

Securitization

A Technical Guide



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Common Terms Used

Administrator/Trustee: Administrator/trustee is the agent of an originator who handles all the administrative aspects of a loan, including ensuring that the borrower complies with the terms in the indenture. Usually audit firms play this role.

Adviser: The adviser solely advises the originator and is required to protect the interest of the originator—typically the arranger is supposed to perform this function as well.

Arranger: Because of structural issues, the originator usually needs the help of an investment bank (the arranger) in setting up the transaction.

Investors: Pension funds, investment banks, insurance companies, high-net-worth individuals—in short anyone who buys the securitized assets—can be categorized as investors.

Originator/Issuer: The originator (also called the issuer) is the entity that owns the assets that will be securitized.

Servicer: A servicer collects payments and monitors the assets that are the crux of the structured financial deal. The servicer can often be the originator, because the servicer needs very similar expertise to the originator and would want to ensure that loan repayments are paid to the special purpose vehicle.

Special Purpose Vehicle (SPV): The SPV is usually a tax-exempt company or trust formed for the specific purpose of funding the assets and is 100 percent owned by the originator. Alternatively known as a special purpose entity (SPE) or special purpose company (SPC), this is setup to reduce the risk of bankruptcy and thereby obtain lower interest rates from potential lenders.

Purpose of This Guide

This guide introduces microfinance institutions (MFIs) to securitization as a potential source of financing. It does not provide an exhaustive description of all the nuances of securitization. Also there is no standard form for securitization documents as they vary depending on local laws and regulations, investors' requirements, and structure of the process. Accordingly this guide should be used by MFIs as general guidance.

The first draft of a securitization agreement is the first step in a long journey. MFIs should recognize that this draft is just a base for negotiating with investors. There may be some conditions in agreements that are considered standard by most investors. However most conditions are specific to the transaction and should be amended to capture the unique features of the transaction.

This Guide includes a standard agreement and provides tips and suggestions to MFIs for negotiating and redrafting the conditions. MFIs should also use this Guide to help them understand the characteristics of securitization. As the MFI understands the process better, it can leverage that knowledge to negotiate preferential terms from investors. Theoretically almost all the conditions can be negotiated. But, in reality, this is determined by the bargaining ability of the MFI.

*Defining Securitization**

Securitization, generally, is the packaging of financial assets that have similar characteristics for sale to investors as securities. Examples of financial assets used in securitizations include receivables, such as payments on mortgages; credit cards; equipment leases; and auto loans. However, other asset classes are just as capable of being used to raise capital for organizations, and there has been a gradual expansion of the market into new areas, such as microfinance loans, also known as microcredit.

MFIs interested in securitizing microcredit should focus on whether a securitization program would provide an added benefit to their capital formation process. The challenge for MFIs considering a securitization of their loan portfolios of microcredit is to preserve the benefits of securitization while at the same time preserving flexibility to manage microcredit in the most efficient way and in a manner consistent with their mission (and management of any microcredit that is not being securitized). The servicing of the securitized microcredit, the collection and remittance of periodic payments, and interaction with the borrower generally will remain with the originating MFIs. However, there may be transactions in the future that contemplate a possible pooling of MFIs' microcredit for a securitization, which could lead to the separation of the "servicing agent" function from the microcredit "origination" function. Although, from a cost and convenience perspective (even for a multi-MFI securitization), each MFI would likely act as servicer for its securitized receivables.

One important motivation for securitization is that it can be a cheaper method of raising capital. Accordingly, if it costs more to securitize than to borrow directly from banks or other funders, then it may be useful to rethink the rationale for conducting a securitization. The essence of securitization is the isolation of cash flows from the credit risk of the originator of the financial assets. Thus, the purchasers of the securities look to the performance of the financial assets and not, at least theoretically, to the solvency of the originator of the assets being securitized. Since repayment can be calculated actuari-

*This Introduction as well as the accompanying Sale and Servicing Agreement and Securitization Checklist may be used as a guide for MFIs interested in securitizing microcredits or selling microcredit portfolios. For a general source of information on microfinance securitizations, see Steiber (2007).

ally if comprehensive data on the credit performance of the asset are available, capital costs can be reduced. Asset-backed securities are typically rated AAA; very few companies or organizations can raise capital at such a credit rating. Investors in microcredit securitizations are likely to be looking for investment grade paper, and some credit enhancement may be necessary.

Securitization transactions follow a general pattern. The originator of the assets transfers them to a special purpose vehicle (SPV), which in turn issues securities backed by those assets. The SPV may be a corporation, a trust, a limited liability company, or a partnership—the choice often being decided by tax or accounting considerations. The only business of the SPV is to issue securities and make the necessary payments to the holders of those securities. The success of securitization hinges on the isolation from credit risk of the originator.

The separateness of the SPV underlies the success of securitization structures. Investors rely on an essentially passive entity that acts as a legal receptacle of payments on the assets and funnels them to payments on the securities. Except in a limited manner, the originator does not step into guarantee payments on the assets or the securities. Similarly, the originator must not ignore the separate legal personality of the SPV in its dealings with obligors on the assets or its future treatment of collections.

For MFIs, this whole idea of separateness may seem counterintuitive. Money that the MFI was accustomed to spending for general corporate purposes must now be accounted for scrupulously and may not be “borrowed” for the MFI’s own purposes. Respecting the separate operational and legal structure set up for the SPV is vital if the transaction is later to face challenges to its status separate from the originator. It is important that the SPV remains separate from the MFI and its securitized assets be isolated from creditors in the event that the MFI becomes insolvent.

It is important that MFIs, through the SPV, consider the requirements of the MFI jurisdiction’s applicable laws. If the MFI wants to issue securities in the public market it must consider a range of problems. The MFI is required to disclose not only the way its assets are underwritten and its collection and foreclosure procedures but also any unusual characteristics of the microcredit. Moreover, such disclosure may have to be regularly updated through filings under that jurisdiction’s securities laws, all of which are publicly available. Thus, the MFI must determine whether it has the capability to provide this kind of information in a timely fashion and in the detail required by securities laws. In addition, it must decide if it wishes to regularly disclose information on its business to outsiders and competitors—a potentially frightening prospect for many new issuers.

New Asset Classes

New asset classes continue to be added to the types of securitization transactions seen in the market. The characteristics of newer asset classes must be considered carefully. Note the following are examples:

- *Are the assets substantially similar?* Securitization thrives on taking a homogeneous pool of assets with standard characteristics. The more disparate the characteristics of the pool, the harder it is to understand the credit risk and the more difficult it is to do a transaction.
- *What is the term of the asset?* It is fundamental to understand how the asset pays. Is there a significant prepayment risk? Understanding the term of the asset is important in developing a structure.
- *What is the size of the asset?* Securitization grew through the packaging of smaller assets of comparable size, but newer assets may have very different characteristics. Large assets, even when packaged together, provide much greater credit risk and may provide a need for higher credit support to take account of the possibility that one or more of the obligors may default over the life of the deal. MFIs should remember this characteristic and point it out during pricing negotiations. Since the MFIs' assets are significantly smaller in size, they should be more attractive to buyers and should warrant some price break.
- *Is it a purely financial asset?* Financial assets are usually defined as assets that “convert into cash within a finite time period.” If the financial asset requires some future performance by an originator or by a third party, payment on the financial asset is subject to that third party's performance and bankruptcy risk. Thus a lease or royalty stream dependent on performance by the lessor or technology updates by the patent owner raises significant questions. Other assets that have been securitized, such as lease residual interests, may not turn to cash automatically, but may be packaged and used to raise capital (or provide credit support), even though they will have to be liquidated. Historical information on the amount of cash realized on equivalent assets is important in this context.
- *Is the documentation standard or diverse?* It is not unusual, particularly for smaller companies, to accommodate customers by negotiating special provisions in documentation. In newer asset classes, this presents a difficult challenge. Documentation that follows no prescribed form is difficult to review as a diligence matter but also makes the contractual risks to be absorbed by the SPV hard to understand. This is not to say that a disparate pool of financial assets cannot be securitized, but the time and effort involved in doing so is significantly increased.

- *What is the credit profile of the assets?* Most new originators have few if any losses. Newly originated microcredit portfolios (or at least those that are securitized) rarely do. Thus, to appreciate the credit risk, it is important to look at comparable assets by comparable issuers. One of the biggest obstacles for an issuer is its lack of data. Without detail on the performance of an asset, it is hard to understand the risk and thus difficult to achieve ratings goals.

Contractual Impediments to Securitization

Many MFIs may find that they have already restricted their ability to securitize by agreeing to covenants in bank loan documents or other financings that restrict their ability to sell assets. Others may have already pledged a significant portion of their microcredit, thus making them unavailable for sale in a securitization. An example of the language used in the type of pledge provision discussed above includes the following:

“The Debtor hereby assigns, mortgages, pledges, hypothecates, transfers, and sets over to the Bank and grants to the Bank a first lien on the security interest in all goods, equipment, inventory, accounts, chattel paper, general intangibles, credits, claims, demands, and any other property, rights and interests of the Debtor, and any and all additions and accessions thereto, all substitutions and replacements therefor and all products and proceeds thereof and proceeds of insurance thereon.”

Such broad pledges of assets are often asked of smaller companies, and the company’s counsel may not have objected to or tried to narrow the scope of the pledge in prior financing deals. However, this can prove to be a problem for an MFI contemplating a securitization as amendments of these provisions may be difficult to obtain from secured lenders to the MFI. Thus, any MFI will need to review its prior agreements to see if any restrictions on sales of assets or pledges of assets exist. This should be done as soon as possible so that waivers can be obtained in time.

Underwriting and Servicing Issues

Securitization forces a rigorous examination of underwriting and servicing procedures used by a new originator. For example

- Does the originator have written credit policies?
- Were the receivables originated in compliance with applicable local, regional, or state laws, particularly consumer laws, such as truth in lending?

- Where are collections sent? A central location or multiple lockboxes?
- How will collections be segregated from other corporate funds?
- What, if any, are the issuer's collection policies on overdue accounts?

Often in collecting data, the MFI will discover efficiencies that can be used to improve its business. For example, an analysis of categories of credit defaults may lead to loan underwriting improvements. Other costs, however, may be incurred that relate solely to the securitization. Computer systems that are adequate for current purposes may not be good enough to prepare the detailed reports required for securitization, and upgrades may be needed—although it is always good to question the necessity of such reports before undertaking a major technology upgrade.

Another difficult issue for MFIs will be its lack of servicing history and experience. While the MFI may be accustomed to servicing a portfolio with few losses and it may prize flexibility in waiving terms for important customers or for customers facing extreme hardships due to circumstances outside of their control (like tsunamis or war/insurrection/civil strife), the MFI may now be required to enforce those covenants in its roles as servicer agent for the securitization transaction. The customer relationship may be seriously jeopardized by such rigidity on the part of the MFI. Customers used to a more relaxed collection policy may be genuinely shocked by the change or may not understand why some customers are treated differently from others (for example, in circumstances where the MFI securitizes only a portion of its outstanding microcredit portfolio). Moreover, sometimes the servicing requirements imposed on MFIs because of “the demands of investors” or because “the rating agencies require it” may not work well for microcredit. A careful assessment must be made of how microcredit needs to be serviced. Therefore, before entering into contractual servicing commitments, the MFI should ask itself whether the resulting loss of control and limited flexibility works for microcredit and for its customers. If it will not work out well, it is time to push back and try to reassess the servicing “requirements.” This is particularly important with new asset classes. Servicing requirements were first set forth for securitizations taking place in the mortgage market, and they may need to be very different for microcredit. For example, in the mortgage market, if the obligor defaults on a mortgage payment, the servicer is required to foreclose on the mortgaged property. This type of action is unlikely to occur in the case of a small microcredit.

The MFI may also find some skepticism about its ability to service. Investment bankers, issuers, and rating agencies may require back-up servicers, especially with thinly capitalized entities. Historically, the role of a back-up servicer was performed by trustees but, after inheriting the job, many trustees found themselves less than pleased to be in this

position because of its onerous and time-consuming duties. Accordingly, the “hot back-up” was invented. Such an entity obtains information from the MFI essentially in real time and has wide access to asset records, the idea being that the hot back-up can step into the servicing role instantaneously. While this seems harmless enough at first glance, as a practical matter, it could raise difficult issues for an MFI. For instance, the only person capable of servicing a portfolio may turn out to be a major competitor of the entity conducting the securitization. The question for the MFI, therefore, is how much information, particularly underwriting standards, credit histories, and customer lists, does it wish to turn over to one of its principal rivals.

Conclusion

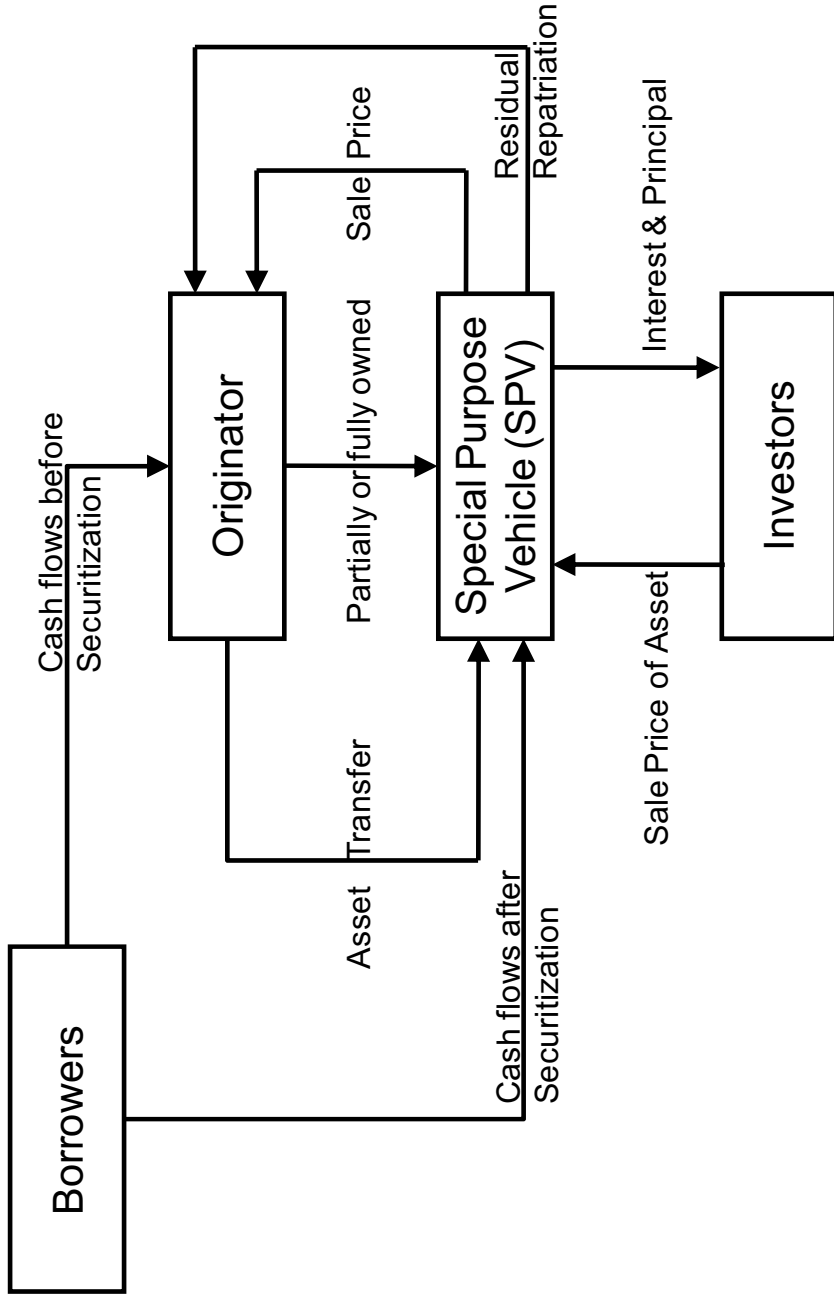
This introduction outlines some of the issues facing MFIs and questions relating to microcredit. Flexibility and creativity, from both a legal and a structural point of view, are very important in considering these matters. It is the way in which we adapt securitization rules and structures that provides the challenge.

Reference

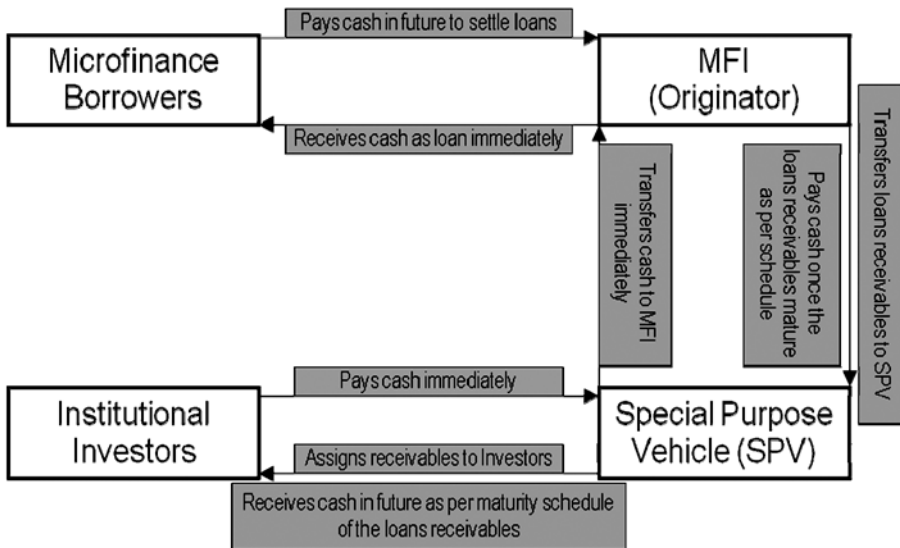
Steiber, S. 2007. “Is Securitization Right for Microfinance?” *MIT Innovations* (Winter & Spring): 202.

Securitization Diagram

Securitization Process



Securitization Diagram: Microfinance Perspective



Draft Sale and Servicing Agreement

SALE AND SERVICING AGREEMENT

by and between

[Microfinance Institution]
As Servicer and Seller

and

[Purchaser]
As Purchaser

Dated as of [____], 2008

This SALE AND SERVICING AGREEMENT, dated as of [____], 2008 (Agreement), is made by and between [Microfinance Institution], a corporation organized under the laws of [____] (MFI), and [Purchaser], a limited liability company organized under the laws of [____] (Purchaser). Initially capitalized terms used herein and not otherwise defined have the meanings assigned to such terms in the Glossary of Terms attached hereto.

WHEREAS, MFI desires to sell (in such capacity, Seller) to the Purchaser, and the Purchaser desires to purchase from the Seller, all of its interests in the Microcredits, on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, the Purchaser wishes to appoint MFI as the servicer of the Microcredits (in such capacity and, together with all permitted assignees, Servicer) and MFI agrees to act in such capacity, on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises herein made, and in consideration of the representations and warranties, herein contained, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to become legally bound, hereby agree as follows:

[This section identifies the parties to this agreement and describes the transaction. It explains that (i) MFI, the originator of the microcredits, is selling the microcredits to the purchaser, and (ii) MFI will act as the servicer of the microcredits and as the servicer will continue to manage the relationships with the microcredit obligors under the microcredits in accordance with the terms and conditions set out in this agreement. NOTE: MFI is referred to as "Seller" in connection with its sale of assets, and as "Servicer" in connection with its servicing responsibilities. This form agreement is intended to be used as a general guide for (i) a securitization transaction involving a sale of assets between an MFI and a special purpose vehicle/purchaser or (ii) a sale of all or part of an existing microcredit loan portfolio or future microcredit loan portfolio.]

Article I Definitions

[This section defines all the key terms used in this agreement and should be referred to whenever a defined term is used in this agreement. Note that there are different drafting conventions for how defined terms are defined in transaction documents. For example, in this agreement they are largely included upfront as opposed to interspersed throughout the document. It is important to be cautious and not assume that the defined terms have the common meaning assigned to them and that any capitalized term designates that a specific meaning has been assigned.]

Section 1.01. Definitions

When used herein, the following terms shall have the following specified meanings:

“Agreement” means this Sale and Servicing Agreement.

“Business Day” shall mean any day other than a Saturday, a Sunday, and any day on which banking institutions located in jurisdiction are authorized by Law or other governmental action to close.

[Be sensitive to the fact that “Business Day” may need to be defined differently depending on the jurisdiction. For example, Friday is a weekly holiday in some Muslim countries.]

“Closing Date” means the date of this Agreement.

“Collateral” means any and all collateral with respect to which a Microcredit Obligor has pledged, granted, collaterally assigned, or otherwise conveyed an interest to secure the payment and other performance of the obligations under or relating to any Microcredit whether now or hereafter assigned, including without limitation all related instruments, negotiable documents, investment property, deposit accounts, letter of credit rights, goods, software, supporting obligations, accounts, chattel paper, payment intangibles, and general intangibles comprising and/or related to any and all the foregoing.

[Collateral means assets pledged by the microcredit obligor to secure the microcredit, and that are subject to seizure in an event of default. Note that this definition will be necessary only if the type of microcredits being sold are collateralized.]

“Customary Policies and Procedures” means, with respect to any Microcredit, the customary standards, policies, and procedures of the Seller (which at all times shall not be less than prudent finance industry standards, policies, and procedures), as the same may be implemented and changed from time to time at the sole discretion of the Servicer (provided that such standards, policies, and procedures at all times shall not be less than the Servicing Standard).

[It is important that standardized customary policies and procedures for servicing microcredits included in a securitization are in place and evidenced in writing. These customary policies and procedures should be interpreted as to allow the servicer to perform its duties discussed herein.]

“Defaulted Microcredit” means any Microcredit with respect to which there has occurred one or more of the following: (i) all or some portion of any Material Payment under such Microcredit is due and unpaid for more than [__] days, (ii) the Microcredit Obligor with respect thereto has failed to perform one or more of its obligations pursuant thereto, or (iii) as to which the Servicer has determined that the collectibility of the Microcredit has been impaired.

[A microcredit default occurs when the microcredit obligor fails to comply with the terms of the microcredit. This failure most commonly occurs from a failure to make scheduled payments, but may also occur if the microcredit becomes uncollectible in some other way. The “cure period” or number of days that a microcredit is due and unpaid has been left blank because it is a point to be negotiated between the MFI and purchaser.]

- (a) For the purposes of determining whether a Microcredit has become a Defaulted Microcredit under clause (i) of this definition, and the date on which such Microcredit has become a Defaulted Microcredit, such Microcredit shall have been reported as being [__] days or more delinquent in a Monthly Portfolio Report, and the date on which such Microcredit shall be deemed to have become a Defaulted Microcredit shall be the effective date of the Monthly Portfolio Report in which such [__] day delinquency was first reported. The date on which a Microcredit shall be deemed to have become a Defaulted Microcredit pursuant to clauses (ii) and (iii) of this definition shall be the effective date of the Monthly Major Events Report in which the circumstances described in clause (ii) or clause (iii), as the case may be, with respect to a Microcredit was first reported.

[The number of days that are negotiated and used in the definition of “Defaulted Microcredit” should be the same number of days inserted into the brackets in the paragraph above.]

- (b) In the event that the Servicer fails to disclose, with respect to a Microcredit, either accurately or at all, the occurrence of a circumstance that would cause such Microcredit to be a Defaulted Microcredit, such Microcredit will constitute a Defaulted Microcredit as of the date on which a Monthly Portfolio Report would have contained such disclosure if the Servicer had complied with the applicable provisions of this Agreement.

“Governmental Authority” means any federal, national, supranational, state, provincial, local, or other government, governmental, regulatory or administrative authority, agency, or commission or any court, tribunal, or judicial or arbitral body.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority.

“Insolvency Event” means, with respect to a specified Person, (a) the filing of a decree or the entry of order for relief by a court having jurisdiction in the premises in respect of such Person or any substantial part of its property in an involuntary case under any applicable insolvency Law now or hereafter in effect, or for such Person or for any sub-

stantial part of its property, or ordering the winding-up or liquidation of such Person's affairs, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; (b) the commencement by such Person of a voluntary case under any applicable insolvency Law now or hereafter in effect, or the consent by such Person to the entry of an order for relief in an involuntary case under such Law, taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official for such Person or for any substantial part of its property; (c) the making by such Person of any general assignment for the benefit of creditors; (d) the failure by such Person generally to pay its debts as such debts become due; (e) the admission by such Person in writing of its inability generally to pay its debts when the same become due; (f) the taking of action by such Person in furtherance of any of the foregoing; or (g) the death of such Person.

[Insolvent means that the microcredit obligor can no longer meet her obligations under the microcredit due to bankruptcy. Generally microentrepreneurs do not operate formal businesses, and so there may be no application of bankruptcy law to them or their businesses. In such cases, the insolvency events listed in subsections (d)–(g) above are sufficient to have in this agreement. However, to the extent microcredits are financing a formalized business, the servicer may also want to include the insolvency events listed in subsections (a)–(c) above.]

“Late Charges” means any amounts payable under or with respect to any Microcredit with respect to any amounts not paid or payable by Microcredit Obligors with respect to any of the Microcredits either at all or on a timely basis.

“Law” means any federal, national, supranational, state, provincial, local, or similar statute, law, ordinance, regulation, rule, code, Governmental Order, or other order, directive, requirement, or rule of law (including common law).

“Liabilities” means any and all debts, liabilities, and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, or determined or determinable, including those arising under any Law, Loss, or Governmental Order and those arising under any contract, agreement, arrangement, commitment, or undertaking.

“Lien” shall mean any mortgage, chattel mortgage, pledge, lien, charge, encumbrance, lease, exercise of rights, security interest, lease in the nature of a security interest, or claim of any kind, including thereof arising under any conditional sale agreement, equipment trust agreement, or title retention agreement.

“Material Adverse Effect” means a material adverse effect on any or all of the following: (a) the ability of the Seller to carry out its obligations under, and to consummate the transactions contemplated by the Servicing Agreement, (b) the enforceability and collectibility (provided that in no event shall the foregoing reference to collectibility mean that the Seller is giving a guarantee of collectibility with respect to the Microcredits) of

the Microcredits by the Seller, the Purchaser, or the Servicer (on the Purchaser's behalf pursuant to this Agreement), or (c) the business, properties, assets, or condition (financial or otherwise) of the Seller or the Purchaser.

[A material adverse effect refers generally to any event, condition, or change that has a significant detrimental impact on either the enforceability of microcredits or on the business or financial condition of either the servicer or the purchaser. Political unrest, terrorism, and armed conflicts are examples of things that could potentially have a material adverse effect on the parties to this agreement. The economic and political consequences of such events could affect the microcredit obligor's ability to perform her obligations under the microcredit.]

“Material Payment” means any Scheduled Payment as well as any balloon, accelerated, casualty, mandatory prepayment, or other payment in the nature of principal, interest, or residual return, irrespective of amount.

“Microcredit Balance” means the outstanding principal balance on a Microcredit plus any accrued and unpaid interest.

“Microcredit Documents” means all documents, instruments, agreements, filings, certificates, and opinions entered into and/or delivered by or on behalf of the Seller.

“Microcredit File” means, with respect to each Microcredit, the fully executed original counterpart of the Microcredit (including, the only executed original promissory note and related security agreement, if any), certificates of insurance, financing statements, and all other documents originally held by the Seller with respect to any Microcredit.

[Note that MFIs have limited and informal files on individual microcredit obligors. Also, in the case of where several individuals are borrowing in a group (as opposed to individuals borrowing separately) there is a likelihood that only one file exists for the entire group (as opposed to all of the individuals making up that group).]

“Microcredit Obligor” means each borrower or lessee under a Microcredit Document, and any other Person with a payment, re-purchase, warranty, indemnity, remarketing, support, or other obligation to the Seller (whether direct or indirect, including, pursuant to any assignment, vendor program, or other arrangement) under any Microcredit Document, including any guarantor or Originator.

“Monthly Major Events Report” has the meaning set forth in Section 6.01(b) hereof.

“Monthly Portfolio Report” has the meaning set forth in Section 6.01(a) hereof.

“Notices” has the meaning set forth in Section 9.02 hereof.

“Originator” means the original financing party, whether as lender or otherwise with respect to a Microcredit.

“Outstanding Microcredit Balance” means, at any given time, with respect to a Microcredit, the outstanding principal amount of such Microcredit together with accrued

interest thereon plus all accrued fees in accordance with the terms of such Microcredit (except Excluded Interests).

“Person” means any individual, corporation, estate, partnership, limited liability entity, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or government, or any agency or political subdivision thereof.

“Prepaid Microcredit” means any Microcredit as to which the Microcredit Obligor’s payment obligations are prepaid in full in advance of the scheduled expiration or termination of such Microcredit.

“Prepayment” means with respect to any collection period for any Microcredit, a partial or full prepayment of amounts due and owing under such Microcredit.

“Schedule” means each Schedule attached hereto, dated as of the date hereof, delivered by the Seller to the Purchaser in connection with this Agreement.

“Scheduled Payment” means, with respect to any Microcredit, the weekly, monthly, or quarterly or semi-annual or annual rent or financing (whether principal, or principal and interest, or a “balloon” payment) payment or other payment scheduled to be made by the related Microcredit Obligor under the terms of such Microcredit (including all extensions or renewals thereof).

“Servicer Default” has the meaning provided under Section 5.01 hereof.

“Servicing Standard” means, with respect to the servicing, collection, and other activities of the Servicer concerning the Microcredits, the conduct of such activities with reasonable care and in accordance with prudent microfinance industry standards, policies, and procedures, using that degree of skill and attention that it exercises with respect to all comparable contracts and related assets that it services for itself or others, and in accordance with applicable Law.

[The Servicer must have the ability to describe and provide to the purchaser, in writing, what type of actions it will take as servicer and these specific policies and procedures must be implemented throughout the duration of the transaction. The standard of care taken by the servicer in implementing these policies and procedures must be uniform and consistent.]

“Servicing Transfer” has the meaning set forth in Section 5.02(b) hereof.

“Solvent” means, as to any Person at any time, that (a) the fair value of the property of such Person is greater than the amount of such Person’s liabilities (including disputed, contingent, and unliquidated liabilities) as such value is established or such liabilities customarily evaluated; (b) the present fair saleable value of the property of such Person in an orderly liquidation of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and

matured; (c) such Person is able to realize upon its property and pay its debts and other liabilities (including disputed, contingent, and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's property would constitute unreasonably small capital.

[This definition presumes that if the microcredit obligor is "solvent," she likely is capable of meeting her financial obligations under the microcredit. If the microcredit obligor is unable to meet her financial obligations under the microcredit, it is likely that an event of default will occur under the microcredit.]

"Successor Servicer" has the meaning set forth in Section 5.02(b) hereof.

[Under Section 5.02(b), if the originating servicer steps down voluntarily or involuntarily, a new organization, i.e., the successor servicer, will become the institution that will manage the relationship with the microcredit borrowers.]

"Tax" or "Taxes" means any and all taxes, levies, imposts, duties, assessments, withholdings, charges, or fees of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Governmental Authority.

"Termination Notice" has the meaning set forth in Section 5.02(a) hereof.

"Transaction Documents" means, collectively, this Agreement and [other] Agreements, as the same may be amended, supplemented, restated, replaced, or otherwise modified from time to time.

[This definition should include all principal documents for this sale of microcredits.]

Article II Sale and Conveyance of Microcredit Loans

Section 2.01. Sale and Conveyance of Microcredits

The Seller hereby sells, transfers, assigns, sets over, and conveys to the Purchaser, and the Purchaser hereby acquires from the Seller, without recourse, subject to the terms of this Agreement, all of the Seller's right, title, and interest in and to the Microcredits. In consideration for its transfer of such Microcredits, the Seller shall receive from the Purchaser the payment in the amount of [].

[This sale and conveyance clause sets forth the terms, including the purchase price, in which the seller is selling the microcredits to the purchaser. The purchase price is highly negotiable and may be discounted to reflect future cash flows.]

Section 2.02. Recharacterization of Sale of the Microcredits as Secured Financing

The parties hereto reconfirm their intent that the conveyance of the Seller's right, title, and interest in, and to, the Microcredits to the Purchaser pursuant to Sections 2.01 of this Agreement, respectively, was and is intended to be a conveyance and transfer of ownership of such Microcredits and that such Microcredits shall not be part of the Seller's estate in the event of the filing of a bankruptcy petition or other action by or against the Seller under any insolvency law. In the event, however, that, notwithstanding such intent and agreement, such conveyance by the Seller to the Purchaser hereunder is determined not to be a conveyance of ownership, the Seller hereby grants to the Purchaser a perfected first priority security interest in the Seller's right, title, and interest in and to (a) such Microcredits and (b) all income from, and proceeds of, the foregoing, and this Agreement shall constitute a security agreement under applicable law, securing the obligations or interests as may arise hereunder.

[This section confirms the parties' intent that the seller is transferring its ownership in the microcredits to the purchaser. A requirement for securitization is the true sale of a "financial asset" to a special purpose entity, in this case the purchaser, which eliminates insolvency risk of the originator, in this case the MFI. However, this section also provides that if a court finds that this is not a conveyance of ownership of the microcredits, then the purchaser will have a perfected first priority security interest in the pledged microcredits. This section should be modified to reflect insolvency laws and the pledge laws, especially in countries where a pledge of intangible assets is not permitted, of the relevant jurisdiction.]

Section 2.03. Books and Records

The transfer of the Microcredits shall be reflected on the Seller's balance sheet and other financial statements as a sale of assets by the Seller, and the Seller shall respond to any third-party inquiry that such transfer is so reflected as a sale. The Seller shall be responsible for maintaining, and shall maintain, a complete set of books and records for each Microcredit, which shall be clearly marked to reflect the ownership of the Microcredit by the Purchaser.

[This section provides that the conveyance of ownership of the microcredits from the MFI to the purchaser will be reflected as a sale on the MFI's balance sheet. This means that once the microcredits are sold these microcredits will no longer be held as assets on the balance sheet of the MFI. Instead the MFI will reflect the receipt of payment for such microcredits on its books. This can have significant implications for how easily the MFI

can meet its capital adequacy ratio requirement, if regulated. As microcredits are sold, the MFI would no longer hold capital in reserve against the sold microcredits. So the securitization should ease the capital adequacy ratio requirement imposed on the MFI.]

Section 2.04. Acknowledgment

The Seller acknowledges and agrees that, immediately upon the consummation of the sale of its interests in the Microcredits, all security interests and other Liens in favor of the Seller, held or controlled by or on behalf of the Seller, respectively, shall be so in favor of or so possessed, held or controlled by the Seller, as agent of and for the sole benefit of the Purchaser.

Article III Representations and Warranties

[This article section offers assurances to the parties to this agreement that the legal, financial, and regulatory affairs of all parties are in order as of the closing date. Both parties to this agreement need to be certain that all representations and warranties that each makes are accurate statements as to the facts articulated in these provisions as of a certain date, in this case the closing date.]

Section 3.01. Seller Representations and Warranties

[The MFI represents to the purchaser that its legal, financial, and regulatory affairs are in order as of the closing date. The MFI needs to be certain that all representations and warranties that it makes are accurate statements as to the facts articulated in these provisions.]

The Seller hereby represents and warrants to the Purchaser as follows and agrees and acknowledges that the Purchaser may rely and is relying on such representations and warranties in purchasing and accepting conveyance of the Microcredits on the Closing Date:

- (a) The Seller is a [corporation] organized under the laws of [___], and has all requisite corporate power and authority to own its assets and properties and to transact the business in which it is currently engaged as it is currently conducted. The Seller is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the character of the business transacted by it or assets or properties owned requires such qualification except in which jurisdiction the failure to qualify would not have a material adverse effect on the business, properties, assets, or condition (financial or otherwise) or prospects of the Seller or the Purchaser or on

the rights and remedies of the Purchaser under this Agreement. The Seller is properly licensed in each jurisdiction to the extent required by the laws of such jurisdiction in order to originate, acquire, own or transfer, sell or convey the Microcredits.

[The MFI represents that it has been formed as a corporation in accordance with the applicable laws in its jurisdiction and that it is qualified to do business in such jurisdiction. Note that an MFI that is not formed as a corporation can complete securitizations; however, it would need to describe the entity laws that are specific to it.]

(b) The Seller has and shall continue to have the corporate power and authority, and the legal right, to make, execute, deliver, and perform this Agreement, and all documents related thereto and has taken and shall continue to take all necessary action to authorize the execution, delivery, and performance of this Agreement and all documents related thereto. This Agreement constitutes the legal, valid, and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except as enforcement of such terms may be limited by bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally, and by the availability of equitable remedies.

[The MFI represents that it has the corporate authority to enter into this agreement and will perform its obligations under this agreement.]

(c) The Seller is not required to obtain the consent or authorization of, approval by, notice to, filing with, or other act by or in respect of, any Person or any consent, license, approval, or authorization from, or notice to or registration or declaration with, any Governmental Authority in connection with the execution, delivery, performance, validity, or enforceability of this Agreement and all documents related thereto.

[The MFI represents that it does not have to obtain the consent of any person or governmental authority before entering into this agreement or performing its obligations hereunder.]

(d) The Seller's execution, delivery, and performance of this Agreement, and all documents related thereto, do not and will not violate any provision of any existing Law or constitute a material breach of any contract or other agreement or obligation to which the Seller is a party or by which the Seller or any of the Seller's properties may be bound. The execution, delivery, and performance of this Agreement and all documents related thereto do not and will not result in, or require the creation or imposition of any lien on, any of the Seller's properties or revenues pursuant to any such Law or organizational documents or contractual obligations.

[The MFI represents that this agreement is legal and will not breach any other agreements to which it is a party. It also represents that this agreement will not result in any improper liens being placed on the MFI's properties or revenues.]

- (e) No litigation or administrative proceeding of or before, nor any investigation by, any Governmental Authority is currently pending or threatened against the Seller or with respect to any of the Microcredits, if adversely determined, would have a Material Adverse Effect on the legality, validity, or enforceability of any of the Microcredit Documents, this Agreement, or the consummation of the transactions contemplated hereby or thereby or affect the Purchaser's interest in the Microcredits or the Purchaser's rights and remedies hereunder or the other documents related hereto.

[The MFI represents that there are no court proceedings or investigations pending against it that will have a material adverse effect on or impede the MFI's obligations or performance hereunder.]

- (f) (i) The Seller has filed all tax returns, which, to the best knowledge of the Seller, are required to be filed in the normal course of their respective businesses, and have paid or made adequate provisions for the payment of all taxes, assessments made against such Persons, or any of their properties and other governmental charges due from the Seller or are contesting any such tax, assessment, or other governmental charge in good faith through appropriate proceedings with respect to which reserves in conformity with generally accepted accounting principles have been provided on the books of the Seller, as the case may be, (ii) no tax lien has been filed with respect thereto, and (iii) no claim is being asserted with respect to any such tax, fee, or other charge to the extent the failure to make such filing or have such claim or lien removed, as the case may be, would have a Material Adverse Effect.

[The MFI represents that it has filed all necessary tax returns and that it does not have any outstanding tax liabilities. Also, the MFI represents that this agreement will not be affected by any claims with respect to any tax or lien.]

- (g) The Seller has not changed its jurisdiction of organization, name, identity, or structure within the [___] months preceding the Closing Date.
- (h) As of the Closing Date, there has been no development or event nor any prospective development or event that has had or could have a Material Adverse Effect.
- (i) The Seller, on the date of and after giving effect to conveyances made hereunder, is Solvent.

[The MFI represents that it is capable of meeting its financial obligations.]

- (j) As of the Closing Date, all other information provided by or on behalf of the Seller in connection with the sale of the Microcredits, when taken as a whole and viewed in the context of all relevant facts and circumstances, is true and complete in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading. There are no material documents relating to the Microcredits that have not been made available in their entirety to the Purchaser.

[The MFI represents that it has provided all of the relevant information and documents regarding the Microcredits to Purchaser and that all of the information it has provided is accurate.]

- (k) As of the Closing Date, (i) immediately prior to the sale of the Microcredits, the Seller has possession of each original Microcredit, Microcredit Document, and the related complete Microcredit File, (ii) each of such Microcredit Documents and other documents that are required to be executed by any Microcredit Obligor has been duly executed by such Microcredit Obligor, and (iii) each Microcredit File is complete.
- (l) The Seller has no material performance obligation in respect of any Microcredit or other Microcredit Document in favor of any Microcredit Obligor and is not in default, breach, or violation of any such Microcredit or Microcredit Document. No applicable Law or contractual obligation of the Seller or any of its subsidiaries has a Material Adverse Effect.

[The MFI represents to the purchaser that it is not in default on any of the microcredits to be securitized or any obligations related thereto.]

- (m) The sale, conveyance, transfer, and assignment to the Purchaser of all of the Seller's right, title, and interest in the Microcredits does not violate the terms or provisions of any Microcredit or any other Microcredit Documents or agreement or contractual obligation to which the Seller is a party or by which it or its property is bound. The Seller is not in default under any Microcredit Document or document, agreement, or other contractual obligation related thereto that would result in a Material Adverse Effect.

[The MFI represents that sale of its interests in the microcredits to the purchaser will not violate the terms of the any of the microcredits being transferred and that it is not in default under any of the microcredit documents or any obligations related thereto that would result in a material adverse effect.]

- (n) As of the Closing Date, no Microcredit Obligor has been released, in whole or in part, from any of its obligations in respect of any Microcredit or other Microcredit Document; no such Microcredit or Microcredit Document has been satisfied, cancelled, or subordinated, in whole, or in part, or rescinded, nor has any agreement or instrument been executed that would affect any such satisfaction, release, cancellation, subordination, or rescission of any such Microcredit or other Microcredit Document.

[The MFI represents that each of the microcredit obligors continues to be held accountable for its performance and obligations under the microcredit and microcredit documents. This provision may need to be modified to the extent the purchasers want a representation regarding group guarantees.]

- (o) The Customary Policies and Procedures are in effect as of the Closing Date and reflect a fair and accurate description of the Sellers underwriting and servicing guidelines as currently in effect.

Section 3.02. Additional Microcredit Representations

[In this section, the seller offers assurances to the purchaser that the legal, financial, and regulatory affairs of the microcredits and microcredit documents are in order as of the closing date. The MFI needs to be certain that all representations and warranties that it makes are accurate statements as to the facts articulated in these provisions.]

The Seller hereby represents and warrants to the Purchaser in respect of the Microcredits and Microcredit Documents as follows and agrees and acknowledges that the Purchaser may rely and is relying on such representations and warranties in purchasing and accepting conveyance of the Microcredits on the Closing Date.

- (a) The Seller shall be the legal and beneficial owner of, and have valid, good, and marketable title to (and following the sale, assignment, transfer, and conveyance by the Seller to the Purchaser of such Microcredits and other Microcredit Documents and all rights assigned to the Seller thereunder, the Purchaser shall be the legal and beneficial owner of and have valid, good, and marketable title to) the Microcredits and other Microcredit Documents, free and clear of any liens, claims, or other encumbrances.

[The MFI represents that it holds the legal title to each of the microcredits that is being transferred to the purchaser.]

- (b) The security interests in the Microcredits created for the benefit of Seller constituted valid, perfected first priority security interests in such Microcredits. The security in-

terests in the Microcredits created for the benefit of the Seller and assigned to the Purchaser will constitute valid, perfected first priority security interests (subject only to any liens that have been subordinated) in such Microcredits.

[Note that security interests are extremely important to investors. A “security interest” is usually given in connection with a pledge of assets, but may be given in connection with a sale like this depending on whether or not local law is clear as to the enforceability of the sale if the originator goes bankrupt or becomes insolvent. It is necessary to check with local counsel to find out if security interest laws are applicable in the relevant jurisdiction.]

- (c) The Seller has a valid, perfected first priority security interest in each of the Microcredits and has complied with all applicable Laws in perfecting such security interest.
- (d) No Microcredit is a Defaulted Microcredit and no event has occurred with respect to any Microcredit or other Microcredit Document that, with the passage of time or notice, would constitute a breach, violation, or default under a Microcredit Document or otherwise result in a Defaulted Microcredit.

[The MFI represents that no microcredit being conveyed is a defaulted microcredit.]

- (e) No amount payable by any Microcredit Obligor under any Microcredit is evidenced by any instrument or tangible chattel paper that has not been delivered to the Seller.
- (f) Any Prepayments or end of term purchase options or final loan or balloon or early termination payments required under the terms of any Microcredit must be in an amount not less than the Outstanding Microcredit Balance thereof.

[The MFI represents that any outstanding or owed amounts that are paid by a microcredit obligor prior to the scheduled terminate date will be in an amount equal to the entire amount owed by the microcredit obligor.]

- (g) No consent, permit or license, or authorization of, or filing with or other act by or in respect of any governmental authority or any other Person is required in connection with the execution, delivery, performance, validity, or enforceability of any of the Microcredits or other Microcredit Documents by any party thereto other than those that have been duly obtained, made, or performed, are in full force and effect, and do not subject the scope of any such Microcredit to any limitation, either specific or general in nature.
- (h) No provision of any Microcredit or other Microcredit Document has been waived, altered, or modified, except to the extent disclosed to the Purchaser.

[The MFI represents that it has not altered the terms of any microcredit or microcredit documents.]

- (i) Each Microcredit and other Microcredit Document is in full force and effect and constitutes a valid and binding obligation of the Microcredit Obligor thereof, each enforceable in accordance with their respective terms by the parties thereto.
- (j) The right, title, and interest of the Seller in, to, and under the Microcredits and other Microcredit Documents is not subject to litigation, or to rights of rescission, setoff, recoupment, claim, counterclaim, or defense and, to the Seller's knowledge, no such rights have been asserted or threatened with respect to any Microcredit or Microcredit Document.

[The MFI represents that no court actions have been threatened or are pending regarding the MFI's ownership of the microcredits being sold.]

- (k) Each Microcredit and each other Microcredit Document at the time it was made, had been originated, made, or entered into in compliance (in all material respects) with applicable Law, and does not violate the Laws of the [____] or any state or any other applicable Governmental Authority.

[The MFI represents that each microcredit is a legal and binding agreement.]

- (l) No Microcredit or any interest therein have been sold, transferred, conveyed, assigned, or pledged, leased, or otherwise disposed of by or on behalf of the Seller to any other Person and no binding contract to do so (other than this Agreement) has been executed by the Seller.

[The MFI represents that it has not sold or pledged any of its interests in any microcredit other than in this agreement. It is important to complete due diligence as to prior financings to find out if a prior pledge of interests in any microcredit has occurred. If a prior pledge of interests in any microcredit has occurred, a securitization of those pledged microcredits may not be possible without first getting a release of such pledge by the beneficiary of such pledge (e.g., the lender who required the pledge).]

- (m) Each Microcredit Obligor is domiciled in the [____] and each Microcredit and other Microcredit Document is a [____] denominated obligation.
- (n) No Microcredit or Microcredit Document requires the prior written notification to or consent of any Microcredit Obligor or contains any other restriction on the transfer

or assignment of such Microcredit or other Microcredit Document except for such notices, consents, or approvals required by the terms of such Microcredit for the sale or assignment of such Microcredit hereunder, all of which have been obtained and delivered to or on behalf of the Purchaser on or prior to the Closing Date.

[The MFI represents that it has obtained all necessary consents from the microcredit obligors and that all notice requirements to the microcredit obligors have been fulfilled. (See also the annotation to Section 3.02(b)) Although most MFIs will not have to obtain consents from the microcredit obligors, to determine if any “necessary” consents are required, the MFI needs to look at its own contractual documentation with its microcredit obligors/borrowers and at local law to determine if any consents are required by law before securitizing/selling the microcredits.]

- (o) If the Microcredit Obligor in respect of any Microcredit or other Microcredit Document is a state or local governmental entity or municipality, the sale, transfer, conveyance, or assignment of such Microcredit or other Microcredit Document under this Agreement does not violate applicable state or municipal laws or regulations (if any) restricting or prohibiting the assignment of claims against or obligations of such Microcredit Obligor.
- (p) Each Microcredit was originated or acquired by the Seller in accordance with its Customary Policies and Procedures as in effect at the time of such origination or acquisition.

Section 3.03. Covenants of Seller

[In this section, the seller promises to the purchaser to continue to meet its duties and obligations as described herein after the closing date. The covenants contained in this section can be either affirmative (promises to do certain things) or negative (promises not take certain actions).]

The Seller hereby covenants and agrees as follows:

- (a) At any time following the Closing Date, the Purchaser may at any time inspect the Microcredit File related to any Microcredit on [] () Business Days’ notice and the Seller shall promptly turn over the Microcredit File related to any Microcredit upon the Purchaser’s request.

[The MFI covenants to the purchaser that it will have access to each microcredit file on [] business days’ notice. The number of business days should be negotiated between the parties.]

- (b) At any time following the Closing Date, the Seller shall provide the Purchaser with prompt written notice of any material changes to the Customary Policies and Procedures.
- (c) The Seller shall promptly notify the Purchaser if any of the representations of the Seller set forth in this Article III cease to be true and accurate.
- (d) The Seller agrees to provide to the Purchaser with any additional information regarding the Seller or the Seller's operations that the Purchaser deems necessary to ensure that the Purchaser is in compliance with all applicable laws concerning money laundering and similar activities.

Section 3.04. Purchaser Representations and Warranties

[This section offers assurances to the seller that its legal, financial, and regulatory affairs are in order as of the closing date. The purchaser needs to be certain that all representations and warranties that it makes are accurate statements as to the facts articulated in these provisions.]

The Purchaser hereby represents and warrants to the Seller as follows and agrees and acknowledges that the Seller may rely and is relying on such representations and warranties in selling, conveying, transferring, and assigning the Microcredits on the Closing Date.

- (a) The Purchaser is a company duly formed, validly existing, and in good standing under the laws of [___] and has the power to own its assets and to transact the business in which it is currently engaged. The Purchaser is duly qualified or authorized to do business as a foreign company or is in good standing, as applicable, in each jurisdiction in which the character of the business transacted by it or properties owned or leased by it requires such qualification and in which the failure so to qualify would have a material adverse effect on the business, properties, assets, or condition (financial or otherwise) of the Purchaser. The Purchaser is properly licensed in each jurisdiction to the extent required by the Laws of such jurisdiction in order to acquire or own the Microcredits and the other Microcredit Documents in accordance with this Agreement.

[The purchaser represents that it has been formed as a company in accordance with the applicable laws in its jurisdiction and that it qualified to do business in such jurisdiction.]

- (b) The Purchaser has the authority to make, execute, deliver, and perform this Agreement and has taken all necessary company action to authorize the execution, delivery,

and performance of this Agreement. This Agreement constitutes the legal, valid, and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as enforcement of such terms may be limited by bankruptcy, insolvency, or similar Laws affecting the enforcement of creditors' rights generally, and by the availability of equitable remedies.

[The purchaser represents that it has the authority to enter into this agreement and will perform its obligations under this agreement.]

- (c) The Purchaser is not required to obtain the consent of any other Person or any consent, license, approval, or authorization from, or registration or declaration with, any Governmental Authority in connection with the execution, delivery, performance, validity, or enforceability of this Agreement.

[The purchaser represents that it does not have to obtain the consent of any person or governmental authority before entering into this agreement or performing its obligations hereunder.]

- (d) The Purchaser's execution, delivery, and performance of this Agreement will not violate any provision of any existing Law or regulation or any order or decree of any court or the organizational documents of the Purchaser or constitute a material breach of any mortgage, indenture, contract, or other agreement to which the Purchaser is a party or by which the Purchaser or any of the Purchaser's properties may be bound.

[The purchaser represents that this agreement is legal and will not breach any other agreements that the purchaser is a party.]

- (e) No litigation or administrative proceeding of or before any court, tribunal, or governmental body is currently pending, or to the knowledge of the Purchaser threatened, against the Purchaser or any of its properties or with respect to this Agreement, if adversely determined, would in the opinion of the Purchaser have a material adverse effect on the business, properties, assets, or condition (financial or otherwise) of the Purchaser or the transactions contemplated by this Agreement.

[The purchaser represents that there are no court proceedings or investigations pending against it that will have a material adverse effect on or impeded the purchaser's obligations or performance hereunder.]

Article IV Servicing of Microcredits

Section 4.01. Initial Servicer's Appointment and Acceptance; Responsibility for Microcredit Administration

- (a) MFI shall be and is hereby appointed as the Servicer pursuant to this Agreement with respect to the Microcredits. MFI accepts the appointment and agrees to act as the Servicer pursuant to this Agreement until such time as and Servicing Transfer (as defined in Section 5.02(b)) may be effected.

[This section appoints the MFI as the servicer of the microcredits. If the MFI is not to be the servicer, a different entity would be named.]

- (b) Except to the extent otherwise specified herein or as contemplated in Article II, the Servicer will manage, administer, service, make collections on, and enforce the Microcredits and perform or cause to be performed all contractual and customary undertakings to the Microcredit Obligor with respect to the Microcredits.

[This section identifies the MFI's responsibilities as the servicer under the agreement, which include the collection of payments and enforcement of the microcredits.]

Section 4.02. General Duties

- (a) The Servicer will manage, service, administer, make collections on, and enforce the Microcredits on behalf of the Purchaser in conformity with its Customary Policies and Procedures, and, subject to the terms and conditions of this Agreement and the other Transaction Documents, will have full power and authority to do any and all acts in connection with such servicing and administration that it reasonably deems necessary and shall not specifically contravene the provisions of this Agreement. The Servicer's duties will include invoicing, collecting, and posting of all payments responding to inquiries of Microcredit Obligor regarding the Microcredits, investigating delinquencies, accounting for collections, furnishing reports with respect to collections and payments as contemplated in Article IV hereof, and maintaining the perfected security interest of the Purchaser in the Microcredits. The Servicer will file or caused to be filed all financing statements [other filings] on behalf of the Purchaser and to bill and collect the expenses related thereto from the Microcredit Obligor

relative to such Microcredit. The Servicer's master computer records (including any backup archives) that refer to any Microcredits shall indicate clearly the 100% beneficial ownership interest of the Purchaser therein at all times.

[This section describes the MFI's duties as the servicer under the agreement. The MFI is responsible for billing and collecting payments from the microcredit obligors, and for all customer contact with the microcredit obligors. The MFI must make all necessary filings to maintain the purchaser's interest in the microcredits. The MFI's records must clearly indicate the purchaser's ownership interest in the microcredits to show that a "true sale" of microcredits from the seller to the purchaser occurred.]

(b) Subject to the terms, conditions, and limitations set forth in this Agreement, (i) the Servicer will have full power and authority, acting alone, to do any and all things in connection with such managing, servicing, administration, and collection that it reasonably deems necessary in furtherance of its servicing responsibilities hereunder so long as the Servicer at all times acts in accordance with its Customary Policies and Procedures; (ii) if the Servicer commences a legal proceeding to enforce a Defaulted Microcredit or commences or participates in a legal proceeding (including a bankruptcy proceeding) relating to or involving a Microcredit, the Purchaser will be deemed to have automatically assigned such Microcredit to the Servicer solely for purposes of, and to the extent necessary for, commencing or participating in any such proceeding as a party or claimant, and the Servicer is authorized and empowered by the Purchaser, pursuant to this Section 4.02(b), and subject to the other provisions hereof, to execute and deliver, on behalf of itself and the Purchaser, any and all instruments of satisfaction or cancellation, or partial or full release or discharge, and all other notices, demands, claims, complaints, responses, affidavits or other documents or instruments in connection with any such proceedings; and (iii) if in any such enforcement suit or legal proceeding it is held that the Servicer may not enforce a Microcredit on the grounds that it is not a real party in interest or a holder entitled to enforce the Microcredit, then the Purchaser will, in consultation with the Servicer, take steps to enforce the Microcredit.

[This section describes the MFI's responsibilities in the event of a defaulted microcredit. Should the MFI decide to bring suit to enforce a microcredit, the MFI is automatically assigned the microcredit for the purposes of bringing the suit and is authorized to produce any and all documents in connection with the suit. If the MFI is deemed to lack real interest in the microcredit and thus is disallowed from bringing an enforcement action, the purchaser must take action to enforce the microcredit.]

Section 4.03. Further Assurance to Servicer

The Purchaser will execute and deliver to the Servicer any powers of attorney and other documents reasonably necessary or appropriate to enable the Servicer to carry out its servicing and administrative duties under this Agreement.

[This section requires that the purchaser provide any documentation necessary to enable the MFI to carry out its duties under the agreement. A key issue for any MFI is to ensure that all practices are in compliance with customary policies and procedures.]

Section 4.04. Notice to Microcredit Obligors

In the event that the Servicer is replaced by the Purchaser, then if the place for payment pursuant to any Microcredit is changed, the Servicer will cooperate with the Successor Servicer (at the expense of the Successor Servicer) to facilitate the dissemination of prompt written notice of the appointment of the Successor Servicer and the Person and the place to which such Microcredit Obligor should make payments pursuant to each such Microcredit.

[This section requires that, in the event that the purchaser replaces the MFI as the servicer with a successor servicer, the MFI agrees to give prompt notice to microcredit obligors of the change of address for purposes of submitting payments. Note that in some cases the “place” of payment may not necessarily change; however, the person to whom payment is made could change.]

Section 4.05. Assignments, Collections, Modifications, Extensions, Etc.

[Note, the provisions in this section should be reviewed to see if they are customary in the relevant jurisdiction.]

The Servicer acknowledges and agrees that its appointment as the Servicer under this Agreement is for the administrative convenience of the Purchaser. Accordingly, subject to the other conditions hereunder (including, without limitation, compliance with Customary Policies and Procedures) and so long as such actions are in the Servicer’s good faith and reasonable belief consistent with the Servicer’s maximizing the Purchaser’s economic return with respect to the Microcredits, the Servicer is authorized on the Purchaser’s behalf to take any of the following actions without the Purchaser’s consent:

- (a) The Servicer will make commercially reasonable efforts to collect all payments called for under the terms and provisions of the Microcredits as and when the same become due, in accordance with its Customary Policies and Procedures. The Servicer is autho-

rized in its reasonable discretion to waive any Late Charges, prepayment penalties, or other administrative fees, expenses, and charges collectible in respect of a Microcredit, including late payment interest, documentation fees, insurance administration charges, and extension fees.

[This section grants the MFI discretion to waive any and all administrative fees, including late fees and prepayment fees, so long as such waiver does not have a material adverse effect on the purchaser.]

- (b) The Servicer may, at its option and in accordance with Customary Policies and Procedures, agree to permit a Microcredit that is not otherwise contractually prepayable by its terms and is not a Defaulted Microcredit, to become a Prepaid Microcredit through a voluntary Prepayment by the Microcredit Obligor.

[This section grants the MFI discretion to allow prepayment of microcredits.]

- (c) The Servicer may grant payment extensions or extensions of the ultimate term of the Microcredit not to exceed [___] (___) days on a Microcredit, consistent with its Customary Policies and Procedures (it being understood that any extensions on a Microcredit resulting from an Insolvency Event with respect to the related Microcredit Obligor will not be deemed to have been granted by the Servicer hereunder) if the Servicer believes in good faith that such extension is necessary to avoid a termination and liquidation of such Microcredit and will maximize the amount to be received by the Purchaser with respect to such Microcredit.

[This section grants the MFI discretion to grant extensions to the microcredit obligors, so long as it is for the purpose of maximizing the amount to be received by the purchaser. The term of the extension will need to be agreed upon by the MFI and the Purchaser.]

- (d) The Servicer also may, subject to any limitations or obligations set forth in this Agreement or any other Transaction Document, at the request of a Microcredit Obligor and at the Servicer's option, waive, amend, modify, or otherwise vary any other provision of a Microcredit.

[This section grants the MFI discretion to modify the terms of microcredits, so long as it would not have a material adverse effect on the purchaser.]

Section 4.06. Taxes and Other Amounts

To the extent provided for in any Microcredit or required by Law, the Servicer will make reasonable efforts consistent with its Customary Policies and Procedures to collect (or cause to be collected) all payments with respect to amounts due for taxes, assessments, and insurance premiums relating to such Microcredit and any Collateral and remit such amounts to the appropriate Governmental Authority or insurer on or prior to the date such payments are due.

[This section requires that the MFI both collect and make all necessary tax payments. Note that the relevance of this Section 4.06 depends on whether there are any requirements to collect taxes on microcredits.]

Section 4.07. Compensation to Servicer

The Servicer shall *[be paid compensation for the performance of its obligations hereunder in an amount equal to ___]* *[not be entitled to any compensation for the performance of its obligations hereunder.]*

[This section provides for/denies any right of compensation. Typically the servicer receives a monthly fee based on a percentage amount of the assets in the asset pool. This point, as to whether the servicer gets compensation, is likely to be highly negotiated by the parties to this agreement.]

Section 4.08. Inspection

The Purchaser or its designated agents shall have the right to inspect, audit, and make extracts of any of the Servicer's books and records (whether written or electronic) relating to the Microcredits on any premises of the Servicer at the Purchaser's sole cost and expense once during each calendar year during reasonable business hours and after at least [___] (__) days' prior written notice. Without otherwise limiting the scope of the examination, such examining party may, using generally accepted audit procedures, verify the status of each such asset and review the records relating thereto for conformity to reports prepared by the Servicer pursuant to Article IV hereof, and compliance with the standards represented to exist as to each such Microcredit in this Agreement. At all times during the term hereof, the Servicer shall keep available a copy of a digital record of the

Schedule of Microcredits at its principal executive office for inspection by the Purchaser or its designated agents. The Servicer shall not dispose of any of its material books or material records relating to the Microcredits without the prior written consent of the Purchaser.

[This section allows the purchaser to inspect the MFI's books and records relating to the microcredits once per year, with a predetermined number of days' notice. Note that the MFI needs to decide how many days' notice is reasonable and negotiate this point with the purchaser. The MFI must obtain written consent from the purchaser before disposing of any books or records pertaining to the microcredits. It is important that the MFI has a document retention policy in place to ensure its compliance with this requirement.]

Section 4.09. Payment by Servicer to Purchaser

- (a) The Purchaser agrees that the Servicer will continue to collect all payments due with respect to the Microcredits in accordance with the terms of this Agreement. All payments received by the Servicer with respect to the Microcredits in accordance with this Agreement shall be held by the Servicer in trust for the Purchaser, but need not be segregated in any manner from any other monies of the Servicer and may be deposited in any general servicing or other account maintained by the Servicer. The Servicer agrees to collect all payments due with respect to the Microcredits consistently with the Customary Policies and Procedures as well as its usual practices on similar accounts, and the Servicer will remit all such payments to the Purchaser on the Remittance Date for all such payments, whether or not the Servicer has received each such payment with respect to the Microcredits applicable to such Remittance Date.

[This section requires that the MFI hold received payments in trust for the purchaser, but not that it segregate those funds from its general accounts. This is typically the case when the servicer is an investment grade rated entity. In such cases, the MFI will make all payments to the purchaser on the remittance date, whether or not it has yet received payment from the microcredit obligor. If the servicer is not an investment grade rated entity, all collections it receives may have to be placed in a separate account, typically referred to as a "Collection Account," within two business days of its receipt of such collections. These funds should be held in the collection account and all payments from the MFI to the purchaser should be made from this account. Whether received payments will be made on a specific date or daily is a point that should be negotiated between the parties. It is important that this section reflects the transaction structure. Note that some

purchasers may require a more complicated payment provision in to cover interest earnings and tax implications.]

- (b) Unless otherwise expressly set forth in this Agreement, all payments from the Servicer to the Purchaser shall be by wire transfer of immediately available funds in [____] currency to the account designated by the Purchaser, as such account information may be revised by the Purchaser from time to time upon five (5) Business Days' prior written notice to the Servicer.

[This section describes the method of payment to be used by the servicer.]

Section 4.10. Return of Microcredit Files

Upon the payment in full of any Microcredit, including any pre-payment of any Microcredit by the applicable Microcredit Obligor or any repurchase by the Servicer of such Microcredit, the Microcredit File for said Microcredit will remain with the Servicer; *provided that*, each of the Purchaser and the Servicer shall cooperate with the other in the event either of them requires possession or control of all or any part of the Microcredit File in connection with any investigation by any Governmental Authority, any third party claim, or the requirements of any applicable Law, or in order to protect or enforce such party's rights relating to the Microcredits.

[This section states that if a microcredit is prepaid, paid in full, or repurchased by the MFI, the microcredit file will remain with the MFI, unless the purchaser requires the microcredit file to protect its rights against a claim related to the microcredit, or in relation to an investigation by a governmental authority.]

Section 4.11. Realization upon Defaulted Loans

[This section should be carefully discussed as to how it applies to the collateral that is pledged to support a microcredit.]

- (a) *Acceleration and Foreclosure of Defaulted Microcredits.* In accordance with the servicing procedures specified in Section 4.02, the Servicer shall accelerate any Microcredit and foreclose upon any collateral securing a Microcredit that is a Defaulted Microcredit. In connection with the commencement of foreclosure proceedings against any collateral securing a Defaulted Microcredit, the Servicer shall

follow such practices and procedures as it shall deem necessary or advisable and as shall be consistent with the Servicing Standard. The Servicer on behalf of the Purchaser is hereby authorized and directed to maximize recoveries with respect to any delinquent Microcredit or Defaulted Microcredit (by, among other things, endeavoring to maximize the disposition value of any foreclosure property). In addition, the Servicer shall comply in all material respects with all applicable laws in connection with the enclosures of any Microcredit collateral and may commence and prosecute any proceedings in respect of such related Microcredit in the name of and on behalf of the Purchaser.

[This section requires the MFI to foreclose upon collateral, if any, that secures a microcredit if the microcredit defaults. The MFI, acting on behalf of the purchaser, should conduct foreclosure proceedings or take such other actions as it typically conducts consistent with the agreed servicing standard so as to maximize recovery on the microcredits, and may commence proceedings on behalf of the purchaser.]

(b) *Cost and Expenses of Actions Taken in Respect of Defaulted Microcredits.* The Servicer shall be responsible for all costs and expenses incurred by the Servicer in connection with any action taken in respect of a Defaulted Microcredit, subject to reimbursement in the form of the Servicing Fee. All Recoveries shall be remitted directly to the Purchaser in the form received for deposit in the Collection Account not later than the Business Day immediately following actual receipt thereof by the Servicer.

[This section states that the MFI will bear the costs related to enforcing defaulted microcredits, but will be reimbursed by the purchaser. Once the MFI receives such reimbursement, it must immediately deliver recoveries to the purchaser.]

Article V Servicer Defaults; Servicing Transfer

Section 5.01. Servicer Default

As used herein, “Servicer Default” means the occurrence of any of the following:

- (a) any failure by the Servicer to make any payment, transfer, or deposit or to give instructions or notice to the Purchaser to make any payment, transfer, or deposit pursuant to this Agreement, which failure continues unremedied for a period of [__] (__) Business Days; or
- (b) any failure by the Servicer to deliver the Monthly Servicer’s Report pursuant to this Agreement, which failure continues unremedied for a period of [__] (__) Business Days of the date thereof; or

- (c) failure on the part of the Servicer duly to observe or perform any other covenants or agreements of the Servicer set forth in this Agreement that has a Material Adverse Effect on the Purchaser, which continues unremedied for a period of [__] (__) Business Days after the first to occur of (i) the date on which written notice of such failure requiring the same to be remedied shall have been given to the Servicer by the Purchaser, and (ii) the date on which the Servicer becomes aware thereof, and such failure continues to materially adversely affect the Purchaser; or
- (d) any representation, warranty, or certification made by the Servicer in this Agreement or by the Servicer in any certificate delivered pursuant hereto shall prove to have been incorrect when made, that has a Material Adverse Effect on the Purchaser and that continues to be incorrect in any material respect for a period of [__] (__) Business Days after the first to occur of (i) the date on which written notice of such incorrectness requiring the same to be remedied shall have been given to the Servicer by the Purchaser, and (ii) the date on which the Servicer becomes aware thereof, and such incorrectness continues to materially adversely affect the Purchaser; or
- (e) an Insolvency Event shall occur with respect to the Servicer.

[This section defines “Servicer Default” under this agreement to mean any of following: (i) a failure to make payment to the purchaser for a specified number of business days (often 2–5 business days); (ii) a failure to make the required reports to the purchaser for a specified number of business days (often 10–15 business days); (iii) a failure to observe any part of the agreement that has a material adverse effect on the purchaser, which continues unremedied for a specified number of business days (often 20–30 business days) after the date of written notice by the purchaser of such failure, or a specified number of days (often 20–30 business days) after the servicer becomes aware of the failure; (iv) a misrepresentation in the agreement that proves to have a material adverse effect on the purchaser, and remains uncorrected for a specified number of business days (often 20–30 business days) after the date of written notice of misrepresentation by the purchaser, or a specified number of business days (often 20–30 business days) after the servicer becomes aware of the misrepresentation; or (v) an insolvency event.

Note that in the section above, the number of days or “cure periods” have been left blank and are points to be negotiated between the parties to this agreement. A cure period is typically provided for in this agreement following an event that would, but for the cure period, constitute an immediate event of default. Note further that additional time is allowed before an event of default occurs if the events causing the default could not have been prevented by the MFI’s reasonable diligence, or were caused by a force majeure.]

Section 5.02. Servicing Transfer

- (a) If a Servicer Default has occurred and is continuing, the Purchaser may by written notice (Termination Notice) delivered to the Servicer, terminate all (but, except as provided herein, not less than all) of the Servicer's rights and obligations under this Agreement.

[This section grants the purchaser the right to terminate the agreement in the event of a servicer default.]

- (b) Upon delivery of a Termination Notice (or, if later, on a date designated therein), and on the date that the Purchaser assumes the servicing responsibilities from the Servicer, or at its sole option appoints a Successor Servicer (such appointment being herein called a Servicing Transfer), all rights, benefits, fees, indemnities, authority, and power of the Servicer under this Agreement, whether with respect to the Microcredits, Microcredit Files, or otherwise, shall pass to and be vested in the Purchaser or its designee, as the case may be, as successor (whether the Purchaser for itself, or its designee as servicing agent, the Successor Servicer) pursuant to and under this Section 5.02. The Successor Servicer is authorized and empowered to execute and deliver on behalf of the Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments and to do any and all acts or things necessary or appropriate to effect the Servicing Transfer. The Servicer agrees to reasonably cooperate with the Successor Servicer in effecting the termination of the responsibilities and rights of the Servicer under this Agreement, including, without limitation, the transfer to the Successor Servicer for administration by it of all cash amounts then held by the Servicer in connection with its services hereunder and transmit or cause to be transmitted directly to the Successor Servicer for its own account, promptly on receipt and in the same form in which received, any amounts or items (properly endorsed where required for the Successor Servicer to collect them) received as payments upon or otherwise in connection with the Microcredits. The Servicer shall transfer to the Successor Servicer all records held by the Servicer relating to such Microcredits in such electronic form as the Successor Servicer may reasonably request and, at the expense of the Purchaser or the Successor Servicer, shall physically deliver the Microcredit Files to an address specified by the Purchaser or the Successor Servicer. In addition, the Servicer shall permit the Successor Servicer or its designee access to all relevant files and systems with respect to the Microcredits and the Microcredit Files.

[This section states that all rights, benefits, fees, indemnities, and authority under the agreement will pass from the MFI to the purchaser, or to the successor servicer if the purchaser appoints one, in the event of the termination of the MFI. The MFI must cooperate with this process, including the transfer of all records and files related to the microcredits.]

Section 5.03. Appointment of Successor Servicer; Reconveyance; Successor Servicer to Act.

- (a) Following delivery of the Termination Notice, the Servicer shall continue to perform all servicing functions under this Agreement until the date specified in the Termination Notice or, if no such date is specified, until a date mutually agreed by the Servicer and the Purchaser. The Purchaser shall as promptly as possible after the giving of a Termination Notice, either assume the servicing responsibilities itself, or appoint a third party Successor Servicer.

[This section requires the MFI to continue servicing the microcredits after its termination as the servicer until an agreed upon date. The purchaser must assume, or assign a successor servicer, all servicing responsibilities as soon as possible after termination.]

- (b) The Purchaser shall automatically be deemed to be the Successor Servicer for all purposes of this Agreement, without further action, if at the time when the Servicer has ceased to act as the Servicer, the Purchaser has not appointed a Successor Servicer or has appointed a Successor Servicer. On or after a Servicing Transfer, the Successor Servicer shall be the successor in all respects to the Servicer in its capacity as servicer under this Agreement, and the transactions set forth or provided for in this Agreement, and shall be subject to all the responsibilities, duties, and liabilities relating thereto placed on the Servicer by the terms and provisions hereof, and the terminated Servicer shall be relieved of such responsibilities, duties, and liabilities arising after such Servicing Transfer; provided, however, that the Successor Servicer shall not be liable for any acts or omissions of the departing Servicer occurring prior to such Servicing Transfer or for any breach by the departing Servicer of any of its representations and warranties contained in this Agreement.

[This section appoints the purchaser as automatic successor servicer if the purchaser does not appoint an alternative successor servicer by the time the MFI ceases to act as servicer. Once a servicing transfer has occurred, the successor servicer becomes subject to the

terms of the agreement, but does not assume liability for any acts committed by the MFI prior to its termination.]

Section 5.04. Responsibilities of the Successor Servicer

- (a) The Successor Servicer will make arrangements with the departing Servicer for the prompt and safe transfer of, and the departing Servicer shall provide to the Successor Servicer, all necessary servicing files and records (as deemed necessary by the Successor Servicer at such time) including prompt physical delivery of the Microcredit Files as of the close of business on the day immediately preceding conversion to the Successor Servicer. The Successor Servicer shall be obligated to pay the costs associated with this Section 5.04(a).

[This section requires the MFI to promptly deliver all necessary servicing files and records to the successor servicer, at the successor servicer's expense.]

- (b) The Successor Servicer shall have no responsibility and shall not be in default hereunder nor incur any liability for any failure, error, malfunction, or any delay in carrying out any of its duties under this Agreement if any such failure or delay results from the Successor Servicer acting in accordance with information prepared or supplied by the Servicer or the failure of the Servicer to prepare or provide such information. The Successor Servicer shall have no responsibility, shall not be in default, and shall incur no liability (i) for any act or failure to act by the departing Servicer or for any inaccuracy or omission in a notice or communication received by the Successor Servicer from the Servicer or (ii) that is due to or results from the invalidity or unenforceability of any Microcredit under applicable Law or the breach or the inaccuracy of any representation or warranty made by the Servicer with respect to any Microcredit.

[This section releases the successor servicer from liability if it fails in its responsibilities under the agreement because of reliance on information provided by the MFI or because of a failure by the MFI to provide necessary information.]

Article VI Servicer Reporting

Section 6.01. Servicer's Reports

- (a) The Servicer will provide to the Purchaser, a monthly statement (Monthly Portfolio Report) not later than [] () Business Days following the end of the preceding calendar month. The Servicer will work with the Purchaser in good faith to deliver to the Purchaser any additional components of the Monthly Portfolio Report that the

Purchaser shall reasonably request. The Purchaser shall have the right to change the way the Monthly Portfolio Report is distributed in order to make such distribution more convenient and/or more accessible to the Purchaser, and the Purchaser shall provide timely and adequate notification (which notice shall not be less than [] Business Days) to the Purchaser regarding any such changes. Upon mutual consent of the Servicer and the Purchaser, the Monthly Portfolio Report may be posted online through a secure Web site, rather than distributed monthly by the Servicer.

[This section requires the MFI to provide the purchaser with a monthly portfolio report. The purchaser can determine the method of distribution. The monthly report may be posted online if both parties so agree. This needs to be carefully reviewed so the MFI is able to fully report all the items requested. Note that the MFI must consider its ability to generate reports and make sure that the negotiated and agreed upon time periods (which have been left blank in the paragraph above) are within the MFI's capacity to meet.]

(b) The Servicer will provide the Purchaser a portfolio statement on a monthly basis (Monthly Major Events Report) not later than [] () Business Days following the end of the preceding calendar month. The Monthly Major Events Report shall include information regarding, among other things, (a) any waiver, amendment, or modification of, or with respect to any Microcredits or related Microcredit Documents approved by the Servicer in accordance with this Agreement, (b) any Insolvency Event with respect to any Microcredit Obligor of which the Servicer has become aware since the last Monthly Major Events Report, and/or (c) any Microcredit that has become a Defaulted Microcredit pursuant to either clause (ii) or clause (iii) of the definition of Defaulted Microcredit. Upon mutual consent of the Servicer and the Purchaser, the Monthly Major Events Report may be posted online through a secure Web site, rather than distributed monthly by the Servicer.

[This section requires the MFI to provide the purchaser with a monthly major events report that includes information about modifications to microcredits, insolvency events that have occurred, and microcredits that have defaulted. Note that the MFI must consider its ability to generate reports and make sure that the negotiated and agreed upon time periods (which have been left blank in the paragraph above) are within the MFI's capacity to meet.]

Section 6.02. Officer's Certificate

Each Monthly Portfolio Report and Monthly Major Events Report delivered pursuant to Section 6.01 shall be accompanied by a certificate of an authorized financial officer or Servicing Officer of the Servicer certifying the accuracy of the Monthly Portfolio Report

and Monthly Major Events Report. The Servicer acknowledges and agrees that the delivery of each such report shall constitute a certification of such reports.

[This section requires that the MFI's monthly portfolio report and monthly major events report be accompanied by an officer's certificate certifying its accuracy.]

Article VII Certain MFI and Servicer Indemnities; Certain Other Agreements

Section 7.01. Servicer Indemnification

The Servicer agrees to indemnify the Purchaser and its respective officers, directors, employees, attorneys, agents, and successors and assigns for any and all actual Losses that may be imposed on, incurred by, or asserted against any of such parties as the direct result of any material act or omission by the Servicer relating to the maintenance and custody of the Microcredit Files or any other breach or noncompliance of the Servicer in the performance of its duties and obligations as the Servicer hereunder; provided, however, that the Servicer will not be liable to any such party for any portion of any such amount resulting from the negligence, willful misconduct, or bad faith of such party.

[This section binds the MFI to indemnify the purchaser for losses that occurred as a result of a breach by the MFI of its duties under the agreement, including the maintenance and custody of the microcredit files. Indemnification provisions can cause the MFI to be liable for unforeseen amounts of money with no limit as to the amount of this financial liability and, thus, should be heavily negotiated. For example, during negotiations the MFI should request or demand indemnification from the purchaser for the purchaser to maintain a standard of no liability for "negligence" of others rather than "gross negligence." This is just one example of trying to limit indemnification. Also, it is important to know that financial strength of the purchaser and, therefore, the MFI may need to request or demand appropriate financial statements to confirm that strength.]

Section 7.02. Operation of Indemnities.

- (a) Indemnification under this Article VII shall include, without limitation, reasonable fees and expenses of counsel and expenses of litigation. If the Servicer or the Seller has made any indemnity payments to the Purchaser pursuant to this Article VII, and the Purchaser thereafter collects any of such amounts from others, the Purchaser will repay such amounts collected to the Servicer or the Seller, respectively, except that any payments received by the Purchaser from an insurance provider as a result of the

events under which the Servicer's indemnity payments arose shall be repaid prior to any payment of the Servicer's or the Seller's indemnity payment.

[This section states that indemnification includes attorneys fees and litigation expenses. If the MFI makes indemnification to the purchaser, however, and the purchaser then collects the amount from third parties, the MFI's payments will be returned.]

(b) With respect to any indemnity payments payable under Article VII, the Servicer shall pay any amounts owed to the Purchaser not later than [___] days after notice of indemnity payment is received by the Servicer, and the Servicer agrees with the calculation of such amount.

[This section allows the MFI a grace period of a certain number of days (this number should be negotiated by the parties) from receipt of notice of an indemnity payment to make such payment.]

Section 7.03. Security Interests

The Servicer will not sell, pledge, assign, or transfer to any other Person, or grant, create, incur, assume, or suffer to exist any Lien on any Microcredit, whether now existing or hereafter transferred to the Purchaser, or any interest therein. The Servicer will immediately notify the Purchaser of the existence of any lien on any Microcredit, and the Servicer shall defend the right and interest of the Purchaser in, to, and under the Microcredits, against all claims of third parties.

[This section prohibits the MFI from transferring any interest in microcredits to any third party. In the event there is a lien placed on any microcredit, the MFI must notify the purchaser and defend the purchaser's interest in the microcredit against third party claims. Note that if the MFI has already pledged a portion of its loan portfolio to other lenders then it cannot assign those same microcredits to the purchaser in this agreement. If the MFI has a practice of pledging all or a portion of its loan portfolio to other lenders, it is likely that the MFI will not be able to securitize its loan portfolio.]

Section 7.04. Tax

The Seller undertakes to pay any and all state, federal, local, or municipal taxes owing under any Microcredits and shall indemnify the Purchaser for any and all liabilities, obligations, losses, damages, costs, or expenses of any kind sustained by the Purchaser from the non-payment or assessment of taxes due and owing on any of the Microcredits.

[This section requires that the MFI pay all taxes due in relation to microcredits and that the MFI indemnify the purchaser for losses that result from a failure to pay taxes.]

Article VIII Perfection of Transfers and Protection of Security Interests

Section 8.01. Custody of Microcredits

- (a) Subject to the terms and conditions of this Section 8.01, the contents of each Microcredit File shall be held in the custody of the Servicer for the benefit of the Purchaser as the owner thereof;

[This section appoints the MFI as custodian of the microcredit files for the benefit of the purchaser.]

- (b) The Servicer, in its role as custodian, agrees to maintain the Microcredit Files at its offices where they are currently maintained, or at such other offices of the Servicer as shall from time to time be established by the Servicer and approved by the Purchaser in its reasonable discretion or in certain instances at offsite storage facilities in the same general geographic area as an office of the Servicer, pursuant to contractual agreement between the Servicer and the Person owning or maintaining such offsite facility. The Servicer may temporarily move individual Microcredit Files or any portion thereof without notice or other such compliance, as necessary to conduct collection and other servicing activities in accordance with the Servicing Standard and its Customary Policies and Procedures.

[This section requires that the MFI, while acting as servicer, maintain the microcredit files on its premises or in a storage facility near its premises.]

- (c) As custodian, the Servicer shall have and perform the following powers and duties:
- (i) hold the Microcredit Files on behalf of the Purchaser; maintain accurate records pertaining to each Microcredit to enable it to comply with the terms and conditions of this Agreement; and maintain a current inventory thereof;
 - (ii) maintain and comply with Customary Policies and Procedures with respect to Persons authorized to have access to the Microcredit Files; and
 - (iii) attend to all details in connection with maintaining custody of the Microcredit Files on behalf of the Purchaser.

[This section lists the MFI's custodial obligations under the agreement. The MFI must maintain accurate records and comply with customary policies and procedures regarding access to the records.]

(d) In performing its duties under this Section 8.01, the Servicer agrees to act generally in accordance with the applicable Servicing Standard and its Customary Policies and Procedures. In acting as custodian of the Microcredit Files, the Servicer further agrees not to assert any legal or beneficial ownership interest in the Microcredits or the Microcredit Files, except as provided in Section 8.02(b).

[This section requires the MFI to act in accordance with the servicing standard and customary policies and procedures, and prohibits the MFI from asserting any interest in the microcredits.]

Section 8.02. Further Assurances

The Servicer will do such acts, and execute and deliver to the Purchaser such additional documents or instruments as may be reasonably requested in order to effect the purposes of this Agreement and confer unto the Purchaser its rights, powers and remedies hereunder.

[This section requires the MFI generally to cooperate in furthering the purposes of this agreement and protecting the purchaser's interest in the microcredit.]

Section 8.03. Servicer's Purchase Option

At any time at which the aggregate outstanding principal amount of the Microcredits is less than _____, the Servicer may (but is not required to), for administrative convenience, repurchase all of the Microcredits from the Purchaser at a price equal to the aggregate Outstanding Microcredit Balance plus Premium. Any such purchase shall be on such other reasonable, typical, and customary terms and conditions as shall be agreed upon by the Servicer and the Purchaser; provided that, the Purchaser shall not be required to make any representations or warranties with respect to title to or condition of the Microcredits or any other matters for which the Servicer was responsible pursuant to the terms of this Agreement.

[This section grants the MFI an option to repurchase all of the microcredits from the purchaser if the balance of the outstanding microcredits drops below a specified balance. Because the cost of servicing \$1,000 of microcredits or \$10,000 of microcredits is the same, in most cases, it is in the MFI's best interests to repurchase, from the purchaser, the remainder of microcredits and resecure those remaining microcredits. This is for administrative convenience due to the cost of servicing a small amount of microcredits.]

Article IX Miscellaneous

Section 9.01. Amendment

- (a) Any provision of this Agreement may be amended or waived, but only if such amendment or waiver is in writing and is signed by the Purchaser and MFI.

[This section requires that any amendment to the agreement must be in writing and signed by both parties.]

Section 9.02. Notices

All notices, demands, certificates, requests, and communications hereunder (Notices) shall be in writing and shall be effective (a) upon receipt when sent through the U.S. mails, certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, or (b) one Business Day after delivery to an overnight courier (specifying one (1) Business Day's delivery), or (c) on the date personally delivered to an authorized officer of the party to which sent, or (d) on the date transmitted by legible telefax transmission with a confirmation of receipt, in all cases addressed to the recipient as follows:

- (i) If to the Seller or the Servicer:

MFI

Address

Attention: Chief Financial Officer

Fax No.: ---.---.---

Tel. No.: ---.---.---

- (ii) If to the Purchaser:

Purchaser

Address

Attention: Director of Business Development

Fax No.: ---,---,---

Tel. No.: ---,---,---

Each party hereto may, by Notice given in accordance herewith to each of the other parties hereto, designate any further or different address to which subsequent Notices shall be sent.

[This section specifies the effective dates of all communications between the parties to the agreement and provides the contact information for each party.]

Section 9.03. Entire Agreement; Amendment; Termination of Agreement

This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and all prior understandings, written or oral, with respect to the subject matter hereof are superseded by this Agreement. This Agreement may not be modified, amended, waived, or supplemented except by a document in writing executed by both parties. The Microcredits may not be sold, transferred, conveyed, or otherwise assigned to any other Person by the Purchaser, except with the prior written consent of the Servicer (which consent will not be unreasonably withheld), and in no event shall the burdens on the Servicer or the extent of the reporting obligations of the Servicer as contained herein be increased as a result of any such sale, conveyance, transfer, or assignment by the Purchaser to another Person.

[This section provides that this written agreement supersedes any prior agreements, oral or written, between the parties. Written consent is required for the modification of the agreement or for transference of the purchaser's interests.]

Section 9.04. Headings

The headings herein are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof.

Section 9.05. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of _____.

Section 9.06. Severability of Provisions

If any one or more of the covenants, agreements, provisions, or terms of this Agreement shall for any reason whatsoever be held invalid or unenforceable, then 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.

Section 9.07. No Waiver; Cumulative Remedies

No failure to exercise and no delay in exercising, on the part of the Purchaser (or any assignee thereof) or the Servicer, 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 (except to the extent specifically provided herein) of any other rights, remedies, powers, or privileges provided by Law.

[This section provides that failure to exercise a right or remedy under the agreement does not constitute a waiver of such right or remedy. The parties' rights and remedies under the agreement are not exhaustive of other legal rights and remedies.]

Section 9.08. Counterparts

This Agreement may be executed in two or more counterparts including by telefax transmission thereof (and by different parties on separate counterparts), each of which shall be an original, but all of which together shall constitute one and the same instrument.

Section 9.09. Jurisdiction

EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES TO THE NON-EXCLUSIVE JURISDICTION OF [_____] AND ANY APPELLATE COURT HAVING JURISDICTION TO REVIEW THE JUDGMENTS THEREOF. EACH OF THE PARTIES HEREBY WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS AND ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER IN ANY OF THE AFOREMENTIONED COURTS.

[This section binds the parties to the jurisdiction of the stated court. The parties waive their rights to any objection that the chosen forum is not convenient.]

Section 9.10. Waiver of Trial

EACH PARTY TO THIS AGREEMENT WAIVES ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY, WHETHER WITH RESPECT TO MICROCREDIT CLAIMS, TORT CLAIMS, OR OTHERWISE. THE PARTIES HERETO EACH AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, EACH OF THE PARTIES HERETO FURTHER AGREES THAT ITS RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, AMENDMENTS AND RESTATEMENTS, OR MODIFICATIONS TO THIS AGREEMENT.

[This section waives the parties' rights to a jury trial. The applicability of this section to a jurisdiction should be discussed.]

[signature page follows]

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

MFI
as Seller

By: _____
Name:
Title:

MFI
as Servicer

By: _____
Name:
Title:

PURCHASER
as Purchaser

By: _____
Name:
Title:

