 1:	QSF BENEFICIARIES <del>AND QSF REPRESENTATIVE SHARES</del>
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<del>3:</del>	CONTACT <del>DETAILS FOR QSF BENEFICIARIES</del> <u>INFORMATION</u>
<del>SCHEDULE 4:</del>	<del>WIRE INSTRUCTIONS FOR QSF BENEFICIARIES</del>

AMENDED AND RESTATED TRUST AGREEMENT

THIS AMENDED AND RESTATED TRUST AGREEMENT, dated as of ~~\_\_\_\_\_~~ December 17, 2013 (this “Agreement”), is hereby executed by and among Residential Capital, LLC (“ResCap”), certain affiliates signatory hereto (together with ResCap, the “Debtors”), and ~~U.S. BANK TRUST NATIONAL ASSOCIATION~~, as trustee (the “Trustee”) in order to establish a qualified settlement trust within the meaning of Code Section 468B and the Treasury Regulations promulgated thereunder (the “QSF Trust”) for the benefit of the holders of residential mortgage backed securities claims against the Debtors and Ally Financial, Inc. and its non-Debtor affiliates.

WITNESSETH

WHEREAS, on May 14, 2012, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) commencing jointly administered cases under the caption *In re Residential Capital, LLC*, Case No. 12-12020 (the “Bankruptcy Cases”);

WHEREAS, on ~~August 20, December 6,~~ December 6, 2013, the Debtors and the Official Committee of Unsecured Creditors of Residential Capital, LLC, et al. filed that certain Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors (Dkt. No. ~~47706030-1~~) (together with any amendments or modifications thereto required or permitted by the Bankruptcy Court or as otherwise permitted pursuant to the terms of the Plan, the “Plan”); and

WHEREAS, on ~~\_\_\_\_\_~~ December 11, 2013, the Bankruptcy Court entered an Order confirming the Plan (Dkt. No. ~~\_\_\_\_\_~~ 6065) (the “Confirmation Order”);

WHEREAS, pursuant to the Plan and the Liquidating Trust Agreement, dated ~~\_\_\_\_\_~~ December 17, 2013 (the “Liquidating Trust Agreement”), by and among the Liquidating Trustees (as such term is defined in the Liquidating Trust Agreement), the Delaware Trustee (as such term is defined in the Liquidating Trust Agreement), ResCap and the other parties signatory thereto, a liquidating trust (the “Liquidating Trust”) has been established for the purpose of liquidating and distributing the Liquidating Trust Assets (as such term is defined in the Liquidating Trust Agreement);

WHEREAS, pursuant to the Plan, the QSF Trust has been established for the benefit of the QSF Beneficiaries on behalf of the RMBS Trusts;

WHEREAS, pursuant to the Plan and the Liquidating Trust Agreement, on the Initial Unit Distribution Date, the Liquidating Trust will issue units of beneficial interests (the “Liquidating Trust Units”) to unsecured creditors of the Debtors and/or their designated recipients, including the QSF Trust;

WHEREAS, as set forth in, and subject to, the Plan and the Liquidating Trust Agreement, the QSF Trust will receive a number of Liquidating Trust Units that will entitle the holders thereof to periodic distributions of cash from the Liquidating Trust;

WHEREAS, the parties hereto are entering into this Agreement for purposes of amending and restating the trust agreement which established the QSF Trust and to facilitate implementation of the Plan in respect of the RMBS Trusts;

WHEREAS, the QSF Trust is established for the sole purpose of distributing the Trust Assets to the QSF Beneficiaries, with no objective or authority to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the QSF Trust and the Plan;

WHEREAS, for federal income tax purposes, the QSF Trust is intended to be treated as a “qualified settlement fund” within the meaning of Treasury Regulation Section 1.468 B-2; and

WHEREAS, this Agreement is subject to the approval of the Bankruptcy Court in the Confirmation Order.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Debtors and the Trustee, intending to be legally bound, agree as follows:

## ARTICLE I

### DEFINITIONS

#### Section 1.01 Defined Terms.

The terms defined in this section are specific to this Agreement. Capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to those terms in the Plan. For the purposes of this Agreement, the following terms (which appear in this Agreement with initial capitalized letters) shall have the meanings set forth below:

“Affected RMBS Trusts” shall have the meaning specified in Section 7.02.

“Affiliate” shall mean: (i) with respect to the Trustee, any person or entity controlling, controlled by or under common control with the Trustee, and (ii) with respect to any other Person, any person or entity controlling, controlled by or under common control with such Person. “Control” means the power to direct the management and policies of a person or entity, directly or indirectly, whether through ownership of voting securities, by contract or otherwise. “Controlling” and “controlled” shall have meanings correlative to the foregoing.

“Agreement” shall have the meaning ascribed to it in the preamble.

“Ally” shall have the meaning specified in Section 2.09(a).

“Available Funds” shall mean all collected funds held in the Collection Account ~~as of the end of the calendar month preceding the applicable Distribution Date~~ less any reasonable reserves established by the Trustee for payment of taxes relating to such distribution or otherwise potentially owed by the QSF Trust.

“Bankruptcy Cases” shall have the meaning ascribed to it in the recitals.

“Bankruptcy Code” shall have the meaning ascribed to it in the recitals.

“Bankruptcy Court” shall have the meaning ascribed to it in the recitals.

“Business Day” shall mean any day that is not a Saturday, Sunday, holiday, or other day on which commercial banking institutions in the City of New York or the State of Delaware or, if different, the city and state in which the Corporate Trust Office is located are authorized or obligated by law or executive order to be closed.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Collection Account” shall have the meaning specified in Section 4.01(a)(i).

“Confirmation Order” shall have the meaning ascribed to it in the recitals.

“Corporate Trust Office” shall mean the principal corporate trust office of the Trustee at which at any particular time its corporate trust business shall be administered.

“Debtors” shall have the meaning ascribed to it in the preamble.

“Distribution Date” shall mean ~~either (i) the 15<sup>th</sup> day of each calendar month or (ii) if the 15<sup>th</sup> day of a calendar month is not a Business Day, the Business Day following the 15<sup>th</sup> day of such calendar month.~~ except as otherwise provided in Section 4.02 with respect to the initial Distribution Date, the fifth Business Day following any receipt of funds from the Liquidating Trust. If in the reasonable judgment of the Trustee it shall question the appropriateness, propriety or correctness of any distribution, then the Trustee may delay such distribution until such time after which the Trustee has obtained further guidance or direction in accordance with the terms of this Agreement.

“Effective Date” shall mean the date on which the Plan becomes effective, in accordance with its terms.

“Eligible Accounts” shall mean either (a) a segregated account or accounts maintained with a federal or state chartered depository institution or trust company the long-term or short-term unsecured debt obligations of which (or, in the case of a depository institution or trust company that is the principal subsidiary of a holding company, the long-term or short-term unsecured debt obligations of such holding company) are rated by any Rating Agency in one of its two highest long-term rating categories or one of its two highest short-term ratings with respect to obligations maturing in less than thirty (30) days or in highest short-term rating with respect to obligations maturing in more than thirty (30) days at the time any amounts are held in deposit therein, or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company, acting in the capacity of a trustee. Eligible Accounts need not be interest-bearing accounts provided the funds therein may be invested in Permitted Investments. All accounts maintained with the Trustee shall constitute Eligible Accounts.

“Final Distribution Date” shall have the meaning specified in Section 8.02.

“Indemnified Parties” shall have the meaning specified in Section 6.04.

“IRS” shall mean the United States Internal Revenue Service.

“Letter Ruling” shall mean a written statement issued by the Internal Revenue Service to a taxpayer (or the taxpayer's authorized representatives) in response to a written inquiry from the taxpayer, or its representatives, about the tax effects of acts or proposed transactions, as set forth in Rev. Proc. 2013-1, Sec. 2.01, 2013-1 IRB 1.

“Liquidating Trust” shall have the meaning ascribed to it in the recitals.

“Liquidating Trust Agreement” shall have the meaning ascribed to it in the recitals.

“Liquidating Trust Units” shall have the meaning ascribed to it in the recitals.

“Majority Beneficiaries” shall mean two (2) or more QSF Beneficiaries who collectively hold at least 51% of the QSF Representative Shares.

“Officer” shall mean: (i) when used with respect to the Trustee, any senior vice president or vice president in the Corporate Trust Office of the Trustee, and (ii) when used with respect to any other Person, the chairman of the board, the president, a vice president (however designated), the treasurer or controller.

“Opinion of Counsel” shall mean a written opinion of legal counsel delivered to the Trustee or any QSF Beneficiary, as the case may be, in each case in form and substance reasonably acceptable to the parties to whom it is delivered; provided, however, that any opinion with respect to tax matters shall be made by a law firm having a national reputation for expertise in such matters.

“Permitted Investments” shall consist of money market funds ~~rated in the highest long-term rating category by any Rating Agency that have a credit rating of at least “Aa3” by Moody’s and “AA-” by Standard & Poor’s;~~ provided, however, that no such investment shall constitute a Permitted Investment unless such investment matures no later than the Business Day immediately preceding the Distribution Date on which the funds invested therein are required to be distributed (or, in the case of an investment that is an obligation of the institution in which the account is maintained, no later than such Distribution Date); and provided further, that no such investment shall constitute a Permitted Investment if it gives rise to payments that would be subject to U.S. federal withholding tax if held by a Person that is not a U.S. Person and that has provided applicable U.S. federal tax forms. Permitted Investments may include such investments for which the Trustee or any of its Affiliates is investment manager or advisor. The Trustee or its respective Affiliates are permitted to receive additional compensation that could be deemed to be in their respective economic self interest for (i) serving as an investment advisor, administrator, shareholder, servicing agent, custodian or sub-custodian with respect to Permitted Investments, (ii) using Affiliates to effect transactions in Permitted Investments, and (iii) effecting transactions in Permitted Investments.<sup>2</sup>

<sup>2</sup>~~To be discussed among the RMBS Trustees.~~

“Person” shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or government or any agency or political subdivision thereof.

“Plan” shall have the meaning ascribed to it in the recitals.

“QSF Beneficiaries” means each of the entities listed on Schedule 1 attached hereto and any such successor to such entities, each of whom has an interest in the Trust Estate in their respective capacities as trustees of each of the RMBS Trusts for which they serve in such capacity.

“QSF Interests” shall mean an uncertificated beneficial interest in the QSF Trust.

“QSF Representative Share” shall mean a QSF Beneficiary’s representative share of the total QSF Interests in the QSF Trust, which is held from time to time in its respective capacities as trustee of each of the RMBS Trusts for which it serves as trustee, which ~~is~~will initially be reflected on ~~Schedule 1 hereto~~the Representative Share Schedules and shall be adjusted from time to time on the books and records of Trustee in accordance with Article VII.

“QSF Trust” shall have the meaning ascribed to it in the preamble.

“Rating Agency” shall mean any nationally recognized statistical rating agency, or its successor. Except as otherwise specified herein, references to any long-term rating category of a Rating Agency shall mean such rating category without regard to any plus or minus or numerical designation.

“Record Date” shall mean the last Business Day of the month preceding the month of such Distribution Date.

“Representative Share Schedules” shall mean the schedules reflecting the initial QSF Representative Share and the initial RMBS Representative Share filed with the Bankruptcy Court, a copy of which will be provided to the Trustee by or on behalf of the QSF Beneficiaries, it being understood and agreed that the Trustee shall have conclusive reliance thereon and shall have no obligation to make any distributions hereunder in the absence of receipt of such Representative Share Schedules.

“Required Reserve Amount” shall mean ~~[\$1,000,000]~~\$1,000,000.

“ResCap” shall have the meaning ascribed to it in the preamble.

“Reserve Account” shall have the meaning specified in Section 4.01(a)(ii).

“RMBS Claims Units” shall mean any and all Liquidating Trust Units issued to the QSF Trust on account of the claims of the RMBS Trusts (as such term is defined in the Plan) under the Liquidating Trust Agreement. For the avoidance of doubt, “RMBS Claims Units” shall not include the five and seven-tenths percent (5.7%) of the Liquidating Trust Units that would otherwise be issuable to the QSF Trust that shall be issued to counsel for the Institutional Investors in satisfaction of the Allowed Fee Claim, in accordance with the terms of the Plan.

“RMBS Representative Share” shall mean each RMBS Trust’s representative share of the total QSF Interests allocable to its applicable QSF Beneficiary, which ~~is~~will initially ~~be~~ reflected on ~~Schedule 2 hereto~~the Representative Share Schedules and shall be adjusted from time to time on the books and records of the Trustee in accordance with Article VII.

“RMBS Trusts” shall mean the RMBS Trusts listed on ~~Schedule 2 hereto~~the Representative Share Schedules.

“Termination Event” shall have the meaning specified in Section 8.01.

“Transferee” shall have the meaning specified in Section 7.02.

“Treas. Reg.” shall have the meaning specified in Section 2.09(a).

“Trust Accounts” shall mean the Collection Account and the Reserve Account.

“Trust Estate” shall mean: (a) the RMBS Claims Units together with all payments due thereon, (b) all present and future claims, demands, causes and choses in action in respect of payments or distributions on the RMBS Claims Units including all rights of beneficiaries under the Liquidating Trust Agreement based thereon, (c) all funds held in the Trust Accounts from time to time, and (d) all proceeds of the foregoing of every kind and nature whatsoever, including, without limitation, all proceeds of the conversion thereof, voluntary or involuntary, into cash or other liquid property, all cash proceeds, accounts receivable, notes, drafts, acceptances, chattel paper, checks, deposit accounts, rights to payment of any and every kind and other forms of obligations and receivables, instruments and other property that at any time constitute all or part of or are included in the proceeds of the foregoing.

“Trustee” shall have the meaning ascribed to it in the preamble and any successor trustee appointed in accordance with this Agreement.

## **Section 1.02 Interpretation.**

In this Agreement:

- (a) “or” is not exclusive;
- (b) “including” means “including without limitation”;
- (c) any reference to the singular includes reference to the plural and vice versa and reference to the masculine gender includes reference to the feminine and neuter genders and *vice versa*;
- (d) unless otherwise expressly stated to the contrary herein, any reference to any Section, sub-section, paragraph or sub-paragraph is to a Section, sub-section, paragraph or sub-paragraph (as the case may be) of this Agreement;

(e) the headings are inserted for convenience of reference only and shall not in any way form part of or affect or be taken into account in the construction or interpretation of any provision of this Agreement or the ~~Schedules~~Schedule hereto; and

(f) the ~~Recitals~~recitals and ~~Schedules~~Schedule form part of this Agreement and shall have the same force and effect as if they were expressly set out in the body of this Agreement and any references to this Agreement shall include the ~~Recitals~~recitals and ~~Schedules~~Schedule.

## ARTICLE II

### ESTABLISHMENT OF THE QSF TRUST

#### Section 2.01 Name.

The trust created hereby shall be known as the “RMBS Claims Trust”, in which name the Trustee may conduct the affairs of the QSF Trust. It is the intention of the parties hereto that the QSF Trust hereby created constitutes a statutory trust under Chapter 38 of Title 12 of the Delaware Code, 12 Del. C., §3801 et seq. and that this Agreement constitutes the governing instrument of the QSF Trust. The Trustee, pursuant to the original trust agreement, filed a certificate of trust with the Delaware Secretary of State.

#### Section 2.02 Office.

The office of the QSF Trust shall be in care of the Trustee at its corporate trust office or at any other address that the Trustee may designate by written notice to the QSF Beneficiaries.

#### Section 2.03 Declaration of Trust.

Upon the Effective Date, the Trustee shall have all the rights, powers and duties set forth herein, ~~in the Plan~~ and pursuant to applicable law for accomplishing the purposes of the QSF Trust. The Trustee is hereby authorized to file with any governmental authority any documents necessary to establish the QSF Trust.

#### Section 2.04 Issuance of RMBS Claims Units and Related Distributions.

On the Initial Unit Distribution Date (as such term is defined in the Plan), the QSF Trust shall accept the ~~number of Liquidating Trust~~RMBS Claims Units issued to the QSF Trust on such date pursuant to the Liquidating Trust Agreement and thereafter the QSF Trust shall accept any distributions made by the Liquidating Trust in respect of any Liquidating Trust Units held by the QSF Trust from time to time ~~in accordance with~~pursuant to the Liquidating Trust Agreement, in all cases in trust for the benefit of the QSF Beneficiaries.

#### Section 2.05 Appointment of Trustee.

{U.S. Bank Trust National Association} is hereby appointed as trustee of the QSF Trust effective as of the date hereof, and shall have the rights, powers, and duties set forth herein.

### **Section 2.06 Acceptance of Trust.**

The Trustee agrees to accept and hold the Trust Estate in trust for the QSF Beneficiaries, subject to the terms of this Agreement.

### **Section 2.07 Activities of the Trust.**

It is the intention of the parties hereto that the QSF Trust shall not engage in any business or activities other than in connection with, or relating to the following:

- (a) to register on its books and records uncertificated beneficial interests to the QSF Beneficiaries;
- (b) to accept distributions of RMBS Claims Units and related cash distributions from the Liquidating Trust and make distributions to the QSF Beneficiaries from time to time;
- (c) to hold, transfer and/or invest the assets included in the Trust Estate and take such other actions with respect to the RMBS Claims Units as are permitted to be taken by the holders of the RMBS Claims Units pursuant to the Liquidating Trust Agreement, in accordance with this Agreement, or by the Trustee to enforce its rights under this Agreement;
- (d) to engage in those activities that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith; and
- (e) to seek a Letter Ruling from the IRS regarding, ~~among other things,~~ the status of the QSF Trust as a qualified settlement fund within the meaning of Section 468B of the Code ~~and to the status of its RMBS Claims Units as qualified reserve assets within the meaning of Code Section 860G(a)(7);~~ and Treasury Regulations promulgated thereunder, and to grant powers of attorney in connection therewith.

### **Section 2.08 Purpose, Limitations of the Trust.**

- (a) Except as otherwise expressly provided herein, the business and affairs of the QSF Trust will be managed by or under the direction of the Trustee.
- (b) The QSF Trust will conduct its business under names or tradenames so as not to mislead others as to the separate identity of the QSF Trust. Without limiting the generality of the foregoing, all oral and written communications, including letters, invoices, contracts, statements and applications, will be made solely in the name of the QSF Trust or in the name of the QSF Trustee in its capacity as such if related to the Trust.
- (c) There will not be any indebtedness relating to borrowings or loans between the QSF Trust and the Liquidating Trust or its Affiliates.
- (d) The QSF Trust will act solely in its name through the Trustee's duly authorized officers or agents in the conduct of its business. The QSF Trust will not: (i) operate

or purport to operate as an integrated, single economic unit with respect to the Liquidating Trust or any other Affiliated or unaffiliated entity or any other Person; (ii) seek or obtain credit or incur any obligation to any third party based upon the assets of the Liquidating Trust or its Affiliates; or (iii) induce any such third party to reasonably rely on the creditworthiness of the Liquidating Trust or any other Affiliated or unaffiliated entity.

(e) The QSF Trust will maintain a Delaware trustee with a principal place of business in the State of Delaware.

(f) The QSF Trust will keep its funds and other assets separate from the Liquidating Trust and will not commingle such funds and other assets with those of any other Affiliates thereof.

(g) Any financial statements prepared by the QSF Trust shall be separate from those of the Liquidating Trust and any other Affiliates.

#### **Section 2.09 Section 468B Qualified Settlement Fund.**

(a) It is intended and it is contemplated in the Plan that the QSF Trust established hereunder will qualify as, and remain, a “Qualified Settlement Fund” within the meaning of Section 468B of the Code, and the Regulations promulgated pursuant thereto and codified at 26 C.F.R. Sections 1.468B-1 through 1.468B-5. ~~It is further intended that the RMBS Claims Units will be treated as qualified reserve assets within the meaning of Code Section 860G(a)(7) and the Regulations promulgated pursuant thereto.~~ For income tax purposes, Ally Financial Inc. (“Ally”) shall be classified as a “transferor” within the meaning of Regulation Section 1.468B-1(d)(1), 26 C.F.R. (“Treas. Reg.”) Section 1.468B-1(d)(1). The Trustee, shall be classified as the “administrator” within the meaning of Treas. Reg. Section 1.468B-2(k)(3).

(b) It is further intended that all transfers to the QSF Trust will satisfy the “all events test” and the “economic performance” requirement of Section 461(h)(1) of the Code and Treas. Reg. Section 1.461-1(a)(2). As such, Ally shall not be taxed on the income of the QSF Trust. The QSF Trust shall be taxed on its modified gross income, excluding the sums, or cash equivalents of items, transferred to it. All computations of the QSF Trust’s modified gross income, as well as any exclusions or deductions thereto, shall be compliant and consistent with Treas. Reg. Sections 1.468B-2(b)(1)-(4).

(c) Subject to the applicable provisions of the Code, the Trustee shall cause to be filed, on behalf of the QSF Trust, all required federal, state, and local tax returns pursuant to the provisions of Treas. Reg. Section 1.468B-2(k). Furthermore, pursuant to the provisions of Treas. Reg. Section 1.468B-2(1), the Trustee shall cause to be filed all required federal, state, and local information returns and ensure compliance with withholding and reporting requirements. The Trustee may retain an independent, certified public accountant to consult with and advise the Trustee with respect to the preparation of any and all appropriate income tax returns, information returns, or compliance with withholding requirements. Ally shall supply to the Trustee and to the IRS the statement described in Treas. Reg. Section 1.468B-3(e)(2) no later than February 15th of the year following each calendar year in which Ally is treated for federal income tax purposes as making a transfer to the QSF Trust.

(d) The Trustee shall be authorized to take all such actions, including such actions as may be consistent with those expressly set forth above, as may be necessary to ensure that the QSF Trust is treated as a Qualified Settlement Fund under Section 468B of the Code, and the Regulations promulgated pursuant thereto.

(e) Notwithstanding anything herein to the contrary, in the event that any portion of this Agreement shall at any time be considered not to be in compliance with Code Section 468B, as amended, together with any and all Treasury Regulations and IRS Notices, Announcements and directives thereunder, such offending Section of this Agreement shall be considered null, void, and of no effect, without any action by any court or by the Trustee. The overarching purpose of this Agreement is to at all times be in compliance with Code Section 468B and all administrative authority and announcements thereunder. In the event that this Section 2.09 applies to render an offending Section null, void, or of no effect, Section 8.059.05 of this Agreement shall still apply with respect to the remaining non-offending Sections of this Agreement.

### ARTICLE III

#### QSF INTERESTS

##### **Section 3.01 Rights of QSF Beneficiaries.**

Each QSF Beneficiary will be entitled to participate in the rights due to a QSF Beneficiary hereunder. Each QSF Beneficiary shall take and hold its QSF Interest subject to all of the terms and provisions of this Agreement. No QSF Beneficiary shall have any title to, right to, possession of, management of or control of, the QSF Trust or the Trust Estate except as herein expressly provided. The QSF Interests shall not be certificated.

##### **Section 3.02 No Legal Title in QSF Beneficiaries.**

No QSF Beneficiary shall have legal title to any part of the Trust Estate. No transfer by operation of law or otherwise, of the right, title and interest of any QSF Beneficiary in and to the Trust Estate or hereunder shall operate to terminate this QSF Trust or entitle any successor or transferee of such QSF Beneficiary to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

##### **Section 3.03 Identification of QSF Beneficiaries.**

The initial QSF Beneficiaries are set forth on Schedule 1 hereto and shall be adjusted from time to time on the books and records of Trustee in accordance with the terms of Article VII. Except as otherwise required by law, references in this Agreement to the identification of QSF Beneficiaries and the providing of information to QSF Beneficiaries shall be read to mean QSF Beneficiaries of record as set forth on Schedule 1 hereto, as modified from time to time in accordance with the terms of Article VII. Unless expressly provided herein, the Trustee may establish a record date, which it deems practicable for determining the QSF Beneficiaries for a particular purpose.

### **Section 3.04 Deemed Majority Consent.**

The Majority Beneficiaries shall have the right to cause the institution of and to direct the time, manner, method and place of conducting any proceeding or exercising any power conferred on the Trustee hereunder; *provided, however*, that: (i) such direction shall not conflict with any rule of law, the Plan or this Agreement (ii) the Trustee shall not be required to undertake any action that might involve it in personal liability or require the expenditure of funds not available to it in the Reserve Account, unless the Trustee shall have been indemnified to its satisfaction, and (iii) the Trustee shall be entitled to condition its compliance with any such direction upon the receipt of an Opinion of Counsel that the directed action is authorized or permitted by this Agreement.

Notwithstanding anything contained herein to the contrary, with respect to any provision of this Agreement which permits or requires the consent of, or direction from, the Majority Beneficiaries prior to the Trustee acting hereunder, such consent of, or direction from, the Majority Beneficiaries shall be deemed to have been given if: (i) the Trustee sends written notice to all QSF Beneficiaries of such proposed action or omission, (ii) within sixty (60) days after delivery of such written notice to the QSF Beneficiaries, the Trustee does not receive the consent of or direction from the Majority Beneficiaries, (iii) after such sixty (60) day period has expired, the Trustee receives the consent of, or direction from, at least one QSF Beneficiary with respect to such proposed action or omission, and (iv) the Trustee does not receive written notice from QSF Beneficiaries holding at least fifty-one percent (51%) of the QSF Representative Shares opposing such proposed action or omission; *provided, however*, that no deemed direction shall be effective hereunder to the extent that it has the effect of denying an RMBS Trust the right to receive payments in respect of its RMBS Representative Share unless the Trustee shall have also received the consent of the QSF Beneficiary for such affected RMBS Trust. The Trustee shall incur no liability to any QSF Beneficiary, any RMBS Trust or any other Person for acting or omitting to act based upon the foregoing deemed consent. The Trustee shall have no duties or responsibility with respect to the compliance by the QSF Beneficiaries with respect to their duties with respect to the RMBS Trusts, including without limitation relating to their authority to act with respect to any RMBS Trusts.

## **ARTICLE IV**

### **ACCOUNTS, DEPOSITS AND DISTRIBUTIONS**

#### **Section 4.01 Establishment of Trust Accounts.**

(a) The Trustee shall establish and maintain the following ~~non-interest bearing~~ trust accounts in the name of the Trustee on behalf of the QSF Trust for the QSF Beneficiaries as provided in this Agreement:

- (i) the collection account (the "Collection Account"); and
- (ii) the reserve account (the "Reserve Account").

The trust accounts will be non-interest bearing but collected funds therein will be invested in accordance with Section 4.04 hereof.

(b) The Trustee shall have the right to create one or more sub-accounts, as needed, for operation purposes.

(c) The Trust Accounts shall be Eligible Accounts.

#### **Section 4.02 Collection Account.**

(a) Deposits. Within one (1) Business Day of receipt, the Trustee shall deposit into the Collection Account the amounts received as distributions or payments on the RMBS Claims Units.

(b) Withdrawal. On each Distribution Date, the Trustee shall withdraw all Available Funds in the Collection Account to be distributed as follows:

(i) First, to the Trustee for payment of any fees, expenses, indemnities or other amounts due to the Trustee under this Agreement;

(ii) Second, to the Reserve Account until the balance in the Reserve Account equals the Required Reserve Amount;

(iii) Third, ratably to each QSF Beneficiary in accordance with such QSF Beneficiary's QSF Representative Share, for further distribution by each QSF Beneficiary to its applicable RMBS Trusts in accordance with such RMBS Trusts' RMBS Representative Share.

The Trustee shall have no duties to the RMBS Trusts and responsibility for distributions by the QSF Beneficiaries to the RMBS Trusts or any investors of any RMBS Trust. Notwithstanding the forgoing and without limiting any other rights of the Trustee hereunder, the first Distribution Date shall, subject to Section 4.05 hereof, occur on the fifteenth Business Day following the date that the Trustee receives a distribution from the Liquidating Trust.

#### **Section 4.03 Reserve Account.**

(a) Deposits. On each Distribution Date, the Trustee shall deposit funds into the Reserve Account in accordance with Section 4.02 until funds in the Reserve Account equal the Required Reserve Amount.

(b) Withdrawal. The Trustee may withdraw amounts held on deposit in the Reserve Account at any time for payment of any fees, expenses, indemnities or other amounts due to the Trustee under this Agreement. So long as there are no claims, causes of actions, suits or other similar litigation proceedings commenced, asserted or threatened against the Trustee related to, connected with or directly or indirectly arising out of this Agreement, then upon the third anniversary of the Final Distribution Date, the Trustee shall distribute any amounts then held in the Reserve Account ratably to each QSF Beneficiary (as of the Record Date related to the Final Distribution Date) in accordance with such QSF Beneficiary's QSF Representative

Share (as of the Record Date related to the Final Distribution Date), for further distribution by each QSF Beneficiary to its applicable RMBS Trusts in accordance with such RMBS Trusts' RMBS Representative Share.<sup>3</sup>

#### **Section 4.04 Investments.**

The Trustee shall invest funds held in the Trust Accounts in Permitted Investments. In no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity.

#### **Section 4.05 Payments to QSF Beneficiaries.**

Any and all distributions from the Trust Accounts to be made by the Trustee to the QSF Beneficiaries shall be made by wire transfer pursuant to the respective wire transfer details for such QSF Beneficiaries ~~listed on Schedule 4~~ as provided in writing by the respective QSF Beneficiary prior to the initial Distribution Date (it being understood and agreed that any distribution by the Trustee to a QSF Beneficiary may be delayed up to ten (10) days after the receipt of such wire transfer instructions and further that it is currently contemplated that no more than three (3) separate wire transfers per QSF Beneficiary would be made on each Distribution Date), which such wire transfer instructions may be amended from time to time in writing provided to the Trustee in a timely manner.

#### **Section 4.06 Record Date.**

Payments to the QSF Beneficiaries on any Distribution Date will be made to the QSF Beneficiaries of record of the respective QSF Interests on the related Record Date.

### **ARTICLE V**

[ RESERVED ]

### **ARTICLE VI**

## **CONCERNING THE TRUSTEE**

#### **Section 6.01 Duties of the Trustee.**

Every provision of this Agreement relating to the conduct of, affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article VI. The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Agreement and no implied covenants or obligations shall be read into this Agreement against the Trustee. Except as provided in Section 6.02, no provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct; *provided, however*, that:

<sup>3</sup>~~-QSF Trustee discussing period for holdback of reserve funds after Final Distribution Date.~~

(a) the Trustee shall not be liable for an error of judgment made in good faith by an Officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(b) with respect to any trust or power conferred upon the Trustee under this Agreement, the Trustee shall not be personally liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of the Majority Beneficiaries (including, without limitation, any deemed direction pursuant to Section 3.04 of this Agreement) or such other percentage as may be specified herein;

(c) any determination of negligence or willful misconduct of the Trustee shall be made only upon the rendering of a final judgment of a court of competent jurisdiction no longer subject to appeal or review; ~~and~~

(d) the Trustee shall be deemed to be acting solely in its capacity as Trustee in connection with the administration of the QSF Trust and not in its individual capacity, and as such, shall not be individually responsible for the payment of any obligations or liabilities of the QSF Trust, including, without limitation, liabilities of the QSF Trust for the payment of taxes; and

(e) the Trustee shall forward a copy of any notice it receives in respect of the RMBS Claims Units or this Agreement to each of the QSF Beneficiaries.

#### **Section 6.02 Certain Matters Affecting the Trustee.**

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) The Trustee may, in the absence of bad faith on its part, rely upon a certificate of an Officer of the appropriate Person whenever in the administration of this Agreement the Trustee shall deem it desirable that a matter be proved or established (unless other evidence be herein specifically prescribed) prior to taking, suffering or omitting any action hereunder.

(c) The Trustee may consult with counsel of its own selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel.

(d) The Trustee shall be under no obligation to exercise any of the trusts or powers vested in it by this Agreement or to institute, conduct or defend any litigation hereunder or in relation hereto at the request, order or direction of any or all of the QSF Beneficiaries, pursuant to the provisions of this Agreement, unless such QSF Beneficiaries shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby.

(o) Except as otherwise instructed pursuant to the express requirements of this Agreement, the Trustee shall have no duty (i) to see to any recording, filing, or depositing of the this Agreement or any agreement referred to herein or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of any such recording or filing or depositing or to any re-recording, re-filing or re-depositing of any thereof, (ii) to see to any insurance, (iii) to see to the payment or discharge of any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Trust Estate, or (iv) to confirm or verify the contents of any reports or certificates delivered to the Trustee pursuant to this Agreement believed by the Trustee to be genuine and to have been signed or presented by the proper party or parties.

(p) The Trustee shall have no liability or responsibility for the acts or omissions of any other party to any this Agreement or any related document.

(q) The Trustee shall have no duty or obligation to obtain or solicit any collateral or any funds to be remitted in any of the accounts established under this Agreement, and shall have a duty only to accept such funds delivered to it in accordance with this Agreement.

(r) The Trustee shall have no duties to any Person or entity other than to the QSF Beneficiaries of record to the extent expressly set forth herein, and without limitation, shall have no other duties to any RMBS Trust or any investor or other party in interest in such RMBS Trust.

(s) The Trustee shall have no duty to investigate, monitor or challenge any action of the Liquidating Trustees (as such term is defined in the Liquidating Trust Agreement) relating to the administration of the Liquidating Trust, and shall not be responsible for any failure of the Liquidating Trustees to carry out any of its duties thereunder, whether or not the Trustee is aware of such failure.

(t) Without limitation of any of the foregoing, the Trustee is not responsible for the REMIC status or any other tax consequence related to any RMBS Trust, and shall have no obligation to seek or obtain any rulings from the IRS with respect thereto in the Letter Ruling or otherwise except as specified in Section 2.07(e).

(u) The Trustee is authorized to seek a judicial instruction with respect to any action or omission that is the subject of this Agreement.

### **Section 6.03 Trustee Not Liable for QSF Interests or RMBS Claims Units.**

The recitals and factual statements contained in this Agreement shall be taken as the statements of the Debtors, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations or warranties as to the validity or sufficiency of this Agreement or of any RMBS Claims Units or related document, including the correctness of the initial amounts and percentages set forth on Schedule 1 and Schedule 2, the Representative Share Schedules. The Trustee shall not be accountable for the use or application of any funds in respect of the RMBS Claims Units or deposited into or withdrawn from the Trust Accounts in accordance with this Agreement. The Trustee shall have no responsibility or obligation to

monitor any other Person's compliance with the Liquidating Trust Agreement. The Trustee makes no representations or warranties whatsoever with respect to the tax status or consequences of this QSF Trust to any person of entity, and all QSF Beneficiaries and each RMBS Trust shall rely solely upon their own tax advice with respect thereto.

**Section 6.04 Trustee's Fees and Expenses.**

(a) Fees.

The Trustee from time to time shall be entitled to reasonable compensation for its services which shall not be limited by any law on compensation of a trustee of an express trust. Such fees shall be set forth on a fee schedule to be provided by the Trustee to the QSF Beneficiaries prior to the date of this Agreement.

(b) Expenses.

The Trustee shall be entitled to the payment of all expenses incurred or made by the Trustee hereunder, including, but not limited to, costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to QSF Beneficiaries and costs of counsel, in addition to the compensation for its services. Such expenses shall include the compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts.

(c) QSF Trust Indemnity; Limited Recourse.

The QSF Trust shall indemnify, defend and hold harmless the Trustee or any predecessor Trustee in each of its capacities hereunder and in any other document related thereto, and each of its officers, directors, employees, representatives, counsel and agents (collectively, the "Indemnified Parties") from and against, and reimburse the Indemnified Parties for, any and all claims, losses, liabilities, obligations, damages, injuries, penalties, stamp or other similar taxes, actions, suits, judgments, costs and expenses (including, but not limited to, attorneys' fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against an Indemnified Party directly or indirectly relating to or arising from, claims against an Indemnified Party by reason of its participation in the transactions contemplated hereby, the administration of this trust and the performance of its duties hereunder and any related document, as the case may be, including the costs and expenses of enforcing this Agreement (including this Section 6.04), or any related document and of defending itself against any claims (whether asserted by any QSF Beneficiary or otherwise); *provided, however*, that the QSF Trust need not indemnify against any loss, liability or expense incurred by an Indemnified Party as a result of its own negligence or willful misconduct, as conclusively determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review.

Any fees, expenses and indemnities due to the Trustee pursuant to this Section 6.04 shall be payable to the Trustee ~~solely~~ from funds held in the Collection Account and the Reserve Account pursuant to Section 4.02(b).

### **Section 6.07 Merger or Consolidation of Trustee.**

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the business of the Trustee, shall be the successor of the Trustee under this Agreement provided such corporation shall be eligible under the provisions of Section 6.05, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

## **ARTICLE VII**

### **TRANSFERS OF QSF INTERESTS**

#### **Section 7.01 Transfers by RMBS Trust.**

An RMBS Trust may not transfer its interest in the RMBS Claims Units.

#### **Section 7.02 Transfers by QSF Beneficiaries.**

(a) Solely in connection with its resignation or removal as trustee of one or more RMBS Trusts (such affected RMBS Trusts are referred to herein as the “Affected RMBS Trusts”), a QSF Beneficiary may transfer its QSF Representative Shares related to such Affected RMBS Trusts to an entity or entities that will act as successor trustee (such entity or entities, collectively the “Transferees”) of such Affected RMBS Trusts.

(b) The transferring QSF Beneficiary shall provide at least ten (10) days prior written notice to the Trustee of such transfer, which notice shall contain the name, contact details and wiring instructions of the Transferees. The QSF Beneficiary shall also provide the Trustee with such other information as the Trustee may reasonably request in connection with such transfer.

(c) In connection with any transfer contemplated by this Article VII, the Trustee shall modify Schedule 1 in respect of any such Transferees and shall adjust each QSF Beneficiary’s QSF Representative Share and each RMBS Trust’s RMBS Representative Share set forth on ~~Schedule 1 and Schedule 2~~, the Representative Share Schedules, respectively, to reflect any such transfer. The Trustee shall provide a copy of such modified Representative Share Schedules to each QSF Beneficiary.

## **ARTICLE VIII**

### **TERMINATION OF QSF TRUST**

#### **Section 8.01 Termination.**

The QSF Trust shall terminate and the obligations and responsibilities of the Trustee created hereby shall terminate upon the earlier to occur of: (i) its receipt of written notice from the Liquidating Trust of the sale, liquidation or other disposition of all of the Liquidating Trust

(d) Miscellaneous.

The manner of obtaining such consents and of evidencing the authorization of the execution thereof by QSF Beneficiaries shall be subject to such reasonable regulations as the Trustee may prescribe.

**Section 9.02 Counterparts.**

This Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. [Delivery of a counterpart of this Agreement by facsimile or email in portable document format \(pdf\) shall be deemed to be delivery of original signatures for all purposes hereof.](#)

**Section 9.03 Limitation on Rights of QSF Beneficiaries.**

(a) No QSF Beneficiary shall have any right to vote or in any manner otherwise control the operation and management of the QSF Trust or the obligations of the parties hereto except as expressly provided for in this Agreement, and nothing herein set forth shall be construed so as to constitute the QSF Beneficiaries from time to time as partners or members of an association.

(b) No QSF Beneficiary shall have any right by virtue of any provision of this Agreement to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Agreement, unless the Majority Beneficiaries shall have made written request upon the QSF Trust or the Trustee on behalf of the QSF Trust to institute such action, suit or proceeding in the name of the QSF Trust under this Agreement and shall have offered to the Trustee such indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee on behalf of the QSF Trust, for sixty (60) days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding. For the protection and enforcement of the provisions of this Section, each and every QSF Beneficiary and the Trustee shall be entitled to such relief as can be given either at law or in equity.

**Section 9.04 Notices.**

(a) All directions, demands and notices hereunder shall be in writing and shall be deemed to have been duly given when sent by facsimile transmission, first class mail or delivered to:

(i) in the case of the Trustee, 300 East Delaware Avenue, 8<sup>th</sup> Floor,  
Wilmington, Delaware 19801-1515, Attention: ~~\_\_\_\_\_~~; Corporate Trust Officer  
-Re: ResCap RMBS Claims Trust.

with a copy to: Maslon Edelman Borman & Brand, LLP, 3300 Wells Fargo Center, 90 South 7<sup>th</sup> Street, Minneapolis, MN 55402, Attention: Clark Whitmore and Brian Klein; and

(ii) in the case of any QSF Beneficiary, at the address of such QSF Beneficiary as shown on [Schedule 31](#) hereto.

(b) Notice may also be delivered by email in accordance with such other side letter agreement entered into between the parties. Any notice so mailed within the time prescribed in this Agreement shall be conclusively presumed to have been duly given, whether or not a QSF Beneficiary receives such notice. A copy of any notice required to be telecopied hereunder also shall be mailed to the appropriate party in the manner set forth above. A copy of any notice given hereunder to any other party shall be delivered to the Trustee.

#### **Section 9.05 Severability of Provisions.**

If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be for any reason whatsoever held invalid, then, to the fullest extent permitted by law, such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement or the rights of the QSF Beneficiaries thereof.

#### **Section 9.06 Third Party Beneficiaries.**

Nothing in this Agreement, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the QSF Beneficiaries and the Indemnified Parties with respect to [Section 6.04\(c\)](#), any benefit or any legal or equitable right, remedy or claim under this Agreement.

#### **Section 9.07 Acts of QSF Beneficiaries.**

Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Agreement to be given or taken by QSF Beneficiaries may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such QSF Beneficiaries in person or by agents duly appointed in writing; and except as herein otherwise expressly provided such action shall become effective when such instrument or instruments are delivered to the Trustee. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Agreement and conclusive in favor of the Trustee. The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner that the Trustee deems sufficient. The ownership of QSF Interests shall be proved by ~~Schedule 1~~ [the Representative Share Schedules](#) as the same may be modified from time to time in accordance with the terms of [Article VII](#).

#### **Section 9.08 Headings.**

Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

IN WITNESS WHEREOF, ResCap, the other Debtors and the Trustee have caused this Trust Agreement to be duly executed by their respective officers thereunto duly authorized and all as of the day and year first above written.

**RESIDENTIAL CAPITAL**

Residential Capital, LLC

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

Name: William Thompson

Title: General Counsel

~~Name: \_\_\_\_\_~~

~~Its: \_\_\_\_\_~~

~~\_\_\_\_\_~~

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

~~Name: \_\_\_\_\_~~

~~Its: \_\_\_\_\_~~

Name: Jill Horner

Title: Chief Finance Executive

AKA 13, LLC (f/k/a ditech, LLC), DOA Holding Properties, LLC, DOA Properties IX (Lots-Other), LLC, EPRE LLC, Equity Investment I, LLC, ETS of Virginia, Inc., ETS of Washington, Inc., Executive Trustee Services, LLC, GMAC-RFC Holding Company, LLC, GMAC Model Home Finance I, LLC, GMAC Mortgage USA Corporation, GMAC Mortgage, LLC, GMAC Residential Holding Company, LLC, GMAC RH Settlement Services, LLC, GMACM Borrower LLC, GMACM REO LLC, GMACR Mortgage Products, LLC, HFN REO SUB II, LLC, Home Connects Lending Services, LLC, Homecomings Financial Real Estate Holdings, LLC, Homecomings Financial, LLC, Ladue Associates, Inc., Passive Asset Transactions, LLC, PATI A, LLC, PATI B, LLC, PATI Real Estate Holdings, LLC, RAHI A, LLC, RAHI B, LLC, RAHI Real Estate Holdings, LLC, RCSEJV2004, LLC, Residential Accredited Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation,

Residential Consumer Services of Alabama, LLC, Residential Consumer Services of Ohio, LLC, Residential Consumer Services of Texas, LLC, Residential Consumer Services, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Exchange, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Funding Real Estate Holdings, LLC, Residential Mortgage Real Estate Holdings, LLC, RFC – GSAP Servicer Advance, LLC, RFC Asset Holdings II, LLC, RFC Asset Management, LLC, RFC Borrower LLC, RFC Construction Funding, LLC, RFC REO LLC and RFC SFJV-2002, LLC

By: \_\_\_\_\_  
Name: William Thompson  
Title: General Counsel

By: \_\_\_\_\_  
Name: Jill Horner  
Title: Chief Financial Officer

**{U.S. BANK TRUST NATIONAL ASSOCIATION}, not in its individual capacity, but solely** as Trustee

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

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

~~Its:—~~ \_\_\_\_\_

Title:

Acknowledged and Agreed  
Solely with Respect to Section  
2.09 Hereof:

ALLY FINANCIAL INC.

|  
  
By:  
Name:  
Title:

**SCHEDULE 1**

**QSF BENEFICIARIES ~~AND QSF REPRESENTATIVE SHARES~~ CONTACT INFORMATION**

<b>QSF BENEFICIARY<sup>4</sup></b>	<b>QSF REPRESENTATIVE-SHARE</b>
<del>The Bank of New York Mellon</del>	
<del>The Bank of New York Mellon Trust Company, N.A.</del>	
<del>Deutsche Bank Trust Company Americas</del>	
<del>Deutsche Bank National Trust Company</del>	
<del>U.S. Bank National Association</del>	
<del>Wells Fargo Bank, N.A.</del>	
<del>Law Debenture Trust Company of New York</del>	
<del>HSBC Bank USA National Association</del>	
<del>Citibank, N.A.</del>	
<del>Wilmington Trust Company</del>	

<sup>4</sup>Each QSF Beneficiary will be acting on behalf of their respective RMBS Trusts listed on Schedule 2.

**SCHEDULE 2**

**RMBS TRUSTS AND RMBS REPRESENTATIVE SHARES**

**QSF Beneficiary – The Bank of New York Mellon**

<b>RMBS TRUST</b>	<b>RMBS REPRESENTATIVE SHARE</b>

**QSF Beneficiary – The Bank of New York Mellon Trust Company, N.A.**

<b>RMBS TRUST</b>	<b>RMBS REPRESENTATIVE SHARE</b>

**QSF Beneficiary – Deutsche Bank Trust Company Americas**

<b>RMBS TRUST</b>	<b>RMBS REPRESENTATIVE SHARE</b>

**QSF Beneficiary – Deutsche Bank National Trust Company**

<b>RMBS TRUST</b>	<b>RMBS REPRESENTATIVE SHARE</b>

**QSF Beneficiary—U.S. Bank National Association**

<b>RMBS TRUST</b>	<b>RMBS REPRESENTATIVE SHARE</b>

**QSF Beneficiary—Wells Fargo Bank, N.A.**

<b>RMBS TRUST</b>	<b>RMBS REPRESENTATIVE SHARE</b>

**QSF Beneficiary—Law Debenture Trust Company of New York**

<b>RMBS TRUST</b>	<b>RMBS REPRESENTATIVE SHARE</b>

**QSF Beneficiary—HSBC Bank USA National Association**

<b>RMBS TRUST</b>	<b>RMBS REPRESENTATIVE SHARE</b>

~~QSF Beneficiary—Citibank, N.A.~~

<del>RMBS TRUST</del>	<del>RMBS REPRESENTATIVE SHARE</del>

~~QSF Beneficiary—Wilmington Trust Company~~

<del>RMBS TRUST</del>	<del>RMBS REPRESENTATIVE SHARE</del>

**SCHEDULE 3**

**CONTACT DETAILS FOR QSF BENEFICIARIES**

~~The Bank of New York Mellon~~

~~{ \_\_\_\_\_ }~~

~~The Bank of New York Mellon Trust Company, N.A.~~

~~{ \_\_\_\_\_ }~~

~~Deutsche Bank Trust Company Americas~~

~~{ \_\_\_\_\_ }~~

~~Deutsche Bank National Trust Company~~

~~{ \_\_\_\_\_ }~~

~~U.S. Bank National Association~~

~~{ \_\_\_\_\_ }~~

~~Wells Fargo Bank, N.A.~~

~~{ \_\_\_\_\_ }~~

~~Law Debenture Trust Company of New York~~

~~{ \_\_\_\_\_ }~~

~~HSBC Bank USA National Association~~

~~{ \_\_\_\_\_ }~~

~~Citibank, N.A.~~

~~{ \_\_\_\_\_ }~~

~~Wilmington Trust Company~~

~~{ \_\_\_\_\_ }~~

The Bank of New York Mellon

6525 West Campus Oval

New Albany, Ohio 43054

Attn.: Robert H. Major, Vice President

Telephone No.: 614-775-5278

Fax No.: 614-775-5636

Email: [robert.major@bnymellon.com](mailto:robert.major@bnymellon.com)

The Bank of New York Mellon Trust Company, N.A.

Global Trust-Mortgage Backed Securities

525 William Penn Place, 7<sup>th</sup> Floor

Pittsburgh, PA 15259

Attn.: Jennifer J. Provenzano, Vice President

Telephone No. 412-236-3140  
Fax No.: 412-234-9019  
Email No. Jennifer.j.provenzano@bnymellon.com

Deutsche Bank Trust Company Americas  
1761 East St. Andrew Place  
Santa Ana, CA 92705-4934  
Attn: Residential Capital LLC/Ronaldo Reyes  
Telephone No. 714-247-6320  
Fax No.: 714-247-6478  
Email: ronaldo.r.reyes@db.com

And

Harborside Financial Center  
100 Plaza One  
MS: JCY03-0699  
Jersey City, NJ 07311-3901  
Attn: Brendan Meyer  
Telephone No.: 201-593-8545  
Fax No.: 646-502-4546  
Email: brendan.meyer@db.com

Deutsche Bank National Trust Company  
1761 East St. Andrew Place  
Santa Ana, CA 92705-4934  
Attn: Residential Capital LLC/Ronaldo Reyes  
Telephone No. 714-247-6320  
Fax No.: 714-247-6478  
Email: ronaldo.r.reyes@db.com

And

Harborside Financial Center  
100 Plaza One  
MS: JCY03-0699  
Jersey City, NJ 07311-3901  
Attn: Brendan Meyer  
Telephone No.: 201-593-8545  
Fax No.: 646-502-4546  
Email: brendan.meyer@db.com

U.S. Bank National Association  
Corporate Trust Services Division  
One Federal Street 3rd Floor  
Boston, MA 02110

<p><u>Mail Station: EX-MA-FED</u> <u>Attention: Laura L. Moran, Vice President</u> <u>Telephone No.: 617-603-6429</u> <u>Facsimile No.:: 617-603-6644</u> <u>Email: Laura.Moran@USBank.com</u></p>
<p><u>Wells Fargo Bank, N.A.</u> <u>Sixth and Marquette</u> <u>MAC N9311-161</u> <u>Minneapolis, MN 55479</u> <u>Attn: Mary L. Sohlberg, Structured Products</u> <u>Group – Default and Restructuring (Rescap)</u> <u>Telephone No.: 612-316-0737</u> <u>Fax No.: 612-667-3464</u> <u>Email: mary.l.sohlberg@wellsfargo.com</u></p>
<p><u>HSBC Bank USA, National Association</u> <u>8 East 40<sup>th</sup> Street, 6<sup>th</sup> Floor</u> <u>New York, NY 10016</u> <u>Attn: Fernando Acebedo</u> <u>Telephone No.: 212-525-1309</u> <u>Fax No.: 212-525-1300</u> <u>Email: fernando.acebedo@us.hsbc.com</u></p>
<p><u>Citibank, N.A.</u> <u>388 Greenwich Street, 14<sup>th</sup> Floor</u> <u>New York, New York 10013</u> <u>Attention: Louis Piscitelli</u> <u>Telephone No.: 212-816-5805</u> <u>Fax No.: 212-816-5527</u> <u>Email: Louis.A.Piscitelli@citigroup.com</u></p>
<p><u>Wilmington Trust Company</u> <u>Rodney Square North</u> <u>1100 North Market Street</u> <u>Wilmington, DE 19890-1605</u> <u>Attention: Adam Scozzafava</u> <u>Telephone No.: 302-636-6196</u> <u>Fax No.: 302-636-4140</u> <u>Email: ascozzafava@wilmingtontrust.com</u></p>
<p><u>Wilmington Trust, National Association</u> <u>Rodney Square North</u> <u>1100 North Market Street</u> <u>Wilmington, DE 19890-1605</u> <u>Attention: Adam Scozzafava</u></p>

Telephone No.: [302-636-6196](tel:302-636-6196)  
Fax No.: [302-636-4140](tel:302-636-4140)  
Email: [ascozzafava@wilmingtontrust.com](mailto:ascozzafava@wilmingtontrust.com)

**SCHEDULE 4**

**WIRE TRANSFER DETAILS FOR QSF BENEFICIARIES**

~~The Bank of New York Mellon~~

~~{ \_\_\_\_\_ }~~

~~The Bank of New York Mellon Trust Company, N.A.~~

~~{ \_\_\_\_\_ }~~

~~Deutsche Bank Trust Company Americas~~

~~{ \_\_\_\_\_ }~~

~~Deutsche Bank National Trust Company~~

~~{ \_\_\_\_\_ }~~

~~U.S. Bank National Association~~

~~{ \_\_\_\_\_ }~~

~~Wells Fargo Bank, N.A.~~

~~{ \_\_\_\_\_ }~~

~~Law Debenture Trust Company of New York~~

~~{ \_\_\_\_\_ }~~

~~HSBC Bank USA National Association~~

~~{ \_\_\_\_\_ }~~

~~Citibank, N.A.~~

~~{ \_\_\_\_\_ }~~

~~Wilmington Trust Company~~

~~{ \_\_\_\_\_ }~~

| [SK 03687.0119.1416725 v12](#)

**Exhibit 4**

**Borrower Claims Trust Agreement**

**THE RESCAP BORROWER CLAIMS TRUST**

**TRUST AGREEMENT**

**BY AND AMONG**

**THE BORROWER CLAIMS TRUSTEE,**

**PROVINCE EAST LLC,**

**RESIDENTIAL CAPITAL, LLC**

**AND**

**THE OTHER DEBTORS LISTED ON THE SIGNATURE PAGES HERETO**

December 17, 2013

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**Exhibits**

Exhibit A – Certificate of Trust

Exhibit B – Initial Borrower Claims Trust Budget

Exhibit C –Trust Committee Members

## **THE RESCAP BORROWER CLAIMS TRUST TRUST AGREEMENT**

This Borrower Claims Trust Agreement, dated as of December 17, 2013 (this "Borrower Claims Trust Agreement"), is entered into by and among Residential Capital, LLC ("ResCap"), AKA 13, LLC (f/k/a ditech, LLC), DOA Holding Properties, LLC, DOA Properties IX (Lots-Other), LLC, EPRE LLC, Equity Investment I, LLC, ETS of Virginia, Inc., ETS of Washington, Inc., Executive Trustee Services, LLC, GMAC-RFC Holding Company, LLC, GMAC Model Home Finance I, LLC, GMAC Mortgage USA Corporation, GMAC Mortgage LLC, GMAC Residential Holding Company, LLC, GMAC RH Settlement Services, LLC, GMACM Borrower LLC, GMACM REO LLC, GMACR Mortgage Products, LLC, HFN REO SUB II, LLC, Home Connects Lending Services, LLC, Homecomings Financial Real Estate Holdings, LLC, Homecomings Financial, LLC, Ladue Associates, Inc., Passive Asset Transactions, LLC, PATI A, LLC, PATI B, LLC, PATI Real Estate Holdings, LLC, RAHI A, LLC, RAHI B, LLC, RAHI Real Estate Holdings, LLC, RCSFJV2004, LLC, Residential Accredited Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, Residential Consumer Services of Alabama, LLC, Residential Consumer Services of Ohio, LLC, Residential Consumer Services of Texas, LLC, Residential Consumer Services, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Exchange, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Funding Real Estate Holdings, LLC, Residential Mortgage Real Estate Holdings, LLC, RFC – GSAP Servicer Advance, LLC, RFC Asset Holdings II, LLC, RFC Asset Management, LLC, RFC Borrower LLC, RFC Construction Funding, LLC, RFC REO LLC and RFC SFJV-2002, LLC (each as a debtor and debtor-in-possession, and collectively, the "Debtors"), Province East LLC, or its successor, as Delaware Trustee, and Peter S. Kravitz of Solution Trust LLC d/b/a Solution Trust, or his successor, as the Borrower Claims Trustee.

### **RECITALS**

- A. On May 14, 2012, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.
- B. On or about August 23, 2013, the Debtors filed the Joint Chapter 11 Plan of Residential Capital, LLC, *et al.*, dated August 23, 2013 (as amended and supplemented and as confirmed, the "Plan"), and the related disclosure statement, the "Disclosure Statement").
- C. On or about August 23, 2013, the Bankruptcy Court approved the Disclosure Statement.
- D. On or about December 11, 2013, the Bankruptcy Court issued an order confirming the Plan.
- E. On December 17, 2013, the Effective Date of the Plan occurred.
- F. The Plan provides for a trust (as so formed and administered in accordance with the terms of this Borrower Claims Trust Agreement, the "Borrower Claims Trust") to

administer and distribute the Borrower Claims Trust Assets to holders of Borrower Claims that are Allowed on the Effective Date or that become Allowed after the Effective Date.

G. This Borrower Claims Trust Agreement is being executed to establish and provide for the administration of the Borrower Claims Trust and the distribution of Borrower Claims Trust Assets as contemplated by the Plan.

H. The Borrower Claims Trust is intended to qualify as a “qualified settlement fund” within the meaning of Treasury Regulation Section 1.468B-2 and to be exempt from the requirements of the Investment Company Act of 1940 pursuant to Section 3(c)(5) and Sections 7(a) and 7(b) thereof.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein, the parties hereto agree as follows:

## **ARTICLE I** **DEFINITIONS**

1.1 Definitions Incorporated from the Plan. Other than the terms defined below or elsewhere in this Borrower Claims Trust Agreement, capitalized terms shall have the meaning assigned to them in the Plan.

1.2 Other Definitions.

(a) “**Administrative Funding Payment**” means the one-time cash payment of \$3,200,000 made to the Borrower Claims Trust by the Liquidating Trust on the Effective Date, which amount represents the amount of the administrative costs and expenses of the Borrower Claims Trust to be funded as of the Effective Date by the Liquidating Trust.

(b) “**Borrower Available Assets**” has the meaning assigned in Section 2.4.

(c) “**Borrower Claims Payment**” has the meaning assigned in Section 4.1(a).

(d) “**Borrower Claims Recovery Percentage**” means (i) in the case of a Borrower Claim against a GMACM Debtor, 30.1%; (ii) in the case of a Borrower Claim against an RFC Debtor, 9.0%; and (iii) in the case of a Borrower Claim against ETS, 100%.

(e) “**Borrower Claims Register**” has the meaning assigned in Section 2.4(d).

(f) “**Borrower Claims Trust**” has the meaning assigned in the Recitals.

(g) “**Borrower Claims Trust Administrative Reserve**” means the reserve established for paying costs, fees and expenses, and reserving for liabilities, of the Borrower Claims Trust.

(h) “**Borrower Claims Trust Agents**” means the advisors, professionals, other agents and such other Persons to whom the Borrower Trustee delegates authority, including any disbursement agent, of the Borrower Claims Trust appointed or engaged by the Borrower Claims Trustee in accordance with the provisions of this Borrower Claims Trust Agreement.

(i) “**Borrower Claims Trustee**” means Peter S. Kravitz of Solution Trust LLC d/b/a Solution Trust, or his successor, appointed in accordance with this Borrower Claims Trust Agreement.

(j) “**Borrower Claims Trust Agreement**” has the meaning assigned in the Recitals.

(k) “**Borrower Claims Trust Assets**” means (i) all Borrower Available Assets, (ii) Cash constituting Return Amounts returned to the Borrower Claims Trust following the Effective Date in accordance with Section 2.5 and (iii) any interest, income or proceeds of any of the foregoing.

(l) “**Borrower Claims Trust Beneficial Interest**” means a non-transferable and non-assignable uncertificated beneficial interest in the Borrower Claims Trust to be issued to each holder of an Allowed Borrower Claim, other than an Allowed ETS Borrower Claim and an Allowed Borrower Convenience Claim, the amount of which for each holder shall be calculated as provided in Section 3.1, which entitles its holder to receive distributions of Distributable Excess Cash from the Borrower Claims Trust as set forth in this Borrower Claims Trust Agreement.

(m) “**Borrower Claims Trust Budget**” has the meaning assigned in Section 2.9(a).

(n) “**Borrower Claims Trust Website**” means an internet website maintained by the Borrower Claims Trust in accordance with this Borrower Claims Trust Agreement.

(o) “**Borrower Convenience Claim**” means (i) a Claim that would otherwise be classified as an Allowed Borrower Claim, but, (A) in the case of a Claim against a GMACM Debtor, the aggregate Allowed amount of such Claim is, or is reduced to, \$8,500 or less (or such other value as determined by the Trust Committee) and (B) in the case of a claim against an RFC Debtor, the aggregate Allowed amount of such Claim is, or is reduced to, \$28,000 or less (or such other value as determined by the Trust Committee) or (ii) such other Claim or class of Claim that the Trust Committee has determined shall be classified as a Borrower Convenience Claim for purposes of this Borrower Claims Trust Agreement.

(p) “**Borrower Convenience Claim Payment**” means, an amount in Cash equal to \$500.00 (or such other amount determined by the Trust Committee) plus the amount of such Allowed Borrower Convenience Claim multiplied by (i) in the case of an Allowed Borrower Convenience Claim against a GMACM Debtor, 30.1% and (ii) in the case of an Allowed Borrower Convenience Claim against an RFC Debtor, 9.0%.

(q) “**Business Day**” means any day other than a Saturday, Sunday or legal holiday on which the banks in the City of New York, Borough of Manhattan, are authorized to remain closed.

(r) “**Cause**” means, with respect to the Borrower Claims Trustee, (i) an act of fraud, embezzlement or theft by the Borrower Claims Trustee in connection with the performance of his or her duties under this Borrower Claims Trust Agreement; (ii) intentional misconduct by the Borrower Claims Trustee with respect to the maintenance and disposition of the Borrower Claims Trust Assets; (iii) intentional disclosure of confidential information by the Borrower Claims Trustee in violation of Section 12.8; or (iv) gross negligence by the Borrower Claims Trustee in the performance of his or her duties under this Borrower Claims Trust Agreement.

(s) “**Case Management and Servicing Orders**” means (i) the Order Approving Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a) and (d), Bankruptcy Rules 1015(c), 2002(m), 7016, and 9007 and Local Bankruptcy Rule 2002-2 for Entry of an Order Approving (A) Supplement to Case Management Order Establishing Mandatory Procedures for Management of Adversary Proceedings Commenced by Borrowers and Former Borrowers and (B) Related Relief [Docket No. 3293], as amended by the Amended Order Approving Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a) and (d), Bankruptcy Rules 1015(c), 2002(m), 7016, and 9007 and Local Bankruptcy Rule 2002-2 for Entry of an Order Approving (A) Supplemental to Case Management Order Establishing Mandatory Procedures for Management of Adversary Proceedings Commenced by Borrowers and Former Borrowers and (B) Related Relief [Docket No. 3490], and (ii) Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 1009, 3007 and 9019(b) Approving (I) Claim Procedures, (II) Borrower Claim Procedures, (III) Settlement Procedures, and (IV) Schedule Amendment Procedures [Docket No. 3294].

(t) “**Certificate of Trust**” means the certificate of trust of the Borrower Claims Trust as required by section 3810 of the Trust Act, substantially in the form set forth in Exhibit A to this Borrower Claims Trust Agreement, and filed in connection with the formation of the Borrower Claims Trust pursuant to the Trust Act.

(u) “**Confidentiality Parties**” has the meaning assigned in Section 12.8.

(v) “**Conflicted Member**” has the meaning assigned in Section 5.4(d).

(w) “**Cooperation Agreement**” means that certain Cooperation Agreement, dated the date hereof, by and between the Borrower Claims Trust and the Liquidating Trust.

(x) “**Debtors**” has the meaning assigned in the Preamble.

(y) “**Delaware Trustee**” means Province East LLC, or its successor, which is appointed in accordance with this Borrower Claims Trust Agreement to comply with the requirement of section 3807 of the Trust Act.

(z) “**Designee**” has the meaning assigned in Section 7.6.

(aa) “**Disputed Borrower Claims**” means Borrower Claims that at any relevant time are Disputed Claims.

(bb) “**Disputed Claims Reserve**” means the reserve of Cash maintained by the Borrower Claims Trust, for distribution to holders of Disputed Borrower Claims that are subsequently Allowed.

(cc) “**Dispute Resolution**” has the meaning assigned in Section 3.7.

(dd) “**Distributable Excess Cash**” means Cash included at any time in the Borrower Claims Trust Assets, other than the Return Amount Reserve, in excess, but without duplication, of (i) the amount of Cash required for making Borrower Claims Payments in respect of Allowed Borrower Claims, (ii) the minimum amount of Cash required be held in the Disputed Claims Reserve for making payments in respect of Disputed Borrower Claims that may become Allowed pursuant to Section 6.3, and (iii) the amount of Cash required to fund the Borrower Claims Trust Administrative Reserve and any other reserve required to be maintained under this Borrower Claims Trust Agreement.

(ee) “**Estimated Amount**” means the estimated amount of a Disputed Borrower Claim, as determined by the Borrower Claims Trustee, which may be (i) the filed amount of the Claim, (ii) such amount as estimated by the Bankruptcy Court at the request of the Debtors or the Borrower Claims Trust pursuant to Bankruptcy Code section 502(c), (iii) such other estimated amount determined in accordance with the Plan, including Article VIII.A.4. thereof, or (iv) such amount calculated in good faith on the basis of a reasonable estimate by the Trust Committee taking into account historical resolutions, by litigation or otherwise, of similar Borrower Claims.

(ff) “**ETS Borrower Claim**” means a Borrower Claim against ETS.

(gg) “**Fee and Expense Report**” has the meaning assigned in Section 6.7(c).

(hh) “**Fee Notice Period**” has the meaning assigned in Section 6.7(c).

(ii) “**FDIC**” means the Federal Deposit Insurance Corporation or any successor institution.

(jj) “**Fiscal Year**” means any fiscal year of the Borrower Claims Trust, as provided in Section 2.8 hereof.

(kk) “**KSC Committee Member**” has the meaning assigned in Section 5.1(a).

(ll) “**Plan**” has the meaning assigned in the Recitals.

(mm) “**Plan Documents**” means, collectively, the Plan, the Confirmation Order and this Borrower Claims Trust Agreement.

(nn) “**Return Amount**” has the meaning assigned in Section 2.4(a).

(oo) “**Return Amount Reserve**” means the reserve of Cash maintained by the Borrower Claims Trust for distribution to certain Trust Beneficiaries as provided in Section 6.5.

(pp) “**Tax Authority**” means a federal, state, local, or foreign government, or agency, instrumentality, or employee thereof, court or other body (if any) charged with the administration of any law relating to Taxes.

(qq) “**Taxes**” means all (i) federal, state, local, or foreign taxes, including, without limitation, all net income, alternative minimum, net worth or gross receipts, capital, value added, franchise, profits, estimated, property, transfer and sales or use taxes, and (ii) interest, penalties, fines, additions to tax or additional amounts imposed by any Tax Authority or paid in connection with any item described in clause (i) hereof.

(rr) “**Tax Return**” means a return, declaration, form, election, letter, report, statement, estimate, information return, or other information filed or required to be filed with respect to any Taxes, including any schedule or attachment thereto or amendment thereof, including any claim for a Tax refund.

(ss) “**Trust Act**” means, the Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq., as the same may from time to time be amended, or any successor statute.

(tt) “**Trust Beneficiaries**” means (i) the holders of Allowed Borrower Claims and (ii) any holder of a Disputed Borrower Claim that may in the future be entitled to receive a distribution of Distributable Excess Cash from the Disputed Claims Reserve.

(uu) “**Trust Beneficiary Committee Member**” ” has the meaning assigned in Section 5.1(a).

(vv) “**Trust Committee**” means the committee of individuals appointed to administer and oversee the affairs of the Borrower Claims Trust, as provided in this Borrower Claims Trust Agreement.

(ww) “**Trustee**” means either of the Borrower Claims Trustee or the Delaware Trustee.

1.3 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code; the Bankruptcy Rules; or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Borrower Claims Trust Agreement, and the word “herein” and words of similar import refer to this Borrower Claims Trust Agreement as a whole and not to any particular Article, Section or subdivision of this Borrower Claims Trust Agreement. The term “including” shall mean “including, without limitation.”

**ARTICLE II**  
**CREATION OF BORROWER CLAIMS TRUST**

2.1 Creation of Trust. The Borrower Claims Trust shall be deemed to have been created by the Debtors and the Trustees effective as of the time of filing of the Certificate of Trust. The Borrower Claims Trust shall bear the name “ResCap Borrower Claims Trust” and the Borrower Claims Trustee may, in connection with the exercise of his powers and duties hereunder, either use this name or such variation thereof from time to time.

2.2 Purpose of Borrower Claims Trust.

(a) The Borrower Claims Trust is established for the purpose of directing the reconciliation, processing, liquidation and payment of the Allowed Borrower Claims in accordance with this Borrower Claims Trust Agreement, and preserving, holding and managing the Borrower Claims Trust Assets. For the avoidance of doubt, the Borrower Claims Trust shall be completely independent of the Liquidating Trust, and neither the Liquidating Trust nor its agents shall have any authority over the Borrower Claims Trust or the Borrower Claims Trustee.

(b) This Borrower Claims Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Borrower Claims Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall any of the Trustees or the Trust Beneficiaries, for any purpose be, or be deemed to be or be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Trust Beneficiaries to the Trustees shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Borrower Claims Trust Agreement.

2.3 Status of Borrower Claims Trust and the Trust Committee.

(a) Subject to the terms of the Confirmation Order, the Borrower Trust shall be the successor-in-interest to the Debtors with respect to any (a) Available Asset constituting Borrower-Related Causes of Action to the extent not waived and released under the Plan and (b) any objection or motion objecting to Borrower Claims that was, is, or could have been commenced or filed, as applicable, by any of the Debtors prior to the Effective Date and shall be deemed substituted for each such Debtor as the party in any such litigation or contested matter.

(b) The Borrower Claims Trust, acting through the Borrower Claims Trustee under the supervision of the Trust Committee, will be the representative of the Estates as that term is used in section 1123(b)(3)(B) of the Bankruptcy Code, with respect to the Borrower-Related Causes of Action and shall have the rights and powers provided in the Bankruptcy Code in addition to any rights and powers granted in the Plan Documents, including the rights to object to Borrower Claims. The Borrower Claims Trust shall be the

successor-in-interest to the Debtors with respect to any and all such matters and shall be deemed substituted for each such Debtor as the party in any such litigation or contested matter.

(c) All Borrower-Related Causes of Action are preserved and retained and may be enforced by the Borrower Claims Trust pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to the extent not waived and released under the Plan.

#### 2.4 Transfer of Borrower Available Assets.

(a) On the Effective Date, subject to the terms of the Confirmation Order, (i) the Liquidating Trust, in its capacity as disbursing agent for the Debtors, if such distribution is not otherwise made by the Debtors, shall transfer (I) Cash in the amount of \$56,101,527, which amount represents \$57,600,000 (A) less any amounts paid by the Debtors to or on behalf of the holders of Allowed Borrower Claims pursuant to settlements entered into prior to the Effective Date pursuant to the Case Management and Servicing Orders or any other order of the Bankruptcy Court and (B) plus the amount, if any, of the Borrower Trust True-Up, which calculation is set forth on Schedule 2.4 hereto, and (II) the Administrative Funding Payment and (ii) the Debtors shall transfer all of the Available Assets constituting Borrower-Related Causes of Action, in the form thereof existing on such date (clauses (i) and (ii) collectively, the "Borrower Available Assets"), in each case, to the Borrower Claims Trust, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other persons and entities to the maximum extent contemplated by and permissible under section 1141 of the Bankruptcy Code. For the avoidance of doubt, the Borrower-Related Causes of Action shall not include Estates' claims, rights and remedies with respect to any note and accompanying mortgage or deed of trust originated, owned, acquired or serviced by the Estates as of the Effective Date and any such claim, right or remedy shall constitute an Available Asset to be assigned to the Liquidating Trust; provided, however, the Estates shall expressly reserve and assign to the Borrower Claims Trust, all claims, defenses, set-offs, cross-claims and counterclaims that the Debtors may have against Borrowers with respect to any Borrower Claim. The Borrower Claims Trust shall have such incidents of ownership in such transferred assets as are necessary to undertake the actions and transactions authorized in the Plan Documents. The transfer of the Borrower Available Assets shall be exempt from any stamp, real estate transfer, mortgage recording, sales, use or other similar tax pursuant to section 1146 of the Bankruptcy Code. Upon the transfer of the Borrower Available Assets to the Borrower Claims Trust, such assets shall become Borrower Claims Trust Assets.

(b) Notwithstanding the foregoing, if on the Effective Date, any of the Borrower Available Assets cannot be transferred to the Borrower Claims Trust for any reason, for example, because the Borrower Claims Trust has not yet established accounts for the purpose of holding Cash or because of a restriction on transferability under applicable non-bankruptcy law that is not superseded by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, the Debtors (or successors thereto) or the Liquidating Trust, as applicable, shall continue to hold such Borrower Claims Trust Assets, as bailee for the account of the Borrower Claims Trust, until such time as the Borrower Claims Trust informs the Debtors (or successors thereto) or the Liquidating Trust, as applicable, that the Borrower Claims Trust may receive such Borrower Available Assets, whereupon such assets shall be promptly transferred to the Borrower Claims Trust and become Borrower Claims Trust Assets;

provided that any proceeds realized from such assets retained by the Debtors (or any successors thereto) or the Liquidating Trust, as applicable, shall nevertheless be deemed to constitute Borrower Claims Trust Assets, and to likewise be held by the Debtors (or successors thereto) or the Liquidating Trust, as applicable, as bailee, and be turned over as soon as practicable to the Borrower Claims Trust pursuant to this Borrower Claims Trust Agreement as if such transfer had not been restricted under applicable non-bankruptcy law. The Borrower Claims Trustee may commence an action in the Bankruptcy Court to resolve any dispute regarding the allocation of the proceeds of any Borrower Available Assets retained by the Debtors (or any successors thereto) or the Liquidating Trust, as applicable, pursuant to the Plan Documents.

(c) On or prior to the Effective Date, the Debtors shall deliver or cause to be delivered to the Liquidating Trust any and all of the Debtors' books and records that relate primarily to or that may be reasonably required in connection with the Borrower Available Assets, whether held by the Debtors, their agents, representatives, advisors, attorneys, accountants and any other professionals hired by the Debtors and provide reasonable access to such employees, agents, advisors, attorneys, accountants or any other Debtor professionals with knowledge of matters relevant to the Borrower Available Assets. The Liquidating Trust shall store and maintain such books and records for the benefit of the Borrower Claims Trust, the Borrower Claims Trustee, and Borrower Claims Trust Agents shall be afforded access to such books and records, in each case, in accordance with the terms of the Cooperation Agreement.

(d) On or prior to the Effective Date, the Debtors shall deliver, or cause to be delivered, to the Borrower Claims Trust a complete list of all Allowed Borrower Claims, including Allowed ETS Borrower Claims, Allowed Borrower Convenience Claims, if any, and Disputed Borrower Claims, reflected on the claims registry (the "Borrower Claims Register") as of the Effective Date. The list shall include the names and addresses of the holders of such Claims and, in the case of Allowed Borrower Claims, Allowed ETS Borrower Claims and Allowed Borrower Convenience Claims, the amounts thereof, and in the case of Disputed Borrower Claims, the amounts thereof as filed and the Estimated Amounts (if any) thereof. The list of Disputed Borrower Claims shall include the details of all objections, including filed objections and identified potential objections (if any), in respect of such the Claims.

(e) The Borrower Claims Trust, as successor-in-interest to the Estates with respect to the Borrower Available Assets, may (i) execute and deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) take, or cause to be taken, all such further action in order to evidence, vest, perfect or effectuate the transfer of all of the Borrower Available Assets to the Borrower Claims Trust and consummate transactions contemplated by and to otherwise carry out the intent of the Plan Documents with respect to such assets.

2.5 Borrower Return Amounts. Subject to the Kessler Settlement Agreement and the Mitchell Settlement Agreement, to the extent a Trust Beneficiary recovers insurance proceeds on account of all or some of an Allowed Borrower Claim, and payments on account of such Allowed Borrower Claim have been made pursuant to this Borrower Claims Trust Agreement, the Trust Beneficiary shall be required to return a portion of such payments

received by such Trust Beneficiary to the Borrower Claims Trust, in accordance with Article IV.F.6. of the Plan (such returned amount, a “Return Amount”). Any Return Amounts received by the Borrower Claims Trust shall be added to the Return Amount Reserve.

2.6 Title to Borrower Claims Trust Assets. Subject to Section 2.4(a), upon the transfer of Available Assets, the Borrower Claims Trust shall succeed to all of the Debtors’ right, title and interest in the Borrower Available Assets, and the Debtors will have no further rights or interest in or with respect to the Borrower Claims Trust Assets or the Borrower Claims Trust.

2.7 No Reversion to Debtors; Distribution of Remaining Assets.

(a) In no event shall any part of the Borrower Claims Trust Assets revert to or be distributed to or for the benefit of any Debtor.

(b) To the extent that after satisfaction in full of all of the costs and expenses of the administration of the Borrower Claims Trust, after all Disputed Borrower Claims have been either Allowed or disallowed, after all Allowed Borrower Claims have been paid pursuant to the Plan Documents, after satisfaction of all other obligations or liabilities of the Borrower Claims Trust incurred or assumed in accordance with the Plan Documents, after the Borrower Claims Trust has made the maximum distribution of Distributable Excess Cash to the Trust Beneficiaries to the extent reasonably practicable, after the Borrower Claims Trust has distributed all of the Cash held in the Return Amount Reserve in accordance with Section 6.5, and after the affairs of the Borrower Claims Trust have been finally wound up and concluded in accordance with the provisions of Article XI hereof and section 3808 of the Trust Act, there shall remain any Borrower Claims Trust Assets, the Borrower Claims Trust shall distribute such remaining Borrower Claims Trust Assets to an organization, selected by the Trust Committee, described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code that is unrelated to the Debtors, the Borrower Claims Trust or the Borrower Claims Trustee.

2.8 Fiscal Year. Except for the first and last years of the Borrower Claims Trust, the Fiscal Year of the Borrower Claims Trust shall be the calendar year. For the first and last years of the Borrower Claims Trust, the Fiscal Year of the Borrower Claims Trust shall be such portion of the calendar year that the Borrower Claims Trust is in existence. The terms fiscal quarter, or similar references, as used in this Borrower Claims Trust Agreement, shall have a correlative meaning.

2.9 Borrower Claims Trust Budget.

(a) There shall be prepared an annual plan and budget for the Borrower Claims Trust (any such plan and budget, as it may be amended from time to time in accordance with the terms hereof, the “Borrower Claims Trust Budget”) for each Fiscal Year, except that the Borrower Claims Trust Budget for the first Fiscal Year, if less than six calendar months, may be combined with the Borrower Claims Trust Budget for the next succeeding Fiscal Year, and the Borrower Claims Trust Budget for the last Fiscal Year, if less than six calendar months, may be combined with the Borrower Claims Trust Budget for the immediate prior

Fiscal Year, unless the Trust Committee determines that a Borrower Claims Trust Budget is not necessary for such Fiscal Year. Except as otherwise determined by the Trust Committee, the Borrower Claims Trust Budget shall set forth (on an annual basis) in reasonable detail the anticipated expenses of the Borrower Claims Trust for the relevant period and the sources of funding available to satisfy the expenses.

(b) The initial Borrower Claims Trust Budget is attached as Exhibit B to this Borrower Claims Trust Agreement. Except as otherwise approved by the Trust Committee, the form of each Borrower Claims Trust Budget shall be substantially the same as the form of the initial Borrower Claims Trust Budget.

(c) Not less than thirty (30) days before the beginning of each Fiscal Year (other than the first Fiscal Year and other than the second Fiscal Year, if the initial Borrower Claims Trust Budget covers such Fiscal Year and other than the last Fiscal Year, if the Borrower Claims Trust Budget for the next preceding Fiscal Year covers such Fiscal Year), the Borrower Claims Trustee shall submit to the Trust Committee a proposed Borrower Claims Trust Budget for such Fiscal Year, together with a comparison to the Borrower Claims Trust Budget then in effect and an explanation of the differences between the two in reasonable detail. The Borrower Claims Trust Budget for such Fiscal Year shall not become effective until approved by the Trust Committee, and until so approved, the Borrower Claims Trust Budget for the prior year shall constitute the Borrower Claims Trust Budget for the subsequent year on an interim basis.

(d) Amendments, if any, to the Borrower Claims Trust Budget shall not become effective unless and until approved by the Trust Committee.

(e) Except as otherwise approved by the Trust Committee, the amount expended in any Fiscal Year (or, if the initial or final Borrower Claims Trust Budget shall cover a combined period as provided above, in such combined period) on any item of expense set forth in the Borrower Claims Trust Budget shall not exceed by more than twenty percent (20)% the budgeted amount therefor set forth in the Borrower Claims Trust Budget for the relevant Fiscal Year.

2.10 Insurance. The Borrower Claims Trust shall maintain customary insurance coverage for the protection of the Trustees and Trust Committee (which coverage shall be primary to any other coverage potentially available to such Persons), and may procure insurance coverage for such employees and Borrower Claims Trust Agents as the Trust Committee may determine in its discretion, and the cost thereof shall be reflected in the Borrower Claims Trust Budget.

#### 2.11 Books and Records.

(a) The Borrower Claims Trustee shall cause to be stored and maintained books and records for the period commencing on the date hereof through the termination of the Borrower Claims Trust, containing such information concerning the Borrower Claims Trust Assets, the conduct of the affairs of the Borrower Claims Trust and the Trust Beneficiaries, in such detail and for such periods of time as may be necessary to enable the Borrower Claims

Trust to make full and proper accounting in respect thereof and to comply with applicable provisions of law. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Borrower Claims Trust.

(b) The Borrower Claims Trust shall be authorized without further application to the Bankruptcy Court or notice to any party, to abandon or otherwise destroy books and records (whether in electronic or paper format) in accordance with Section 11.2.

(d) Anything in the Trust Act to the contrary notwithstanding, no Trust Beneficiary shall have the right to obtain from the Borrower Claims Trust any of its books or records except as expressly provided in this Borrower Claims Trust Agreement or as may otherwise be expressly permitted by the Borrower Claims Trustee.

2.12 No Interest or Accruals. Except as otherwise may be expressly provided in the Plan Documents, holders of Borrower Claims shall not be entitled to interest on the distributions provided for in this Borrower Claims Trust Agreement, regardless of whether such distributions are deliverable on or at any specified time after the Effective Date.

### **ARTICLE III** **TRUST BENEFICIARIES**

3.1 Receipt of Borrower Claims Trust Beneficial Interest. Subject to Section 4.1(c), on the Effective Date, each holder of an Allowed Borrower Claim as of the Effective Date shall be deemed to receive a Borrower Claims Trust Beneficial Interest in an amount corresponding to the amount of such holder's Allowed Claim multiplied by the applicable Borrower Claims Recovery Percentage. Subject to Section 4.1(c), the holder of a Borrower Claim that is a Disputed Claim on the Effective Date and that subsequently becomes Allowed, in whole or in part, shall be deemed to receive a Borrower Claims Trust Beneficial Interest in an amount corresponding to the amount of such holder's Allowed Claim multiplied by the applicable Borrower Claims Recovery Percentage at such time as such Claim becomes Allowed.

3.2 Evidence of Borrower Claims Trust Beneficial Interest. Ownership of a Borrower Claims Trust Beneficial Interest shall be evidenced by appropriate notation on the books and records maintained for that purpose by the Borrower Claims Trust or an agent of the Borrower Claims Trust. Such notation shall be conclusive absent manifest error, and the Borrower Claims Trust and the Borrower Claims Trustee shall treat each Person whose name is recorded on the books and records of the Borrower Claims Trust as aforesaid as the owner of the Borrower Claims Trust Beneficial Interest indicated therein for all purposes of this Borrower Claims Trust Agreement, notwithstanding notice to the contrary. The notation shall be in such form as the Borrower Claims Trustee shall determine, but shall correspond in amount or quantity to the amount of the Allowed Borrower Claim in respect of which the Borrower Claims Trust Beneficial Interest was issued. A Trust Beneficiary shall be deemed the "holder of record" of such beneficiary's Borrower Claims Trust Beneficial Interest for purposes of all applicable laws, rules and regulations. The Borrower Claims Trustee shall, upon the written request of a Trust Beneficiary, provide reasonably adequate documentary

evidence of such Trust Beneficiary's Borrower Claims Trust Beneficial Interest; provided that the Borrower Claims Trustee shall not be required to provide such evidence to a Trust Beneficiary in response to more than one request of such Trust Beneficiary during any twelve-month period. The expense (including Borrower Claims Trustee fees and professional fees) of providing such documentation shall be borne by the requesting Trust Beneficiary.

3.3 Non-Transferability of the Borrower Claims Trust Beneficial Interests. Borrower Claims Trust Beneficial Interests shall not be transferable or assignable except by will, intestate succession or operation of law; provided that any transfer or assignment of a Borrower Claims Trust Beneficial Interest by will, intestate succession or operation of law shall not be effective unless and until such transfer or assignment is recorded on the books and records of the Borrower Claims Trust maintained for that purpose, as provided in Section 3.2. Notwithstanding any other provision to the contrary, the Borrower Claims Trustee may disregard any purported transfer or assignment of Borrower Claims Trust Beneficial Interests by will, intestate succession or operation of law if necessary information (as reasonably determined by the Borrower Claims Trustee), including applicable Tax-related information, is not provided by such purported transferee or assignee to the Borrower Claims Trustee.

3.4 Borrower Claims Trust Beneficial Interests Not Securities. The Borrower Claims Trust Beneficial Interests shall not constitute "securities" and shall not be registered pursuant to the Securities Act of 1933, as amended, or any state securities law. However, if it should be determined that the Borrower Claims Trust Beneficial Interests constitute "securities," the exemption provisions of section 1145 of the Bankruptcy Code shall apply to the Borrower Claims Trust Beneficial Interests.

3.5 Rights of Trust Beneficiaries. Each Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Trust Beneficiary hereunder on account of its Borrower Claims Trust Beneficial Interest. Each Trust Beneficiary shall take and hold the same, subject to all the terms and conditions of the Plan Documents. The interest of a Trust Beneficiary is hereby declared and shall be, in all respects, personal property.

3.6 Interest Beneficial Only. Except as expressly provided hereunder, a Trust Beneficiary shall have no title to, right to, possession of, management of or control of the Borrower Claims Trust or the Borrower Claims Trust Assets. The ownership of a Borrower Claims Trust Beneficial Interest in the Borrower Claims Trust shall not entitle any Trust Beneficiary to any title in or to the Borrower Claims Trust Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein.

3.7 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to a Borrower Claims Trust Beneficial Interest, the Borrower Claims Trust (as determined by the Trust Committee at its sole election or by the Borrower Claims Trustee pursuant to delegated authority of the Trust Committee) shall be entitled to refuse to comply with any such conflicting claims or demands. In so refusing, the Borrower Claims Trust may elect to make no payment or distribution with respect to the Borrower Claims Trust Beneficial Interest at issue subject to the claims or demands involved, or any part thereof, and the Borrower Claims Trust shall be entitled to refer such conflicting claims or demands to the

Bankruptcy Court, which shall have exclusive and continuing jurisdiction over resolution of such conflicting claims or demands. Neither the Borrower Claims Trust, the Trust Committee nor the Borrower Claims Trustee shall be or become liable to any party for either (x) the election to continue making payments or distributions pursuant to its books and records, without regard to the conflicting claims or demands; or (y) the election to cease payments or distributions with respect to the subject Borrower Claims Trust Beneficial Interest(s). In the event that the Borrower Claims Trust elects to cease payments, it shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court (or such other court of proper jurisdiction) or (ii) all differences have been resolved by a written agreement among all of such parties and the Borrower Claims Trust, which agreement shall include a complete release of the Borrower Claims Trust, the Trust Committee and the Borrower Claims Trustee in form and substance reasonably satisfactory to the Trust Committee (the occurrence of either (i) or (ii), a “Dispute Resolution”). Promptly after a Dispute Resolution is reached, the Borrower Claims Trust shall transfer the payments and distributions, if any, held in the segregated account, together with any interest and income earned thereon, if any, in accordance with the terms of such Dispute Resolution.

3.8 Trust Beneficiary Liability to Third Persons. No Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Borrower Claims Trust Assets or the affairs of the Borrower Claims Trust to the fullest extent provided by section 3803(a) of the Trust Act.

3.9 Actions in the Right of the Borrower Claims Trust. No Trust Beneficiary shall have the right to bring an action in the right of the Borrower Claims Trust to recover a judgment pursuant to section 3816 of the Trust Act unless such Trust Beneficiary or Trust Beneficiaries individually or collectively own ten percent (10%) or more of the total Borrower Claims Trust Beneficial Interests outstanding.

#### **ARTICLE IV** **SATISFACTION OF BORROWER CLAIMS**

##### 4.1 General.

(a) Each holder of an Allowed Borrower Claim shall be entitled to receive (i) Cash in an amount equal to the Allowed amount of such Claim multiplied by the applicable Borrower Claims Recovery Percentage (a “Borrower Claims Payment”) and (ii) its Borrower Claim Trust Beneficial Interest, as provided in Section 3.1. For the avoidance of doubt, any insurance proceeds to which a holder of an Allowed Borrower Claim may be entitled shall be in addition to, and not inclusive of, a Borrower Claims Payment, subject to the right of the Borrower Claims Trust to any Return Amounts pursuant to Section 2.5, and any Cash distributions from the Return Amount Reserve shall be made in accordance with Section 6.5(b).

(b) For the purposes of determining the Allowed amount of a Borrower Claim, if such Borrower Claim constitutes, in whole or in part, a Consent Order Borrower Claim, the Allowed amount of such Borrower Claim shall be reduced to the extent paid pursuant to the Consent Order or any settlement of the Debtors’ obligations thereunder,

without further order of the Bankruptcy Court.

(c) Notwithstanding the provisions of subsection (a) above, (i) each holder of a Borrower Convenience Claim that is or becomes Allowed shall receive a payment in Cash in an amount equal to the Borrower Convenience Claim Payment with respect to such Claim and (ii) each holder of an ETS Borrower Claim that is or becomes Allowed shall receive a Borrower Claim Payment with respect to such Claim. For the avoidance of doubt, the payments received by holders of Borrower Convenience Claims and ETS Borrower Claims pursuant to this Section 4.1(c) shall represent the full and final satisfaction of such Claims and such holders shall not receive Borrower Claims Trust Beneficial Interests.

(d) The Borrower Claims Payment is intended to be comparable to the recovery that the holder of an Allowed Claim in the same amount against the same Debtor Group would realize from distributions made by the Liquidating Trust on Units issued to Unitholders with respect to such Allowed Claim, based on the estimated value of the Liquidating Trust Assets available for distribution to Unitholders as of the Effective Date (without, in each case, giving effect to any insurance proceeds, including proceeds from the GM Policies that may be received in respect of certain Allowed Borrower Claims or to the time delay in receipt of distributions in respect of the Units). Notwithstanding the foregoing and subject to the terms of the Confirmation Order, the allocated share of Cash available for distributions from the Borrower Claims Trust shall be solely determined by the provisions of this Borrower Claims Trust Agreement, and not by the Liquidating Trust Agreement or any other Plan Document.

#### 4.2 Borrower Claims Payments.

(a) As soon as practicable following the Effective Date, the Borrower Claims Trust shall make a Borrower Claims Payment to each holder of a Borrower Claim that is Allowed as of the Effective Date.

(b) Each holder of a Borrower Claim that was not Allowed as of the Effective Date and that is subsequently Allowed, in whole or in part, shall receive from the Disputed Claims Reserve a Borrower Claims Payment in respect of such Claim following the date such Claim becomes Allowed. Such Borrower Claims Payments shall be made at such time and from time to time as determined by the Trust Committee, provided that a Borrower Claims Payment shall be made no later than ninety (90) days following date on which the respective Borrower Claim becomes Allowed.

(c) At the time a Borrower Claims Payment is made in respect of a Borrower Claim that becomes Allowed following the Effective Date, there shall also be paid to the holder of such Borrower Claim from the Disputed Claims Reserve an amount of Cash equal to all distribution that the holder of a Borrower Claims Trust Beneficial Interest corresponding to such Allowed Borrower Claim would have received had such holder received such Borrower Claims Trust Beneficial Interest as of the Effective Date; provided, that with respect to Borrower Convenience Claims and ETS Borrower Claims that become Allowed following the Effective Date, there shall be paid to each such holder of a Borrower Convenience Claim or ETS Borrower Claim, such amounts that such holder would have received under Section 4.1(c)

had such Claim been Allowed as of the Effective Date.

(d) Notwithstanding anything to the contrary herein, the Borrower Claims Trust shall in no event be obligated to make any payment to a holder of a Borrower Claim, whether by Borrower Claims Payment or distribution in respect of a Borrower Claims Trust Beneficial Interest or otherwise, in the event the total amount of such Borrower Claim, after giving effect to payment of any Return Amount, has been satisfied in full, and such holder has collected the total amount of such Borrower Claim, whether through the receipt of insurance proceeds, payments hereunder, other sources or a combination of the foregoing, or otherwise.

(e) Notwithstanding anything to the contrary herein, the Trust Committee may determine to adjust the timing and amount of a Borrower Claims Payment to the extent necessary for the Borrower Claims Trust to meet the Cash maintenance requirements of the Disputed Claims Reserve and the Borrower Claims Trust Administrative Reserve set forth in this Trust Agreement.

#### 4.3 Distributions of Distributable Excess Cash.

(a) Subject to Section 6.5, if at any time the Trust Committee determines that there exists any Distributable Excess Cash held by the Borrower Claim Trust, including Cash in the Disputed Claims Reserve in excess of the minimum amount specified in Section 6.3, the Trust Committee may, but shall not be required to, make a distribution of all or part of such Distributable Excess Cash to holders of Borrower Claims Trust Beneficial Interests. Such distribution shall be made pro rata to all holders of Borrower Claims Trust Beneficial Interests; provided that in connection with such distribution the Disputed Claims Reserve shall be deemed to have a Borrower Claims Trust Beneficial Interest corresponding to the Estimated Amount of all Disputed Borrower Claims as of the relevant time. The Trust Committee shall establish a record date, which shall be no earlier than fifteen (15) calendar days prior to the date of the distribution, for the purpose of determining the holders of Borrower Claims Trust Beneficial Interests entitled to receive such distribution and the Borrower Claims Trust Beneficial Interest deemed held for these purposes by the Disputed Claims Reserve.

(b) At such time as all Cash in the Disputed Claims Reserve shall have been distributed, and Borrower Claim Payments have been made to all holders of Allowed Borrower Claims, any remaining Distributable Cash shall be distributed to the holders of Borrower Claims Trust Beneficial Interests pro rata.

4.4 Delivery of Payments and Distributions. Subject to Bankruptcy Rule 9010, and except as provided in this Section 4.4, all payments and distributions to any holder of an Allowed Borrower Claim shall be made at the address of such holder as set forth on the Borrower Claims Register delivered to the Borrower Claims Trust pursuant to Section 2.4(d), unless the Debtors or the Borrower Claims Trustee has been notified in writing of a change of address, including, without limitation, by the filing of a proof of Claim by such holder that contains an address for such holder different than the address of such holder as set forth on the Borrower Claims Register.

4.5 Undeliverable and Unclaimed Payments and Distributions. In the event that any payment or distribution to any holder of an Allowed Borrower Claim or Allowed Borrower Convenience Claim is returned as undeliverable, the Borrower Claims Trust in consultation with the Borrower Claims Trustee shall use commercially reasonable efforts to determine the current address of each holder, but no payment or distribution to such holder shall be made unless and until the Borrower Claims Trust has determined the then current address of such holder; provided, however, that all payments and distributions made pursuant to this Borrower Claims Trust Agreement that are unclaimed for a period of six (6) months after payment or distribution thereof shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and revested in the Borrower Claims Trust and any entitlement of any holder of any Claims to such payments or distributions shall be extinguished and forever barred. The Borrower Claims Trust shall have no further obligation to make any payment or distribution to the holder of such Claim on account of such Claim, and any entitlement of any holder of such Claim to any such payments or distributions shall be extinguished and forever barred; provided, however, that the holder of such Claim may receive future payments or distributions on account of such Claim by contacting the Borrower Claims Trustee prior to the final distribution by the Borrower Claims Trust pursuant to Section 4.3(b).

4.6 Withholding and Reporting Requirements. The Borrower Claims Trust may withhold and pay to the appropriate Tax Authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or distribution to the Trust Beneficiaries. All such amounts withheld and paid to the appropriate Tax Authority (or placed in escrow pending resolution of the need to withhold) shall be treated as amounts distributed to such holders for all purposes of the Plan and this Borrower Claims Trust Agreement. The Borrower Claims Trust shall be authorized to collect such tax information from the Trust Beneficiaries including social security numbers or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan and this Borrower Claims Trust Agreement. To receive distributions under the Plan, the Trust Beneficiaries shall be required to identify themselves to the Borrower Claims Trust and provide tax information and the specifics of their holdings, to the extent the Borrower Claims Trust or such disbursing agent deems appropriate (including completing the appropriate Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9, as applicable to each holder). The Borrower Claims Trust may refuse to make a distribution to any Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; provided, however, that, upon the delivery of such information by a Trust Beneficiary, the Borrower Claims Trust shall make such distribution to which the Trust Beneficiary is entitled, without interest; and provided further that, if the holder fails to comply with such a request within one (1) year, such distribution shall be deemed an unclaimed distribution to be treated as the Trust Committee determines in its discretion; and provided further that, if the Borrower Claims Trust fails to withhold in respect of amounts received or distributable with respect to any such holder and the Borrower Claims Trust is later held liable for the amount of such withholding, such holder shall reimburse the Borrower Claims Trust for such liability including interest, penalties, fines and other additions thereto. Notwithstanding the foregoing, each Trust Beneficiary that receives a distribution under the Plan shall have the sole and exclusive responsibility for the payment of any Taxes imposed by any governmental unit, including income, withholding and other Taxes, on account of such distribution.

4.7 Disbursing Agent. Upon prior approval by the Trust Committee, the Borrower Claims Trustee may engage one or more agents to make payments and distributions. References in this Borrower Claims Trust Agreement to distributions by the Borrower Claims Trust shall include distributions made by a disbursing agent.

4.8 Minimum Payments; Other Limitations. No Cash payment of less than \$50.00 shall be made by the Borrower Claims Trust to a holder of an Allowed Claim on account of such Allowed Claim. If a holder of an Allowed Claim would be entitled to receive less than \$50.00 as of the time of a particular payment, but would be entitled to receive more than \$50.00 in combination with later payments or distributions, the Borrower Claims Trust will combine such payments with later payments or distributions to such holder of an Allowed Claim so that such holder may eventually be entitled to a payment or distribution of at least \$50.00 in value. Whenever any payment of Cash of a fraction of a dollar would otherwise be required, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or less being rounded down.

4.9 Subordination. All distributions pursuant to this Borrower Claims Trust Agreement shall be subject to the subordination provisions of the Plan. The Borrower Claims Trust reserves the right to seek subordination of any Claim in accordance with applicable law.

## **ARTICLE V** **TRUST COMMITTEE**

5.1 General. The affairs of the Borrower Trust shall be managed by, or under the direction, of the Trust Committee, which shall have such powers and authority as are provided in this Article V and as elsewhere set forth in this Borrower Trust Agreement and in the Trust Act.

### 5.2 Membership

(a) The Trust Committee shall consist of no more than three (3) members, one of whom shall be either a member of the Kessler Settlement Class or a representative of counsel for the Kessler Settlement Class (the "KSC Committee Member"). Each other initial member of the Trust Committee shall be a Borrower (or representative thereof) that holds a Borrower Claims Trust Beneficial Interest appointed by counsel for the Kessler Settlement Class with the consent of the Plan Proponents, which consent shall not be unreasonably withheld (each such other member, a "Trust Beneficiary Committee Member"). Each member of the Trust Committee shall be a natural person at least 18 years of age. The identity of the initial members of the Borrow Claims Trust Committee, including the KSC Committee Member and the Trust Beneficiary Committee Members, if any, is set forth on Exhibit C hereto.

(b) Each member of the Trust Committee shall hold office until the earlier of (i) the termination of the Borrower Claims Trust, (ii) the resignation, death, incapacity or bankruptcy of such member, or (iii) the removal of such member by counsel for the Kessler Settlement Class. In the event of a vacancy on the Trust Committee resulting from the foregoing clauses (ii) or (iii), a replacement KSC Committee Member or Trust Beneficiary

Committee Member, as applicable, shall be appointed by the representatives of the Kessler Settlement Class.

(c) The Trust Committee shall act by affirmative consent of a majority of the members constituting the Trust Committee, unless otherwise provided in this Borrower Claims Trust Agreement, given at a meeting called for that purpose, or by written consent in lieu of meeting, in accordance with this Borrower Claims Trust Agreement. Members of the Trust Committee may vote by proxies duly authorized in writing.

(d) In the event that, following the failure of counsel for the Kessler Settlement Class to appoint a successor member when required pursuant to Section 5.2(b), there is at any time no member on the Trust Committee, the Borrower Claims Trustee may serve as a temporary member of the Trust Committee while promptly filing a motion with the Bankruptcy Court for approval, after notice and hearing, of a successor member as designated by the Borrower Claims Trustee in the motion.

(e) The Borrower Claims Trustee shall, as frequently as requested by the Trust Committee, provide the Trust Committee with an update (verbal or written, as determined by the Trust Committee) as to the various actions the Borrower Claims Trustee has taken (or declined to take) during the relevant time period, and shall offer the Trust Committee an opportunity to ask questions with respect to such actions or inactions. The Borrower Claims Trustee shall, on a regular basis, inform the Trust Committee of actions that the Borrower Claims Trustee is pursuing and is planning to pursue in connection with the discharge of the Borrower Claims Trustee's duties and responsibilities pursuant to the Plan Documents, including with respect to the resolution or prosecution of Borrower Claims and Borrower-Related Causes of Action. The Borrower Claims Trustee shall seek the advice, consent, and approval of the Trust Committee when required by the Plan Documents.

5.3 Authority. The Trust Committee shall be responsible for exercising the authority and performing the obligations of the Borrower Claims Trust expressly provided for in this Borrower Claims Trust Agreement and otherwise giving effect to the intents and purposes of this Borrower Claims Trust Agreement. Without limiting the generality of the preceding sentence, and in furtherance thereof, the Trust Committee shall be expressly authorized and empowered to undertake, acting as appropriate through the Borrower Claims Trustee, the following actions on behalf of the Borrower Claims Trust, without the need for any additional approvals, authorization, or consents and without any further notice to or action, order or approval of the Bankruptcy Court; provided, that all such actions are undertaken in a manner consistent with the purposes of the Borrower Claims Trust (a) review and supervise the activities of the Borrower Claims Trustee, (b) have authority to remove and replace the Borrower Claims Trustee in accordance with Article VI hereof and (c) perform all other actions specified to be performed by the Trust Committee in this Borrower Claims Trust Agreement and the Plan Documents.

5.4 Meetings of the Trust Committee.

(a) Meetings of the Trust Committee may be called by any member of the Trust Committee, by delivery of written notice of the time and place of such special meeting to

each member of the Trust Committee by personal delivery, facsimile or other means of electronic communication at least two (2) Business Days prior to such meeting.

(b) The presence at a meeting of all of the members of the Trust Committee shall constitute a quorum for the transaction of business at such meeting of the Trust Committee, but if less than all members are present at a meeting, any member of the Trust Committee present may adjourn the meeting from time to time. When a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Trust Committee may transact any business which might have been transacted at the original meeting.

(c) Meetings may be held in person within or without the State of Delaware, telephonically or electronically, and upon such notice as may be determined from time to time in accordance with the rules and procedures adopted by the Trust Committee, and any member of the Trust Committee who participates by such means shall be deemed to be present for purposes of quorum under Section 5.4(b). Members of the Trust Committee may also act by written consent in lieu of a meeting, which consent may be less than unanimous, provided each of the members of the Trust Committee shall have received notice of the action to be taken by written consent in lieu of a meeting at least two (2) Business Days in advance of the effectiveness thereof. Any such written consents shall be filed with the minutes of the proceedings of the Trust Committee

(d) Individual members of the Trust Committee may participate in discussions at meetings, but shall recuse themselves from any confidential discussion designated as such by the other members of the Trust Committee and from voting on any proposed action by the Borrower Claims Trustee that involves (i) an objection to any Borrower Claim held by such member or by the Trust Beneficiary that any member represents, or any Insider (as defined in section 101(31) of the Bankruptcy Code) of such member or Trust Beneficiary (such member, a “Conflicted Member”), (ii) the initiation by the Borrower Claims Trustee of any litigation or prosecution of any Borrower-Related Cause of Action against the Conflicted Member or the Trust Beneficiary represented by such member, (iii) the settlement of any Borrower-Related Cause of Action against the Conflicted Member or the Beneficiary represented by such member, or (iv) any other matter as to which the any member or the Trust Beneficiary represented by such member that presents a conflict of interest.

5.5 Compensation. Other than (a) a fee of \$250.00 per meeting of the Trust Committee or any committee thereof in the case of a Trust Beneficiary Committee Member who is not a Borrower Claims Trust Agent and (b) the reasonable expenses, if any, of attendance at such meetings, the members of the Trust Committee shall not be entitled to compensation for time spent in preparation for and participation in meetings of the Trust Committee or any committee thereof; provided, however, that nothing contained herein shall preclude a member of the Trust Committee who is a Borrower Claims Trust Agent engaged to perform services from charging for services that are professional in nature in connection with a meeting of the Trust Committee. Fees payable to members of the Trust Committee pursuant to this Section 5.5 shall be satisfied from the Borrower Claims Trust Administrative Reserve.

5.6 Bylaws. The Trust Committee may adopt bylaws or protocols which shall contain such additional provisions, procedures and protocols for the governance of the Borrower Claims Trust and as shall be determined from time to time by the Trust Committee; provided that no such provisions, procedures and protocols shall in any way be inconsistent with the terms of this Borrower Claims Trust Agreement or the other Plan Documents.

**ARTICLE VI**  
**OPERATION OF THE BORROWER CLAIMS TRUST**

6.1 Prohibited Activities.

(a) The Borrower Claims Trustee and the Borrower Claims Trust Agents shall hold the Borrower Claims Trust out as a trust in the process of liquidation, whose activities are limited to the liquidation of the Borrower Claims Trust Assets on behalf, and for the benefit, of the Trust Beneficiaries and the other purposes set forth in this Borrower Claims Trust Agreement. Without limiting the foregoing, the Borrower Claims Trust shall not hold itself out as an investment company, and no part of the Borrower Claims Trust Assets shall be caused by the Borrower Claims Trustee to be used or disposed of in furtherance of any trade or business.

6.2 Resolution of Disputed Borrower Claims.

(a) The Borrower Claims Trustee, or one or more Borrower Claims Trust Agents designated by the Borrower Claims Trustee if, and to the extent, authorized by the Trust Committee, shall be authorized to resolve, on behalf of the Borrower Claims Trust, all Disputed Borrower Claims without further Bankruptcy Court order, provided, however, that the Borrower Claims Trustee must obtain the prior approval of the Trust Committee in the event the resolution of a Disputed Borrower Claim would result in an Allowed Claim that exceeds \$100,000. Without limiting the foregoing, the Borrower Claims Trust may, as successor-in-interest to the Debtors, continue to prosecute objections to Borrower Claims pursuant to the Case Management and Servicing Orders as the same may be amended or replaced from time to time or pursuant to any other order of the Bankruptcy Court, as determined by the Trust Committee.

(b) If the Borrower Claims Trust and the holder of a Disputed Borrower Claim are unable to reach a settlement on a Disputed Borrower Claim, or if the Borrower Claims Trust determines to disallow a Disputed Borrower Claim, such Disputed Borrower Claim shall be submitted to the Bankruptcy Court for adjudication by way of an objection to such Borrower Claim. If it is determined that the Bankruptcy Court does not have jurisdiction to resolve any Disputed Borrower Claim, then such Disputed Borrower Claim shall be submitted to the District Court or other court of appropriate jurisdiction for resolution. The Borrower Claims Trust shall file with the Bankruptcy Court a quarterly notice of Disputed Borrower Claims resolved and/or settled during the prior quarter following the end of each fiscal quarter, starting with the first complete fiscal quarter after the Effective Date.

(c) Disputed Borrower Claims that become Allowed, in whole or in part, shall be satisfied exclusively out of the Disputed Claims Reserve, in the manner provided in

Article IV, and in the order in which such Disputed Borrower Claims are Allowed. In the event the Cash remaining in the Disputed Claims Reserve shall be insufficient to satisfy all of the Disputed Borrower Claims that have become Allowed and are due to be satisfied with distributions from the Disputed Claims Reserve, such Disputed Borrower Claims shall be satisfied pro rata in proportion to their respective Allowed Claim amounts. After (i) all Cash has been distributed from the Disputed Claims Reserve, (ii) no available Cash remains in the Borrower Claims Trust Assets that is not otherwise reserved for use for other purposes in accordance with the provisions of this Borrower Claims Trust Agreement, and (iii) the Trust Committee does not have a reasonable expectation that additional funds will be added to the Borrower Claims Trust Assets in the future, no further distributions shall be made in respect of Disputed Borrower Claims.

(d) The Trust Committee may, from time to time, make immaterial technical adjustments, or seek an adjusted determination from the Bankruptcy Court of, the Estimated Amounts of the Disputed Borrower Claims.

### 6.3 Disputed Claims Reserve.

(a) On or as soon as practicable following the Effective Date, the Borrower Claims Trust shall establish the Disputed Claims Reserve.

(b) The Borrower Claims Trustee shall, at the direction of the Trust Committee, cause to be added to and maintained in the Disputed Claims Reserve, from time to time, at least that amount of Cash sufficient (i) to make Borrower Claims Payments in respect of all Disputed Borrower Claims or in the case of Borrower Convenience Claims or ETS Borrower Claims, the amount provided in Section 4.1(c), as if such Claims had been Allowed in the amount of their respective Estimated Amounts and (ii) to pay to such holders, other than in respect of Borrower Convenience Claims and ETS Borrower Claims, the amount of all distributions made to holders of Borrower Claims Trust Beneficial Interests since the Effective Date as if such holders of Disputed Borrower Claims had received Borrower Claims Trust Beneficial Interest corresponding to the Estimated Amount of such Claims; provided that Cash shall only be required to be added to the Disputed Claims Reserve to the extent of available Cash included in the Borrower Claims Trust Assets that is not otherwise reserved for use for other purposes in accordance with the provisions of this Borrower Claims Trust Agreement.

(c) All Cash held in the Disputed Claims Reserve shall be maintained with a United States FDIC insured financial institution, and may be maintained in an interest-bearing account, as the Trust Committee may from time to time determine. The Cash in the Disputed Claims Reserve shall be held separately and shall not be commingled with any other Cash constituting Borrower Claims Trust Assets.

### 6.4 Borrower Claims Trust Administrative Reserve.

(a) On the Effective Date, there shall be established a Borrower Claims Trust Administrative Reserve for the purpose of maintaining Cash allocated and retained by the Borrower Claims Trust from time to time in an amount necessary (subject to the Borrower Claims Trust Budget) to satisfy reasonable costs and expenses of the Borrower Claims Trust

and other obligations and liabilities incurred, assumed or reasonably anticipated by the Borrower Claims Trust (or to which the Borrower Claims Trust Assets are otherwise subject) in accordance with the Plan Documents, including without limitation (i) fees and costs incurred in connection with the protection, preservation, liquidation and distribution of the Borrower Claims Trust Assets; (ii) the fees and costs incurred in connection with investigating, prosecuting and resolving Disputed Borrower Claims and other Borrower-Related Causes of Action; (iii) the fees and costs of maintaining the Disputed Claims Reserve, the Borrower Claims Trust Administrative Reserve and the Return Amount Reserve; (iv) reserves for any judgments, settlements or other Cash liabilities or potential liabilities that are or may be payable by the Borrower Claims Trust, as determined by the Trust Committee; (v) any Taxes imposed on the Borrower Claims Trust or in respect of the Borrower Claims Trust Assets or otherwise, including the Disputed Claims Reserve; (vi) costs and expenses of the Borrower Claims Trustee, the Trust Committee, the Borrower Claims Trust Agents, and their respective employees, professionals and advisors (but not including expenses and fees incurred by the Kessler Class Claimants pursuant to the GM Insurance Rights) and (vii) such other costs, fees and expenses as shall be provided for in the Borrower Claims Trust Budget and as may be incurred in carrying out the purposes and intents of this Borrower Claims Trust Agreement.

(b) The Administrative Funding Payment shall be used to fund the Borrower Claims Trust Administrative Reserve. In the event the Trust Committee determines that additional Cash is necessary to satisfy the administrative costs and expenses of the Borrower Claims Trust, the Borrower Claims Trustee, at the direction of the Trust Committee, may fund the Borrower Claims Trust Administrative Reserve with other Borrower Available Assets, as necessary or appropriate in furtherance of the purposes thereof, provided that in no event may the Borrower Claims Trust receive or retain Cash in excess of a reasonable amount to meet claims and contingent liabilities of the Borrower Claims Trust or to maintain the value of the Borrower Claims Trust Assets. Any Cash released from the Borrower Claims Trust Administrative Reserve shall be available for distribution in accordance with the provisions of Article IV.

(c) Cash in the Borrower Claims Trust Administrative Reserve shall be held separately and shall not be commingled with any other Cash constituting Borrower Claims Trust Assets.

#### 6.5 Return Amount Reserve.

(a) There shall be established a Return Amount Reserve for the purpose of maintaining Return Amounts received and retained by the Borrower Claims Trust from time to time.

(b) Notwithstanding anything to the contrary in this Borrower Claims Trust Agreement, if at any time the Trust Committee determines that Cash held in the Return Amount Reserve may be distributed in accordance herewith, the Trust Committee shall direct the Borrower Claims Trustee to make a distribution of such Cash to holders of Borrower Claims Trust Beneficial Interests; provided, however, that such distribution shall (i) in the event the Return Amount was paid to the Borrower Claims Trust by a Trust Beneficiary in connection with its Allowed Borrower Claim against a GMACM Debtor, be made only to Trust Beneficiaries that received a Borrower Claims Payment in respect of Allowed GMACM

Claims, pro rata in accordance with the Allowed GMACM Claim corresponding to such Trust Beneficiary's Borrower Claims Trust Beneficial Interest, or (ii) in the event the Return Amount was paid to the Borrower Claims Trust by a Trust Beneficiary in connection with its Allowed Borrower Claim against a RFC Debtor, be made only to Trust Beneficiaries that received a Borrower Claims Payment in respect of Allowed RFC Claims, pro rata in accordance with the Allowed RFC Claim corresponding to such Trust Beneficiary's Borrower Claims Trust Beneficial Interest; provided, further, that prior to making any distribution pursuant to this Section 6.5(b), the Borrower Claims Trustee shall first fund the Borrower Claims Trust Administrative Reserve with Cash from the Return Amount Reserve necessary to satisfy the costs and expenses associated with such distribution.

(c) All Cash held in the Return Amount Reserve shall be maintained with a United States FDIC insured financial institution, and may be maintained in an interest-bearing account, as the Trust Committee may from time to time determine. The Cash in the Return Amount Reserve shall be held separately and shall not be commingled with any other Cash constituting Borrower Claims Trust Assets.

6.6 Reporting. The Borrower Claims Trust shall cause to be prepared, and shall post to the Borrower Claims Trust Website, on a semi-annual basis, reports containing the following information regarding the activity of the Borrower Claims Trust during the most recently completed fiscal semi-annual period, and in the report prepared after the end of each Fiscal Year, the most recently completed Fiscal Year and since the Effective Date:

(a) The Borrower Claims Payments made and Distributable Cash distributed during the relevant period and in the aggregate;

(b) The amount of Return Amounts added to the Borrower Claims Trust Assets and Cash distributed from the Return Amount Reserve during the relevant period and in the aggregate;

(c) Cash added to or withdrawn from the Borrower Claims Trust Administrative Reserve during the relevant period, and Cash held in the Borrower Claims Trust Administrative Reserve as of the end of such period;

(d) the amount of Disputed Borrower Claims resolved by the Borrower Claims Trust during the relevant period, including, separately, the amounts of the Claims that were Allowed, in whole or in part, including both the Estimated Amounts thereof and amounts in which such Claims were Allowed, and the Estimated Amounts of the Claims that were not Allowed, in whole or in part, the amounts of the Disputed Borrower Claims remaining to be resolved as of the end of such period;

(e) Cash distributed to holders of Disputed Borrower Claims that were Allowed, in whole or in part, during the relevant period, and the Cash in respect thereof released from the Disputed Claims Reserve, during the relevant period, and Cash held in the Disputed Claims Reserve as of the end of such period; and

(f) such other information as the Trust Committee may determine to include from time to time.

6.7 Borrower Claims Trust Agents; Employees.

(a) The Borrower Claims Trust may employ or engage such Borrower Claims Trust Agents, including counsel, advisors, administrators and other professionals (which may have represented parties in the Chapter 11 Cases, to the extent permissible by applicable law), as deemed reasonably necessary or desirable by the Borrower Claims Trustee to carry out the intents and purposes of the Borrower Claims Trust, without further order from the Bankruptcy Court, upon prior approval by the Trust Committee. Borrower Claims Trust Agents shall be appointed, and their appointment may be terminated, by the Borrower Claims Trustee, in each case upon prior approval by the Trust Committee, unless authority in respect thereof is delegated by the Trust Committee to the Borrower Claims Trustee. Borrower Claims Trust Agents shall be compensated at standard billing rates in effect at the time of service or such other rate of compensation that is reasonable and agreed to by the Borrower Claims Trustee, with the approval of the Trust Committee, and shall be paid without further motion, application, notice or other order of the Bankruptcy Court, except described in Section 6.7(c). All reasonable out-of-pocket expenses incurred by the Borrower Claims Trust Agents shall be reimbursed.

(b) The Borrower Claims Trustee shall be authorized to hire such employees he or she deems appropriate, subject to such limitations, conditions and qualifications as may be imposed by the Trust Committee.

(c) On a monthly basis, or as otherwise agreed by the Borrower Claims Trustee with approval of the Trust Committee, the Borrower Claims Trustee and each Borrower Claims Trust Agent performing services for the Borrower Claims Trust shall provide to the Borrower Claims Trust Committee a statement setting forth his, her or its aggregate fees and expenses (to the extent unbilled and outstanding) incurred in connection with its engagement, together with reasonable documentation of such expenses (any such report, a "Fee and Expense Report"). Such Borrower Claims Trust Agents shall be entitled to receive payment of such fees and expenses not later than 10 days after providing the Fee and Expense Report to the Trust Committee (the "Fee Notice Period"). Notwithstanding the foregoing, if any member of the Trust Committee objects to such Fee and Expense Report within the Fee Notice Period, the Borrower Claims Trust Agent and the Trust Committee may seek to resolve such objection on a consensual basis. If a majority of the members of the Trust Committee and the Borrower Claims Trust Agent are unable to reach a consensual resolution within 30 days of the Trust Committee member's objection, the Borrower Claims Trust Agent shall be entitled to payment of the contested portion of its fees and/or expenses only pursuant to a Final Order of the Bankruptcy Court after notice and opportunity for a hearing, provided that the Borrower Claims Trust Agent shall be entitled to payment of the uncontested portion, if any, of such fees and expenses upon expiration of the Fee Notice Period.

**ARTICLE VII**  
**BORROWER CLAIMS TRUSTEE**

7.1 Borrower Claims Trustee Generally. The Borrower Claims Trustee shall have the general executive responsibility for the conduct of the affairs of the Borrower Claims Trust, and shall have such other functions, authority and duties as are provided in this Article

VII and as elsewhere set forth in this Borrower Claims Trust Agreement and in the Trust Act, or as may be prescribed by the Trust Committee. The Borrower Claims Trustee shall report to Trust Committee, which shall be entitled to remove and replace the Borrower Claims Trustee in accordance with Section 7.2.

7.2 Appointment and Removal of Borrower Claims Trustee.

(a) By execution hereof, the Borrower Claims Trustee accepts his trusteeship of the Borrower Claims Trust on the terms set forth herein. The Borrower Claims Trustee shall be a natural person at least 18 years of age, and upon his or her appointment, shall be deemed a trustee under the Trust Act, with all privileges and immunities appurtenant thereto, and, as necessary or applicable, shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

(b) The Borrower Claims Trustee shall hold office until the earlier of (i) the termination of the Borrower Claims Trust, (ii) his or her resignation, death or incapacity or (iii) his or her removal in accordance with this Borrower Claims Trust Agreement.

(c) The Borrower Claims Trustee may resign upon sixty (60) days' prior written notice to the Trust Committee. The Borrower Claims Trustee may be removed by the Trust Committee (x) for Cause, upon motion filed with the Bankruptcy Court, with the consent of a majority of the members of the Trust Committee (which removal shall be effective upon order of the Bankruptcy Court); or (y) by unanimous action of the members of the Trust Committee with or without Cause at any time; provided, that (i) in the case of removal pursuant to clause (y), the Trust Committee shall give notice of removal to the Borrower Claims Trustee no less than fifteen (15) days prior to the effectiveness of the Borrower Claims Trustee's removal, and (ii) notice of removal of a Borrower Claims Trustee shall be promptly filed with the Bankruptcy Court and posted to the Borrower Claims Trust Website.

(d) In the event of a vacancy of the position of the Borrower Claims Trustee, whether as a result of the resignation, death, disability or removal of such Borrower Claims Trustee, a successor Borrower Claims Trustee shall be promptly appointed by the Trust Committee. Notice of the appointment of any replacement Borrower Claims Trustee shall be filed with the Bankruptcy Court and posted to the Borrower Claims Trust Website. If a majority of the members of the Trust Committee cannot agree on designation of such successor within 30 days after the occurrence of the event giving rise to the vacancy, the Bankruptcy Court shall determine such successor upon motion filed by any party in interest with the consent of any member of the Trust Committee.

(e) Immediately upon appointment of any successor Borrower Claims Trustee, all rights, powers, duties, authority, and privileges of the predecessor Borrower Claims Trustee hereunder shall be vested in and undertaken by the successor Borrower Claims Trustee without any further act by any party, and the successor Borrower Claims Trustee shall not be liable personally for any act or omission of the predecessor Borrower Claims Trustee.

(f) If the Borrower Claims Trustee is removed for Cause, he or she shall not be entitled to any accrued but unpaid fees, expenses or other compensation for services

performed under this Borrower Claims Trust Agreement. If the Borrower Claims Trustee resigns or is removed or replaced for a reason other than for Cause, he or she shall be entitled to all accrued but unpaid fees, expenses, and other compensation for services performed under this Borrower Claims Trust Agreement, to the extent incurred, arising or relating to events occurring before his or her removal or resignation, and to any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties and all rights to any successor Borrower Claims Trustee.

7.3 Borrower Claims Trustee Compensation. The Borrower Claims Trustee shall be (a) compensated for services in the administration of the Borrower Claims Trust from the Borrower Claims Trust Administrative Reserve at a fixed monthly rate and (b) reimbursed from the Borrower Claims Trust Administrative Reserve for reasonable and customary costs and expenses commensurate with U.S. Trustee guidelines in effect from time to time.

7.4 Authority of the Borrower Claims Trustee.

(a) The Borrower Claims Trustee shall be responsible for performing the obligations of the Borrower Claims Trust expressly provided for in this Borrower Claims Trust Agreement, otherwise giving effect to the intents and purposes of this Borrower Claims Trust Agreement and exercising the rights of trustees under the Trust Act.

(b) Without limiting the generality of the preceding subsection, and in furtherance thereof, the Borrower Claims Trustee shall be expressly authorized and empowered to undertake, acting as appropriate through Borrower Claims Trust Agents, the following actions on behalf of the Borrower Claims Trust, and, except as otherwise provided in this Trust Agreement with respect to approvals, authorizations, or consents of the Trust Committee, without the need for any additional approvals, authorization, or consents, and without any further notice to or action, order or approval of the Bankruptcy Court, except as otherwise provided herein; provided, that all such actions are undertaken in a manner consistent with the purposes of the Borrower Claims Trust:

(i) to hold, manage and monetize (to the extent such assets are non-Cash), and distribute the Borrower Claims Trust Assets for the benefit of Trust Beneficiaries, whether such beneficiaries' Claims are Allowed on or after the Effective Date;

(ii) to hold the right to vote any claim or interest in any case under the Bankruptcy Code and receive distributions therein on behalf of the Borrower Claims Trust;

(iii) to the extent consistent with the terms of the Plan, to investigate, prosecute, settle, liquidate, dispose of, and/or abandon the Borrower Claims Trust Assets, including Borrower-Related Causes of Action;

(iv) to engage in litigation in the name of the Borrower Claims Trust and file or pursue Borrower-Related Causes of Action and objections to Borrower Claims (including seeking to settle or disallow, recharacterize, reclassify, subordinate, or estimate any of them), and compromise, adjust, arbitrate, sue on or defend, prosecute,

abandon or otherwise deal with, any Borrower Claim or Borrower-Related Cause of Action;

(v) to assert, enforce, waive or release rights, defenses, privileges or immunities related to the Borrower Claims Trust Assets or the Borrower Claims;

(vi) to perform the duties, exercise the powers and assert the rights of a trustee under section 704 and section 1106 of the Bankruptcy Code, including holding and asserting applicable privileges and defenses with respect to the Borrower Claims, filing, commencing or prosecuting (x) objections to Borrower Claims under section 502 of the Bankruptcy Code, (y) turnover actions under sections 542 and 543 of the Bankruptcy Code and (z) avoidance actions against Borrowers under sections 544, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code;

(vii) to establish and administer the Borrower Claims Trust Administrative Reserve;

(viii) to establish and administer the Disputed Claims Reserve;

(ix) to establish and administer the Return Amount Reserve;

(x) subject to Section 7.1, to appoint, engage, review, supervise, remove, replace and determine the compensation payable to Borrower Claims Trust Agents and waive any conflicts of interest as deemed necessary or appropriate in the discretion of the Borrower Claims Trustee;

(xi) to settle or otherwise resolve Disputed Borrower Claims;

(xii) to monitor and enforce the implementation of the Plan insofar as relating to the Borrower Claims Trust Assets;

(xiii) to file all Tax Returns and regulatory forms, returns, reports and other documents and financial information required to be filed with respect to the Borrower Claims Trust, including filing Tax Returns as a qualified settlement fund;

(xiv) to request any appropriate Tax determination with respect to the Borrower Claims Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xv) to seek the examination of any Entity under, and subject to, the provisions of the Bankruptcy Rules, including Bankruptcy Rule 2004;

(xvi) to abandon any property that the Borrower Claims Trustee determines in his or her reasonable discretion to be de minimis value or otherwise burdensome to the Borrower Claims Trust, including any pending adversary proceeding or other legal action (by abandonment, dismissal, or any other discontinuance thereof);

(xvii) to make Borrower Claims Payments to holders of Allowed Borrower Claims and distributions of Distributable Excess Cash to holders of Borrower Claims Trust Beneficial Interests;

(xviii) to make Cash distributions from the Return Amount Reserve in accordance with Section 6.5;

(xix) to prepare and disseminate reports, as provided in Section 6.6;

(xx) to determine and satisfy all liabilities created, incurred or assumed by the Borrower Claims Trust, including all expenses and other payments relating to the Borrower Claims Trust Assets, including reasonable fees and expenses of the Borrower Claims Trustee pursuant to this Borrower Claims Trust Agreement;

(xxi) to enter into and exercise rights under contracts that are necessary or desirable to the administration of the Borrower Claims Trust and execute any documents or pleadings related to the liquidation of the Borrower Claims Trust Assets or other matters related to the Borrower Claims Trust;

(xxii) to borrow funds on behalf of, and solely as a liability of, the Borrower Claims Trust, which loans may be secured by the Borrower Claims Trust Assets but shall be without recourse to the Borrower Claims Trustee in his or her individual capacity, as are necessary to enable the Borrower Claims Trustee to discharge his or her duties under this Borrower Claims Trust Agreement;

(xxiii) to establish and maintain bank accounts and terminate such accounts on behalf of the Borrower Claims Trust;

(xxiv) to set off amounts owed to the Debtors against distributions to Trust Beneficiaries;

(xxv) to bring suits or defend itself against such suits, if any, in connection with any matter arising from or related to the Plan Documents that affects in any way the rights or obligations of the Borrower Claims Trust, the Trust Beneficiaries (whether such Borrower Claims are Allowed as of the Effective Date or become Allowed at any subsequent time), in their capacities as such;

(xxvi) to obtain and maintain insurance coverage with respect to the liabilities and obligations of the Borrower Claims Trustee, and, if so determined by the Borrower Claims Trustee, any Borrower Claims Trust Agents, and such other insurance as the Borrower Claims Trustee determines as appropriate for the circumstances from time to time;

(xxvii) to invest Borrower Claims Trust Assets (including any earnings thereon or proceeds therefrom) in any manner permitted to be made by a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable Internal Revenue Service guidelines, rulings, or other controlling authorities, including Revenue Procedure 94-45, 1994-2 C.B. 684;

(xxviii) to take all actions necessary and appropriate to minimize any adverse Tax consequences to the holders of Allowed Borrower Claims; provided that such actions do not result in an adverse Tax consequence to the Borrower Claims Trust and are consistent with and are not contrary to the treatment of the Borrower Claims Trust as a “qualified settlement fund” for United States federal income Tax purposes;

(xxix) to remove and replace the Delaware Trustee;

(xxx) to protect and enforce the rights of the Borrower Claims Trust Assets by any lawful method deemed appropriate by the Borrower Claims Trustee, including by judicial proceedings or pursuant to applicable bankruptcy, insolvency, moratorium or similar law or general principles of equity;

(xxxi) to issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions, as determined by the Borrower Claims Trustee to be necessary or appropriate to effectuate the terms of the Plan regarding the Borrower Claims Trust Assets following the Effective Date; and

(xxxii) to take such other and further actions, including, transfers or other corporate transactions, as determined by the Borrower Claims Trustee to be necessary or appropriate, in furtherance of the purposes of the Plan Documents in respect of the Borrower Claims Trust Assets as are not inconsistent with this Borrower Claims Trust Agreement or the other Plan Documents.

(c) The Borrower Claims Trustee shall comply with all applicable laws, shall act to maximize the distributions to Trust Beneficiaries to the extent reasonably possible under the circumstances and in furtherance of the purposes of this Borrower Claims Trust.

(d) To the extent provided in the Cooperation Agreement, certain of the functions of the Borrower Claims Trust may be performed by the Liquidating Trust on behalf of the Borrower Claims Trust in accordance with the terms of the Cooperation Agreement.

7.5 Limitations on Borrower Claims Trustee Authority. Notwithstanding any provision in this Borrower Claims Trust Agreement to the contrary, the Borrower Claims Trustee shall not do or undertake any of the following on behalf of the Borrower Claims Trust without the prior approval of the Trust Committee:

(a) Guarantee any debt;

(b) Loan to any Person, any portion of the Borrower Claims Trust Assets;

(c) Transfer or commingle Borrower Claims Trust Assets with any account of another trust established under the Plan;

(d) Make any transfer, assignment or distribution of Borrower Claims Trust Assets, other than as expressly authorized hereunder; or

(e) Permit or cause the Borrower Claims Trust to hold 50% or more of the stock (in either vote or value) of any Entity that is treated as a corporation for federal income tax purposes or have any interest in an Entity that is treated as a partnership for federal income tax purposes, unless such stock or partnership interest was obtained involuntarily or as a matter of practical economic necessity, including enforcement of and execution of judgments, in order to preserve the value of the Borrower Claims Trust Assets.

7.6 Conflicts of Interest. If the Borrower Claims Trustee determines, in his or her reasonable discretion, that he or she has a material conflict of interest with respect to the settlement of a Borrower Claim, the resolution or prosecution of a Borrower-Related Cause of Action, or any other matter, the Borrower Claims Trustee shall select a designee approved by the Trust Committee to act on behalf of the Borrower Claims Trust solely with respect to such matter (the “Designee”), with such Designee’s authority to act on behalf of the Borrower Claims Trust to terminate upon the matter’s conclusion. If the Designee files a pleading, motion, or other paper with a court or tribunal on behalf of the Borrower Claims Trust, it shall do so in its own name as “Designee of the ResCap Borrower Claims Trust”.

7.7 Fiduciary Duty and Standard of Care.

(a) The Borrower Claims Trustee’s powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Borrower Claims Trust and not otherwise, and in accordance with applicable law, including the Trust Act.

(b) The Borrower Claims Trustee in the exercise of his or her duties hereunder shall act in accordance with principles of good faith and fair dealing.

7.8 Bond or Insurance. The Borrower Claims Trustee shall obtain a trustee’s bond (a “Trustee’s Bond”) from an Entity approved by the Trust Committee to protect the Trust Beneficiaries with respect to his obligations as Borrower Claims Trustee. The premiums for such the Trustee’s Bond shall be paid with Borrower Claims Trust Assets as an expense of administering the Borrower Claims Trust. The amount of the Trustee’s Bond shall be determined based upon the amount of Cash under the control of the Borrower Claims Trustee at any time, and shall be adjusted from time to time in accordance with Cash receipts and disbursements by the Borrower Claims Trust. Alternatively, with approval of the Trust Committee, the Borrower Claims Trustee may satisfy the requirement to obtain a Trustee’s Bond with insurance coverage for the liabilities, duties and obligations of the Borrower Claims Trustee and his agents, employees, and professionals (in the form of an errors and omissions policy or otherwise) which may, at the option of the Borrower Claims Trustee unless unanimously disapproved by the Trust Committee, remain in effect for a reasonable period after the conclusion of the Borrower Claims Trustee’s service. In the event the Borrower Claims Trustee elects to satisfy the requirements of this Section 7.9 with insurance coverage, such insurance coverage shall be maintained by the Borrower Claims Trust in accordance with Section 2.10.

**ARTICLE VIII**  
**DELAWARE TRUSTEE**

8.1 Appointment. The Delaware Trustee shall act solely for the purpose of complying with the requirement of section 3807 of the Trust Act, and its powers and obligations hereunder shall become effective upon its execution of this Borrower Claims Trust Agreement.

8.2 Powers.

(a) The duties and responsibilities of the Delaware Trustee shall be limited solely to (i) accepting legal process served on the Borrower Claims Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Delaware Trustee is required to execute under section 3811 of the Trust Act (including without limitation the Certificate of Trust), and (iii) any other duties specifically allocated to the Delaware Trustee in this Borrower Claims Trust Agreement. Except as provided in the foregoing sentence, the Delaware Trustee shall have no management responsibilities or owe any fiduciary duties to the Borrower Claims Trust, the Borrower Claims Trustee, or the Trust Beneficiaries. The filing of the Certificate of Trust with the Secretary of State of the State of Delaware as provided under the Trust Act is hereby ratified.

(b) By its execution hereof, the Delaware Trustee accepts the trusteeship of the Borrower Claims Trust on the terms set forth herein. Except as otherwise expressly set forth in Section 8.2(a), the Delaware Trustee shall not have any duty or liability with respect to the administration of the Borrower Claims Trust, the investment of the Borrower Claims Trust Assets or the distribution of the Borrower Claims Trust Assets to the Trust Beneficiaries, and no such duties shall be implied. The Delaware Trustee shall not be liable for the acts or omissions of the Borrower Claims Trustee, nor shall the Delaware Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Borrower Claims Trustee under this Borrower Claims Trust Agreement. The Delaware Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The Delaware Trustee shall not be personally liable under any circumstances, except for its own gross negligence, bad faith or willful misconduct. Without limiting the foregoing:

(i) the Delaware Trustee shall not be personally liable for any error of judgment made in good faith, except to the extent such error of judgment constitutes willful misconduct, bad faith or gross negligence;

(ii) the Delaware Trustee shall not have any duty or obligation to manage or deal with the Borrower Claims Trust Assets, or to otherwise take or refrain from taking any action under the Borrower Claims Trust Agreement except as expressly provided by the terms hereof, and no implied trustee duties or obligations shall be deemed to be imposed on the Delaware Trustee;

(iii) no provision of this Borrower Claims Trust Agreement shall require the Delaware Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder if the Delaware Trustee has reasonable grounds to believe that the payment of

such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it;

(iv) the Delaware Trustee shall not be personally liable for the validity or sufficiency of this Borrower Claims Trust Agreement or for the due execution hereof by the other parties hereto;

(v) the Delaware Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect;

(vi) the Delaware Trustee may request the Borrower Claims Trustee to provide a certificate with regard to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vii) in the exercise of its duties hereunder, the Delaware Trustee (I) may act directly or through agents or attorneys pursuant to agreements entered into with any of them, and (II) may consult with nationally recognized counsel selected by it in good faith and with due care and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel; and

(viii) the Delaware Trustee acts solely as Delaware Trustee hereunder and not in its individual capacity, and all persons having any claim against the Delaware Trustee by reason of the transactions contemplated by this Borrower Claims Trust Agreement shall look only to the Borrower Claims Trust Assets for payment or satisfaction thereof;

(ix) the Delaware Trustee shall not be personally liable for any representation, warranty, covenant, agreement, or indebtedness of the Borrower Claims Trust;

(x) the Delaware Trustee shall not incur liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. The Delaware Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Delaware Trustee may for all purposes hereof rely on a certificate, signed by the Borrower Claims Trustee, as to such fact or matter, and such certificate shall

constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon; and

(xi) the Delaware Trustee shall not be liable for punitive, exemplary, consequential, special or other damages for a breach of this Agreement under any circumstances.

8.3 Compensation. The Delaware Trustee shall be entitled to receive compensation out of Borrower Claims Trust Administrative Reserve for the services that the Delaware Trustee performs in accordance with this Borrower Claims Trust Agreement in accordance with such fee schedules as shall be agreed from time to time by the Delaware Trustee and the Borrower Claims Trustee, and if so required by the Plan Documents or applicable law, as approved by the Bankruptcy Court. The Delaware Trustee may also consult with counsel (who may be counsel for the Borrower Claims Trustee) with respect to those matters that relate to the Delaware Trustee's role as the Delaware Trustee of the Borrower Claims Trust, and the reasonable legal fees incurred in connection with such consultation shall be reimbursed out of Borrower Claims Trust Administrative Reserve.

8.4 Duration and Replacement. The Delaware Trustee shall serve for the duration of the Borrower Claims Trust or until the earlier of (i) the effective date of the Delaware Trustee's resignation, or (ii) the effective date of the removal of the Delaware Trustee. The Delaware Trustee may resign at any time by giving thirty (30) days' written notice to the Borrower Claims Trustee; provided, however, that such resignation shall not be effective until such time as a successor Delaware Trustee has accepted appointment. The Delaware Trustee may be removed with the Borrower Claims Trustee, by providing thirty (30) days' written notice to the Delaware Trustee; provided, however, that such removal shall not be effective until such time as a successor Delaware Trustee has accepted appointment. Upon the resignation or removal of the Delaware Trustee, the Borrower Claims Trustee shall appoint a successor Delaware Trustee. If no successor Delaware Trustee shall have been appointed and shall have accepted such appointment within forty-five (45) days after the giving of such notice of resignation or removal, the Delaware Trustee may petition the Bankruptcy Court for the appointment of a successor Delaware Trustee. Any successor Delaware Trustee appointed pursuant to this Section shall be eligible to act in such capacity in accordance with this Borrower Claims Trust Agreement and, following compliance with this Section, shall become fully vested with the rights, powers, duties and obligations of its predecessor under this Borrower Claims Trust Agreement, with like effect as if originally named as Delaware Trustee. Any such successor Delaware Trustee shall notify the Delaware Trustee of its appointment by providing written notice to the Delaware Trustee and upon receipt of such notice, the Delaware Trustee shall be discharged of its duties herein. Any such successor Delaware Trustee shall also file an amendment to the Certificate of Trust as required by the Trust Act.

## **ARTICLE IX** **TAX MATTERS**

9.1 Tax Treatment.

(a) For all U.S. federal income tax purposes, all parties (including, without limitation, the Debtors, the Borrower Claims Trustee and the Trust Beneficiaries) shall treat the Borrower Claims Trust as a “qualified settlement fund” within the meaning of Treasury Regulation Section 1.468B-2.

9.2 Tax Reporting.

(a) The Borrower Claims Trust shall file Tax Returns treating the Borrower Claims Trust as a qualified settlement fund and in accordance with the Plan. The Borrower Claims Trust also shall timely file (or cause to be timely filed) and/or provide to the Trust Beneficiaries any other statements, returns, or disclosures relating to the Borrower Claims Trust that are required by any Governmental Unit.

(b) The Borrower Claims Trust may request an expedited determination of Taxes of the Borrower Claims Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Borrower Claims Trust for all taxable periods through the dissolution of the Borrower Claims Trust.

9.3 Tax Payment. The Borrower Claims Trust shall be responsible for the payment, out of the Borrower Claims Trust Administrative Reserve, of any Taxes imposed on the Borrower Claims Trust or the Borrower Claims Trust Assets, including the Disputed Claims Reserve. In the event, and to the extent, that any Cash retained on account of Disputed Borrower Claims in the Disputed Claims Reserve is insufficient to pay any portion of such Taxes attributable to the taxable income arising from the assets held in the Disputed Claims Reserve, such Taxes shall be (x) reimbursed from any subsequent Cash amounts retained on account of the respective classes of Disputed Borrower Claims or (y) to the extent such Disputed Borrower Claims subsequently have been resolved, deducted from any amounts distributable by the Borrower Claims Trust as a result of the resolutions of such Disputed Borrower Claims.

**ARTICLE X**  
**LIMITATION OF LIABILITY AND INDEMNIFICATION**

10.1 Limitation of Liability.

(a) None of the Delaware Trustee, the Borrower Claims Trustee, the members of the Trust Committee or any Borrower Claims Trust Agent, or their respective advisors or professionals, shall be liable to the Borrower Claims Trust or any Trust Beneficiary for any damages arising out of the creation, operation or termination of the Borrower Claims Trust, including actions taken or omitted in fulfillment of his or her duties with respect to the Borrower Claims Trust, except in the case of such party’s gross negligence, bad faith or willful misconduct; provided, that in no event will any such party be liable for punitive, exemplary, consequential or special damages under any circumstances. Furthermore, none of the Delaware Trustee, the Borrower Claims Trustee or members of the Trust Committee shall be liable to the Borrower Claims Trust or any Trust Beneficiary for any action taken in good faith reliance upon the advice of counsel or other Borrower Claims Trust Agent.

(b) None of the Delaware Trustee, the Borrower Claims Trustee, the members of the Trust Committee or the Borrower Claims Trust Agents, when acting in such capacities, shall be subject to any personal liability whatsoever, whether in tort, contract or otherwise, to any person, other than the Borrower Claims Trust, in connection with the affairs of the Borrower Claims Trust to the fullest extent provided under section 3803 of the Trust Act, and all persons claiming against any of the Delaware Trustee, the Borrower Claims Trustee, or Borrower Claims Trust Agent, or otherwise asserting claims of any nature in connection with affairs of the Borrower Claims Trust, shall look solely to the Borrower Claims Trust Assets for satisfaction of any such claims.

(c) Nothing contained in the Plan Documents shall be deemed to be an assumption by the Delaware Trustee, the Borrower Claims Trustee, the Trust Committee or any Borrower Claims Trust Agent of any of the liabilities, obligations or duties of the Debtors or shall be deemed to be or contain a covenant or agreement by any of them to assume or accept any such liability, obligation or duty.

#### 10.2 Indemnification.

(a) The Delaware Trustee, the Borrower Claims Trustee, the members of the Trust Committee, and their respective affiliates, and the officers, directors, partners, managers, members, and employees of each of them, as the case may be (all persons so entitled to indemnification, collectively, the “Covered Parties”), shall be indemnified and held harmless, to the fullest extent permitted by law by the Borrower Claims Trust from and against any and all losses, claims, taxes, damages, reasonable expenses and liabilities (including liabilities under state or federal securities laws) of any kind and nature whatsoever, to the extent that such expenses arise out of or are imposed upon or asserted against such indemnified persons with respect to the creation, operation or termination of the Borrower Claims Trust or the execution, delivery or performance of this Borrower Claims Trust Agreement or the transactions contemplated hereby and shall not be liable for actions taken or omitted in their capacity, as Delaware Trustee, Borrower Claims Trustee or a member of the Trust Committee, on behalf of, or in fulfillment of their duties with respect to, the Borrower Claims Trust, except those acts that are determined by Final Order to have arisen out of their own gross negligence, bad faith or willful misconduct, and each shall be entitled to be indemnified, held harmless, and reimbursed for fees and expenses including, without limitation, reasonable attorney’s fees, which such persons and entities may incur or may become subject to or in connection with any action, suit, proceeding or investigation that is brought or threatened against such persons or entities regarding the implementation or administration of the Plan Documents or the discharge of their respective duties hereunder or thereunder or in respect thereof, except for any actions or inactions that are determined by Final Order to have arisen out of their own gross negligence, bad faith, or willful misconduct.

(b) The Covered Parties shall be entitled to obtain advances from the Borrower Claims Trust to cover their reasonable expenses of defending themselves in any action threatened or brought against them as a result of the acts or omissions, actual or alleged, of any such party in its capacity as such; provided, however, that the Covered Parties receiving such advances shall repay the amounts so advanced to the Borrower Claims Trust immediately

upon the entry of a Final Order finding that such parties were not entitled to any indemnity under the provisions of this Section 10.2.

(c) Any claim of the Covered Parties to be indemnified, held harmless, or reimbursed shall be satisfied solely from the Borrower Claims Trust Assets, bonds (if any) or any applicable insurance that the Borrower Claims Trust has purchased, as provided in Section 2.10, and no recourse may be had to the Liquidating Trust, the Released Parties or any creditor in the Chapter 11 Cases.

(d) The Borrower Claims Trust may also determine to provide indemnification to Borrower Claims Trust Agents and their respective officers, directors, partners, managers, members and employees, on such terms as the Borrower Claims Trustee may determine, provided that any claim for indemnification shall be satisfied solely from the Borrower Claims Trust Assets or insurance.

## **ARTICLE XI**

### **DURATION OF BORROWER CLAIMS TRUST**

#### 11.1 Duration.

(a) The Borrower Claims Trust shall be dissolved as soon as practicable after the date that is the earliest to occur of: (i) the distribution of all Borrower Claims Trust Assets pursuant to the Plan Documents, (ii) the determination of the Trust Committee that the administration of the Borrower Claims Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit, or (iii) all the distributions required to be made under this Borrower Claims Trust Agreement have been completed and, in each case, all Borrower Claims have been resolved by Final Order, written agreement or pursuant to the Plan Documents; provided, however, that in no event shall the Borrower Claims Trust be dissolved later than three (3) years from the Effective Date, unless the Bankruptcy Court, upon motion within the six (6) months prior to the third (3<sup>rd</sup>) anniversary of the Effective Date (or within six (6) months prior to the end of an extension period), determines that a fixed-period extension is necessary to facilitate or complete the recovery and liquidation of the Borrower Claims Trust Assets (without the need for a favorable private letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the trust as a qualified settlement fund for United States federal income tax purposes).

(b) If at any time the Trust Committee determines, in reliance upon its professionals, that the expense of administering the Borrower Claims Trust, including the making of a final distribution to the Trust Beneficiaries, is likely to exceed the value of the assets remaining in the Borrower Claims Trust, the Borrower Claims Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amounts necessary to dissolve the Borrower Claims Trust, (ii) donate any balance to an organization selected by the Trust Committee which is described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code, as provided in Section 2.7(b) hereof, and (iii) dissolve the Borrower Claims Trust.

11.2 Post-Termination. After the termination of the Borrower Claims Trust and solely for the purpose of liquidating and winding up the affairs of the Borrower Claims Trust, the Borrower Claims Trustee and the Delaware Trustee shall continue to act as such until their duties have been fully performed. Upon distribution of all the Borrower Claims Trust Assets, the Borrower Claims Trustee shall designate the Liquidating Trust (or an agent thereof) to continue to retain all books and records pertaining to the Borrower Claims Trust Assets that have been delivered to the Liquidating Trust on the Effective Date, or created and maintained by the Borrower Claims Trust thereafter, subject to the provisions of the Cooperation Agreement.

11.3 Destruction of Books and Records. If so determined by the Borrower Claims Trustee, or absent such determination, in the discretion of the Liquidating Trust or agent thereof appointed pursuant to Section 11.2, all books and records pertaining to the Borrower Claims Trust and the Trust Beneficiaries that have been created and maintained by the Borrower Claims Trust after the Effective Date may be destroyed at any time following the date that is six (6) years after the final distribution of Borrower Claims Trust Assets (unless such records and documents are necessary to fulfill the Borrower Claim Trust's remaining obligations) subject to the terms of any joint prosecution and common interests agreement(s) to which the Borrower Claims Trust may be a party, or such earlier date as set by the Bankruptcy Court; provided, however, that the Borrower Claims Trust or the designee appointed pursuant to Section 11.2 shall obtain an order of the Bankruptcy Court before disposing of any books and records that are reasonably likely to pertain to pending litigation in which the Borrower Claims Trust or Borrower Claims Trustee is involved.

11.4 Discharge. Except as otherwise specifically provided herein, upon the final distribution of Borrower Claims Trust Assets and the filing by the Delaware Trustee of a Certificate of Cancellation with the Secretary of State of the State of Delaware, the Delaware Trustee and the Borrower Claims Trustee shall be deemed discharged and have no further duties or obligations hereunder, and the Borrower Claims Trust will be deemed to have been dissolved. In the event that there are Borrower Claims Trust Assets at the termination of the Borrower Claims Trust, the Trust Committee shall cause to be donated such Borrower Claims Trust Assets to a charitable organization of the Borrower Claims Trustee's choice described in section 501(c)(3) of the Tax Code and exempt from U.S. federal income tax under section 501(a) of the Tax Code, as provided in Section 2.7(b).

## **ARTICLE XII**

### **MISCELLANEOUS PROVISIONS**

12.1 Governing Law. This Borrower Claims Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (without reference to conflicts of law).

12.2 Jurisdiction. Subject to the proviso below, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Borrower Claims Trust, including, without limitation, the administration and activities of the Borrower Claims Trust, provided, however, that notwithstanding the foregoing or anything to the contrary set forth in the Plan, the Borrower Claims Trustee shall have power and authority to bring (or cause to be brought)

any action in any court of competent jurisdiction to prosecute any Borrower-Related Causes of Action.

12.3 Severability. In the event that any provision of this Borrower Claims Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Borrower Claims Trust Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Borrower Claims Trust Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.4 Notices. Any notice or other communication required or permitted to be made under this Borrower Claims Trust Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by facsimile, sent by nationally recognized overnight delivery service, or mailed by first-class mail:

(i) if to the Delaware Trustee, to:

Province East LLC  
c/o Polsinelli LLP  
222 Delaware Avenue, Suite 1101  
Wilmington, DE 19801  
Phone: (302) 252-0920  
Fax: (302) 252-0921

(iii) if to the Borrower Claims Trustee, to:

Peter S. Kravitz, Esq.  
Solution Trust  
29209 Canwood Street  
Agoura Hills, CA 91301  
Phone: (310) 974-6350  
Email: PKravitz@SolutionTrust.com

(iii) if to any Trust Beneficiary, to the last known address of such Trust Beneficiary according to the records of the Borrower Claims Trust.

12.5 Headings. The headings contained in this Borrower Claims Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Borrower Claims Trust Agreement or of any term or provision hereof.

12.6 Plan Documents. Nothing contained herein shall modify the terms of any other Plan Document, which are intended to be supplemented by the terms of this Borrower Claims Trust Agreement. However, to the extent that the terms of any of the other Plan Documents are inconsistent with the terms set forth in this Borrower Claims Trust Agreement with respect to the Borrower Claims Trust, then the terms of this Borrower Claims Trust Agreement shall govern.

12.7 Cooperation. The Debtors and the Liquidating Trust shall reasonably cooperate with the Borrower Claims Trust in carrying out its duties and exercising its rights hereunder.

12.8 Confidentiality. The Borrower Claims Trustee, the Delaware Trustee, the members of the Trust Committee and the Borrower Claims Trust Agents, and their respective officers, directors, partners, managers, members and employees (the “Confidentiality Parties”), shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidentiality Party of or pertaining to the Debtors, the Borrower Claims Trust, the Trust Beneficiaries or the Borrower Claims Trust Assets; provided, however, that such information may be disclosed if—

- (i) it is now or in the future becomes generally available to the public other than as a result of a disclosure by any of the Confidentiality Parties;
- (ii) such disclosure is required of any of the Confidentiality Parties pursuant to legal process, including subpoena or other court order or other applicable laws or regulations; or
- (iii) the Borrower Claims Trustee determines that such disclosure is in the interests of the Borrower Claims Trust or the Trust Beneficiaries.

12.9 Entire Borrower Claims Trust Agreement. This Borrower Claims Trust Agreement and the Exhibits attached hereto, and the Plan Documents, contain the entire agreement between the parties and supersede all prior and contemporaneous agreements or understandings between the parties with respect to the subject matter hereof.

12.10 Named Party. In pursuing any Borrower-Related Causes of Action, or otherwise administering the Borrower Claims Trust or any Borrower Claims Trust Assets, including, without limitation, the execution of documents, such as bills of sale, releases, and agreements, the Borrower Claims Trustee may authorize the pursuit of such matters and/or execution of any such documents in the name of “ResCap Borrower Claims Trust” or in such other names or such representative capacities as necessary or appropriate.

12.11 Amendment. This Borrower Claims Trust Agreement may be amended by the Trust Committee; provided, however, that no amendment shall be made to this Borrower Claims Trust Agreement that makes it inconsistent with the provisions of the Plan or the Confirmation Order. Notwithstanding this Section 12.11 no amendments to this Borrower Claims Trust Agreement shall be inconsistent with the purpose and intention of the Borrower Claims Trust to liquidate in an orderly manner the Borrower Claims Trust Assets (which will maximize the value of such assets).

12.12 Counterparts. This Borrower Claims Trust Agreement may be executed in any number of counterparts, each of which shall be deemed original, but such counterparts shall together constitute one and the same instrument. A facsimile or portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

**[REMAINDER OF PAGE BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Borrower Claims Trust Agreement or caused this Borrower Claims Trust Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

Residential Capital, LLC

By: /s/ William Thompson  
Name: William Thompson  
Title: General Counsel

By: /s/ Jill Horner  
Name: Jill Horner  
Title: Chief Finance Executive

AKA 13, LLC (f/k/a ditech, LLC), DOA Holding Properties, LLC, DOA Properties IX (Lots-Other), LLC, EPRE LLC, Equity Investment I, LLC, ETS of Virginia, Inc., ETS of Washington, Inc., Executive Trustee Services, LLC, GMAC-RFC Holding Company, LLC, GMAC Model Home Finance I, LLC, GMAC Mortgage USA Corporation, GMAC Mortgage, LLC, GMAC Residential Holding Company, LLC, GMAC RH Settlement Services, LLC, GMACM Borrower LLC, GMACM REO LLC, GMACR Mortgage Products, LLC, HFN REO SUB II, LLC, Home Connects Lending Services, LLC, Homecomings Financial Real Estate Holdings, LLC, Homecomings Financial, LLC, Ladue Associates, Inc., Passive Asset Transactions, LLC, PATI A, LLC, PATI B, LLC, PATI Real Estate Holdings, LLC, RAHI A, LLC, RAHI B, LLC, RAHI Real Estate Holdings, LLC, RCSFJV2004, LLC, Residential Accredited Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, Residential Consumer Services of Alabama, LLC, Residential Consumer Services of Ohio, LLC, Residential Consumer Services of Texas, LLC, Residential Consumer Services, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Exchange, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Funding Real Estate Holdings, LLC, Residential Mortgage Real Estate Holdings, LLC, RFC – GSAP Servicer Advance, LLC, RFC Asset Holdings II, LLC, RFC Asset Management, LLC, RFC Borrower LLC, RFC Construction Funding, LLC, RFC REO LLC and RFC SFJV-2002, LLC

By: /s/ William Thompson  
Name: William Thompson  
Title: General Counsel

By: /s/ Jill Horner  
Name: Jill Horner  
Title: Chief Financial Officer

Province East LLC, as Delaware Trustee

By: /s/ Peter Kravitz  
Name: Peter Kravitz  
Title: Managing Member

/s/ Peter Kravitz, as Borrower Claims Trustee

**EXHIBIT A**  
**FORM OF**  
**CERTIFICATE OF TRUST**  
**OF**  
**RESCAP BORROWER CLAIMS TRUST**

This Certificate of Trust of ResCap Borrower Claims Trust is being duly executed and filed on behalf of such trust by the undersigned, as trustee, to form a statutory trust under the Delaware Statutory Trust Act (12 Del. C. § 3801 et seq.) (the “Trust Act”).

1. Name. The name of the Delaware statutory trust formed by this Certificate of Trust is ResCap Borrower Claims Trust.

2. Delaware Trustee. The name and business address of the trustee of the Trust with a principal place of business in the State of Delaware are Province East LLC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801.

3. Effective Date. This Certificate of Trust shall be effective upon its filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Trust in accordance with section 3811(a)(1) of the Trust Act.

Province East LLC, not in its individual capacity  
but solely as trustee

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

\_\_\_\_\_  
Peter S. Kravitz, not in his individual capacity but  
solely as trustee

**EXHIBIT B**

**Initial Borrower Claims Trust Budget**

	Year 1
Trustee	\$ 325,000
General Counsel, Litigation Counsel, Local Counsel	1,667,500
Tax Advisor	10,000
General Administration	7,500
Insurance	150,000
Oversight	12,000
Total	<hr/> \$2,172,000

**EXHIBIT C**

**Initial Committee Members**

Set forth below is information regarding the initial members of the Borrower Claims Trust Committee upon the Effective Date.<sup>1</sup>

1. Rowena Drennen for the Kessler Settlement Class in the consolidated class action styled *In re Community Bank of Northern Virginia Second Mortgage Lending Practice Litigation*, consolidated in the United States District Court for the Western District of Pennsylvania, MDL No. 1674, Case Nos. 03-0425, 02-01201, 05-0688, 05-1386.

2. Steven Mitchell for the Mitchell Settlement Class in the civil action styled *Steven and Ruth Mitchell v. Residential Funding Company, LLC, et al.*, currently pending before the Circuit Court of Jackson County, Missouri, Division 4, Case No. 03-CV-220489.

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<sup>1</sup> All capitalized terms used but not defined herein shall have the meaning ascribed to them in the *Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [Docket No. 4819, Ex. 1] (as may be amended from time to time, the “**Plan**”).

**Schedule 2.4**

**Calculation of Cash Portion of Borrower Claims Trust Assets**

Unadjusted Allocation of Cash to Borrower Claims Trust	\$57,600,000
Cash Amounts Paid by the Debtors to or on Behalf of Holders of Allowed Borrower Claims Pursuant to Settlements Entered into Prior to the Effective Date	(1,498,473)
Borrower Trust True-Up	<u>0</u>
Cash to Borrower Claims Trust (Excluding Administrative Funding Payment)	\$56,101,527

**Blackline**

**THE RESCAP BORROWER CLAIMS TRUST**

**TRUST AGREEMENT**

**BY AND AMONG**

**THE BORROWER CLAIMS TRUSTEE,**

~~**[THE DELAWARE TRUSTEE]**~~, PROVINCE EAST LLC,

**RESIDENTIAL CAPITAL, LLC**

**AND**

**THE OTHER DEBTORS LISTED ON THE SIGNATURE PAGES HERETO**

~~**[•]**~~, December 17, 2013

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**Exhibits**

Exhibit A – Certificate of Trust

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## **THE RESCAP BORROWER CLAIMS TRUST TRUST AGREEMENT**

This Borrower Claims Trust Agreement, dated as of           ; December 17, 2013 (this “Borrower Claims Trust Agreement”), is entered into by and among Residential Capital, LLC (“ResCap”), AKA 13, LLC (f/k/a ditech, LLC), DOA Holding Properties, LLC, DOA Properties IX (Lots-Other), LLC, EPRE LLC, Equity Investment I, LLC, ETS of Virginia, Inc., ETS of Washington, Inc., Executive Trustee Services, LLC, GMAC-RFC Holding Company, LLC, GMAC Model Home Finance I, LLC, GMAC Mortgage USA Corporation, GMAC Mortgage LLC, GMAC Residential Holding Company, LLC, GMAC RH Settlement Services, LLC, GMACM Borrower LLC, GMACM REO LLC, GMACR Mortgage Products, LLC, HFN REO SUB II, LLC, Home Connects Lending Services, LLC, Homecomings Financial Real Estate Holdings, LLC, Homecomings Financial, LLC, Ladue Associates, Inc., Passive Asset Transactions, LLC, PATI A, LLC, PATI B, LLC, PATI Real Estate Holdings, LLC, RAHI A, LLC, RAHI B, LLC, RAHI Real Estate Holdings, LLC, RCSFJV2004, LLC, Residential Accredited Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, Residential Consumer Services of Alabama, LLC, Residential Consumer Services of Ohio, LLC, Residential Consumer Services of Texas, LLC, Residential Consumer Services, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Exchange, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Funding Real Estate Holdings, LLC, Residential Mortgage Real Estate Holdings, LLC, RFC – GSAP Servicer Advance, LLC, RFC Asset Holdings II, LLC, RFC Asset Management, LLC, RFC Borrower LLC, RFC Construction Funding, LLC, RFC REO LLC and RFC SFJV-2002, LLC (each as a debtor and debtor-in-possession, and collectively, the “Debtors”),           Province East LLC, or its successor, as Delaware Trustee, and           Peter S. Kravitz of Solution Trust LLC d/b/a Solution Trust, or his successor, as the Borrower Claims Trustee.

### **RECITALS**

A. On May 14, 2012, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

B. On or about August 23, 2013, the Debtors filed the Joint Chapter 11 Plan of Residential Capital, LLC, *et al.*, dated August 23, 2013 (as amended and supplemented and as confirmed, the “Plan”, and the related disclosure statement, the “Disclosure Statement”).

C. On or about August 23, 2013, the Bankruptcy Court approved the Disclosure Statement.

D. On or about           ; December 11, 2013, the Bankruptcy Court issued an order confirming the Plan.

E. On           ; December 17, 2013, the Effective Date of the Plan occurred.

F. The Plan provides for a trust (as so formed and administered in accordance with the terms of this Borrower Claims Trust Agreement, the “Borrower Claims Trust”) to administer and distribute the Borrower Claims Trust Assets to holders of Borrower Claims that are Allowed on the Effective Date or that become Allowed after the Effective Date.

G. This Borrower Claims Trust Agreement is being executed to establish and provide for the administration of the Borrower Claims Trust and the distribution of Borrower Claims Trust Assets as contemplated by the Plan.

H. The Borrower Claims Trust is intended to qualify as a “qualified settlement fund” within the meaning of Treasury Regulation Section 1.468B-2 and to be exempt from the requirements of the Investment Company Act of 1940 pursuant to Section 3(c)(5) and Sections 7(a) and 7(b) thereof.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein, the parties hereto agree as follows:

## **ARTICLE I** **DEFINITIONS**

1.1 Definitions Incorporated from the Plan. Other than the terms defined below or elsewhere in this Borrower Claims Trust Agreement, capitalized terms shall have the meaning assigned to them in the Plan.

1.2 Other Definitions.

(a) “**Administrative Funding Payment**” means the one-time cash payment of \$~~1~~3,200,000 made to the Borrower Claims Trust by the Liquidating Trust on the Effective Date, which amount represents the amount of the administrative costs and expenses of the Borrower Claims Trust to be funded as of the Effective Date by the Liquidating Trust.

(b) “**Borrower Available Assets**” has the meaning assigned in Section 2.4.

(c) “**Borrower Claims Payment**” has the meaning assigned in Section 4.1(a).

(d) “**Borrower Claims Recovery Percentage**” means (i) in the case of a Borrower Claim against a GMACM Debtor, ~~{30.1%}~~; (ii) in the case of a Borrower Claim against an RFC Debtor, ~~{9.0%}~~; and (iii) in the case of a Borrower Claim against ETS, 100%.

(e) “**Borrower Claims Register**” has the meaning assigned in Section 2.4(d).

(f) “**Borrower Claims Trust**” has the meaning assigned in the Recitals.

(g) “**Borrower Claims Trust Administrative Reserve**” means the reserve established for paying costs, fees and expenses, and reserving for liabilities, of the Borrower Claims Trust.

(h) “**Borrower Claims Trust Agents**” means the advisors, professionals, other agents and such other Persons to whom the Borrower Trustee delegates authority, including any disbursement agent, of the Borrower Claims Trust appointed or engaged by the Borrower Claims Trustee in accordance with the provisions of this Borrower Claims Trust Agreement.

(i) “**Borrower Claims Trustee**” means ~~\_\_\_\_\_~~ [Peter S. Kravitz of Solution Trust LLC d/b/a Solution Trust](#), or his successor, appointed in accordance with this Borrower Claims Trust Agreement.

(j) “**Borrower Claims Trust Agreement**” has the meaning assigned in the Recitals.

(k) “**Borrower Claims Trust Assets**” means (i) all Borrower Available Assets, (ii) Cash constituting Return Amounts returned to the Borrower Claims Trust following the Effective Date in accordance with Section 2.5 and (iii) any interest, income or proceeds of any of the foregoing.

(l) “**Borrower Claims Trust Beneficial Interest**” means a non-transferable and non-assignable uncertificated beneficial interest in the Borrower Claims Trust to be issued to each holder of an Allowed Borrower Claim, other than an Allowed ETS Borrower Claim and an Allowed Borrower Convenience Claim, the amount of which for each holder shall be calculated as provided in Section 3.1, which entitles its holder to receive distributions of Distributable Excess Cash from the Borrower Claims Trust as set forth in this Borrower Claims Trust Agreement.

(m) “**Borrower Claims Trust Budget**” has the meaning assigned in Section 2.9(a).

(n) “**Borrower Claims Trust Website**” means an internet website maintained by the Borrower Claims Trust in accordance with this Borrower Claims Trust Agreement.

(o) “**Borrower Convenience Claim**” means (i) a Claim that would otherwise be classified as an Allowed Borrower Claim, but, (A) in the case of a Claim against a GMACM Debtor, the aggregate Allowed amount of such Claim is, or is reduced to, \$8,500 or less (or such other value as determined by the Trust Committee) and (B) in the case of a claim against an RFC Debtor, the aggregate Allowed amount of such Claim is, or is reduced to, \$28,000 or less (or such other value as determined by the Trust Committee) or (ii) such other Claim or class of Claim that the Trust Committee has determined shall be classified as a Borrower Convenience Claim for purposes of this Borrower Claims Trust Agreement.

(p) “**Borrower Convenience Claim Payment**” means, an amount in Cash equal to \$500.00 (or such other amount determined by the Trust Committee) plus the amount of such Allowed Borrower Convenience Claim multiplied by (i) in the case of an Allowed Borrower Convenience Claim against a GMACM Debtor, ~~{30.1%}~~ and (ii) in the case of an Allowed Borrower Convenience Claim against an RFC Debtor, ~~{9.0%}~~.

(q) “**Business Day**” means any day other than a Saturday, Sunday or legal holiday on which the banks in the City of New York, Borough of Manhattan, are authorized to remain closed.

(r) “**Cause**” means, with respect to the Borrower Claims Trustee, (i) an act of fraud, embezzlement or theft by the Borrower Claims Trustee in connection with the performance of his or her duties under this Borrower Claims Trust Agreement; (ii) intentional misconduct by the Borrower Claims Trustee with respect to the maintenance and disposition of the Borrower Claims Trust Assets; (iii) intentional disclosure of confidential information by the Borrower Claims Trustee in violation of Section 12.8; or (iv) gross negligence by the Borrower Claims Trustee in the performance of his or her duties under this Borrower Claims Trust Agreement.

(s) “**Case Management and Servicing Orders**” means (i) the Order Approving Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a) and (d), Bankruptcy Rules 1015(c), 2002(m), 7016, and 9007 and Local Bankruptcy Rule 2002-2 for Entry of an Order Approving (A) Supplement to Case Management Order Establishing Mandatory Procedures for Management of Adversary Proceedings Commenced by Borrowers and Former Borrowers and (B) Related Relief [Docket No. 3293], as amended by the Amended Order Approving Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a) and (d), Bankruptcy Rules 1015(c), 2002(m), 7016, and 9007 and Local Bankruptcy Rule 2002-2 for Entry of an Order Approving (A) Supplemental to Case Management Order Establishing Mandatory Procedures for Management of Adversary Proceedings Commenced by Borrowers and Former Borrowers and (B) Related Relief [Docket No. 3490], and (ii) Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 1009, 3007 and 9019(b) Approving (I) Claim Procedures, (II) Borrower Claim Procedures, (III) Settlement Procedures, and (IV) Schedule Amendment Procedures [Docket No. 3294].

(t) “**Certificate of Trust**” means the certificate of trust of the Borrower Claims Trust as required by section 3810 of the Trust Act, substantially in the form set forth in Exhibit A to this Borrower Claims Trust Agreement, and filed in connection with the formation of the Borrower Claims Trust pursuant to the Trust Act.

(u) “**Confidentiality Parties**” has the meaning assigned in Section 12.8.

(v) “**Conflicted Member**” has the meaning assigned in Section 5.4(d).

(w) “**Cooperation Agreement**” means that certain Cooperation Agreement, dated the date hereof, by and between the Borrower Claims Trust and the Liquidating Trust.

(x) “**Debtors**” has the meaning assigned in the Preamble.

(y) “**Delaware Trustee**” means   Province East LLC, or its successor, which is appointed in accordance with this Borrower Claims Trust Agreement to comply with the requirement of section 3807 of the Trust Act.

(z) “**Designee**” has the meaning assigned in Section 7.6.

(aa) “**Disputed Borrower Claims**” means Borrower Claims that at any relevant time are Disputed Claims.

(bb) “**Disputed Claims Reserve**” means the reserve of Cash maintained by the Borrower Claims Trust, for distribution to holders of Disputed Borrower Claims that are subsequently Allowed.

(cc) “**Dispute Resolution**” has the meaning assigned in Section 3.7.

(dd) “**Distributable Excess Cash**” means Cash included at any time in the Borrower Claims Trust Assets, other than the Return Amount Reserve, in excess, but without duplication, of (i) the amount of Cash required for making Borrower Claims Payments in respect of Allowed Borrower Claims, (ii) the minimum amount of Cash required be held in the Disputed Claims Reserve for making payments in respect of Disputed Borrower Claims that may become Allowed pursuant to Section 6.3, and (iii) the amount of Cash required to fund the Borrower Claims Trust Administrative Reserve and any other reserve required to be maintained under this Borrower Claims Trust Agreement.

(ee) “**Estimated Amount**” means the estimated amount of a Disputed Borrower Claim, as determined by the Borrower Claims Trustee, which ~~shall either~~ may be (i) the filed amount of the Claim ~~or~~ (ii) such amount as estimated by the Bankruptcy Court at the request of the Debtors or the Borrower Claims Trust pursuant to Bankruptcy Code section 502(c) or (iii) such other estimated amount determined in accordance with the Plan, including Article VIII.A.4. thereof, or (iv) such amount calculated in good faith on the basis of a reasonable estimate by the Trust Committee taking into account historical resolutions, by litigation or otherwise, of similar Borrower Claims.

(ff) “**ETS Borrower Claim**” means a Borrower Claim against ETS.

(gg) “**Fee and Expense Report**” has the meaning assigned in Section 6.7(c).

(hh) “**Fee Notice Period**” has the meaning assigned in Section 6.7(c).

(ii) “**FDIC**” means the Federal Deposit Insurance Corporation or any successor institution.

(jj) “**Fiscal Year**” means any fiscal year of the Borrower Claims Trust, as provided in Section 2.8 hereof.

(kk) “**KSC Committee Member**” has the meaning assigned in Section 5.1(a).

(ll) “**Plan**” has the meaning assigned in the Recitals.

(mm) “**Plan Documents**” means, collectively, the Plan, the Confirmation Order and this Borrower Claims Trust Agreement.

(nn) “**Return Amount**” has the meaning assigned in Section 2.4(a).

successor-in-interest to the Debtors with respect to any and all such matters and shall be deemed substituted for each such Debtor as the party in any such litigation or contested matter.

(c) All Borrower-Related Causes of Action are preserved and retained and may be enforced by the Borrower Claims Trust pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to the extent not waived and released under the Plan.

#### 2.4 Transfer of Borrower Available Assets.

(a) On the Effective Date, subject to the terms of the Confirmation Order, (i) the Liquidating Trust, in its capacity as disbursing agent for the Debtors, if such distribution is not otherwise made by the Debtors, shall transfer (I) Cash in the amount of \$56,101,527, which amount represents \$57,600,000 (A) less any amounts paid by the Debtors to or on behalf of the holders of Allowed Borrower Claims pursuant to settlements entered into prior to the Effective Date pursuant to the Case Management and Servicing Orders or any other order of the Bankruptcy Court and (B) plus the amount, if any, of the Borrower Trust True-Up, which calculation is set forth on Schedule 2.4 hereto, and (II) the Administrative Funding Payment and (ii) the Debtors shall transfer all of the Available Assets constituting Borrower-Related Causes of Action, in the form thereof existing on such date (clauses (i) and (ii) collectively, the “Borrower Available Assets”), in each case, to the Borrower Claims Trust, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or otherwise) of all other persons and entities to the maximum extent contemplated by and permissible under section 1141 of the Bankruptcy Code. For the avoidance of doubt, the Borrower-Related Causes of Action shall not include Estates’ claims, rights and remedies with respect to any note and accompanying mortgage or deed of trust originated, owned, acquired or serviced by the Estates as of the Effective Date and any such claim, right or remedy shall constitute an Available Asset to be assigned to the Liquidating Trust; provided, however, the Estates shall expressly reserve and assign to the Borrower Claims Trust, all claims, defenses, set-offs, cross-claims and counterclaims that the Debtors may have against Borrowers with respect to any Borrower Claim. The Borrower Claims Trust shall have such incidents of ownership in such transferred assets as are necessary to undertake the actions and transactions authorized in the Plan Documents. The transfer of the Borrower Available Assets shall be exempt from any stamp, real estate transfer, mortgage recording, sales, use or other similar tax pursuant to section 1146 of the Bankruptcy Code. Upon the transfer of the Borrower Available Assets to the Borrower Claims Trust, such assets shall become Borrower Claims Trust Assets.

(b) Notwithstanding the foregoing, if on the Effective Date, any of the Borrower Available Assets cannot be transferred to the Borrower Claims Trust for any reason, for example, because the Borrower Claims Trust has not yet established accounts for the purpose of holding Cash or because of a restriction on transferability under applicable non-bankruptcy law that is not superseded by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, the Debtors (or successors thereto) or the Liquidating Trust, as applicable, shall continue to hold such Borrower Claims Trust Assets, as bailee for the account of the Borrower Claims Trust, until such time as the Borrower Claims Trust informs the Debtors (or successors thereto) or the Liquidating Trust, as applicable, that the Borrower Claims Trust may receive such Borrower Available Assets, whereupon such assets shall be promptly transferred to the Borrower Claims Trust and become Borrower Claims Trust

Assets; provided that any proceeds realized from such assets retained by the Debtors (or any successors thereto) or the Liquidating Trust, as applicable, shall nevertheless be deemed to constitute Borrower Claims Trust Assets, and to likewise be held by the Debtors (or successors thereto) or the Liquidating Trust, as applicable, as bailee, and be turned over as soon as practicable to the Borrower Claims Trust pursuant to this Borrower Claims Trust Agreement as if such transfer had not been restricted under applicable non-bankruptcy law. The Borrower Claims Trustee may commence an action in the Bankruptcy Court to resolve any dispute regarding the allocation of the proceeds of any Borrower Available Assets retained by the Debtors (or any successors thereto) or the Liquidating Trust, as applicable, pursuant to the Plan Documents.

(c) On or prior to the Effective Date, the Debtors shall deliver or cause to be delivered to the Liquidating Trust any and all of the Debtors' books and records that relate primarily to or that may be reasonably required in connection with the Borrower Available Assets, whether held by the Debtors, their agents, representatives, advisors, attorneys, accountants and any other professionals hired by the Debtors and provide reasonable access to such employees, agents, advisors, attorneys, accountants or any other Debtor professionals with knowledge of matters relevant to the Borrower Available Assets. The Liquidating Trust shall store and maintain such books and records for the benefit of the Borrower Claims Trust, the Borrower Claims Trustee, and Borrower Claims Trust Agents shall be afforded access to such books and records, in each case, in accordance with the terms of the Cooperation Agreement.

(d) On or prior to the Effective Date, the Debtors shall deliver, or cause to be delivered, to the Borrower Claims Trust a complete list of all Allowed Borrower Claims, including Allowed ETS Borrower Claims, Allowed Borrower Convenience Claims, if any, and Disputed Borrower Claims, reflected on the claims registry (the "Borrower Claims Register") as of the Effective Date. The list shall include the names and addresses of the holders of such Claims and, in the case of Allowed Borrower Claims, Allowed ETS Borrower Claims and Allowed Borrower Convenience Claims, the amounts thereof, and in the case of Disputed Borrower Claims, the amounts thereof as filed and the Estimated Amounts (if any) thereof. The list of Disputed Borrower Claims shall include the details of all objections, including filed objections and identified potential objections (if any), in respect of such the Claims.

(e) The Borrower Claims Trust, as successor-in-interest to the Estates with respect to the Borrower Available Assets, may (i) execute and deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) take, or cause to be taken, all such further action in order to evidence, vest, perfect or effectuate the transfer of all of the Borrower Available Assets to the Borrower Claims Trust and consummate transactions contemplated by and to otherwise carry out the intent of the Plan Documents with respect to such assets.

2.5 Borrower Return Amounts. Subject to the Kessler Settlement Agreement ~~and the Mitchell Settlement Agreement~~, to the extent a Trust Beneficiary recovers insurance proceeds on account of all or some of an Allowed Borrower Claim, and payments on account of such Allowed Borrower Claim have been made pursuant to this Borrower Claims Trust Agreement, the Trust Beneficiary shall be required to return a portion of such payments

(e) Permit or cause the Borrower Claims Trust to hold 50% or more of the stock (in either vote or value) of any Entity that is treated as a corporation for federal income tax purposes or have any interest in an Entity that is treated as a partnership for federal income tax purposes, unless such stock or partnership interest was obtained involuntarily or as a matter of practical economic necessity, including enforcement of and execution of judgments, in order to preserve the value of the Borrower Claims Trust Assets.

7.6 Conflicts of Interest. If the Borrower Claims Trustee determines, in his or her reasonable discretion, that he or she has a material conflict of interest with respect to the settlement of a Borrower Claim, the resolution or prosecution of a Borrower-Related Cause of Action, or any other matter, the Borrower Claims Trustee shall select a designee approved by the Trust Committee to act on behalf of the Borrower Claims Trust solely with respect to such matter (the “Designee”), with such Designee’s authority to act on behalf of the Borrower Claims Trust to terminate upon the matter’s conclusion. If the Designee files a pleading, motion, or other paper with a court or tribunal on behalf of the Borrower Claims Trust, it shall do so in its own name as “Designee of the ResCap Borrower Claims Trust”.

7.7 Fiduciary Duty and Standard of Care.

(a) The Borrower Claims Trustee’s powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Borrower Claims Trust and not otherwise, and in accordance with applicable law, including the Trust Act.

(b) The Borrower Claims Trustee in the exercise of his or her duties hereunder shall act in accordance with principles of good faith and fair dealing.

7.8 Bond or Insurance. The Borrower Claims Trustee shall obtain a trustee’s bond (a “Trustee’s Bond”) from an Entity approved by the Trust Committee to protect the Trust Beneficiaries with respect to his obligations as Borrower Claims Trustee. The premiums for such the Trustee’s Bond shall be paid with Borrower Claims Trust Assets as an expense of administering the Borrower Claims Trust. The amount of the Trustee’s Bond shall be determined based upon the amount of Cash under the control of the Borrower Claims Trustee at any time, and shall be adjusted from time to time in accordance with Cash receipts and disbursements by the Borrower Claims Trust. Alternatively, with approval of the Trust Committee, the Borrower Claims Trustee may satisfy the requirement to obtain a Trustee’s Bond with insurance coverage for the liabilities, duties and obligations of the Borrower Claims Trustee and his agents, employees, and professionals (in the form of an errors and omissions policy or otherwise) which may, at the option of the Borrower Claims Trustee unless unanimously disapproved by the Trust Committee, remain in effect for a reasonable period after the conclusion of the Borrower Claims Trustee’s service. In the event the Borrower Claims Trustee elects to satisfy the requirements of this Section 7.9 with insurance coverage, such insurance coverage shall be maintained by the Borrower Claims Trust in accordance with Section ~~2.11~~ 2.10.

**ARTICLE VIII**  
**DELAWARE TRUSTEE**

action in any court of competent jurisdiction to prosecute any Borrower-Related Causes of Action.

12.3 Severability. In the event that any provision of this Borrower Claims Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Borrower Claims Trust Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Borrower Claims Trust Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.4 Notices. Any notice or other communication required or permitted to be made under this Borrower Claims Trust Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by facsimile, sent by nationally recognized overnight delivery service, or mailed by first-class mail:

- (i) if to the Delaware Trustee, to:

[redacted]  
[redacted]  
[redacted]

~~Attention: Trust Administration~~

[Province East LLC](#)  
[c/o Polsinelli LLP](#)  
[222 Delaware Avenue, Suite 1101](#)  
[Wilmington, DE 19801](#)  
[Phone: \(302\) 252-0920](#)  
[Fax: \(302\) 252-0921](#)

- (iii) if to the Borrower Claims Trustee, to:

[redacted]  
[redacted]  
[redacted]

[Peter S. Kravitz, Esq.](#)  
[Solution Trust](#)  
[29209 Canwood Street](#)  
[Agoura Hills, CA 91301](#)  
[Phone: \(310\) 974-6350](#)  
[Email: PKravitz@SolutionTrust.com](#)

- (iii) if to any Trust Beneficiary, to the last known address of such Trust Beneficiary according to the records of the Borrower Claims Trust.

12.5 Headings. The headings contained in this Borrower Claims Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Borrower Claims Trust Agreement or of any term or provision hereof.

**IN WITNESS WHEREOF**, the parties hereto have executed this Borrower Claims Trust Agreement or caused this Borrower Claims Trust Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

Residential Capital, LLC;

By: /s/ William Thompson  
Name: William Thompson  
Title: General Counsel

By: /s/ Jill Horner  
Name: Jill Horner  
Title: Chief Finance Executive

AKA 13, LLC (f/k/a ditech, LLC), DOA Holding Properties, LLC, DOA Properties IX (Lots-Other), LLC, EPRE LLC, Equity Investment I, LLC, ETS of Virginia, Inc., ETS of Washington, Inc., Executive Trustee Services, LLC, GMAC-RFC Holding Company, LLC, GMAC Model Home Finance I, LLC, GMAC Mortgage USA Corporation, GMAC Mortgage, LLC, GMAC Residential Holding Company, LLC, GMAC RH Settlement Services, LLC, GMACM Borrower LLC, GMACM REO LLC, GMACR Mortgage Products, LLC, HFN REO SUB II, LLC, Home Connects Lending Services, LLC, Homecomings Financial Real Estate Holdings, LLC, Homecomings Financial, LLC, Ladue Associates, Inc., Passive Asset Transactions, LLC, PATI A, LLC, PATI B, LLC, PATI Real Estate Holdings, LLC, RAHI A, LLC, RAHI B, LLC, RAHI Real Estate Holdings, LLC, RCSFJV2004, LLC, Residential Accredited Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, Residential Consumer Services of Alabama, LLC, Residential Consumer Services of Ohio, LLC, Residential Consumer Services of Texas, LLC, Residential Consumer Services, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Exchange, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Funding Real Estate Holdings, LLC, Residential Mortgage Real Estate Holdings, LLC, RFC – GSAP Servicer Advance, LLC, RFC Asset Holdings II, LLC, RFC Asset Management, LLC, RFC Borrower LLC, RFC Construction Funding, LLC, RFC REO LLC and RFC SFJV-2002, LLC

By: /s/ William Thompson  
Name: William Thompson  
Title: General Counsel

By: [/s/ Jill Horner](#)  
Name: [Jill Horner](#)  
Title: [Chief Financial Officer](#)

[\[redacted\]](#) [Province East LLC](#), as Delaware Trustee

By: [/s/ Peter Kravitz](#)  
Name: [Peter Kravitz](#)  
Title: [Managing Member](#)

[\[redacted\]](#) [/s/ Peter Kravitz](#), as Borrower  
Claims Trustee

**EXHIBIT A**  
**FORM OF**  
**CERTIFICATE OF TRUST**  
**OF**  
**RESCAP BORROWER CLAIMS TRUST**

This Certificate of Trust of ResCap Borrower Claims Trust is being duly executed and filed on behalf of such trust by the undersigned, as trustee, to form a statutory trust under the Delaware Statutory Trust Act (12 Del. C. § 3801 et seq.) (the “Trust Act”).

1. Name. The name of the Delaware statutory trust formed by this Certificate of Trust is ResCap Borrower Claims Trust.

2. Delaware Trustee. The name and business address of the trustee of the Trust with a principal place of business in the State of Delaware are ~~\_\_\_\_\_~~ Province East LLC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801.

3. Effective Date. This Certificate of Trust shall be effective upon its filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Trust in accordance with section 3811(a)(1) of the Trust Act.

~~[DELAWARE TRUSTEE]~~ Province East LLC, not in its individual capacity but solely as trustee

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

\_\_\_\_\_  
~~[BORROWER CLAIMS TRUSTEE]~~ Peter S. Kravitz,  
not in ~~[his/her]~~ individual capacity but solely as trustee

*Privileged and Confidential*

*Subject to Common Interest Privilege/FRE 408  
KL Draft as of 10/8/2013*

**EXHIBIT B**

**Initial Borrower Claims Trust Budget**

	<u>Year 1</u>
<u>Trustee</u>	<u>\$ 325,000</u>
<u>General Counsel, Litigation Counsel, Local Counsel</u>	<u>1,667,500</u>
<u>Tax Advisor</u>	<u>10,000</u>
<u>General Administration</u>	<u>7,500</u>
<u>Insurance</u>	<u>150,000</u>
<u>Oversight</u>	<u>12,000</u>
<u>Total</u>	<u>\$2,172,000</u>

*{To come}*

*Privileged and Confidential*

*Subject to Common Interest Privilege/FRE 408*

*~~KL Draft as of 10/8/2013~~*

**EXHIBIT C**

**Initial Committee Members**

*Privileged and Confidential*

*Subject to Common Interest Privilege/FRE 408  
~~KL Draft as of 10/8/2013~~*

**Initial Members of the Borrower Claims Trust Committee**

Set forth below is information regarding the initial members of the Borrower Claims Trust Committee upon the Effective Date.<sup>1</sup>

1. Rowena Drennen for the Kessler Settlement Class in the consolidated class action styled *In re Community Bank of Northern Virginia Second Mortgage Lending Practice Litigation*, consolidated in the United States District Court for the Western District of Pennsylvania, MDL No. 1674, Case Nos. 03-0425, 02-01201, 05-0688, 05-1386.

2. Steven Mitchell for the Mitchell Settlement Class in the civil action styled *Steven and Ruth Mitchell v. Residential Funding Company, LLC, et al.*, currently pending before the Circuit Court of Jackson County, Missouri, Division 4, Case No. 03-CV-220489.

~~3. [Mark Strauss as proposed counsel for the putative Rothstein Class].—~~

<sup>1</sup> All capitalized terms used but not defined herein shall have the meaning ascribed to them in the *Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [Docket No. 4819, Ex. 1] (as may be amended from time to time, the “**Plan**”).

*Privileged and Confidential*

*Subject to Common Interest Privilege/FRE 408*

*~~KL Draft as of 10/8/2013~~*

**Schedule 2.4**

**Calculation of Cash Portion of Borrower Claims Trust Assets**

<u>Unadjusted Allocation of Cash to Borrower Claims Trust</u>	<u>\$57,600,000</u>
<u>Cash Amounts Paid by the Debtors to or on Behalf of Holders of Allowed Borrower Claims Pursuant to Settlements Entered into Prior to the Effective Date</u>	<u>(1,498,473)</u>
<u>Borrower Trust True-Up</u>	<u>0</u>
<u>Cash to Borrower Claims Trust (Excluding Administrative Funding Payment)</u>	<u>\$56,101,527</u>

**Exhibit 5**

**Private Securities Claims Trust Agreement**

**RESCAP PRIVATE SECURITIES CLAIMS LIQUIDATING TRUST  
AGREEMENT AND DECLARATION OF LIQUIDATING TRUST**

This Private Securities Claims Liquidating Trust Agreement and Declaration of Liquidating Trust (this “**PSC Trust Agreement**”) is entered into as of December 17, 2013, by and among Residential Capital, LLC (“**ResCap**”), certain affiliates signatory hereto (together with ResCap, the “**Debtors**”), and Quest Turnaround Advisors, LLC, as the liquidating trustee (the “**PSC Trustee**”) in order to establish a liquidating trust (the “**PSC Trust**”) for the benefit of the holders of securities litigation claims against the Debtors and Ally Financial, Inc. and its non-Debtor affiliates, arising from the purchase or sale of residential mortgage-backed securities (the “**Private Securities Claims**,” and the exclusive holders thereof, as identified in footnote 10 of the Supplemental Term Sheet annexed as Exhibit B to the Plan Support Agreement, dated as of May 13, 2013 (the “**Plan Support Agreement**”), are hereinafter referred to as the “**Private Securities Claimants**”).

**RECITALS**

**WHEREAS**, on May 14, 2012, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) commencing jointly administered cases under the caption *In re Residential Capital, LLC*, Case No. 12-12020 (the “**Bankruptcy Cases**”); and

**WHEREAS**, on August 20, 2013, the Debtors and the Official Committee of Unsecured Creditors of Residential Capital, LLC, et al. filed that certain Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors (Dkt. No. 4770) (together with any amendments or modifications thereto required or permitted by the Bankruptcy Court or as otherwise permitted pursuant to the terms of the Plan, the “**Plan**”); and

**WHEREAS**, on December 11, 2013, the Bankruptcy Court entered an Order confirming the Plan (Dkt. No. 6030-1) (the “**Confirmation Order**”); and

**WHEREAS**, pursuant to the Plan, a liquidation trust has been established for the benefit of unsecured creditors of the Debtors (the “**Main Liquidating Trust**”); and

**WHEREAS**, pursuant to the Plan, the PSC Trust has been established for the benefit of the Private Securities Claimants;

**WHEREAS**, as soon as practicable after the Effective Date, the Main Liquidating Trust will issue units of beneficial interests (the “**Liquidating Trust Units**”) to unsecured creditors of the Debtors and/or their designated recipients, including the PSC Trust; and

**WHEREAS**, as set forth in the Plan, the PSC Trust will receive a number of Liquidating Trust Units (referred to in the Main Liquidating Trust Agreement as the “Private Securities Claims Trust Unit Distribution”) that will entitle the holders thereof to periodic distributions of cash from the Main Liquidating Trust in the aggregate amount of \$235 million, subject to upward or downward adjustment as provided under the Plan (the “**PSC Trust Assets**”); and

**WHEREAS**, the Private Securities Claimants having agreed to the allocation among them of the PSC Trust Assets, as set forth in the Allocation Agreement (as defined below), the primary duty of the PSC Trustee hereunder shall be the distribution to each Private Securities Claimant of its respective allocated share of the PSC Trust Assets, in accordance with the Allocation Agreement; and

**WHEREAS**, as soon as practicable after receiving the PSC Trust Assets (and in any event, within one Business Day), the PSC Trust shall distribute to the Designated DTC Participant (as defined below) of each Private Securities Claimant such claimant's allocated share of the PSC Trust Assets, calculated in accordance with Schedule I annexed to the Allocation Agreement; provided, however, that if any Private Securities Claimant has not identified to the PSC Trust its Designated DTC Participant, such Private Securities Claimant shall not be entitled to receive its allocated share of the Private Securities Claims Trust Unit Distribution from the PSC Trust; and

**WHEREAS**, pending the distributions contemplated by the immediately preceding recital, the PSC Trust Assets will be held in trust pursuant to the terms of the Plan and this PSC Trust Agreement for the benefit of each Private Securities Claimant as a Holder of an Allowed Private Securities Claim in Classes R-6, GS-6, and RS-6 under the Plan (each, a "**Beneficiary**" and collectively, the "**Beneficiaries**"); and

**WHEREAS**, the PSC Trust is established for the sole purpose of distributing the PSC Trust Assets to the Beneficiaries, with no objective or authority to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the PSC Trust and the Plan; and

**WHEREAS**, for federal income tax purposes, the PSC Trust is intended to be treated as an agent of the Beneficiaries; and

**WHEREAS**, this PSC Trust Agreement is subject to the approval of the Bankruptcy Court in the Confirmation Order.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Debtors, the reorganized Debtors, the PSC Trustee, intending to be legally bound, agree as follows:

## **ARTICLE I DEFINITIONS**

### **Section 1.1. Definitions.**

The terms defined in this section are specific to this PSC Trust Agreement. Capitalized terms used but not otherwise defined in this PSC Trust Agreement shall have the meanings ascribed to those terms in the Plan. For the purposes of this PSC Trust Agreement, the following terms (which appear in this PSC Trust Agreement with initial capitalized letters) shall have the meanings set forth below, and such meanings shall be equally applicable to the singular and to the plural form of the terms defined, unless the context requires otherwise.

“**Allocation Agreement**” means the Private Securities Claims Allocation Agreement, dated as of August 16, 2013, by and among the Private Securities Claimants, pursuant to which the parties thereto agreed to allocate the PSC Trust Assets among the Private Securities Claimants.

“**Bankruptcy Cases**” has the meaning ascribed thereto in the recitals.

“**Bankruptcy Code**” has the meaning ascribed thereto in the recitals.

“**Bankruptcy Court**” has the meaning ascribed thereto in the recitals.

“**Beneficiary**” or “**Beneficiaries**” has the meaning ascribed thereto in the recitals;

“**Business Day**” means any day other than Saturday, Sunday, and any day that is a legal holiday or a day on which banking institutions in New York, New York are required or authorized by law or governmental action to close.

“**Confirmation Order**” has the meaning ascribed thereto in the recitals.

“**Debtors**” has the meaning ascribed thereto in the preamble.

“**Designated DTC Participant**” means a participant (including a securities broker and dealer, a bank, a trust company, a clearing corporation, and other financial organizations) of DTC, as depository, identified by a Private Securities Claimant to the PSC Trust as the party that will receive the distribution, on behalf of such Private Securities Claimant, of such Private Securities Claimant’s allocated share of the PSC Trust Assets.

“**Effective Date**” means the date on which the Plan becomes effective, in accordance with its terms.

“**Indemnified Person**” has the meaning ascribed thereto in Section 8.1.

“**IRS**” means the Internal Revenue Service.

“**IRS Form(s)**” has the meaning ascribed thereto in Section 6.10.

“**Liquidating Trust Unit**” has the meaning ascribed thereto in the recitals.

“**Main Liquidating Trust**” has the meaning ascribed thereto in the recitals.

“**Main Liquidating Trust Agreement**” means the liquidating trust agreement governing the Main Liquidating Trust.

“**Nominating Party**” has the meaning ascribed thereto in Section 3.4(a) of this PSC Trust Agreement.

“**Non-DTC Beneficiary**” has the meaning ascribed thereto in Section 6.4(a).

“**Original Beneficiary**” means any party that was a Beneficiary as of the Effective Date;

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

“**Plan**” has the meaning ascribed thereto in the recitals.

“**Plan Support Agreement**” has the meaning ascribed thereto in the preamble.

“**PSC Board Designee**” has the meaning ascribed thereto in Section 3.4(a) of this PSC Trust Agreement.

“**PSC DTC Account**” has the meaning ascribed thereto in Section 4.5(a) of this PSC Trust Agreement.

“**PSC Trust**” has the meaning ascribed thereto in the preamble.

“**PSC Trust Agreement**” has the meaning ascribed thereto in the preamble.

“**PSC Trust Assets**” has the meaning ascribed thereto in the recitals.

“**PSC Trust Office**” means the address at which the PSC Trustee conducts business as set forth in Section 9.1 of this PSC Trust Agreement.

“**Register**” has the meaning ascribed thereto in Section 3.2.

“**Treasury Regulations**” mean U.S. Treasury Department regulations promulgated under the Internal Revenue Code of 1986, as amended.

**Section 1.2. Rules of Construction.**

Except as otherwise expressly provided in this PSC Trust Agreement or unless the context otherwise clearly requires:

(a) References to designated articles, sections, and other subdivisions of this PSC Trust Agreement refer to the designated article, section, or other subdivision of this PSC Trust Agreement as a whole and to all subdivisions of the designated article, section, or other subdivision. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to this PSC Trust Agreement as a whole and not to any particular article, section or other subdivision of this PSC Trust Agreement.

(b) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this PSC Trust Agreement.

(c) Unless a provision is restricted as to time or limited as to frequency, all provisions under this PSC Trust Agreement are implicitly available from time to time.

(d) The term “including” and all its variations mean “including but not limited to.” Except when used in conjunction with the word “either,” the word “or” is always used inclusively (for example, the phrase “A or B” means “A or B or both,” not “either A or B but not both”).

(e) All accounting terms used in an accounting context and not otherwise defined shall be construed in accordance with United States generally accepted accounting principles.

(f) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the word “from” means “from and including” and the words “to” or “until” mean “to but excluding.” Likewise, in setting deadlines or other periods, “by” means “on or before,” and “after” means “from and after.”

All terms defined in this PSC Trust Agreement shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein.

## **ARTICLE II ORGANIZATION**

### **Section 2.1. Establishment of PSC Trust and Name.**

Pursuant to the Plan, the Debtors and the PSC Trustee hereby establish for the benefit of the Beneficiaries a trust that shall be known as the “**ResCap Private Securities Claims Trust**,” in which name the PSC Trustee may conduct the affairs of the PSC Trust as set forth in this PSC Trust Agreement.

### **Section 2.2. Office.**

The office of the PSC Trust shall be in care of the PSC Trustee at the PSC Trust Office or at any other address that the PSC Trustee may designate by written notice to the Beneficiaries.

### **Section 2.3. Declaration of PSC Trust.**

Upon the Effective Date, the PSC Trustee shall have all the rights, powers and duties set forth herein, in the Plan and pursuant to applicable law for accomplishing the purposes of the PSC Trust. The PSC Trustee is hereby authorized to file with any governmental authority any documents necessary to establish the PSC Trust.

### **Section 2.4. Appointment of PSC Trustee.**

The appointment of the PSC Trustee was approved by the Bankruptcy Court in the Confirmation Order and the PSC Trustee shall commence serving as the PSC Trustee on the Effective Date; provided, however, that the party appointed as the PSC Trustee shall be permitted to act in accordance with the terms of the PSC Trust Agreement from the date the Confirmation Order is entered through the Effective Date.

**Section 2.5. Acceptance of PSC Trust.**

The PSC Trustee accepts the PSC Trust Assets and agrees to promptly distribute the PSC Trust Assets in accordance with Section 6.4(a) of this PSC Trust Agreement, subject to the terms of the Plan, the Confirmation Order and this PSC Trust Agreement.

**Section 2.6. [RESERVED]**

**Section 2.7. Conveyance of PSC Trust Assets.**

On the Initial Unit Distribution Date (as such term is defined in the Main Liquidating Trust Agreement), the Main Liquidating Trust will issue to the PSC Trust the Private Securities Claims Trust Unit Distribution, and the PSC Trust shall accept the Private Securities Claims Trust Unit Distribution in trust for the benefit of the Beneficiaries.

**Section 2.8. Nature and Purpose of the PSC Trust.**

(a) Purpose. The PSC Trust shall be established for the sole purpose of distributing the Private Securities Claims Trust Unit Distribution and the proceeds thereof, with no objective to continue or engage in the conduct of a trade or business. Subject to definitive guidance from the IRS, for federal income tax purposes, all parties shall treat the PSC Trust as an agent of the Beneficiaries.

(b) Manner of Acting. The PSC Trustee shall oversee the distribution of the PSC Trust Assets in a cost-effective manner in accordance with Section 6.4(a) of this PSC Trust Agreement, the Plan and the Confirmation Order, and shall not unduly prolong the duration of the PSC Trust.

**Section 2.9. Status of PSC Trustee.**

The PSC Trustee is not authorized to engage, and shall not engage, in any trade or business with respect to the PSC Trust Assets or any proceeds therefrom, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the PSC Trust.

**ARTICLE III  
THE BENEFICIARIES**

**Section 3.1. Rights of Beneficiaries.**

Each Beneficiary shall be entitled to participate in the rights due to a Beneficiary hereunder. Each Beneficiary shall have a beneficial interest in the PSC Trust subject to all of the terms and provisions of this PSC Trust Agreement and the Plan, and each of the Private Securities Claims is hereby deemed to be an allowed claim in the Bankruptcy Cases, in the respective amounts sufficient to justify the distributions provided herein and in the Allocation Agreement. The interest of a Beneficiary of the PSC Trust is in all respects personal property. A Beneficiary shall have no title to, right to, possession of, management of, or control of, the PSC

Trust Assets, except as herein expressly provided. The sole interest of the Beneficiaries shall be the rights and benefits given to such Persons under this PSC Trust Agreement.

**Section 3.2. Transfer of Interests of Beneficiaries.**

To the extent a Beneficiary has identified its Designated DTC Participant to the PSC Trustee and received Liquidating Trust Units in accordance with Section 6.4(a) of this PSC Trust Agreement, such Liquidating Trust Units shall be freely negotiable and transferrable to the extent provided in the Main Liquidating Trust Agreement and the provisions of applicable securities laws. For so long as DTC continues to serve as depository for the Liquidating Trust Units, the transferability of Liquidating Trust Units shall also be subject to the requirements of DTC's electronic book-entry system. The PSC Trustee shall maintain a register (the "**Register**"), which may be a distribution matrix or other appropriate register, to record the beneficial interests of the Original Beneficiaries. Any Original Beneficiary that purchases or sells any Liquidating Trust Units shall notify the PSC Trustee of the number of Liquidating Trust Units purchased or sold within three (3) business days of the closing of such purchase or sale, and the PSC Trustee shall update the Register accordingly. The Register shall be kept at the PSC Trust Office, pending termination of the Main Liquidating Trust.

**Section 3.3. No Legal Title in Beneficiaries.**

No Beneficiary shall have legal title to any part of the PSC Trust Assets (prior to the distribution to a Beneficiary of its allocated share thereof). No transfer by operation of law or otherwise, of the right, title and interest of any Beneficiary in and to the PSC Trust Assets or hereunder shall operate to terminate this PSC Trust or entitle any successor or transferee of such Beneficiary to an accounting or to the transfer to it of legal title to any part of the PSC Trust Assets.

**Section 3.4. Appointment and Replacement of Main Trust Board Designee..**

(a) In accordance with the Plan Support Agreement, the Private Securities Claimants have the right to designate a member of the board of the Main Liquidating Trust (the "**PSC Board Designee**"). The right to name and/or replace the PSC Board Designee, or to decline to fill a vacancy of such position, shall be vested in the Original Beneficiary that holds the largest number of Liquidating Trust Units (the "**Nominating Party**") at the time a PSC Board Designee is to be appointed or replaced, determined by reference to the Register.

(b) In the event there is a vacancy on the Liquidating Trust Board (as defined in the Main Liquidating Trust Agreement) with respect to the board seat previously held by the PSC Board Designee, the PSC Trustee will, within three (3) business days of such vacancy, notify the Nominating Party of the vacancy of the PSC Board Designee. The Nominating Party will then notify the remaining Original Beneficiaries, utilizing the list of contact parties set forth in Schedule I hereto, within three (3) business days of receiving notice of the vacancy. Such notice shall constitute an offer to consult with any interested Original Beneficiary prior to naming a replacement or declining to fill a vacancy regarding a PSC Board Designee.

(c) If the Nominating Party does not exercise its right to name a replacement upon vacancy of the PSC designated Board seat within 45 days of receiving notice of such a

vacancy from the PSC Trustee, the right to name a replacement or allow seat to lapse shall pass to the Original Beneficiary with the next largest holding of Liquidating Trust Units, who may assume the right to name a replacement or let the seat lapse. If no replacement has been made and there has been no decision to allow the seat to lapse within 60 days of the original vacancy notice, such right shall revert to the Liquidating Trust Board. However, in the event of a subsequent vacancy in the Board seat of the PSC Board Designee, the Nominating Party shall retain the right to name a replacement or allow the seat to lapse.

(d) For the avoidance of doubt, rights to designate the PSC Board Designee (i) shall not be transferrable other than on the basis of the original Liquidating Trust Unit allocations protocol provided in this Section 3.4, (ii) are not the personal property of any holder, and (iii) without limitation, shall not vest in any transferee (or subsequent transferee) of an Original Beneficiary.

(e) This Section 3.4 shall survive the termination of the PSC Trust.

#### **ARTICLE IV THE PSC TRUSTEE**

##### **Section 4.1. Appointment and Tenure of PSC Trustee.**

[Quest Turnaround Advisors, LLC, led by Mr. Jeffrey A. Brodsky,] shall be the PSC Trustee until the PSC Trustee's resignation, death, replacement in accordance with Section 4.2 of this PSC Trust Agreement, or completion of all tasks related to the winding up of the PSC Trust, in accordance with Section 7.2 of this PSC Trust Agreement.

##### **Section 4.2. Tenure and Replacement of the PSC Trustee.**

Subject to Section 2.4 above, the authority of the PSC Trustee shall be effective as of the Effective Date and shall remain and continue in full force and effect until (a) the PSC Trust is terminated in accordance with Section 7.1 of this PSC Trust Agreement and (b) the PSC Trustee has completed all tasks related to winding up the PSC Trust. In the event Quest is replaced as the Liquidating Trust Manager of the Main Liquidating Trust, the person named to replace him as the Liquidating Trust Manager of the Main Liquidating Trust shall automatically be appointed, and shall replace Quest, as the PSC Trustee, and all rights, powers, duties, authority, and privileges of the predecessor PSC Trustee hereunder shall be vested in and undertaken by the successor PSC Trustee without any further act.

##### **Section 4.3. [RESERVED]**

##### **Section 4.4. [RESERVED]**

##### **Section 4.5. Authority/Duties.**

Subject to any limitations contained in, or as otherwise provided by this PSC Trust Agreement or in the Plan or the Confirmation Order, the PSC Trustee shall have the following powers and authorities, subject to the terms and conditions of this PSC Trust Agreement:

(a) to establish a securities account, custodial account or other appropriate account at a securities broker and dealer, bank, trust company, clearing corporation, or other financial organization, in each case that is a participant of the Depository Trust Company (the “PSC DTC Account”), to receive the Private Securities Claims Trust Unit Distribution from the Main Liquidating Trust (and for the avoidance of doubt, the PSC Trustee shall not have the authority to open any interest bearing account);

(b) to distribute to the Beneficiaries their respective allocated shares of the PSC Trust Assets in accordance with the Allocation Agreement;

(c) to maintain the Register listing the Liquidating Trust Units held by each Original Beneficiary, in order to determine at any date the Original Beneficiary entitled to appoint or replace the PSC Trust board designee;

(d) to provide notice to each of the Original Beneficiaries, within three Business Days, if there is a change in the Original Beneficiary entitled to appoint or replace the PSC Trust board designee, which notice shall include the name and contact information (telephone number and/or email address) of the Original Beneficiary succeeding to such appointment and replacement rights; and

(e) to do any and all things reasonably necessary to accomplish the purposes of this PSC Trust Agreement, subject to and consistent with the Plan, the Allocation Agreement and the Confirmation Order.

**Section 4.6. Compensation of PSC Trustee.**

The PSC Trustee shall perform the duties hereunder as incidental to the duties performed for the Main Liquidating Trust and shall not be entitled to additional compensation for the services provided hereunder.

**Section 4.7. No Implied Obligations.**

No other covenants or obligations shall be implied into this PSC Trust Agreement. The PSC Trustee shall not be responsible in any manner whatsoever for the correctness of any recital, statement, representation, or warranty herein, or in any document or instrument evidencing or otherwise constituting a part of the PSC Trust Assets.

**Section 4.8. Unknown Property and Liabilities.**

The PSC Trustee shall only be responsible for the property delivered to the PSC Trust, and the PSC Trustee shall have no duty to make, nor incur any liability for failing to make, any search for unknown property or for any liabilities.

**Section 4.9. No Bond.**

Notwithstanding any state law to the contrary, the PSC Trustee shall be exempt from giving any bond or other security in this jurisdiction.

**Section 4.10. Books and Records.**

The PSC Trustee shall maintain books and records relating to the PSC Trust, in such detail as may be necessary to enable the PSC Trustee to fulfill its obligations hereunder, and shall retain such books and records for a period of six (6) years following the termination of the PSC Trust.

**ARTICLE V  
[RESERVED]**

**ARTICLE VI  
ADMINISTRATION OF THE PSC TRUST**

**Section 6.1. Establishment of PSC DTC Account.**

Prior to the Effective Date, the PSC Trustee shall establish the PSC DTC Account to receive the Private Securities Claims Trust Unit Distribution from the Main Liquidating Trust.

**Section 6.2. Designation of Designated DTC Participants.**

Prior to the Effective Date, each Beneficiary shall identify to the PSC Trust its Designated DTC Participant, utilizing the form annexed hereto as Exhibit A, and shall provide to the PSC Trust such additional information concerning such Beneficiaries account(s) at its Designated DTC Participant as is necessary to enable the PSC Trust to make the distributions contemplated under Section 6.4 of this PSC Trust Agreement.

**Section 6.3. [RESERVED]**

**Section 6.4. Distribution Procedures.**

(a) Distributions. As soon as practicable after receiving the PSC Trust Assets from the Main Liquidating Trust (and in any event, within one Business Day thereof), the PSC Trust shall (i) distribute to the Designated DTC Participant of each Beneficiary that has identified to the PSC Trustee a Designated DTC Participant such Beneficiary's allocated share of the PSC Trust Assets, calculated in accordance with Schedule I annexed to the Allocation Agreement (with the identity of each Original Beneficiary and their respective allocations to be provided separately to, and confirmed by, the PSC Trust), and (ii) provide written notice that such distribution has been made to each of the parties listed on Schedule I hereto. Upon the receipt by a Designated DTC Participant of the respective Beneficiary's allocable share of the PSC Trust Assets, all future distributions to such Beneficiary shall be made directly by the Main Liquidating Trust on account of such Beneficiary's Liquidating Trust Units, and such Beneficiary shall not be entitled to receive any further distributions from the PSC Trust (except in the case of the misdelivery of any property) .

(b) Return of Distributions. If a Beneficiary otherwise entitled to receive an allocated share of the Private Securities Claims Trust Unit Distribution has not identified to the

PSC Trustee a Designated DTC Participant prior to the Effective Date (each a “**Non-DTC Beneficiary**”), then following the transfer to the PSC Trust of the Private Securities Claims Trust Unit Distribution, the PSC Trustee shall return to the Main Liquidating Trust the Liquidating Trust Units such Non-DTC Beneficiary would otherwise be entitled to receive, together with any cash distributed in respect of such Liquidating Trust Units, and the Main Liquidating Trust shall hold such Liquidating Trust Units and cash until such time as such holder complies with the requirements of Section 4.5(a) of the Main Liquidating Trust Agreement. In the event such Non-DTC Beneficiary has not complied with the requirements of Section 4.5(a) of the Main Liquidating Trust Agreement by the date that is ten (10) days before the date selected as the final Distribution Date (as defined in the Main Liquidating Trust Agreement) (i) the Liquidating Trust Units otherwise distributable to such holder shall be deemed cancelled and not outstanding, and (ii) the cash distributed or distributable in respect of such Liquidating Trust Units shall be distributed pro rata (in accordance with the Allocation Agreement) to the other Original Beneficiaries on the final Distribution Date.

**Section 6.5. [RESERVED]**

**Section 6.6. [RESERVED]**

**Section 6.7. [RESERVED]**

**Section 6.8. Further Authorization.**

The PSC Trustee shall be entitled to seek any orders, judgments, injunctions and rulings as it deems necessary to carry out the intentions and purposes, and to give full effect to the provisions of the Plan, the Confirmation Order, and this PSC Trust Agreement.

**Section 6.9. Withholding and Reporting Requirements.**

The PSC Trustee shall comply with all applicable tax withholding and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The PSC Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

**Section 6.10. Determination of Tax Information With Respect to Allowed Claims.**

Each Beneficiary shall provide to the PSC Trust prior to the Effective Date a valid properly completed IRS Form W-9 or a valid properly completed IRS Form W-8BEN, W-8ECI, W-8EXP or W-8IMY (including any successor, or otherwise applicable, form, individually, an “**IRS Form**” and, collectively, the “**IRS Forms**”), as applicable. To the extent necessary, the PSC Trust may provide copies of the Beneficiaries’ IRS Forms to the Main Liquidating Trust.

**Section 6.11. Tax Returns/Tax Matters.**

The PSC Trustee shall file any required tax returns for the PSC Trust in a manner consistent with Section 2.8(a) of this PSC Trust Agreement. The PSC Trustee shall make such

information available to the Beneficiaries in order to enable them to properly file their separate tax returns and withhold and pay any amounts required by any applicable tax law.

## **ARTICLE VII DURATION OF PSC TRUST**

### **Section 7.1. Duration of PSC Trust.**

The PSC Trust shall terminate three (3) business days after the PSC Trustee has completed distribution of the PSC Trust Assets to the Beneficiaries, and the PSC Trustee shall promptly take all actions necessary to wind up the affairs of the PSC Trust as soon as reasonably practicable. For the avoidance of doubt, in the event the PSC Trust has distributed all of the PSC Trust Assets to the Beneficiaries (utilizing their Designated DTC Participants), then the PSC Trust shall terminate three (3) business days thereafter.

### **Section 7.2. Continuance of PSC Trust for Winding Up.**

After the termination of the PSC Trust and for the purpose of liquidating and winding up the affairs of the PSC Trust, the PSC Trustee shall continue to act until the PSC Trustee's duties have been fully performed. Upon termination of the PSC Trust, the PSC Trustee shall retain for a period of six (6) years the books, records, Register, and other documents and files which have been delivered to or created by the PSC Trustee. At the PSC Trustee's discretion, all other records and documents may, but need not, be destroyed at any time after two (2) years from the completion and winding up of the affairs of the PSC Trust. Except as otherwise specifically provided herein, upon the termination of the PSC Trust, the PSC Trustee shall have no further duties or obligations hereunder.

## **ARTICLE VIII INDEMNIFICATION; LIMITATIONS ON LIABILITY**

### **Section 8.1. General Indemnification.**

The PSC Trust shall indemnify, defend, and hold harmless any Person who was, or is, a party, or is threatened to be made a party, to any pending or contemplated investigation, action, suit or proceeding, by reason of the fact that such Person is or was the PSC Trustee (an "**Indemnified Person**"), from and against any and all claims, causes of action, liabilities, obligations, losses, damages, costs, expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred or paid by such Indemnified Person in connection with such investigation, action, suit or proceeding, or the defense or settlement of any such investigation, action, suit, proceeding, claim, issue or matter therein, to the extent of its assets legally available for that purpose and to the fullest extent, permitted by applicable law, except to the extent such liability is determined to be the result of willful misconduct, bad faith, gross negligence, or fraud.

### **Section 8.2. No Recourse.**

To the extent permitted by law, absent willful misconduct, no recourse shall ever be had, directly or indirectly, against the PSC Trustee personally, or against any agent, representative, affiliate, attorney, accountant, financial consultant or other professional of the PSC Trustee, for

actions taken or omitted to be taken in connection with the PSC Trust, by legal or equitable proceedings, or by virtue of any statute or otherwise, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the PSC Trustee under the Plan, the Confirmation Order or this PSC Trust Agreement; it being expressly understood and agreed that all such liabilities, covenants and agreements shall be enforceable only against and be satisfied only out of the PSC Trust Assets

**Section 8.3. No Liability for Successor Trustee.**

No successor PSC Trustee shall be in any way responsible or liable for the acts or omissions of any predecessor PSC Trustee in office prior to the date on which such Person becomes the PSC Trustee, nor shall such successor PSC Trustee be obligated to inquire into the validity or propriety of any such act or omission unless such successor PSC Trustee expressly assumes such responsibility. Any successor PSC Trustee shall be entitled to accept as conclusive any final accounting and statement of PSC Trust Assets furnished to such successor PSC Trustee by the predecessor PSC Trustee and shall further be responsible only for those PSC Trust Assets included in such statement. No predecessor PSC Trustee shall be in any way responsible or liable for the acts or omissions of any successor PSC Trustee, nor shall such predecessor PSC Trustee be obligated to inquire into the validity or propriety of any such act or omission.

**Section 8.4. Limitation on Liability.**

To the extent permitted by law, the PSC Trustee, the Beneficiaries, and their respective agents, affiliates, attorneys, accountants, financial consultants, or other professionals shall be exculpated from any liability for any errors or omissions made in connection with their duties or actions in connection with this PSC Trust Agreement, except for liability for any errors or omissions arising from their own gross negligence, willful misconduct, bad faith, or fraud. No amendment modification or repeal of this Section 8.4 shall adversely affect any right or protection of the PSC Trustee, the Beneficiaries, and their respective agents, affiliates, attorneys, accountants, financial consultants, or other professionals that exists at the time of such amendment, modification or repeal.

**Section 8.5. Enforcement Costs.**

Any out-of-pocket professional fees, costs or expenses incurred by any Private Securities Claimant, the PSC Trustee or trustee of the Main Liquidating Trust in defending or enforcing the terms of this PSC Trust Agreement shall be recoverable from the Beneficiary or other party whose action or failure to act initiates such defense or enforcement expenditures (an “**Initiating Claimant**”), with right of offset (including reserves for offsets) against any distribution otherwise payable to such Initiating Claimant, except that no defense or enforcement recovery shall apply in the event that such Initiating Claimant is a prevailing party by final judgment.

**Section 8.6. Survival.**

Each section within this Article VIII shall survive the termination of the PSC Trust.

**ARTICLE IX**  
**MISCELLANEOUS PROVISIONS**

**Section 9.1. Notices.**

All notices, requests or other communications to the PSC Trustee hereto shall be in writing and shall be sufficiently given only if: (i) delivered in person; (ii) sent by electronic mail, or facsimile communication (as evidenced by a confirmed fax transmission report); (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by a national commercial delivery service or courier. Until a change of address is communicated, as provided below, all notices, requests and other communications shall be sent to the following address, facsimile number, or email address:

To the PSC Trustee:

ResCap Private Securities Claims Trust  
c/o Quest Turnaround Advisors, LLC  
800 Westchester Avenue, Suite S-520  
Rye Brook, NY 10573  
Fax: 914-253-8103  
Email: jbrodsky@qtadvisors.com

Notices to each Beneficiary shall be to the (i) the address of each Beneficiary as set forth in the schedules of assets and liabilities filed by the Debtors with the Court unless superseded by the address set forth on any proof of claim filed by such Beneficiary, or (ii) the last known address of such Beneficiary if the Debtors and the PSC Trustee have been notified in writing of a change of address.

Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the PSC Trustee.

**Section 9.2. Effectiveness.**

This PSC Trust Agreement shall become effective upon the Effective Date.

**Section 9.3. Counterparts.**

This PSC Trust Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one agreement binding on all parties. Copies of executed counterparts may be exchanged by facsimile, email, or other electronic transmission and such an exchange shall constitute effective delivery by the parties of their respective executed counterparts.

**Section 9.4. Governing Law.**

Except to the extent the Bankruptcy Code or the Bankruptcy Rules are applicable, this PSC Trust Agreement shall be governed by, construed under and interpreted in accordance with

the laws of the State of New York, without regard to whether any conflicts of law that would require the application of the law of another jurisdiction.

**Section 9.5. Severability of Provisions.**

Any provision of this PSC Trust Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining provisions of this PSC Trust Agreement or affecting the validity or enforceability of any of the terms or provisions of this PSC Trust Agreement in any other jurisdiction.

**Section 9.6. Entire Agreement.**

This PSC Trust Agreement (including the Recitals), the Allocation Agreement, the Plan, and the Confirmation Order constitute the entire agreement between and among the parties hereto and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This PSC Trust Agreement, the Allocation Agreement, the Plan, and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder; provided, however, to the extent that there is any conflict between the provisions of this PSC Trust Agreement, the Plan, and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this PSC Trust Agreement. Except as otherwise specifically provided herein, nothing in this PSC Trust Agreement is intended or shall be construed to confer upon or to give any person other than the parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this PSC Trust Agreement.

**Section 9.7. Waiver.**

No failure or delay of any party to exercise any right or remedy pursuant to this PSC Trust Agreement shall affect such right or remedy or constitute a waiver by such party of any right or remedy pursuant thereto. Resort to one form of remedy shall not constitute a waiver of alternative remedies.

**Section 9.8. Relationship Created.**

The only relationship created by this PSC Trust Agreement is the relationship between the PSC Trustee and the Beneficiaries as set forth herein. No other relationship or liability is created. Nothing contained in this PSC Trust Agreement shall create or be construed as creating an association, partnership, or joint venture of any kind involving any Beneficiary, nor shall the PSC Trustee or the Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers.

**Section 9.9. Confidentiality**

The PSC Trustee shall, during the period that the PSC Trustee serves as PSC Trustee under this PSC Trust Agreement and for a period of twelve (12) months following the earlier of the termination of this PSC Trust Agreement or removal or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the PSC Trust Assets relates or of which it has become aware in its capacity as PSC Trustee.

**Section 9.10. [RESERVED]**

**Section 9.11. Retention of Jurisdiction by the Bankruptcy Court.**

The Bankruptcy Court shall retain jurisdiction to adjudicate any issue or dispute arising under this PSC Trust Agreement and any other matter that relates to the implementation of the terms and conditions of the Plan and the Confirmation Order. The PSC Trustee shall have standing in any such proceeding to enforce the rights of the PSC Trust or of the Beneficiaries arising under this PSC Trust Agreement. Any and all claims and disputes, if any, asserted against the PSC Trustee are subject to the exclusive jurisdiction of the Bankruptcy Court.

**Section 9.12. [RESERVED]**

**Section 9.13. Fiscal Year.**

The fiscal year of the PSC Trust will begin on the first day of January and end on the last day of December of each calendar year.

**Section 9.14. Investment Company Act.**

This PSC Trust is organized as a liquidating entity in the process of liquidation, and therefore should not be considered, and the PSC Trust does not and will not hold itself out as, an “investment company” or an entity “controlled” by an “investment company” as such terms are defined in the Investment Company Act of 1940, as amended.

*[Signature page to follow.]*

**IN WITNESS WHEREOF**, the parties hereto have executed this PSC Trust Agreement or caused this PSC Trust Agreement to be duly executed by their respective representatives as of the day and year first written above.

Residential Capital, LLC

By: /s/ William Thompson  
Name: William Thompson  
Title: General Counsel

By: /s/ Jill Horner  
Name: Jill Horner  
Title: Chief Finance Executive

AKA 13, LLC (f/k/a ditech, LLC), DOA Holding Properties, LLC, DOA Properties IX (Lots-Other), LLC, EPRE LLC, Equity Investment I, LLC, ETS of Virginia, Inc., ETS of Washington, Inc., Executive Trustee Services, LLC, GMAC-RFC Holding Company, LLC, GMAC Model Home Finance I, LLC, GMAC Mortgage USA Corporation, GMAC Mortgage, LLC, GMAC Residential Holding Company, LLC, GMAC RH Settlement Services, LLC, GMACM Borrower LLC, GMACM REO LLC, GMACR Mortgage Products, LLC, HFN REO SUB II, LLC, Home Connects Lending Services, LLC, Homecomings Financial Real Estate Holdings, LLC, Homecomings Financial, LLC, Ladue Associates, Inc., Passive Asset Transactions, LLC, PATI A, LLC, PATI B, LLC, PATI Real Estate Holdings, LLC, RAHI A, LLC, RAHI B, LLC, RAHI Real Estate Holdings, LLC, RCSFJV2004, LLC, Residential Accredited Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, Residential Consumer Services of Alabama, LLC, Residential Consumer Services of Ohio, LLC, Residential Consumer Services of Texas, LLC, Residential Consumer Services, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Exchange, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Funding Real Estate Holdings, LLC, Residential Mortgage Real Estate Holdings, LLC, RFC – GSAP Servicer Advance, LLC, RFC Asset Holdings II, LLC, RFC Asset Management, LLC, RFC Borrower LLC, RFC Construction Funding, LLC, RFC REO LLC and RFC SFJV-2002, LLC

By: /s/ William Thompson  
Name: William Thompson  
Title: General Counsel

By: /s/ Jill Horner  
Name: Jill Horner  
Title: Chief Financial Officer

Quest Turnaround Advisors, LLC, as the liquidating trustee

By: /s/ Jeffrey Brodsky

Name: Jeffrey Brodsky

Title: Member

**Schedule I**

**Notice Parties**

<u><b>Name of Private Securities Claimant</b></u>	<u><b>Notice Address</b></u>
(i) AIG Asset Management (U.S.), LLC	<a href="mailto:cherie.schaible@aig.com">cherie.schaible@aig.com</a> , with a copy to <a href="mailto:scottshelley@quinnemanuel.com">scottshelley@quinnemanuel.com</a>
(ii) Allstate Insurance Company	<a href="mailto:pmcelvai@allstate.com">pmcelvai@allstate.com</a> , with a copy to <a href="mailto:ericwinston@quinnemanuel.com">ericwinston@quinnemanuel.com</a>
(iii) Asset Management Funds d/b/a AMF Funds, AMF Intermediate Mortgage Fund, AMF Ultra Short Mortgage Fund	with copies to <a href="mailto:marisohn@labaton.com">marisohn@labaton.com</a> and <a href="mailto:rsmith@labaton.com">rsmith@labaton.com</a>
(iv) Bank Hapoalim B.M.	with copies to <a href="mailto:marisohn@labaton.com">marisohn@labaton.com</a> and <a href="mailto:rsmith@labaton.com">rsmith@labaton.com</a>
(v) Cambridge I,	with a copy to <a href="mailto:metkin@lowenstein.com">metkin@lowenstein.com</a>
(vi) Cambridge II	with a copy to <a href="mailto:metkin@lowenstein.com">metkin@lowenstein.com</a>
(vii) Deutsche Zentra-Genossenschaftsbank, New York Branch, d/b/a DZ Bank AG, New York, DH Holding Trust	with copies to <a href="mailto:marisohn@labaton.com">marisohn@labaton.com</a> and <a href="mailto:rsmith@labaton.com">rsmith@labaton.com</a>
(viii) Federal Home Loan Bank of Boston	with a copy to <a href="mailto:ggotto@krplc.com">ggotto@krplc.com</a>
(ix) Federal Home Loan Bank of Chicago	with a copy to <a href="mailto:ggotto@krplc.com">ggotto@krplc.com</a>
(x) Federal Home Loan Bank of Indianapolis	with a copy to <a href="mailto:ggotto@krplc.com">ggotto@krplc.com</a>
(xi) HSH Nordbank AG, HSH Nordbank AG Luxembourg Branch, HSH Nordbank AG New York Branch, HSH Nordbank Securities S.A.	with copies to <a href="mailto:marisohn@labaton.com">marisohn@labaton.com</a> and <a href="mailto:rsmith@labaton.com">rsmith@labaton.com</a>
(xii) Huntington Bancshares Inc.	with copies to <a href="mailto:marisohn@labaton.com">marisohn@labaton.com</a> and <a href="mailto:rsmith@labaton.com">rsmith@labaton.com</a>

(xiii) IKB Deutsche Industriebank AG, IKB International S.A. in liquidation	with copies to <a href="mailto:marisohn@labaton.com">marisohn@labaton.com</a> and <a href="mailto:rsmith@labaton.com">rsmith@labaton.com</a>
(xiv) John Hancock Life Insurance Company (U.S.A.)	with copies to <a href="mailto:gjarvis@gelaw.com">gjarvis@gelaw.com</a> and <a href="mailto:delman@gelaw.com">delman@gelaw.com</a>
(xv) Massachusetts Mutual Life Insurance Company	<a href="mailto:ewilliams@massmutual.com">ewilliams@massmutual.com</a> with copies to <a href="mailto:jenniferbarrett@quinnemanuel.com">jenniferbarrett@quinnemanuel.com</a> and <a href="mailto:scottshelley@quinnemanuel.com">scottshelley@quinnemanuel.com</a>
(xvi) Principal Life Insurance Company, Principal Funds, Inc., Principal Variable Contracts Funds, Inc.	with copies to <a href="mailto:marisohn@labaton.com">marisohn@labaton.com</a> and <a href="mailto:rsmith@labaton.com">rsmith@labaton.com</a>
(xvii) Prudential Insurance Company	<a href="mailto:ramsay.lewis@prudential.com">ramsay.lewis@prudential.com</a> with a copy to <a href="mailto:scottshelley@quinnemanuel.com">scottshelley@quinnemanuel.com</a>
(xviii) Sealink Funding Limited	with copies to <a href="mailto:marisohn@labaton.com">marisohn@labaton.com</a> and <a href="mailto:rsmith@labaton.com">rsmith@labaton.com</a>
(xix) Stichting Pensioenfonds ABP	with copies to <a href="mailto:gjarvis@gelaw.com">gjarvis@gelaw.com</a> and <a href="mailto:delman@gelaw.com">delman@gelaw.com</a>
(xx) The Union Central Life Insurance Company/Ameritas Life Insurance Corp./Acacia Life Insurance Company	with a copy to <a href="mailto:metkin@lowenstein.com">metkin@lowenstein.com</a>
(xxi) the Western and Southern Life Insurance Company, Western-Southern Life Assurance Company, Columbus Life Insurance Company, Integrity Life Insurance Company, National Integrity Life Insurance Company, and Fort Washington Investment Advisors, Inc.	with a copy to <a href="mailto:sfitzgerald@wmd-law.com">sfitzgerald@wmd-law.com</a>

**Exhibit A**

**DTC Participant Information**

Name of Private Securities Claimant: \_\_\_\_\_

Address of Private Securities Claimant: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**BROKER, BANK OR OTHER FINANCIAL INSTITUTION INFORMATION**

Name of Broker, Bank or Other Financial Institution:	
Contact Name:	
Contact Email:	
Contact Phone:	
Account Number:	
DTC Participant (if different from Financial Institution above):	
DTC Participant Number:	
Wire Instructions: Financial Institution: SWIFT or ABA No. Account Name: Account Number: Other:	

This form must be completed and returned to the Claims Officer with a completed Internal Revenue Service Form W-9 or Internal Revenue Service Form W-8BEN (or other applicable Form W-8).

**Blackline**

## RESCAP PRIVATE SECURITIES CLAIMS LIQUIDATING TRUST AGREEMENT AND DECLARATION OF LIQUIDATING TRUST

This Private Securities Claims Liquidating Trust Agreement and Declaration of Liquidating Trust (this “**PSC Trust Agreement**”) is entered into as of \_\_\_\_\_, December 17, 2013, by and among Residential Capital, LLC (“**ResCap**”), certain affiliates signatory hereto (together with ResCap, the “**Debtors**”), and ~~{\_\_\_\_\_}, not in his individual capacity, but solely in his capacity~~ Quest Turnaround Advisors, LLC, as the liquidating trustee (the “**PSC Trustee**”) in order to establish a liquidating trust (the “**PSC Trust**”) for the benefit of the holders of securities litigation claims against the Debtors and Ally Financial, Inc. and its non-Debtor affiliates, arising from the purchase or sale of residential mortgage-backed securities (the “**Private Securities Claims**,” and the exclusive holders thereof, as identified in footnote 10 of the Supplemental Term Sheet annexed as Exhibit B to the Plan Support Agreement, dated as of May 13, 2013 (the “**Plan Support Agreement**”), are hereinafter referred to as the “**Private Securities Claimants**”).

### RECITALS

**WHEREAS**, on May 14, 2012, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) commencing jointly administered cases under the caption *In re Residential Capital, LLC*, Case No. 12-12020 (the “**Bankruptcy Cases**”); and

**WHEREAS**, on August 20, 2013, the Debtors and the Official Committee of Unsecured Creditors of Residential Capital, LLC, et al. filed that certain Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors (Dkt. No. 4770) (together with any amendments or modifications thereto required or permitted by the Bankruptcy Court or as otherwise permitted pursuant to the terms of the Plan, the “**Plan**”); and

**WHEREAS**, on {\_\_\_\_\_}, December 11, 2013, the Bankruptcy Court entered an Order confirming the Plan (Dkt. No. H6030-1) (the “**Confirmation Order**”); and

**WHEREAS**, pursuant to the Plan, a liquidation trust has been established for the benefit of unsecured creditors of the Debtors (the “**Main Liquidation Liquidating Trust**”); and

**WHEREAS**, pursuant to the Plan, the PSC Trust has been established for the benefit of the Private Securities Claimants;

**WHEREAS**, as soon as practicable after the Effective Date, the Main ~~Liquidation~~ Liquidating Trust will issue units of beneficial interests (the “**Liquidating Trust Units**”) to unsecured creditors of the Debtors and/or their designated recipients, including the PSC Trust; and

**WHEREAS**, as set forth in the Plan, the PSC Trust will receive a number of Liquidating Trust Units (referred to in the Main Liquidating Trust Agreement as the “Private Securities Claims Trust Unit Distribution”) that will entitle the holders thereof to periodic distributions of

cash from the Main ~~Liquidation~~Liquidating Trust in the aggregate amount of \$235 million, subject to upward or downward adjustment as provided under the Plan (the “**PSC Trust Assets**”); and

**WHEREAS**, the Private Securities Claimants having agreed to the allocation among them of the PSC Trust Assets, as set forth in the Allocation Agreement (as defined below), the primary duty of the PSC Trustee hereunder shall be the distribution to each Private Securities Claimant of its respective allocated share of the PSC Trust Assets, in accordance with the Allocation Agreement; and

**WHEREAS**, as soon as practicable after receiving the PSC Trust Assets (and in any event, within one Business Day), the PSC Trust shall distribute to the Designated DTC Participant (as defined below) of each Private Securities Claimant such claimant’s allocated share of the PSC Trust Assets, calculated in accordance with Schedule I annexed to the Allocation Agreement; provided, however, that if any Private Securities Claimant has not identified to the PSC Trust its Designated DTC Participant, such Private Securities Claimant shall not be entitled to receive its allocated share of the Private Securities Claims Trust Unit Distribution from the PSC Trust; and

**WHEREAS**, pending the distributions contemplated by the immediately preceding recital, the PSC Trust Assets will be held in trust pursuant to the terms of the Plan and this PSC Trust Agreement for the benefit of each Private Securities Claimant as a Holder of an Allowed Private Securities Claim in Classes R-6, GS-6, and RS-6 under the Plan (each, a “**Beneficiary**” and collectively, the “**Beneficiaries**”); and

**WHEREAS**, the PSC Trust is established for the sole purpose of distributing the PSC Trust Assets to the Beneficiaries, with no objective or authority to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the PSC Trust and the Plan; and

**WHEREAS**, for federal income tax purposes, the PSC Trust is intended to be treated as an agent of the Beneficiaries; and

**WHEREAS**, this PSC Trust Agreement is subject to the approval of the Bankruptcy Court in the Confirmation Order.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Debtors, the reorganized Debtors, the PSC Trustee, intending to be legally bound, agree as follows:

## **ARTICLE I DEFINITIONS**

### **Section 1.1. Definitions.**

The terms defined in this section are specific to this PSC Trust Agreement. Capitalized terms used but not otherwise defined in this PSC Trust Agreement shall have the meanings ascribed to those terms in the Plan. For the purposes of this PSC Trust Agreement, the following

the largest number of Liquidating Trust Units (the “**Nominating Party**”) at the time a PSC Board Designee is to be appointed or replaced, determined by reference to the Register.

(b) In the event there is a vacancy on the Liquidating Trust Board (as defined in the Main [Liquidating](#) Trust Agreement) with respect to the board seat previously held by the PSC Board Designee, the PSC Trustee will, within three (3) business days of such vacancy, notify the Nominating Party of the vacancy of the PSC Board Designee. The Nominating Party will then notify the remaining Original Beneficiaries, utilizing the list of contact parties set forth in Schedule I hereto, within three (3) business days of receiving notice of the vacancy. Such notice shall constitute an offer to consult with any interested Original Beneficiary prior to naming a replacement or declining to fill a vacancy regarding a PSC Board Designee.

(c) If the Nominating Party does not exercise its right to name a replacement upon vacancy of the PSC designated Board seat within 45 days of receiving notice of such a vacancy from the PSC Trustee, the right to name a replacement or allow seat to lapse shall pass to the Original Beneficiary with the next largest holding of Liquidating Trust Units, who may assume the right to name a replacement or let the seat lapse. If no replacement has been made and there has been no decision to allow the seat to lapse within 60 days of the original vacancy notice, such right shall revert to the Liquidating Trust Board. However, in the event of a subsequent vacancy in the Board seat of the PSC Board Designee, the Nominating Party shall retain the right to name a replacement or allow the seat to lapse.

(d) For the avoidance of doubt, rights to designate the PSC Board Designee (i) shall not be transferrable other than on the basis of the original Liquidating Trust Unit allocations protocol provided in this Section 3.4, (ii) are not the personal property of any holder, and (iii) without limitation, shall not vest in any transferee (or subsequent transferee) of an Original Beneficiary.

(e) This Section 3.4 shall survive the termination of the PSC Trust.

#### **ARTICLE IV THE PSC TRUSTEE**

##### **Section 4.1. Appointment and Tenure of PSC Trustee.**

[Quest Turnaround Advisors, LLC, led by Mr. Jeffrey A. Brodsky,] shall be the PSC Trustee until the PSC Trustee’s resignation, death, replacement in accordance with Section 4.2 of this PSC Trust Agreement, or completion of all tasks related to the winding up of the PSC Trust, in accordance with Section 7.2 of this PSC Trust Agreement.

##### **Section 4.2. Tenure and Replacement of the PSC Trustee.**

Subject to Section 2.4 above, the authority of the PSC Trustee shall be effective as of the Effective Date and shall remain and continue in full force and effect until (a) the PSC Trust is terminated in accordance with Section 7.1 of this PSC Trust Agreement and (b) the PSC Trustee has completed all tasks related to winding up the PSC Trust. In the event Quest is replaced as the Liquidating Trust Manager of the Main Liquidating Trust, the person named to replace him as the Liquidating Trust Manager of the Main Liquidating Trust shall automatically be

appointed, and shall replace Quest, as the PSC Trustee, and all rights, powers, duties, authority, and privileges of the predecessor PSC Trustee hereunder shall be vested in and undertaken by the successor PSC Trustee without any further act.

**Section 4.3. [RESERVED]**

**Section 4.4. [RESERVED]**

**Section 4.5. Authority/Duties.**

Subject to any limitations contained in, or as otherwise provided by this PSC Trust Agreement or in the Plan or the Confirmation Order, the PSC Trustee shall have the following powers and authorities, subject to the terms and conditions of this PSC Trust Agreement:

(a) to establish a securities account, custodial account or other appropriate account at a securities broker and dealer, bank, trust company, clearing corporation, or other financial organization, in each case that is a participant of the Depository Trust Company (the “PSC DTC Account”), to receive the Private Securities Claims Trust Unit Distribution from the Main Liquidating Trust (and for the avoidance of doubt, the PSC Trustee shall not have the authority to open any interest bearing account);

(b) to distribute to the Beneficiaries their respective allocated shares of the PSC Trust Assets in accordance with the Allocation Agreement;

(c) to maintain the Register listing the Liquidating Trust Units held by each Original Beneficiary, in order to determine at any date the Original Beneficiary entitled to appoint or replace the PSC Trust board designee;

(d) to provide notice to each of the Original Beneficiaries, within three Business Days, if there is a change in the Original Beneficiary entitled to appoint or replace the PSC Trust board designee, which notice shall include the name and contact information (telephone number and/or email address) of the Original Beneficiary succeeding to such appointment and replacement rights; and

(e) to do any and all things reasonably necessary to accomplish the purposes of this PSC Trust Agreement, subject to and consistent with the Plan, the Allocation Agreement and the Confirmation Order.

**Section 4.6. Compensation of PSC Trustee.**

The PSC Trustee shall perform the duties hereunder as incidental to the duties performed for the Main Liquidating Trust and shall not be entitled to additional compensation for the services provided hereunder. ~~{NTD: Need to discuss}~~

**Section 4.7. No Implied Obligations.**

No other covenants or obligations shall be implied into this PSC Trust Agreement. The PSC Trustee shall not be responsible in any manner whatsoever for the correctness of any recital,

identified to the PSC Trustee a Designated DTC Participant such Beneficiary's allocated share of the PSC Trust Assets, calculated in accordance with Schedule I annexed to the Allocation Agreement (with the identity of each Original Beneficiary and their respective allocations to be provided separately to, and confirmed by, the PSC Trust), and (ii) provide written notice that such distribution has been made to each of the parties listed on Schedule I hereto. Upon the receipt by a Designated DTC Participant of the respective Beneficiary's allocable share of the PSC Trust Assets, all future distributions to such Beneficiary shall be made directly by the Main Liquidating Trust on account of such Beneficiary's Liquidating Trust Units, and such Beneficiary shall not be entitled to receive any further distributions from the PSC Trust (except in the case of the misdelivery of any property) .

(b) **Return of Distributions.** If a Beneficiary otherwise entitled to receive an allocated share of the Private Securities Claims Trust Unit Distribution has not identified to the PSC Trustee a Designated DTC Participant prior to the Effective Date (each a "**Non-DTC Beneficiary**"), then following the transfer to the PSC Trust of the Private Securities Claims Trust Unit Distribution, the PSC Trustee shall return to the Main Liquidating Trust the Liquidating Trust Units such Non-DTC Beneficiary would otherwise be entitled to receive, together with any cash distributed in respect of such Liquidating Trust Units, and the Main Liquidating Trust shall hold such Liquidating Trust Units and cash until such time as such holder complies with the requirements of Section 4.5(a) of the Main Liquidating Trust Agreement. In the event such Non-DTC Beneficiary has not complied with the requirements of Section 4.5(a) of the Main Liquidating Trust Agreement by the date that is ten (10) days before the date selected as the final Distribution Date (as defined in the Main Liquidating Trust Agreement) (i) the Liquidating Trust Units otherwise distributable to such holder shall be deemed cancelled and not outstanding, and (ii) the cash distributed or distributable in respect of such Liquidating Trust Units shall be distributed pro rata (in accordance with the Allocation Agreement) to the other Original Beneficiaries on the final Distribution Date.

**Section 6.5. [RESERVED]**

**Section 6.6. [RESERVED]**

**Section 6.7. [RESERVED]**

**Section 6.8. Further Authorization.**

The PSC Trustee shall be entitled to seek any orders, judgments, injunctions and rulings as it deems necessary to carry out the intentions and purposes, and to give full effect to the provisions of the Plan, the Confirmation Order, and this PSC Trust Agreement.

**Section 6.9. Withholding and Reporting Requirements.**

The PSC Trustee shall comply with all applicable tax withholding and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The PSC Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

**Section 8.5. Enforcement Costs.**

Any out-of-pocket professional fees, costs or expenses incurred by any Private Securities Claimant, the PSC Trustee or trustee of the Main Liquidating Trust in defending or enforcing the terms of this PSC Trust Agreement shall be recoverable from the Beneficiary or other party whose action or failure to act initiates such defense or enforcement expenditures (an “**Initiating Claimant**”), with right of offset (including reserves for offsets) against any distribution otherwise payable to such Initiating Claimant, except that no defense or enforcement recovery shall apply in the event that such Initiating Claimant is a prevailing party by final judgment.

**Section 8.6. Survival.**

Each section within this Article VIII shall survive the termination of the PSC Trust.

**ARTICLE IX  
MISCELLANEOUS PROVISIONS**

**Section 9.1. Notices.**

All notices, requests or other communications to the PSC Trustee hereto shall be in writing and shall be sufficiently given only if: (i) delivered in person; (ii) sent by electronic mail, or facsimile communication (as evidenced by a confirmed fax transmission report); (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by a national commercial delivery service or courier. Until a change of address is communicated, as provided below, all notices, requests and other communications shall be sent to the following address, facsimile number, or email address:

To the PSC Trustee:

~~{Quest Turnaround Advisors, LLC  
Attn: Jeffrey A. Brodsky  
The ResCap Private Securities Claims Trust  
c/o Residential Capital, LLC 1177 Avenue of the Americas  
Quest Turnaround  
Advisors, LLC  
800 Westchester Avenue, Suite S-520  
Rye Brook, NY 10573  
Fax: 914-253-8103  
Email: jbrodsky@qtadvisors.com  
New York, New York 10036}~~  
Phone: [ ]  
Fax: [ ]  
Email: [ ]

Notices to each Beneficiary shall be to the (i) the address of each Beneficiary as set forth in the schedules of assets and liabilities filed by the Debtors with the Court unless superseded by the address set forth on any proof of claim filed by such Beneficiary, or (ii) the last known

**IN WITNESS WHEREOF**, the parties hereto have executed this PSC Trust Agreement or caused this PSC Trust Agreement to be duly executed by their respective representatives as of the day and year first written above.

Residential Capital, LLC

By: /s/ William Thompson  
Name: William Thompson  
Title: General Counsel

By: /s/ Jill Horner  
Name: Jill Horner  
Title: Chief Finance Executive

AKA 13, LLC (f/k/a ditech, LLC), DOA Holding Properties, LLC, DOA Properties IX (Lots-Other), LLC, EPRE LLC, Equity Investment I, LLC, ETS of Virginia, Inc., ETS of Washington, Inc., Executive Trustee Services, LLC, GMAC-RFC Holding Company, LLC, GMAC Model Home Finance I, LLC, GMAC Mortgage USA Corporation, GMAC Mortgage, LLC, GMAC Residential Holding Company, LLC, GMAC RH Settlement Services, LLC, GMACM Borrower LLC, GMACM REO LLC, GMACR Mortgage Products, LLC, HFN REO SUB II, LLC, Home Connects Lending Services, LLC, Homecomings Financial Real Estate Holdings, LLC, Homecomings Financial, LLC, Ladue Associates, Inc., Passive Asset Transactions, LLC, PATI A, LLC, PATI B, LLC, PATI Real Estate Holdings, LLC, RAHI A, LLC, RAHI B, LLC, RAHI Real Estate Holdings, LLC, RCSEJV2004, LLC, Residential Accredit Loans, Inc., Residential Asset Mortgage Products, Inc., Residential Asset Securities Corporation, Residential Consumer Services of Alabama, LLC, Residential Consumer Services of Ohio, LLC, Residential Consumer Services of Texas, LLC, Residential Consumer Services, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Exchange, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Funding Real Estate Holdings, LLC, Residential Mortgage Real Estate Holdings, LLC, RFC – GSAP Servicer Advance, LLC, RFC Asset Holdings II, LLC, RFC Asset Management, LLC, RFC Borrower LLC, RFC Construction Funding, LLC, RFC REO LLC and RFC SFJV-2002, LLC

By: /s/ William Thompson  
Name: William Thompson  
Title: General Counsel

By: /s/ Jill Horner  
Name: Jill Horner  
Title: Chief Financial Officer

Quest Turnaround Advisors, LLC, as the liquidating trustee

By: /s/ Jeffrey Brodsky  
Name: Jeffrey Brodsky  
Title: Member

Residential Capital, LLC

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

Name:—

Title:—

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

Name:—

Title:—

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

Name:—

Title:—

[\_\_\_\_\_] , as PSC Trustee

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

Name:—

Title:—

~~Privileged and Confidential~~  
~~Attorney Work Product~~

QE Draft: 10/10/2013 6:03 PM

**Schedule I**

~~[notice parties]~~  
Notice Parties

<u>Name of Private Securities Claimant</u>	<u>Notice Address</u>
(i) AIG Asset Management (U.S.), LLC	<a href="mailto:cherie.schaible@aig.com">cherie.schaible@aig.com</a> , with a copy to <a href="mailto:scottshelley@quinnemanuel.com">scottshelley@quinnemanuel.com</a>
(ii) Allstate Insurance Company	<a href="mailto:pmcelvai@allstate.com">pmcelvai@allstate.com</a> , with a copy to <a href="mailto:ericwinston@quinnemanuel.com">ericwinston@quinnemanuel.com</a>
(iii) Asset Management Funds d/b/a AMF Funds, AMF Intermediate Mortgage Fund, AMF Ultra Short Mortgage Fund	with copies to <a href="mailto:marisohn@labaton.com">marisohn@labaton.com</a> and <a href="mailto:rsmith@labaton.com">rsmith@labaton.com</a>
(iv) Bank Hapoalim B.M.	with copies to <a href="mailto:marisohn@labaton.com">marisohn@labaton.com</a> and <a href="mailto:rsmith@labaton.com">rsmith@labaton.com</a>
(v) Cambridge I,	with a copy to <a href="mailto:metkin@lowenstein.com">metkin@lowenstein.com</a>
(vi) Cambridge II	with a copy to <a href="mailto:metkin@lowenstein.com">metkin@lowenstein.com</a>
(vii) Deutsche Zentra-Genossenschaftsbank, New York Branch, d/b/a DZ Bank AG, New York, DH Holding Trust	with copies to <a href="mailto:marisohn@labaton.com">marisohn@labaton.com</a> and <a href="mailto:rsmith@labaton.com">rsmith@labaton.com</a>
(viii) Federal Home Loan Bank of Boston	with a copy to <a href="mailto:ggotto@krplc.com">ggotto@krplc.com</a>
(ix) Federal Home Loan Bank of Chicago	with a copy to <a href="mailto:ggotto@krplc.com">ggotto@krplc.com</a>
(x) Federal Home Loan Bank of Indianapolis	with a copy to <a href="mailto:ggotto@krplc.com">ggotto@krplc.com</a>
(xi) HSH Nordbank AG, HSH Nordbank AG Luxembourg Branch, HSH Nordbank AG New York Branch, HSH Nordbank Securities S.A.	with copies to <a href="mailto:marisohn@labaton.com">marisohn@labaton.com</a> and <a href="mailto:rsmith@labaton.com">rsmith@labaton.com</a>
(xii) Huntington Bancshares Inc.	with copies to <a href="mailto:marisohn@labaton.com">marisohn@labaton.com</a> and <a href="mailto:rsmith@labaton.com">rsmith@labaton.com</a>

**Exhibit A**

**{DTC Participant Information}**

Name of Private Securities Claimant: \_\_\_\_\_

Address of Private Securities Claimant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

~~Broker, Bank or Financial Institution Information:~~

~~Company Name: \_\_\_\_\_~~

~~Contact Name at Company: \_\_\_\_\_~~

~~Contact Phone: \_\_\_\_\_~~

~~Contact Email: \_\_\_\_\_~~

**BROKER, BANK OR OTHER FINANCIAL INSTITUTION INFORMATION**

<u>Name of Broker, Bank or Other Financial Institution:</u>	
<u>Contact Name:</u>	
<u>Contact Email:</u>	
<u>Contact Phone:</u>	
<u>Account Number:</u>	
<u>DTC Participant (if different from Financial Institution above):</u>	
<u>DTC Participant Number:</u>	

<u>Wire Instructions:</u>  <u>Financial Institution:</u> <u>SWIFT or ABA No.</u> <u>Account Name:</u> <u>Account Number:</u> <u>Other:</u>	
--	--

This form must be completed and returned to the ~~PSC Trustee~~Claims Officer with a completed Internal Revenue Service Form W-9 or Internal Revenue Service Form W-8BEN (or other applicable Form W-8), ~~at the address set forth in Section 9.1 of the PSC Trust Agreement.~~

**Exhibit 11**

**Cooperation Agreement between the Liquidating Trust and the Kessler Settlement Class**

## COOPERATION AGREEMENT

This agreement (the “Cooperation Agreement”) is made and entered into as of the Effective Date, by and among the ResCap Liquidating Trust (the “Liquidating Trust”), the Kessler Settlement Class, and the Mitchell Settlement Class. The Liquidating Trust, the Kessler Settlement Class and the Mitchell Settlement Class are referred to collectively in this Cooperation Agreement as “the Parties” or individually as a “Party”.

### RECITALS

A. On May 14, 2012, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

B. On or about August 23, 2013, the Debtors filed the Joint Chapter 11 Plan of Residential Capital, LLC, et al., dated August 23, 2013 (as amended and supplemented and as confirmed, the “Plan”, and the related disclosure statement, the “Disclosure Statement”).

C. On or about August 26, 2013, the Bankruptcy Court approved the Disclosure Statement.

D. On August 23, 2013 and November 27, 2013, the Bankruptcy Court entered the Kessler Settlement Approval Orders.

E. On or about December 11, 2013, the Bankruptcy Court issued an order confirming the Plan.

F. On December [ ], 2013, (i) the Bankruptcy Court entered the Order (A) Granting Claimants Limited Relief from Automatic Stay and (B) Approving the Debtors’ Entry into the Settlement Agreement Regarding the Pending State Court Class Action Litigation, Authorizing the Debtors to Perform the Obligations Thereunder and Fixing the Amount of an Allowed General Unsecured Claim for the Class Action Plaintiffs (the “Mitchell Order”), and (ii) the Circuit Court of Jackson County, Missouri, Division 4 (the “State Court”) entered (a) the Order Finally Approving Class Action Settlement and Certifying a Class for Settlement Purposes, and (b) the Final Judgment (collectively, the “Mitchell State Court Orders”).

G. On December 17, 2013, the Effective Date of the Plan occurred.

H. The Plan provides for the conveyance, transfer, and assignment of the GM Insurance Rights to the Liquidating Trust and the Kessler Settlement Class on the Effective Date.

I. The Mitchell Order provides for the conveyance, transfer and assignment of certain of the GM Insurance Rights to the Mitchell Settlement Class provided that the State Court enters the Mitchell State Court Orders.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the Parties agree as follows:

## DEFINITIONS

Other than the terms defined below or elsewhere in this Cooperation Agreement, capitalized terms shall have the meaning assigned to them in the Plan or the Mitchell Order.

## AGREEMENT

1. The Parties shall cooperate with each other in good faith to coordinate the prosecution of their respective GM Insurance Rights and shall use reasonable efforts not to prejudice the other's GM Insurance Rights, provided that nothing in this Cooperation Agreement shall require either the Liquidating Trust, the Kessler Settlement Class or the Mitchell Settlement Class to undertake any efforts that would materially adversely affect the position of the cooperating party.

2. The Parties agree that the Mitchell Settlement Class's right to collect on the allowed Mitchell Claim from the proceeds of the GM Insurance Policies shall be subordinated with respect to any valid claim to the proceeds of those same policies made by the Liquidating Trust and/or the Kessler Settlement Class as described in Section 5b of the Kessler Settlement Agreement.

3. Such cooperation shall include cooperating by bringing any insurance coverage action in a combined action or proceeding to the extent necessary to avoid insurance company defenses based on splitting of a cause of action through partial assignment. To the extent the Parties after good faith consultation cannot agree on the venue or forum for a combined action (if necessary) or on any other action that must be done by the Parties unitarily then each Party shall provide the other parties in writing their recommended decision and the reasons therefor with respect to the venue or forum for the combined action or any other action that must be done by all Parties unitarily (the "Writing"). Within ten (10) days the Parties shall further consult in good faith and if no agreement can be reached with respect to the venue or forum for a combined action then each Party shall submit within five (5) days its Writing to an independent arbitrator for a binding and non appealable determination. The independent arbitrator for any such determination shall be: Charles E. Atwell. All costs of the independent arbitrator shall be shared equally by the Parties. With respect to any other action that must be done by all Parties unitarily which does not involve the venue or forum for a combined action, within ten (10) days the Parties shall further consult in good faith and if no agreement can be reached then the Kessler Settlement Class shall have the right to select the other action for the Parties that must be done unitarily.

4. Each assignee of the GM Insurance Rights shall bear its own attorney's fees, costs and expenses in pursuing recovery on the rights assigned to it.

5. Except as expressly limited or conditioned in paragraphs 6 and 7, each Party shall have sole settlement authority with respect to its claims subject to the terms of the Kessler Settlement Agreement and the Mitchell Order.

6. Before any Party enters into a settlement involving any of its GM Insurance Rights, it shall give the other Party at least fourteen (14) days' notice of the proposed settlement, and disclose to the other Party any proposed amount to be paid under any of the GM Policies. Settlement can proceed as soon as the other Party consents or the fourteen (14) day notice period has been expired, unless otherwise ordered by the Bankruptcy Court.

7. After any Party enters into a settlement involving any of its GM Insurance Rights, it shall, within fourteen (14) days of entering into the settlement, notify the other Party of the settlement and disclose to the other Party any amounts to be paid under any of the GM Policies. Any settlement entered into by any Party concerning its GM Insurance Rights shall contain a provision authorizing the disclosure to the other Party of the amount to be paid under any of the GM Policies and a provision whereby the settling insurance companies agree to waive any defense of splitting a cause of action or of merger and bar as to the non-settling Party arising out of, relating to, or resulting from the settlement.

8. The Parties to this Cooperation Agreement have common legal interests in connection with potential claims that have been or may be asserted in connection with the GM Insurance Rights ("Common Interests"). To protect and advance those Common Interests, the Parties desire, from time to time, to exchange certain confidential, privileged, and/or work product information among themselves or their counsel, including the thoughts, mental impressions, and strategies of counsel, without waiving otherwise applicable privileges and protections. The Parties believe that exchanging such information is necessary to further their Common Interests, and, in the event of litigation, their joint defense.

9. The Parties intend by this Cooperation Agreement to invoke as broadly as is legally permissible the joint defense doctrine and the common interest doctrine with respect to any materials shared pursuant to this Cooperation Agreement.

10. Any notice required pursuant to this Cooperation Agreement shall be provided by email and by either regular mail or overnight mail, to the following:

As to the Kessler Settlement Class:

R. Frederick Walters  
WALTERS, BENDER, STROHBEHN & VAUGHAN, P.C.  
2500 City Center Square  
1100 Main  
Kansas City, MO 64105  
Emailfwalters@wbsvlaw.com

Bruce Carlson  
CARLSON LYNCH LTD.  
PNC Park  
115 Federal Street, Suite 210  
Pittsburgh, PA 15212  
Email: bcarlson@carlsonlynch.com

As to the Mitchell Settlement Class:

R. Frederick Walters  
WALTERS, BENDER, STROHBEHN & VAUGHAN, P.C.  
2500 City Center Square  
1100 Main  
Kansas City, MO 64105  
Emailfwalters@wbsvlaw.com

As to the Liquidating Trust:

ResCap Liquidating Trust  
c/o Quest Turnaround Advisors, LLC  
800 Westchester Avenue, Suite S-520  
Rye Brook, NY 10573  
Email: jbrodsky@qtadvisors.com

11. This Cooperation Agreement shall not create any agency or similar arrangement among the Parties. No Party shall have authority to waive or settle any claims, GM Insurance Rights or other rights on behalf of any other Party; nor shall any waiver or settlement by any Party be construed to apply to any claims, GM Insurance Rights or other rights of the other Party.

12. This Cooperation Agreement supersedes all prior oral and written understandings, agreements, and arrangements between the Parties with respect to the Cooperation Agreement. For the avoidance of doubt, this Cooperation Agreement does not supersede any other rights and obligations of the Parties as set forth in the Kessler Settlement Agreement, the Mitchell Order, the Plan, the Confirmation Order or the Liquidating Trust Agreement. Except for those set forth expressly in this Cooperation Agreement, there are no agreements, covenants, promises, representations or arrangements between the Parties with respect to the Cooperation Agreement.

13. This Cooperation Agreement may be altered, amended, modified or waived, in whole or in part, only in a writing signed by all Parties. This Cooperation Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

14. Each Party to this Cooperation Agreement warrants that it is acting upon its independent judgment and upon the advice of its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Cooperation Agreement.

15. This Cooperation Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of the state of New York, without regard to conflict of laws rules. This Cooperation Agreement shall be enforced in the Bankruptcy Court. The Parties waive any objection that each Party may now have or hereafter have to the venue of such suit, action, or proceeding and irrevocably consent to the jurisdiction of the Bankruptcy Court in any

such suit, action, or proceeding, and agree to accept and acknowledge service of any and all process which may be served in any such suit, action, or proceeding.

16. This Cooperation Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and legal representatives. If any additional assignments of GM Insurance Rights are made under the GM Policies, the provisions and obligations under this Cooperation Agreement shall be binding on and extend to any such assignees and their respective successors, assigns, executors, administrators, heirs and legal representatives as set forth in Section 5(b) of the Kessler Settlement Agreement and the Mitchell Order.

17. This Cooperation Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Cooperation Agreement.

18. With respect to itself, each Party to this Cooperation Agreement represents, covenants and warrants that (a) it has the full power and authority to enter into and consummate all transactions contemplated by this Cooperation Agreement and has duly authorized the execution, delivery, and performance of this Cooperation Agreement, and (b) the person executing this Cooperation Agreement has the full right, power and authority to enter into this Cooperation Agreement on behalf of the Party for whom he/she has executed this Cooperation Agreement, and the full right, power, and authority to execute any and all necessary instruments in connection herewith, and to bind such Party fully to the terms and obligations of this Cooperation Agreement.

19. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, and other entities. The term "including" shall mean "including, without limitation."

20. The Parties acknowledge and agree that any breach of this Cooperation Agreement may result in immediate and irreparable injury for which there is no adequate remedy available at law, and the Parties agree that, in addition to any other remedies available, specific performance and injunctive relief are appropriate remedies to compel performance of this Cooperation Agreement.

21. Nothing in this Cooperation Agreement shall constitute, or be construed as, an admission that any Party is liable to any other Party or to any person not a party to this Cooperation Agreement. This Cooperation Agreement shall not be admissible in evidence nor shall it be used as evidence in any action or proceeding for any purpose other than for the purpose of enforcing the terms of this Cooperation Agreement.

22. Any provision of this Cooperation Agreement held to be invalid, illegal, or unenforceable shall be ineffective to the extent of such invalidity, illegality, or unenforceability without affecting the validity, legality, or enforceability of the remaining provisions.

23. This Cooperation Agreement may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original and all of which taken together shall constitute one Cooperation Agreement. This Cooperation Agreement may be executed and delivered by each Party by facsimile or electronic mail and a facsimile or electronic mail of this Cooperation Agreement when so executed shall be binding as an original.

IN WITNESS WHEREOF, the undersigned parties and their counsel have executed this  
Cooperation Agreement:

Dated as of the Effective Date

THE KESSLER SETTLEMENT CLASS

By: /s/ R. Frederick Walters

Name: R. Frederick Walters, Walters  
Bender, Strohhahn & Vaughan

Title: Co-Lead Counsel to the  
Kessler Settlement Class

Dated as of the Effective Date

THE MITCHELL SETTLEMENT CLASS

By: /s/ R. Frederick Walters

Name: R. Frederick Walters, Walters  
Bender, Strohhahn & Vaughan

Title: Counsel to the  
Mitchell Settlement Class

Dated as of the Effective Date

RESCAP LIQUIDATING TRUST

By Quest Turnaround Advisors, LLC, as  
Liquidating Trust Manager

By: /s/ Jeffrey Brodsky  
Name: Jeffrey Brodsky  
Title: Member

**Blackline**

## COOPERATION AGREEMENT

This agreement (the “Cooperation Agreement”) is made and entered into as of the Effective Date, by and ~~between~~among the ResCap Liquidating Trust (the “Liquidating Trust”), the Kessler Settlement Class, and the ~~Kessler~~Mitchell Settlement Class. The Liquidating Trust, the Kessler Settlement Class and the ~~Kessler~~Mitchell Settlement Class are referred to collectively in this Cooperation Agreement as “the Parties” or individually as a “Party”.

### RECITALS

A. On May 14, 2012, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

B. On or about August 23, 2013, the Debtors filed the Joint Chapter 11 Plan of Residential Capital, LLC, et al., dated August 23, 2013 (as amended and supplemented and as confirmed, the “Plan”, and the related disclosure statement, the “Disclosure Statement”).

C. On or about August ~~23~~26, 2013, the Bankruptcy Court approved the Disclosure Statement.

~~FD.~~ On August 23, 2013 and ~~[ ]~~November 27, 2013, the Bankruptcy Court entered the Kessler Settlement Approval Orders.

~~DE.~~ On or about ~~[ ]~~December 11, 2013, the Bankruptcy Court issued an order confirming the Plan.

~~E. On [ ], 2013, the Effective Date of the Plan occurred.~~E. On December [ ], 2013, (i) the Bankruptcy Court entered the Order (A) Granting Claimants Limited Relief from Automatic Stay and (B) Approving the Debtors’ Entry into the Settlement Agreement Regarding the Pending State Court Class Action Litigation, Authorizing the Debtors to Perform the Obligations Thereunder and Fixing the Amount of an Allowed General Unsecured Claim for the Class Action Plaintiffs (the “Mitchell Order”), and (ii) the Circuit Court of Jackson Count, Missouri, Division 4 (the “State Court”) entered (a) the Order Finally Approving Class Action Settlement and Certifying a Class for Settlement Purposes, and (b) the Final Judgment (collectively, the “Mitchell State Court Orders”).

G. On December 17, 2013, the Effective Date of the Plan occurred.

~~GH.~~ The Plan provides for the conveyance, transfer, and assignment of the GM Insurance Rights to the Liquidating Trust and the Kessler Settlement Class on the Effective Date.

I. The Mitchell Order provides for the conveyance, transfer and assignment of certain of the GM Insurance Rights to the Mitchell Settlement Class provided that the State Court enters the Mitchell State Court Orders.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the Parties agree as follows:

### **DEFINITIONS**

Other than the terms defined below or elsewhere in this Cooperation Agreement, capitalized terms shall have the meaning assigned to them in the Plan or the Mitchell Order.

### **AGREEMENT**

1. The Parties shall cooperate with each other in good faith to coordinate the prosecution of their respective GM Insurance Rights and shall use reasonable efforts not to prejudice the other's GM Insurance Rights, provided that nothing in this Cooperation Agreement shall require either the Liquidating Trust, the Kessler Settlement Class or the ~~Kessler~~Mitchell Settlement Class to undertake any efforts that would materially adversely affect the position of the cooperating party.

2. The Parties agree that the Mitchell Settlement Class's right to collect on the allowed Mitchell Claim from the proceeds of the GM Insurance Policies shall be subordinated with respect to any valid claim to the proceeds of those same policies made by the Liquidating Trust and/or the Kessler Settlement Class as described in Section 5b of the Kessler Settlement Agreement.

3. ~~2.~~ Such cooperation shall include cooperating by bringing any insurance coverage action in a combined action or proceeding to the extent necessary to avoid insurance company defenses based on splitting of a cause of action through partial assignment. To the extent the Parties after good faith consultation cannot agree on the venue or forum for a combined action (if necessary) or on any other action that must be done by the Parties unitarily then each Party shall provide the other ~~party~~parties in writing their recommended decision and the reasons therefor with respect to the venue or forum for the combined action or any other action that must be done by ~~both~~all Parties unitarily (the "Writing"). Within ten (10) days the Parties shall further consult in good faith and if no agreement can be reached with respect to the venue or forum for a combined action then each Party shall submit within five (5) days its Writing to an independent arbitrator for a binding and non appealable determination. The independent arbitrator for any such determination shall be: Charles E. Atwell. All costs of the independent arbitrator shall be shared equally by the Parties. With respect to any other action that must be done by ~~both~~all Parties unitarily which does not involve the venue or forum for a combined action, within ten (10) days the Parties shall further consult in good faith and if no agreement can be reached then the Kessler Settlement Class shall have the right to select the other action for the Parties that must be done unitarily.

4. ~~3.~~ Each assignee of the GM Insurance Rights shall bear its own attorney's fees, costs and expenses in pursuing recovery on the rights assigned to it.

5. ~~4.~~ Except as expressly limited or conditioned in paragraphs ~~5~~6 and ~~6~~7, each Party shall have sole settlement authority with respect to its claims subject to the terms of the Kessler Settlement Agreement and the Mitchell Order.

6. ~~5.~~ Before any Party enters into a settlement involving any of its GM Insurance Rights, it shall give the other Party at least fourteen (14) days' notice of the proposed settlement, and disclose to the other Party any proposed amount to be paid under any of the GM Policies. Settlement can proceed as soon as the other Party consents or the fourteen (14) day notice period has been expired, unless otherwise ordered by the Bankruptcy Court.

7. ~~6.~~ After any Party enters into a settlement involving any of its GM Insurance Rights, it shall, within fourteen (14) days of entering into the settlement, notify the other Party of the settlement and disclose to the other Party any amounts to be paid under any of the GM Policies. Any settlement entered into by any Party concerning its GM Insurance Rights shall contain a provision authorizing the disclosure to the other Party of the amount to be paid under any of the GM Policies and a provision whereby the settling insurance companies agree to waive any defense of splitting a cause of action or of merger and bar as to the non-settling Party arising out of, relating to, or resulting from the settlement.

8. ~~7.~~ The Parties to this Cooperation Agreement have common legal interests in connection with potential claims that have been or may be asserted in connection with the GM Insurance Rights ("Common Interests"). To protect and advance those Common Interests, the Parties desire, from time to time, to exchange certain confidential, privileged, and/or work product information among themselves or their counsel, including the thoughts, mental impressions, and strategies of counsel, without waiving otherwise applicable privileges and protections. The Parties believe that exchanging such information is necessary to further their Common Interests, and, in the event of litigation, their joint defense.

9. ~~8.~~ The Parties intend by this Cooperation Agreement to invoke as broadly as is legally permissible the joint defense doctrine and the common interest doctrine with respect to any materials shared pursuant to this Cooperation Agreement.

10. ~~9.~~ Any notice required pursuant to this Cooperation Agreement shall be provided by email and by either regular mail or overnight mail, to the following:

As to the Kessler Settlement Class:

R. Frederick Walters  
WALTERS, BENDER, STROHBEHN & VAUGHAN, P.C.  
2500 City Center Square  
1100 Main  
Kansas City, MO 64105  
Emailfwalters@wbsvlaw.com

Bruce Carlson

CARLSON LYNCH LTD.  
PNC Park  
115 Federal Street, Suite 210  
Pittsburgh, PA 15212  
Email: bcarlson@carlsonlynch.com

[As to the Mitchell Settlement Class:](#)

[R. Frederick Walters](#)  
[WALTERS, BENDER, STROHBEHN & VAUGHAN, P.C.](#)  
[2500 City Center Square](#)  
[1100 Main](#)  
[Kansas City, MO 64105](#)  
[Email:walters@wbsvlaw.com](#)

[As to the Liquidating Trust:](#)

~~if to the Delaware Trustee, to:~~

~~[ ]~~

~~Attention: Trust Administration~~

~~if to the~~[ResCap](#) Liquidating Trust, ~~to:~~  
[c/o Quest Turnaround Advisors, LLC](#)  
[800 Westchester Avenue, Suite S-520](#)  
[Rye Brook, NY 10573](#)  
[Email: jbrodsky@qtadvisors.com](#)

~~[ ]~~

11. ~~10.~~ This Cooperation Agreement shall not create any agency or similar arrangement among the Parties. No Party shall have authority to waive or settle any claims, GM Insurance Rights or other rights on behalf of any other Party; nor shall any waiver or settlement by any Party be construed to apply to any claims, GM Insurance Rights or other rights of the other Party.

12. ~~11.~~ This Cooperation Agreement supersedes all prior oral and written understandings, agreements, and arrangements between the Parties with respect to the Cooperation Agreement. For the avoidance of doubt, this Cooperation Agreement does not supersede any other rights and obligations of the Parties as set forth in the Kessler Settlement Agreement, [the Mitchell Order](#), the Plan, the Confirmation Order or the Liquidating Trust Agreement. Except for those set forth expressly in this Cooperation Agreement, there are no agreements, covenants, promises, representations or arrangements between the Parties with respect to the Cooperation Agreement.

13. ~~12.~~ This Cooperation Agreement may be altered, amended, modified or waived, in whole or in part, only in a writing signed by all Parties. This Cooperation Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

14. ~~13.~~ Each Party to this Cooperation Agreement warrants that it is acting upon its independent judgment and upon the advice of its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Cooperation Agreement.

15. ~~14.~~ This Cooperation Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of the state of New York, without regard to conflict of laws rules. This Cooperation Agreement shall be enforced in the Bankruptcy Court. The Parties waive any objection that each Party may now have or hereafter have to the venue of such suit, action, or proceeding and irrevocably consent to the jurisdiction of the Bankruptcy Court in any such suit, action, or proceeding, and agree to accept and acknowledge service of any and all process which may be served in any such suit, action, or proceeding.

16. ~~15.~~ This Cooperation Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and legal representatives. If any additional assignments of GM Insurance Rights are made under the GM Policies, the provisions and obligations under this Cooperation Agreement shall be binding on and extend to any such assignees and their respective successors, assigns, executors, administrators, heirs and legal representatives as set forth in Section 5(b) of the Kessler Settlement Agreement [and the Mitchell Order](#).

17. ~~16.~~ This Cooperation Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Cooperation Agreement.

18. ~~17.~~ With respect to itself, each Party to this Cooperation Agreement represents, covenants and warrants that (a) it has the full power and authority to enter into and consummate all transactions contemplated by this Cooperation Agreement and has duly authorized the execution, delivery, and performance of this Cooperation Agreement, and (b) the person executing this Cooperation Agreement has the full right, power and authority to enter into this Cooperation Agreement on behalf of the Party for whom he/she has executed this Cooperation Agreement, and the full right, power, and authority to execute any and all necessary instruments in connection herewith, and to bind such Party fully to the terms and obligations of this Cooperation Agreement.

19. ~~18.~~ Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, and other entities. The term "including" shall mean "including, without limitation."

20. ~~19.~~ The Parties acknowledge and agree that any breach of this Cooperation Agreement may result in immediate and irreparable injury for which there is no adequate remedy available at law, and the Parties agree that, in addition to any other remedies available, specific performance and injunctive relief are appropriate remedies to compel performance of this Cooperation Agreement.

21. ~~20.~~ Nothing in this Cooperation Agreement shall constitute, or be construed as, an admission that any Party is liable to any other Party or to any person not a party to this Cooperation Agreement. This Cooperation Agreement shall not be admissible in evidence nor shall it be used as evidence in any action or proceeding for any purpose other than for the purpose of enforcing the terms of this Cooperation Agreement.

22. ~~21.~~ Any provision of this Cooperation Agreement held to be invalid, illegal, or unenforceable shall be ineffective to the extent of such invalidity, illegality, or unenforceability without affecting the validity, legality, or enforceability of the remaining provisions.

23. ~~22.~~ This Cooperation Agreement may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original and all of which taken together shall constitute one Cooperation Agreement. This Cooperation Agreement may be executed and delivered by each Party by facsimile or electronic mail and a facsimile or electronic mail of this Cooperation Agreement when so executed shall be binding as an original.

IN WITNESS WHEREOF, the undersigned parties and their counsel have executed this  
Cooperation Agreement:

Dated: \_\_\_\_\_ as of the Effective Date  
CLASS

THE KESSLER SETTLEMENT

Frederick Walters

By: \_\_\_\_\_/s/ R.

~~Signature~~ Name: R. Frederick Walters, Walters

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Bender, Strohhahn & Vaughan  
Title: Co-Lead Counsel to the  
Kessler Settlement Class

Dated: \_\_\_\_\_  
SETTLEMENT CLASS

~~THE~~ as of the Effective Date

THE \_\_\_\_\_ MITCHELL

By: /s/ R. Frederick Walters  
Name: R. Frederick Walters, Walters  
Bender, Strohhahn & Vaughan  
Title: Counsel to the  
Mitchell Settlement Class

Dated as of the Effective Date

RESCAP LIQUIDATING TRUST

By Quest Turnaround Advisors, LLC, as  
Liquidating Trust Manager

Jeffrey Brodsky

By: \_\_\_\_\_/s/

~~Signature~~

\_\_\_\_\_  
~~Printed Name:~~ Jeffrey Brodsky

\_\_\_\_\_  
Title: Member