SERVICING AGREEMENT

dated [●]

between

[●]

as Owner

and

[●]

as Servicer

MAYER • BROWN
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THIS SERVICING AGREEMENT is entered into on this [●] by and between:

(1) [●] incorporated under the laws of [●] having its registered office at [●] (the “Owner”); and

(2) [●] incorporated under the laws of [●] having its registered office at [●] (the “Servicer”).

PREAMBLE

(1) The Owner has acquired loans and related security under a loan sale, purchase, assignment and assumption agreement dated [●] (the “Sale and Purchase Agreement”).

(2) The Owner desires to engage the Servicer to service the assets as defined in the Sale and Purchase Agreement on behalf of the Owner pursuant to this Agreement.

1. DEFINITIONS, TERMS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“Additional Services” means the additional services which the Servicer shall provide to the Owner pursuant to Section 2.1 and which are mutually agreed upon in writing between the Servicer and the Owner.

“Agreement” means this Servicing Agreement (as amended and modified from time to time).

“Anti-Money Laundering Procedures” means all applicable Laws of Germany relating to the prevention of money laundering, including, but not limited to, the German Anti-Money Laundering Act (Geldwäschegesetz) and its procedures.

“Assets” means the assets including (but not limited to) all rights, receivables and collateral of any kind (if any) as described in the Sale and Purchase Agreement.

“BaFin” means Bundesanstalt für Finanzdienstleistungsaufsicht.

“Base Services” means the services described in Section 2.2 of this Agreement which the Servicer shall provide to the Owner.

“Borrower” means any borrower guarantor or other debtor in respect of any Asset.

“Business Day” means any day which is a day on which commercial banks in [●] and [●], are open for business.

“Collection Period” means a period starting [●] and ending [●].

“Data Protection Act” means the German Federal Data Protection Act (Bundesdatenschutzgesetz).

“Effective Date” has the meaning given to that term in Section 2.10.

“Emergency Matter” has the meaning given to that term in Section 2.6(d).

1 Reference is made to NPL-Sale and Purchase Agreement published in NPL Jahrbuch 2011/2012.
“Excluded Activities” means [●].

“Fee Letter” means the fee letter as attached in Schedule 1.

“Governmental Authority” means any federal, regional or local government, public administration, court, tribunal, department, authority or agency of any nation or any state or municipality or any political subdivision thereof exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Know Your Customer Check” means the form of the “know your customer check” as attached in Schedule 2.

“Law” means any domestic or foreign constitutional provision, statute or other law, rule, regulation, or interpretation of any Governmental Authority and any decision, decree, injunction, judgment, order, ruling, assessment or writ of any Governmental Authority or any arbitrator.

“Loan Files” means all files, data, records, books or other information, regardless of whether in paper or electronic form underlying or documenting or relating to the Assets.

“Owner Account” means the account specified in Section 2.8(d) of this Agreement.

“Parties” means the Owner and the Servicer together, and “Party” means either the Owner or the Servicer individually, as the case may be.

“Records” has the meaning given to that term in Section 3.2(a).

“Recoveries” means, relating to the Assets, any and all rents, profits, proceeds, income, revenue, receipts, rebates, tax refunds and collections, of any nature and from any source, received by the Owner and the Servicer.

“Reporting Date” means in respect of each Collection Period, the [●] calendar day.

“Service Level Agreement” means the service level agreement as attached in Schedule 3.

“Servicer Expense Account” means the account specified in Section 2.8(e) of this Agreement.

“Servicer Material Adverse Effect” means the occurrence of any circumstances pursuant to which the commercial or financial condition of the Servicer has substantially deteriorated or could reasonably be expected to do so and which in either case materially and adversely affects the ability of the Servicer to perform its obligations under this Agreement or the Sub-Servicing Agreements.

“Services” means the services to be performed by the Servicer in accordance with this Agreement, including, but not limited to, the Base Services and the Additional Services.

“Servicing Expenses” means any out-of-pocket costs and expenses incurred by or on behalf of the Servicer in connection with the performance of the Services under this Agreement and as further described in accordance with Section 4.3 of this Agreement.

“Servicing Expense Items” means the items listed in Schedule 4 to this Agreement.

“Servicing Fee” has the meaning given to that term in Section 4.1.
“Servicing Standard” means the care and diligence of a prudent businessman (Sorgfalt eines ordentlichen Kaufmanns) and at least the same commercially reasonable care, skill and diligence with which prudent institutional commercial loan servicers perform the servicing of assets comparable to the Assets. The Owner will adopt and communicate, from time to time, revisions to these Servicing Standards as required by changes in applicable law. If the Owner wishes to adjust the Servicing Standard in order to contractually reflect (a) the applicable law, (b) the principles as amended or interpreted by BaFin from time to time as provided for in Section 3.3(b), then (c) the Parties shall mutually agree to the amendments to the Servicing Standard required within one (1) week from receipt of the Owner’s written proposal.

“Standard Report” means a report prepared by the Servicer, materially in the form as attached as Schedule 5 and in accordance with Section 2.3 of this Agreement.

“VAT” means any value added tax chargeable in the Federal Republic of Germany.

Words denoting the singular number only shall include the plural number also and vice versa. Any other terms defined in the Sale and Purchase Agreement and not otherwise defined herein shall have the same meaning when used herein.

1.2 Interpretations

The headings in this Agreement do not influence its interpretation. Words denoting the singular shall include the plural and vice versa and words denoting any gender shall denote all genders.

1.3 Schedules

The Schedules form part of this Agreement.

1.4 Calculation of interest

Any interest to be paid under the provisions of this Agreement is to be calculated on the basis of the number of days past divided by 360 days.

1.5 Default interest

Unless otherwise agreed herein, a defaulting party is to pay default interest to the other party in the amount of [●] percentage points above the basis interest rate according to Section 247 of the German Civil Code (BGB). Further rights on the part of the creditor remain unaffected. The above does not exclude the assertion of claims for higher damage caused by default. A claim for payment of interest arises without notification or reminder for any payment which under this Agreement is due on a specific date.

2. THE SERVICER'S DUTIES

2.1 General

The Owner appoints the Servicer to provide the services described in Section 2.2 below in connection with the administration and collection of the Assets in accordance with the Servicing Standard (the “Base Services”). The Servicer hereby accepts the appointment as Servicer on the terms and subject to the conditions of this Agreement. The Servicer shall in accordance with the Servicing Standard provide to the Owner such additional services as are

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2 If preferred, can be amended in the same interest calculation pursuant to Section 1.5.
mutually agreed upon in writing between the Servicer and the Owner from time to time (the “Additional Services”).

2.2 Base Services

The Base Services shall comprise the following services and shall not (subject to any term to the contrary contained in any other document entered into by or in favour of, and accepted by, the Servicer relating to the Assets) comprise the Excluded Activities:

(a) general loan processing, i.e. (i) manage, prepare, and respond to, Borrower correspondence, including billing; (ii) process Borrower payments and other receipts and expenses; (iii) maintain separate accounting records on each Asset; and (iv) update loan information including interest accruals, repayments and prepayment penalty calculations;

(b) to the extent that the Servicer receives any Recoveries, identify, set aside and hold in trust (Treuhand) all such Recoveries and transfer the same as soon as legally and commercially possible to Owner Account;

(c) assist, upon the Owner’s request, in preparing correspondence for delivery to the Borrowers relating to the transfer of servicing of the Assets;

(d) co-operate with any reasonable information request expressly approved by the Owner and made in connection with the Assets by auditors, accountants, rating agencies, bank regulators and any other regulatory and governmental authorities;

(e) assist with making necessary notifications to the Borrower, in particular in connection with a change of addresses or accounts;

(f) prepare and assist in (but, for the avoidance of doubt, not initiate) all filings, activities or transactions within the time limits (including properly obtained extensions thereto) prescribed by applicable Law necessary from time to time to preserve all rights, claims and powers under the Assets;

(g) provide to the Borrowers normal and customary information that is reasonably requested in a prompt manner, which service shall include responding to reasonable requests by the Borrower for information on the status of a particular Asset;

(h) notify the Owner immediately upon gaining actual knowledge of any litigation brought by the Borrower against the Owner and the Servicer;

(i) notify the Owner (as soon as practicable after such event has come to its attention) of any information which has a material impact on the Assets or which may have a material impact on the Servicer’s ability to perform its duties;

(j) prepare on a [monthly] basis a Standard Report;

(k) to support the Owner that it can comply with its duties under the Sale and Purchase Agreement;

(l) arrange for insurance coverage;

(m) manage the land charge and mortgage re-registration process and ensure that any application is properly filed with the competent land register; and
(n) any additional base services as listed in Schedule 6.

2.3 **Standard Report**

On or before each Reporting Date, the Servicer shall submit a written copy of the Standard Report to the Owner reflecting its activities during the immediately preceding Collection Period and certain forecasts, setting forth, in particular, the following information:

(i) [complete accounts for the Recoveries including account statements;]

(ii) [an itemized list of all Servicing Expenses to be reimbursed, taking into account items (vi) and (vii) below;]

(iii) [a summary of material modifications, material waivers or material amendments of or to any Original Loan Documents or any other agreements relating to any Asset;]

(iv) [a summary of any material changes in any Borrower’s performance or any related composition, reorganization or liquidation plan;]

(v) [a detailed description of actions taken in respect of an Emergency Matter and of the decisions taken by the Servicer on the basis of any express instruction or delegation of authority by the Owner from time to time and undertaken by the Servicer without further approval by the Owner, if any;]

(vi) [an account of any capital expenditure and a projection of such capital expenditure for the following Collection Period;]

(vii) [an account of the operational Servicing Expenses incurred by the Servicer and a projection of such operational Servicing Expenses for the following Collection Period;]

(viii) [an account of the current insurance coverage of the Assets and the cost incurred in connection therewith;]

(ix) [to the extent that the Assets comprise security over real estate, a list of the sale, transfer, discharge, waiver, introduction of public auction (Zwangsversteigerung) or forced administration (Zwangsverwaltung) or insolvency proceedings, expropriation, accidental destruction, or other disposition (Verfügung) of any Asset which results or could result in the Owner having no further legal, equitable, or economic interest in such Asset;]

(x) [to the extent that the Assets comprise security over real estate, a list of the scheduled public auctions for the next three calendar months with the respective dates and a description of the envisaged strategy with respect to such public auction;]

(xi) [to the extent that the Assets comprise security over real estate and/or assignments of rent receivables, an account of the rent collections and a projection thereof for the subsequent Collection Period; and]

(xii) [a forecast of the items covered in Sections [●] hereof].
The form of the Standard Report as set out in the relevant Schedule attached to this Agreement may be amended from time to time at the discretion of the Owner (acting reasonably), provided however, that the Owner shall consult for no longer than 10 Business Days with the Servicer prior to notifying any amendments and take into account all reasonable comments of the Servicer. Any amendment of the Standard Report Schedule shall become effective subject to 5 Business Days’ prior written notice by the Owner to the Servicer about the amendment on the first Reporting Date after receipt of such notification by the Servicer.

2.4 No Additional Obligations

Nothing contained in this Agreement shall require or be deemed to imply that the Servicer shall be obliged to provide any services other than the Services set forth in Sections 2.1 and 2.2.

2.5 Authority of the Servicer with respect to Third Parties

Subject to any term to the contrary contained in any other agreement entered into by or in favour of the Servicer relating to the Assets, the Servicer shall not act as the representative of the Owner by performing any activity in respect of the Assets which is not agreed in this Agreement as an activity to be undertaken by the Servicer.

2.6 Approval

(a) Unless expressly instructed otherwise by the Owner, the Servicer shall perform or procure the Base Services without prior approval of the Owner. Any other actions and activities relating to the Assets may, subject to this Section 2.6, be carried out by the Servicer only upon prior written approval and consent by the Owner.

(b) Any lawful and reasonable instruction by the Owner relating to the servicing of the Assets shall, subject to this Agreement, be binding upon the Servicer. The Owner may give instructions at any time about all matters connected with this Agreement and the Servicer shall promptly comply with any such instructions (and procure that its employees promptly comply with any such instructions).

(c) The Servicer shall be permitted to act as loan servicer for third parties provided that this does not give rise to any conflict of interest for the Servicer or otherwise adversely impact on the Servicer’s performance of this Agreement. To the extent necessary or desirable in order to avoid any conflict of interest, the Servicer will ensure that appropriate organisational measures are implemented, e.g. wall-of-separation arrangements, in order to provide servicing to different counterparties or in respect of its servicing of portfolios of assets that are different from the Assets.

(d) Without limiting any other authority of the Servicer contained herein, if, in order to preserve or protect the value of any Asset or the rights and interests of the Servicer, the Owner with respect to any Asset, any action or expense not authorized pursuant to the terms of this Agreement that would otherwise require the approval of the Owner must be immediately incurred in response to an emergency matter concerning the Assets (an “Emergency Matter”), then the Servicer shall be authorized to take or procure such action and/or incur such expenses as it deems reasonably necessary or appropriate to so protect the value of such Asset and/or the rights and interests of the Servicer, the Owner therein. The Servicer shall promptly notify the Owner of the action taken and the expense incurred and the circumstances giving rise to such expense (including the reason for the requirement for immediate action). For the purpose of this Agreement, an Emergency Matter exists in particular, without limitation, if there is (i) an imminent danger of material diminution in the value of one or more
of the Assets; and (ii) there is insufficient time for the Servicer to request approval by the Owner.

(e) For the avoidance of doubt, this Section 2.6 shall not be construed as to oblige the Servicer to perform any Excluded Activities.

2.7 Relationship between Owner and Servicer

During the continuance of its appointment hereunder:

(a) the Servicer acknowledges that the Owner is the owner of the Assets;

(b) the Servicer acknowledges that all legal title to all files and records and other information related to the Assets to be delivered by the Owner (maybe through to third parties to the Servicer pursuant to this Agreement) are the economic and the legal property of Owner.

2.8 Payments

(a) Except as expressly otherwise provided in this Section 2.8, all Recoveries that might be received by the Servicer to the Owner and shall be directed into the Owner Account.

(b) Where the terms of the Loan Documents require from the Borrower to fund escrow deposits for taxes and/or insurance purposes, and the Borrower actually funds such amount, then the Servicer shall direct that such funds are to be paid to the Owner Accounts.

(c) All payments to be made by the Parties under this Agreement are to be transferred by bank transfer in funds that are immediately available and freely disposable, without costs or fees incurring to the recipient.

(d) Payments to the Owner shall be transferred to the following bank account:

Bank: [●]
Account name: [●]
Account number: [●]
IBAN: [●]
Sort Code: [●]
SWIFT/BIC: [●]
Beneficiary: [●]

(e) Payments to the Servicer shall be transferred to the following bank account or another bank account to be specified by the Servicer with at least [●] Business Day´s notice:

Bank: [●]
Account name: [●]
Account number: [●]
IBAN: [●]

3 To be discussed if escrow account concept shall be used instead of the “Owner Account” concept.
(f) Payments to the Servicer of Servicing Expenses shall be transferred in accordance with Section [●] to the following bank account ("Servicer Expense Account") or another bank account to be specified by the Servicer with at least [●] Business Days’ notice:

Bank: [●]
Account name: [●]
Sub-title: [●]
Account number: [●]
IBAN: [●]
Sort Code: [●]
SWIFT/BIC: [●]
Beneficiary: [●]

(g) To the extent that a payment or other action to be rendered under this Agreement is due on a day which is not a Business Day, such payment or action is to be rendered on the subsequent Business Day. No interest shall accrue for the period between the due date and the subsequent Business Day.

2.9 Commissioning of Third Parties

The Servicer may commission third parties appropriately qualified to fulfil its contractual obligations but only in the Servicer’s (not the Owner’s) name and only with the prior written consent of the Owner. The terms and conditions of such sub-delegation agreements with third parties shall correspond to the terms of this Agreement. Vis à vis the Owner, the Servicer shall remain fully liable for the performance in accordance with the terms of this Agreement of the services to be provided by the Servicer. The Servicer’s liability for its own employees extends to any third parties commissioned by the Servicer.

2.10 Service Level Agreement

The Servicer agrees that it will perform the servicing in accordance with the Service Level Agreement as amended from time to time. Any amendment of the Service Level Agreement has to be notified to the Servicer [●] Business Days prior to the respective effective day ("Effective Day").

During a ramp-up period of [●] Business Days from the Effective Date, the Servicer shall implement all necessary steps in order to be fully operational so as to fulfil the obligations under the amended Service Level Agreement.

2.11 Know Your Customer

The Servicer agrees that it will perform the servicing in accordance with the Know Your Customer Check.
3. RECORDS; DATA PROTECTION; CONFIDENTIALITY

3.1 Loan Files

The Servicer shall ensure that the Loan Files are at all times kept in safe custody and the original loan contracts, security documents, security purpose agreements, land charge and mortgage deeds and land charge and mortgage certificates (the “Original Loan Documents”) kept in a secure place (for the avoidance of doubt, the Servicer is entitled to store the Loan Files and the Original Loan Documents at third party premises, provided that these premises belong to a German credit institution). If a mortgage certificate or land charge certificate is destroyed by fire while in the Servicer’s custody, the Servicer shall replace such certificate at the Servicer’s cost; if the Servicer cannot replace such certificate, the Servicer shall indemnify the Owner against any damage incurred by the Servicer due to the destruction of such certificate unless the Servicer can prove that the destruction is not caused by the Servicer’s negligence or wilful misconduct.

3.2 Records

(a) For the term of this Agreement, the Servicer shall maintain at the Servicer’s offices, a complete and accurate set of files, books and records reflecting (i) the business activities and operations conducted by the Servicer in connection with the Servicer’s performance of the Services under this Agreement and (ii) all information which the Servicer reasonably obtains with respect to the Assets. The foregoing files, books and records and the Loan Files shall be referred to in this Agreement collectively as the “Records”.

(b) The Servicer is obliged to return the Loan Files and the Original Loan Documents to the party entitled to them upon the earlier of the following events (i) the termination of this Agreement or (ii) payment of the final collections into the Owner Account. If all of the Loan Files and the Original Loan Documents have so been returned, the Servicer shall have no further obligation to continue to maintain all files and records pertaining to the performance of this Agreement.

(c) The Owner or any third party that is nominated by the Owner by previous arrangement with the Servicer, as the case may be, shall be entitled, subject to compliance with the Data Protection Act and to German banking secrecy rules and/or other confidentiality rules, to inspect the documents referred to in Section 3.2(b) at [3] Business Days’ written notice during the usual business hours of the Servicer. The Owner shall be entitled to make copies of, and extracts from, such Records at its own costs.

(d) The Servicer shall upon reasonable request of the Owner notify the Owner without undue delay by appropriate means of telecommunication with details of the physical location of all Records provided that, where Records are not kept under its control, it shall notify the Owner only of the last known location of such Records.

3.3 Data Protection

(a) The Servicer acknowledges that the third party data which is received under this Agreement may be subject to confidentiality rules, in particular if the matter concerns customer data. In particular, this duty relates to protected data according to the Data Protection Act and to data which is subject to banking secrecy rules and/or future confidentiality Law. The Servicer will not use any personal data received under this Agreement for any purpose other than stated in this Agreement. The Servicer will not create any copies or duplicates of any personal data received under this Agreement without the knowledge and prior approval of the Owner unless for the purposes of the servicing under this Agreement.
(b) Both Parties will fulfill all duties that arise from the processing of order data. In particular, the Servicer will fulfill its duties according to this Agreement’s Servicing Standard. For this purpose the parties agree that:

(i) the Servicer shall observe the Data Protection Act, German banking secrecy rules, future confidentiality Law and/or confidentiality rules as stipulated in sale and Purchase Agreement. The Servicer shall observe all future Laws regarding data protection at the time coming into effect;

(ii) the Owner and the Servicer shall, in their relationship and dealings with each other, ensure that the provisions of the Data Protection Act are observed and the Owner and the Servicer shall ensure the confidentiality and availability of all data covered by the Data Protection Act;

(iii) the Servicer shall ensure that all personal information relating to the Borrower is protected by appropriate technical and organizational means, in particular against loss, any unauthorized use of copying or falsification;

(iv) the Servicer shall keep the business secrets of the Owner confidential; and

(v) the Servicer shall ensure that, in the event that it provides services similar to the Services to any third parties, no Borrower information relating to the Assets will be obtained by any such third party and no information relating to the assets of the third party shall be obtained by the Owner.

(c) The Owner acknowledges that the Servicer is not obliged to provide the Owner with any information regarding the Borrower which could lead to a violation of any applicable data protection, banking secrecy law or any other confidentially rules if the requested information would be disclosed.

(d) The Servicer will submit to the Owner, at the Owner’s request, the concept for data protection and data security according to section 9 of the Data Protection Act and will develop it further according to technological progress. The Servicer shall provide the Owner upon request proof of the technical and organizational measures taken in accordance with section 9 of the Data Protection Act. The Owner is entitled to enter the Servicer’s premises within the usual hours of business in order to check compliance with the duties, to observe secrecy and, insofar as this is required and reasonable for checking compliance with the duties to observe banking secrecy, to inspect the documents relevant to such duties. The Servicer shall at all times ensure that an orderly continuation of business is possible in an event of an emergency.

(e) The Servicer shall require its employees and subcontractors to comply with data secrecy according to section 5 of the Data Protection Act and to familiarize themselves with the Data Protection Act’s provisions and German banking secrecy rules to the degree the Servicing Standards derives from such rules.

3.4 Confidentiality

The Parties shall not, during the term of this Agreement or after its termination, disclose to any person (except with the authority of the other Party hereto) any information which the Party has received in accordance or in connection with this Agreement, unless (but only if and to the extent it is in compliance with the Data Protection Act):

(a) if required to do so by an order of court of competent jurisdiction whether in pursuance of any procedure for discovering documents or otherwise;
(b) pursuant to any law or regulation or requirements of any governmental agency in accordance with which that party is required or accustomed to act;

(c) to the auditors or legal or other professional advisers subject to professional secrecy rules of any entity mentioned above; and

(d) as contemplated pursuant to this Agreement,

provided that the above restriction shall not apply to:

(i) information already known to the recipient but not in breach of this Section 3.4; and

(ii) information which is or becomes available to the general public but not in breach of this Section.

4. THE SERVICER’S FEES AND EXPENSES

Option 1

4.1 Servicing Fee

(a) The Owner shall pay the Servicer a fee in respect of the performance of the Services (other than Additional Services, if any) performed during the period starting on [●] until the termination of this Agreement a fixed administration fee in the amount of [●] per annum, payable by the end of December of each calendar year.

(b) The Servicing Fee excludes any applicable VAT and costs such as out-of-pocket costs and expenses (which shall include, without limitation, any costs for storage of the Loan Files) in connection with the performance of the Services.

4.2 Fees for Additional Services

The Owner may from time to time request Additional Services from the Servicer. The scope of the Additional Services and the fee charged for it will be negotiated between the Servicer and the Owner at the time the Additional Services are requested to be carried out.

Option 2

The Servicing Fee is outlined in the Fee Letter as attached in Schedule 1.

4.3 Servicing Expenses

The Servicer shall pay all Servicing Expenses required to be incurred by it in the performance of its obligations hereunder [with the prior [written] approval of the Owner].

(a) Initial Advance

[Promptly after the execution of this Agreement, the Owner shall pay to the Servicer an initial advance in the amount of (EUR [●]) (“Initial Advance”) in order to fund future Servicing Expenses. To the extent that the total balance on the Servicer Expense Account falls below the amount of the Initial Advance as of the respective last day of two consecutive Collection Periods, the parties may agree to increase such amount in which case the Owner shall pay the amount by which the Initial Advance has been increased to the Servicer Expense Account. Upon termination of this Agreement, the Servicer shall pay the amount of the Initial Advance]
(including, as the case may be, any amounts by which the Initial Advance has been increased
in accordance with the preceding sentence) back to the Owner, provided that the claim of the
Owner for payment of the Initial Advance may be set off against undisputed claims of the
Servicer for reimbursement of Servicing Expenses still due at such time, so that only the
portion of the Initial Advance due for repayment after such set-off shall be payable to the
Owner in cash.]

(b) Monthly Advance

The Owner shall

(i) pay to the Servicer an advance in the amount of the future Servicing Expenses estimated for each Collection Period in the Servicer’s expense forecast to be delivered as part of the Standard Report, and

(ii) promptly after the Servicer has included in the Standard Report detailed written invoices for such expenses along with reasonably detailed supporting documentation in connection therewith, reimburse all actual Servicing Expenses to the Servicer to the extent they are in compliance with this Agreement and exceed the advances paid for such Collection Period.

(c) Servicing Expenses; Certain Exclusions and Limitations

Servicing Expenses to be reimbursed shall not include, and the Owner shall not be required to pay or reimburse any amounts relating to, costs and expenses of the Servicer (i) not arising directly from the collection or management of the Assets in accordance with this Agreement, (ii) resulting from any event of default or other failure by the Servicer to perform any obligation under this Agreement or any breach by the Servicer of any provision of Law, or iii) made necessary by the Servicer’s default under any agreement other than this Agreement to which the Servicer is a party.

(d) Third Party Costs and Fees

The Servicer shall disclose to the Owner (i) all fees, charges, expense payments, payable to or disbursed to any third party, commission or engaged by the Servicer including e.g. outside counsel, auditors, and other consultants and advisers retained by the Servicer in connection with the enforcement, collection, foreclosure, management, operation and disposition of the Assets and (ii) all payments, considerations or other compensations of any kind, or set-off or other quid pro quo arrangements (whether oral or in written form) received from or concluded with such parties (a “Payment Arrangement”). Servicing Expenses shall be reimbursed by the Owner only net of any benefits of whatsoever nature (including any future benefits) received by the Servicer under or in connection with any Payment Arrangement.

(e) [Servicing Expense Items]

[Notwithstanding any provision contained herein to the contrary, any single Servicing Expense item in an amount equal to or less than the respective threshold amounts assigned to each item shall be reimbursed and does not have to be separately approved by the Owner. The reimbursement of further amounts in the discretion of the Owner of further reasonable expenses shall remain unaffected. The Servicing Expense Items Schedule may be amended from time to time at the sole discretion of the Owner. Any amendment of the Servicing Expense Items Schedule shall become effective on the [●] Business Day after notice has been given to the Servicer. Any costs and expenses other than the Servicing Expense Items which]
do not on their face have a clear indication of their purpose must be approved in writing by the Owner prior to disbursement.]

5. **INSURANCE**

The Servicer shall during the term of this Agreement keep in force, at the Servicer’s expense, a professional indemnity errors and omissions insurance policy with coverage of at least [●] per loss, including the Servicer’s loan servicing described in Section 2 of this Agreement and a comprehensive or commercial general liability insurance (bodily injury and property damage) for general liability including, without limitation, third party risks.

The Servicer shall provide information about the insurance to the Owner upon its request.

6. **COVENANTS, REPRESENTATIONS**

6.1 **Covenants**

The Servicer hereby covenants with the Owner that it will:

(a) **Compliance**

comply with the terms of this Agreement and all instructions of the Owner;

(b) **Care and Diligence**

devote such time and attention and shall exercise all such skill, care and diligence as necessary to ensure that the Servicing Standard is met;

(c) **Reports**

prepare and submit to the Owner the Standard Report by no later than [●] Business Days (or such other date as the Parties may from time to time agree) after the end of a month;

(d) **Financial Reporting**

maintain a system of accounting established and administered in accordance with generally accepted German accounting laws and principles (Grundsätze ordnungsgemäßer Buchführung);

(e) **System Requirements and Inspection of Records**

have systems in place in relation to the Assets that are capable of providing the information to which the Owner is reasonably and properly entitled pursuant to this Agreement, use all reasonable endeavours to maintain such systems in good working order, and permit the Owner, any firm of independent accountants and/or any other representatives of the Owner upon ten days’ prior written notice to enter upon its premises during normal business hours under the direct supervision of the Servicer for the following purposes to inspect and satisfy itself or themselves that the systems are in place, maintained in good working order and are capable of providing the information to which it or they are reasonably and properly entitled pursuant to this Agreement;
(f) Keeping of Records

keep and maintain Records for the purposes of identifying, in particular, at any time, any amount paid by and to the Borrower, any amount due by or to the Borrower, and the source of receipts which are paid into the Owner Accounts. The Servicer shall give the Owner notice of any material change to its administrative and operating procedures in relation to the keeping and maintaining of Records;

(g) Performance and Compliance with the underlying Original Loan Documents

at its expense and in a timely manner, fully perform and comply with all provisions, covenants and other promises relating to the Assets under the Original Loan Documents and relevant to the servicing;

(h) Licence

obtain and keep in force all licences, approvals, registration, authorizations and consents which may be necessary or desirable in connection with the performance of the Services;

(i) Compliance with Legal Requirements

comply with all legal requirements in relation to the Assets, including without limitation the Data Protection Act and circulars and other statements issued from time to time by BaFin (and, for the purposes of this Section 6.1(i) only, the Owner covenants to the Servicer that if and to the extent relevant, it shall comply with the Data Protection Act and circulars and other statements issued from time to time by BaFin). This shall apply only to such statements brought to the attention of the Owner and which will influence the Servicing. The Owner shall notify the Servicer of such statements without undue delay;

(j) Insurance

The Servicer shall not delegate the servicing to an independent contractor unless the independent contractor maintains an appropriate insurance.

6.2 During the term of the Agreement and for the time period after termination or expiration of this Agreement required by applicable law, the Owner may be subject to regulation and audit by governmental bodies, standards organizations or other regulatory authorities, including without limitation BaFin, or under applicable laws, rules, regulations, standards and contract provisions. If a governmental body, standards organizations, other regulatory authority, including without limitation BaFin, exercises its right to examine or audit the Owner’s books and records to the extent relevant to the Services pursuant to such laws, rules, regulations, standards, the Servicer shall provide all assistance requested by the Owner in responding to such audits or requests for information.

6.3 Without prejudice to Section 3.2(b) during the term of the Agreement and for a period of [three (3) years] after termination or expiration of this Agreement, the Servicer shall provide in accordance to the period as mentioned in Section 3.2(c) to the Owner, BaFin and the BaFin’s authorized auditing agents full and unrestricted access at all reasonable business hours to the facilities at or from which the Services are being provided and to the Servicer’s contract records, data system records and other pertinent information to the extent relevant to the Services and obligations undertaken by the Servicer under this Agreement and to provide all relevant information and documentation, all to the extent relevant to the Services and the
Servicer’s obligations under this Agreement to the degree such information is not contained in
Records which have been returned to the party entitled to them in accordance with Section
3.2(b). Such access shall be provided to the extent necessary to enable the Parties to comply
with applicable legal, regulatory and contractual obligations and shall in particular be provided
for the purpose of performing audits and inspections of the Owner or BaFin to verify the
integrity of company data, to examine the Servicer’s performance of the Services, to audit
compliance with the prudential provision and individual instructions from BaFin all to the
extent relevant to the Services provided and obligations undertaken by the Servicer under this
Agreement. The Servicer shall provide any assistance reasonably requested by the Owner,
BaFin or other above mentioned designee in conducting any such audit, including providing
all information and any documents relevant to the services provided and obligations
undertaken by the Servicer under this Agreement; the Servicer shall provide reprographic
facilities to make copies of such relevant documents.

6.4 If an audit by a governmental body, standards organization or regulatory authority, including
without limitation BaFin, having jurisdiction over the Owner, results in a finding that the
Servicer is not in compliance with any generally accepted accounting principle or other audit
requirement or any law or standard relating to the performance of its obligations under this
Agreement, the Servicer shall, within the time period specified by such auditor, address and
resolve the deficiency or deficiencies identified by such governmental body, standards
organization or regulatory authority.

6.5 Representations and Warranties

Each Party represents and warrants to the other that:

(a) **Due organization:** It is duly organized and validly existing under the Laws of the
jurisdiction of its formation. It has all requisite power and authority to enter into and to
perform its obligations under this Agreement.

(b) **Due authorization:** The execution and delivery of this Agreement has been duly
authorized by all necessary action.

(c) **Binding effect:** This Agreement is a legal and binding obligation of such Party,
enforceable in accordance with its terms, except to the extent enforceability is
modified by bankruptcy, reorganization and other similar Laws affecting the rights of
creditors generally and by general principles fair dealing (*Treu und Glauben*).

(d) **Consents, authorizations, etc:** No consents, authorization, approval, licence, notice
or filing is required for the due execution and performance of its obligations under this
Agreement, or if such is required it has been obtained.

(e) **Litigation:** There is no litigation pending against such Party or, to such Party's
knowledge, threatened, which is determined to be materially adverse to such Party.

(f) **Non-Violation:** The execution and performance by it of this Agreement and all other
instruments and documents to be entered into pursuant to this Agreement and all
transactions contemplated in this Agreement do not contravene:

(i) its constitutive documents,

(ii) any Law, rule or regulation applicable to it,
(iii) any material contractual restriction contained in any agreement or instrument to which it is a party or by which it is bound, or
(iv) any order, writ, judgment, award, injunction or decree binding on or affecting it, or all or any part of its assets.

7. INDEMNIFICATION

7.1 The Servicer shall indemnify the Owner and any director, officer or employee of the Owner, and hold it harmless against any and all damages, liabilities or expenses (including reasonable costs of legal counsel and litigation), arising in respect of the Servicer’s acts or omissions in connection with this Agreement incurred as a result of the Servicer’s wilful misconduct (Vorsatz) or gross negligence (grobe Fahrlässigkeit) in respect of failing to observe its duties hereunder; provided that in any such event, the Owner shall immediately advise the Servicer of any actual or pending action or circumstance which could reasonably give rise to any action. The Servicer shall be entitled to manage resolution of any such action and the Owner shall cooperate with the Servicer in connection thereto.

7.2 The Owner shall indemnify the Servicer and any director, officer or employee of the Servicer, and hold it harmless against any and all damages, liabilities or expenses (including reasonable costs of legal counsel and litigation), arising in respect of the Owner’s acts or omissions in connection with this Agreement (including acts or omissions of the Servicer resulting from acting in good faith upon the Owner instructions) incurred as a result of the Owner’s wilful misconduct (Vorsatz) or gross negligence (grobe Fahrlässigkeit) in respect of failing to observe its duties hereunder; provided that in any such event, the Servicer shall immediately advise the Owner of any actual or pending action or circumstance which could reasonably give rise to any action. The Owner shall be entitled to manage resolution of any such action and the Servicer shall cooperate with the Owner in connection thereto.

8. TERMINATION OF AGREEMENT

8.1 Termination by the Owner

The Owner may terminate this Agreement with effect after giving [●] prior written notice.

8.2 Termination by the Servicer

The Servicer may terminate this Agreement with effect after giving [●] prior written notice.

9. NOTIFICATIONS

Every notification, instruction or other communication by the Parties in connection with this Agreement, must be sent to the following persons in writing (including by fax but excluding by email) at the following addresses (or such other person, address or fax number as notified to the other Party in accordance with this Section 9):

(a) to the Servicer:

[●]

(b) to the Owner:

[●]
10. MISCELLANEOUS

10.1 No Assignment

The Servicer shall not be entitled to assign, delegate or transfer all or any of its rights or benefits hereunder (and, for the avoidance of doubt, nothing in this Section 10.1 shall restrict the Servicer’s right to delegate the performance of its duties pursuant to the terms of this Agreement).

10.2 Amendment in Writing

Amendments to this Agreement require the written form. The same applies to a waiver of this requirement of the written form.

10.3 Independent Contractor

The relationship between the Parties is that of independent contractors solely as set forth herein, and each Party shall be responsible only for its obligations as set forth herein.

10.4 Illegality

If single or several provisions of this Agreement are wholly or partially inoperative or become so, then the effectiveness of the remaining provisions will not be affected thereby. The Parties undertake to replace any inoperative provision by a provision that approximates legally and commercially as closely as possible to the intended provision.

10.5 Cooperation

The Parties hereto agree that they will fully co-operate to take all such further actions and execute any further documents as may be necessary or desirable to give full effect to the arrangements contemplated by this Agreement.

10.6 No Instruction Right

The Owner acknowledges that it does not have a right to instruct the Servicer with regard to the Services to be performed by the Servicer. The Servicer is solely responsible and liable for the way in which it provides the Services assumed under this Agreement.

10.7 Governing Law and Jurisdiction

This Agreement and any non-contractual obligations arising from or in connection with this Agreement shall be governed by German law. [●] shall be the non-exclusive place of jurisdiction for the hearing and settlement of any dispute or proceeding between the Parties relating to any matter arising from or in connection with this Agreement.
SIGNATORIES

Date: ___________________________ Date: ___________________________

For [●] For [●]

As: ___________________________

By: ___________________________

As: ___________________________

By: ___________________________