

**NOTICE OF PROPOSED REPLACEMENT MANAGER AND PROPOSED SECOND  
AMENDED AND RESTATED COLLATERAL MANAGEMENT AGREEMENT**

**CRYSTAL COVE CDO, LTD.  
CRYSTAL COVE CDO, INC.**

To: The Parties listed on Schedule A hereto.

Reference is made to (i) that certain Amended and Restated Collateral Management Agreement dated as of January 29, 2013 (as amended, modified or supplemented, the "Management Agreement") between Crystal Cove CDO, Ltd., as Issuer (the "Issuer") and Vertical Capital, LLC, as Collateral Manager (the "Collateral Manager") and (ii) that certain Indenture dated as of August 25, 2004 (as amended, modified or supplemented, the "Indenture") among the Issuer, Crystal Cove CDO, Inc., as Co-Issuer, and Wells Fargo Bank, National Association, as Trustee (the "Trustee"). Capitalized terms used herein without definition shall have the meaning given to such terms in the Management Agreement or the Indenture.

**I. Notice to Nominees and Custodians.**

If you act as or hold Notes or Preference Shares as a nominee or custodian for or on behalf of other persons, please transmit this notice immediately to the beneficial owner of such Notes or Preference Shares or such other representative who is authorized to take actions. Your failure to act promptly in compliance with this paragraph may impair the chance of the beneficial owners on whose behalf you act to take any appropriate actions concerning the matters described in this notice.

**II. Notice of Proposed Replacement Manager and Proposed Second Amended and Restated Collateral Management Agreement.**

Reference is further made to that certain Notice of Removal of Collateral Manager Without Cause dated June 24, 2015 in which the Trustee provided notice that the Issuer notified the Trustee that Holders of at least 66-2/3% of the Aggregate Outstanding Amount of the Controlling Class of Notes had directed the Issuer to terminate and remove the Collateral Manager without cause pursuant to Section 11(c) of the Management Agreement.

The Trustee hereby provides notice that, by written notice dated as of June 29, 2015, which is attached hereto as Annex A (the "Issuer Notice"), the Issuer notified the Trustee that Holders of at least 66-2/3% in Aggregate Outstanding Amount of the Controlling Class of Notes have directed the Issuer to propose Dock Street Capital Management LLC ("Dock Street") as successor collateral manager ("Replacement Manager") under the Management Agreement. A copy of the proposed Second Amended and Restated Collateral Management Agreement to be entered into by the Issuer and the Replacement Manager in connection with the removal and proposed replacement of the Collateral Manager is attached as Exhibit A to the Issuer Notice.

Pursuant to Section 15.4(iv) of the Indenture, the Trustee hereby delivers a copy of the Issuer Notice to each Noteholder.

Pursuant to Section 11(e) of the Management Agreement and subject to certain other conditions being met, no removal of the Collateral Manager will be effective unless the proposed Replacement Manager is not objected to by Holders of at least a Majority of the Controlling Class of Notes or a Majority-in-Interest of Preference Shareholders (excluding any Notes or Preference Shares held by the Collateral Manager or any of its Affiliates) within 30 days after notice thereof. Pursuant to Section 15.4(iv) of the Indenture, neither the Issuer nor the Collateral Manager may enter into any agreement amending, modifying or terminating the Management Agreement if at least 66-2/3% in Aggregate Outstanding Amount of the Controlling Class shall, by notice to the Issuer and the Trustee within 30 days after notice thereof, object to such amendment, modification or termination. According to the Issuer Notice, a Holder of at least a Majority of the Controlling Class of Notes has confirmed that it does not object to the appointment of Dock Street as Replacement Manager.

Should any Holder of the Preference Shares, as of the Notice Record Date defined below, wish to notify the Trustee that such Holder objects (i) to Dock Street as Replacement Manager or (ii) to the proposed Second Amended and Restated Collateral Management Agreement (an “Objection”), please notify the Trustee in writing on or before 5:00 p.m. ET on July 30, 2015 at the address set forth below.

Wells Fargo Bank, National Association  
9062 Old Annapolis Road  
Columbia, MD 21045  
Tel: 410-884-2097  
Fax: 866-373-0261  
Email: [cheryl.bohn@wellsfargo.com](mailto:cheryl.bohn@wellsfargo.com)  
Attention: Cheryl Bohn

The Notice Record Date for determining the Holders entitled to receive this Notice of Proposed Replacement Manager and Proposed Second Amended and Restated Collateral Management Agreement and to deliver an Objection shall be June 30, 2015.

**THE TRUSTEE AND THE PREFERENCE SHARE PAYING AGENT MAKE NO STATEMENT AS TO THE RIGHTS OF THE HOLDERS OF THE NOTES OR PREFERENCE SHARES IN RESPECT OF THE PROPOSED REPLACEMENT MANAGER OR AMENDMENT AND RESTATEMENT OF THE MANAGEMENT AGREEMENT, ASSUME NO RESPONSIBILITY OR LIABILITY FOR THE CONTENTS OR SUFFICIENCY OF THE ISSUER NOTICE, AND MAKE NO RECOMMENDATIONS AS TO ANY ACTION TO BE TAKEN WITH RESPECT TO THE PROPOSED REPLACEMENT MANAGER, AMENDMENT AND RESTATEMENT OF THE MANAGEMENT AGREEMENT OR OTHERWISE. HOLDERS ARE ADVISED TO CONSULT THEIR OWN LEGAL OR INVESTMENT ADVISOR.**

Pursuant to Section 11(e) of the Management Agreement, the removal of the Collateral Manager shall not be effective unless a successor collateral manager which satisfies the requirements therein has been appointed and such successor collateral manager has agreed in writing to accept such appointment and assumed the collateral manager obligations thereunder and all other conditions precedent have been satisfied or waived.

Any completed Objections or questions may be directed to the attention of Cheryl Bohn by telephone at 410-884-2097, by e-mail at cheryl.bohn@wellsfargo.com, by facsimile at 866-373-0261 or by mail addressed to Wells Fargo Bank, National Association, Corporate Trust Department, Attn.: Cheryl Bohn, 9062 Old Annapolis Road, Columbia, MD 21045. The Trustee may conclude that a specific response to particular inquiries from individual Holders is not consistent with equal and full dissemination of material information to all Holders. Holders of Notes or Preference Shares should not rely on the Trustee as their sole source of information. The Trustee makes no recommendations and gives no investment advice herein or as to the appointment of the Replacement Manager, amendment and restatement of the Management Agreement or the Notes or Preference Shares generally.

Dated: June 30, 2015

**WELLS FARGO BANK,  
NATIONAL ASSOCIATION,**  
as Trustee and Preference Share Paying  
Agent

## SCHEDULE A

### **Holders of Notes and Preference Shares: \***

229196AA81 229196AB61 229196AD21  
229196AE01 229196AF71 G257652001  
G25766AE91 G25766AG41 229195201

### **Issuer:**

Crystal Cove, Ltd.  
c/o Fund Fiduciary Partners Limited  
2nd Floor, Harbour Centre  
42 North Church Street  
George Town, Grand Cayman  
Cayman Islands  
Attention: Andrew Childe

With a copy to:

10 Market Street #769  
Camana Bay, Grand Cayman KY1-9006  
Cayman Islands  
Attention: Andrew Childe

### **Co-Issuer:**

Crystal Cove CDO, Inc.  
c/o Puglisi & Associates  
850 Library Avenue, Suite 204  
Newark, Delaware 19711  
Attention: Donald Puglisi

### **Rating Agencies**

Moody's Investors Service  
7 World Trade Center  
250 Greenwich Street  
New York, New York 10007  
Attn: CBO/CLO Monitoring  
e-mail: cdomonitoring@moodys.com

### **Collateral Manager:**

Vertical Capital, LLC  
437 Madison Avenue, 39th Floor  
New York, New York 10022  
Fax: (212) 786-5301  
Attention: Kem Blacker

### **Irish Stock Exchange Announcement**

#### **Office:**

Company Announcement Office  
The Irish Stock Exchange Limited  
28 Anglesea Street  
Dublin 2, Ireland

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\* The Trustee shall not be responsible for the use of the CUSIP, CINS, ISIN or Common Code numbers selected, nor is any representation made as to their correctness indicated in the notice or as printed on any Note or Preference Share. The numbers are included solely for the convenience of the Holders.

**ANNEX A**  
**ISSUER NOTICE**

Crystal Cove CDO, Ltd.  
c/o Fund Fiduciary Partners Limited  
2<sup>nd</sup> Floor, Harbour Centre  
42 North Church Street  
George Town  
Grand Cayman, Cayman Islands

June 29, 2015

Wells Fargo Bank, National Association  
P.O. Box 98  
Columbia, Maryland 21046  
Attention: CDO Group—Crystal Cove  
Facsimile No.: (410) 884-2000

Re: Crystal Cove CDO, Ltd. – Removal and Replacement of the Collateral Manager

Ladies and Gentlemen:

Reference is made to (i) the Indenture, dated as of August 25, 2004 (the “Indenture”), among Crystal Cove CDO, Ltd., an exempted company incorporated and existing under the laws of the Cayman Islands (the “Issuer”), Crystal Cove CDO, Inc., a corporation organized and existing under the laws of the State of Delaware (the “Co-Issuer”), and Wells Fargo Bank, National Association, a national banking association organized under the laws of the United States (the “Trustee”), and (ii) the Amended and Restated Collateral Management Agreement, dated as of January 29, 2013 (the “Collateral Management Agreement”), between the Issuer and Vertical Capital, LLC, a limited liability company organized under the laws of the State of Delaware (the “Collateral Manager”). Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Indenture or the Collateral Management Agreement, as applicable.

So long as any Class A Notes or Class B Notes are Outstanding, the Collateral Manager may be removed by the Issuer at the direction of Holders of at least 66-2/3% in Aggregate Outstanding Amount of the Controlling Class of Notes if the Class A/B Overcollateralization Test is less than 100% as of the immediately preceding Determination Date, upon not less than 45 days’ prior written notice to the Collateral Manager, pursuant to Section 11(c) of the Collateral Management Agreement.

The Class A/B Overcollateralization Test was less than 100% as of June 3, 2015 (being the Distribution Date immediately preceding the Removal Direction (as defined below)).

The Holder of at least 66-2/3% of the Aggregate Outstanding Amount of the Controlling Class of Notes has directed the Issuer to terminate and remove the Collateral Manager without cause pursuant to Section 11(c) of the Collateral Management Agreement (the “Removal Direction”).

The Holder of at least a Majority of the Controlling Class of Notes has directed the Issuer to propose Dock Street Capital Management LLC (“Dock Street”) as Replacement Manager pursuant to Section 11(e) of the Collateral Management Agreement (the “Replacement Direction” and, together with the Removal Direction, the “Direction”).

Pursuant to Section 11(e) of the Collateral Management Agreement, Holders of at least a Majority of the Controlling Class of Notes or a Majority-in-Interest of Preference Shareholders (excluding any Notes or Preference Shares held by the Collateral Manager or any of its Affiliates) may, within 30 days after notice, object to the appointment of Dock Street as Replacement Manager.

Please be advised that Holder of at least a Majority of the Controlling Class of Notes has confirmed that it does not object to the appointment of Dock Street as Replacement Manager.

The Issuer hereby requests that the Trustee deliver written notice of the Direction with a copy of the proposed Second Amended and Restated Collateral Management Agreement to be entered into by the Issuer and the Replacement Manager upon satisfaction of all conditions precedent related thereto (attached as Exhibit A hereto) to the Collateral Manager, each Rating Agency, the Hedge Counterparty, the Holders of the Notes and the Preference Shareholders pursuant to Section 11(e) of the Collateral Management Agreement and Section 15.4(iv) of the Indenture.

Sincerely,

**CRYSTAL COVE CDO, LTD.**



By:

Name: Andrew Childe

Title: Director

cc: Wells Fargo Bank, National Association  
Corporate Trust Office  
9062 Old Annapolis Road  
Columbia, Maryland 21045  
Attention: Cheryl Bohn  
Facsimile No.: (866) 373-0261

**EXHIBIT A**

**SECOND AMENDED AND RESTATED  
COLLATERAL MANAGEMENT AGREEMENT**



**CRYSTAL COVE CDO, LTD.,  
as Issuer**

**DOCK STREET CAPITAL MANAGEMENT LLC,  
as Collateral Manager**

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**SECOND AMENDED AND RESTATED  
COLLATERAL MANAGEMENT AGREEMENT**

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**THIS SECOND AMENDED AND RESTATED COLLATERAL MANAGEMENT AGREEMENT** (as the same may be amended from time to time, this *Agreement*), dated as of [July 31], 2015 (the *Restatement Effective Date*) is made

**BETWEEN**

- (1) **CRYSTAL COVE CDO, LTD.**, an exempted limited liability company organized under the law of the Cayman Islands (the *Issuer*);and
- (2) **DOCK STREET CAPITAL MANAGEMENT LLC, (Dock Street)**, a limited liability company organized under the law of Delaware (the *Collateral Manager*).

**PRELIMINARY STATEMENTS**

The parties hereto wish to amend and restate the Amended and Restated Collateral Management Agreement (the *First Amended and Restated Collateral Management Agreement*) dated as of January 29, 2013, by and between the Issuer and Vertical Capital, LLC, as collateral manager (the *Predecessor Collateral Manager*), which amended and restated the Collateral Management Agreement (the *Original Collateral Management Agreement*) dated as of August 25, 2004, by and between the Issuer and Pacific Investment Management Company LLC as collateral manager (the *Original Collateral Manager*) to evidence, among other things, the appointment of Dock Street as successor Collateral Manager.

On the Closing Date (as defined in the Indenture) the Issuer issued, (a) Class A-1 First Priority Senior Secured Floating Rate Notes due September 3, 2039 (the *Class A-1 Notes*), Class A-2 Second Priority Senior Secured Floating Rate Notes due September 3, 2039 (the *Class A-2 Notes*, and together with the Class A-1 Notes, the *Class A Notes*), Class B Third Priority Senior Secured Floating Rate Notes due September 3, 2039 (the *Class B Notes*), Class C-1 Mezzanine Secured Deferrable Floating Rate Notes due September 3, 2039 (the *Class C1 Notes*), Class C-2 Mezzanine Secured Deferrable Fixed Rate Notes due September 3, 2039 (the *Class C-2 Notes* and together with the Class C-1 Notes, the *Class C Notes*) (the Class C Notes, together with the Class A Notes and Class B Notes, collectively, the *Notes*), the Class C-1 Combination Securities due September 3, 2039 (the *Class C-1 Combination Securities*) and the Class P Combination Securities due September 3, 2039 (the *Class P Combination Securities*, and together with the Class C-1 Securities, the *Combination Securities*) pursuant to the Indenture (the *Indenture*) dated as of August 25, 2004, between the Issuer, Crystal Cove CDO, Inc., as Co-issuer, and Wells Fargo Bank, National Association, as Trustee (in such capacity, together with its successors in such capacity, the *Trustee*), and (b) 20,300 Preference Shares, par value U.S.\$0.01 per share (the *Preference Shares* and, together with the Notes and Combination Securities, the *Securities*), pursuant to its Memorandum and Articles of Association. As collateral security for the Notes, the Class C-1 Note Component of the Class C-1 Combination Securities and any other obligations secured by the Indenture, the Issuer has pledged or caused to be pledged the Collateral (as defined in the Indenture) to the Trustee for the benefit of the Secured Parties (as defined in the Indenture).

The Issuer wishes to enter into this Agreement pursuant to which the Collateral Manager agrees to perform, on behalf of the Issuer, certain duties with respect to the Collateral in the manner and on the terms set forth herein and the Collateral Manager has the capacity to provide the services required hereby and is prepared to perform such duties upon the terms and conditions set forth herein.

In consideration of the foregoing and the mutual agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### **INTERPRETATION**

1. (a) **Definitions.** Capitalized terms used but not defined herein have the respective meanings given to such terms in the Indenture. The terms defined in Section 18 will have the meanings therein specified for the purpose of this Agreement.

(b) **Rules of Construction.** Unless the context otherwise clearly requires: (i) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;(ii) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms; (iii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”; (iv) the word “will” shall be construed to have the same meaning and effect as the word “shall”; (v) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein); (vi) any reference herein to any Person shall be construed to include such Person’s successors and assigns; (vii) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof; and (viii) all references herein to Sections and Schedules shall be construed to refer to Sections of and Schedules to, this Agreement.

#### **COLLATERAL MANAGER**

2. (a) **Appointment of the Collateral Manager.** The Issuer hereby appoints the Collateral Manager as its investment adviser and manager, from and after the Restatement Effective Date, with respect to the Collateral and authorizes the Collateral Manager, from and after the Restatement Effective Date, to perform such services and take such actions on its behalf as are contemplated hereby and to exercise such other powers as are delegated to the Collateral Manager hereby, in each case, together with such authority and powers as are reasonably incidental thereto.

(b) **Services.** Subject to and in accordance with the terms of this Agreement and the applicable provisions of the Indenture, the Collateral Manager agrees to supervise and direct the investment and reinvestment of the Collateral and to

perform on behalf of the Issuer the duties that have been specifically delegated to the Collateral Manager in the Indenture (**provided** that the Collateral Manager shall have no obligation hereunder to perform any other duties other than as specified herein or in the Indenture or the Preference Share Agency Agreement). To the extent necessary or appropriate to perform such duties, the Collateral Manager shall have the power to (i) negotiate, execute and deliver all necessary and appropriate documents and instruments on behalf of the Issuer with respect thereto, including any purchase or sale agreement with respect to any Collateral Debt Security, Equity Security, Eligible Investment, U.S. Agency Security and the Hedge Agreements and (ii) instruct the Custodian, the Bank and any other agent on behalf of the Issuer.

(c) **Selection.** The Collateral Manager shall select all Collateral to be acquired by the Issuer in accordance with the investment criteria set forth herein and in the Indenture. In particular, the Collateral Manager will not hold itself out on behalf of the Issuer as being willing and able to make loans or otherwise to enter into transactions with customers in the ordinary course of business.

(d) **Monitoring.** The Collateral Manager shall monitor the Collateral on an ongoing basis and provide to the Issuer all certificates, schedules and other data relating to the Collateral that the Issuer is required to prepare and deliver under the Indenture (other than reports, schedules and other data that the Collateral Administrator is required to provide to the Issuer pursuant to the Collateral Administration Agreement), in the form and containing all information required thereby and in reasonable time for the Issuer to review such required certificates, schedules and other data and to deliver them to the party or parties entitled to receive them under the Indenture. In addition, the Collateral Manager shall follow its existing practices and procedures in determining to the extent reasonably practicable whether a Collateral Debt Security has become a Defaulted Security, a Written- Down Security, a Deferred Interest PIK Bond, a Credit Risk Security or a Credit Improved Security; **provided** that the Collateral Manager shall be entitled, having identified information that could cause a Collateral Debt Security to become a Defaulted Security, a Written-Down Security, a Deferred Interest PIK Bond, a Credit Risk Security or a Credit Improved Security, to await further performance or other information with respect thereto prior to making any such determination where such information could reasonably be expected to materially affect such determination.

(e) **Direction of Trustee.** The Collateral Manager, subject to and in accordance with the provisions of the Indenture and this Agreement, may as agent of the Issuer at any time direct the Trustee (i) to dispose of a Collateral Debt Security, an Equity Security, an Eligible Investment, a U.S. Agency Security or other obligations or securities received in respect thereof in the open market or otherwise, or (ii) to acquire, as security for the Notes (and the Class C-1 Note Component of the Class C-1 Combination Securities) and any other obligations secured by the Indenture in substitution for or in addition to any Collateral Debt Securities, Equity Securities, Eligible Investments or U.S. Agency Securities previously included in the Collateral, one or more Collateral Debt Securities, Equity Securities, Eligible

Investments or U.S. Agency Securities, and may, in each case subject to and in accordance with the provisions of the Indenture, as agent of the Issuer, require the Trustee to take one or more of the following actions with respect to a Collateral Debt Security, Equity Security, Eligible Investment or U.S. Agency Security:

- (i) retain such Collateral Debt Security, Equity Security, Eligible Investment or U.S. Agency Security;
  - (ii) acquire or dispose of such Collateral Debt Security, Equity Security, Eligible Investment or U.S. Agency Security in the open market or otherwise;
  - (iii) if applicable, tender such Collateral Debt Security, Equity Security, Eligible Investment or U.S. Agency Security;
  - (iv) retain or dispose of any securities or other property (if other than Cash) received with respect to such Collateral Debt Security, Equity Security, Eligible Investment or U.S. Agency Security;
  - (v) waive or elect not to exercise remedies in respect of any default with respect to any Defaulted Security;
  - (vi) vote to accelerate the maturity of any Defaulted Security;
  - (vii) participate on behalf of the Issuer in a committee or group formed by creditors of an issuer of, or an obligor under, a Collateral Debt Security or Eligible Investment and agree on behalf of the Issuer to any restructuring of any Collateral Debt Security or Eligible Investment (including the acceptance of any security or other property in exchange for or in satisfaction of such Collateral Debt Security or Eligible Investment) and/or the reorganization of such issuer or obligor; and
  - (viii) exercise any other rights or remedies with respect to such Collateral Debt Security, Equity Security, Eligible Investment or U.S. Agency Security (including any right to consent to any proposed amendment, modification or waiver) as provided in the related Underlying Instruments or take any other action consistent with the terms of the Indenture.
- (f) **Voting, etc.** In the event that any vote is solicited with respect to any Collateral Debt Security or Equity Security, the Collateral Manager, on behalf of the Issuer, shall vote or refrain from voting any such security in any manner permitted by the Indenture. In addition, with respect to any Defaulted Security, so long as no Event of Default has occurred and is continuing, the Collateral Manager, on behalf of the Issuer, may instruct the trustee for such Defaulted Security to enforce the Issuer's rights under the Underlying Instruments governing such Defaulted Security or any applicable law, rule or regulation in any manner permitted under the Indenture. In the event any Offer is made with respect to any Collateral Debt Security or Equity Security, the Collateral Manager, on behalf of the Issuer, may

take such action as is permitted by the Indenture.

- (g) [RESERVED].
- (h) **Redemption of Notes and Preference Shares.** The Collateral Manager shall take such action on behalf of the Issuer in order that the Issuer may, subject to the applicable limitations set forth in the Indenture and the Issuer Charter: redeem all (but not less than all) of the Notes after a Majority-in-Interest of Preference Shareholders or, in the case of a Tax Redemption, a Majority of any Affected Class directs, in accordance with the Indenture, that the Issuer redeem the Notes, and after the Notes have been paid in full, redeem all (but not less than all) of the Preference Shares at the direction of a Majority-in-Interest of Preference Shareholders, in accordance with the Indenture and the Preference Share Agency Agreement.
- (i) **Power of Attorney.** In furtherance of Sections 2(a) through 2(h), with effect from the Restatement Effective Date the Issuer hereby makes, constitutes and appoints the Collateral Manager, with full power of substitution, as its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead, to sign, execute, certify, swear to, acknowledge, deliver, file, receive and record any and all documents that the Collateral Manager reasonably deems appropriate or necessary in connection with the Collateral Manager's powers and duties under this Agreement, the Indenture, the Collateral Administration Agreement, the Preference Share Agency Agreement or the Purchase Agreement. The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, and it shall survive and not be affected by the subsequent bankruptcy or insolvency or dissolution of the Issuer; **provided** that the foregoing power of attorney will expire, and the Collateral Manager will cease to have any power to act as the Issuer's attorney-in-fact, upon termination of this Agreement in accordance with its terms. The Issuer shall execute and deliver to the Collateral Manager, or cause to be executed and delivered to the Collateral Manager, all such other powers of attorney, proxies, dividend and other orders, and all such instruments as the Collateral Manager may reasonably request for the purpose of enabling the Collateral Manager to exercise the rights and powers which it is entitled to exercise pursuant to Sections 2(a) through 2(h) or this Section 2(i).
- (j) **Investment Objectives.** Subject to the standard of care set forth in Section 2(k) below, in performing its duties hereunder, the Collateral Manager will seek to maximize the value of the Collateral for the benefit of the Noteholders and the Preference Shareholders taking into account the value of the Collateral as of the Restatement Effective Date, the investment criteria and limitations set forth herein and in the Indenture, and the Collateral Manager will manage the Collateral from and after the Restatement Effective Date in such a way that timely payments are made on the Notes and no Default occurs under the Indenture; **provided** that (i) the Collateral Manager shall not be responsible if such objectives are not achieved so long as the Collateral Manager performs its duties under this Agreement in good faith and in the manner provided for herein and (ii) there shall be no recourse to

the Collateral Manager with respect to the Notes, the Combination Securities or any other obligations of the Co-Issuers incurred in accordance with the Indenture or the Preference Shares.

- (k) **Standard of Care.** The Collateral Manager shall, subject to the terms and conditions hereof and of the Indenture and the Preference Share Agency Agreement, perform its obligations hereunder with reasonable care and in good faith and in a manner consistent with the procedures and practices that a prudent collateral manager would employ relating to assets of the nature and character of the Collateral, using a degree of skill and attention no less than that which the Collateral Manager customarily exercises with respect to comparable assets that it manages for others in accordance with its existing practices and procedures relating to assets of the nature and character of the Collateral. In each instance where the Collateral Manager is required by the Indenture to exercise its judgment, it shall do so in accordance with the standard of care specified in this Section 2(k). The Collateral Manager shall comply with all the terms and conditions of the Indenture affecting the duties and functions that have been delegated to it thereunder and hereunder. The Collateral Manager shall not be bound to follow any amendment to the Indenture, however, until it has received written notice thereof and until it has received a copy of the amendment from the Issuer or the Trustee; **provided** that the Collateral Manager shall not be bound by any amendment to the Indenture that alters the rights or obligations of the Collateral Manager unless the Collateral Manager shall have consented thereto in writing. None of the Collateral Manager, any Affiliate of the Collateral Manager, or any officer, agent, stockholder, partner, director, member or employee of the Collateral Manager or any Affiliate of the Collateral Manager shall, except to the extent otherwise expressly provided by applicable law, have any liability, whether direct or indirect and whether in contract, tort or otherwise, (x) for any action taken or omitted to be taken by any of them hereunder or in connection herewith unless such act or omission was performed or omitted in bad faith or constituted gross negligence or willful misconduct or (y) for any action taken or omitted to be taken by the Collateral Manager at the express direction of the Issuer, the Trustee or any other Person entitled under the Indenture or the Issuer Charter to give directions to the Collateral Manager.
- (l) **Arm's Length Basis.** The Collateral Manager shall cause any purchase or sale of any Collateral to be effected on an arm's length basis.
- (m) **Support for Services.** The Collateral Manager shall, at its own expense (subject to Section 7(b)), maintain such equipment, materials and expertise, and employ such professionals and other personnel, as shall be necessary to perform the services hereunder in accordance with Section 2(k).
- (n) **Limited Duties and Obligations; No Partnership or Joint Venture.** The Collateral Manager shall not have any duties or obligations except those expressly set forth herein and in the Indenture. Without limiting the generality of the foregoing, (i) the Collateral Manager shall not be subject to any fiduciary or other implied duties, (ii) the Collateral Manager shall not have any duty to take any



discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or in the Indenture, and (iii) except as expressly set forth herein or in the Indenture, the Collateral Manager shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any issuer of any Collateral Debt Security or Equity Security or any of its Affiliates that is communicated to or obtained by the Collateral Manager or any of its Affiliates. The Issuer agrees that the Collateral Manager is an Independent contractor and not a general agent of the Issuer and that, except as expressly provided herein, the Collateral Manager shall not have authority to act for or represent the Issuer in any way and shall not otherwise be deemed to be the Issuer's agent. Nothing contained herein shall create or constitute the Issuer and the Collateral Manager as members of any partnership, joint venture, association, syndicate, unincorporated business or other separate entity, nor shall be deemed to confer on any of them any express, implied, or apparent authority to incur any obligation or liability on behalf of any other such entity.

- (o) **Reliance.** The Collateral Manager shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing reasonably believed by it to be genuine and to have been signed or sent by a duly authorized Person. The Collateral Manager also may rely upon any statement made to it orally or by telephone and reasonably believed by it to be made by a duly authorized Person, and shall not incur any liability for relying thereon. The Collateral Manager may consult with legal counsel (which may be counsel for an issuer of any Collateral Debt Security or Equity Security or any of its Affiliates), Independent accountants and other Independent experts selected by it in good faith. The Collateral Manager shall not be liable for any action taken or not taken by it in good faith in accordance with the advice of any such counsel, accountants or experts.
- (p) **Performance Through Agents.** The Collateral Manager may perform any and all of its duties and exercise its rights and powers by or through any agents, including its Affiliates, selected by the Collateral Manager in accordance with the standard of care specified in Section 2(k). The exculpatory provisions of the preceding paragraphs of this Section 2 shall apply to any such agent; **provided** that the Collateral Manager shall not be relieved of any of its duties hereunder regardless of the performance of any services by agents, and the Collateral Manager will, subject to Section 5(d) and Section 7(b), be solely responsible for the fees and expenses payable to such agent.
- (q) **Brokerage.** The Collateral Manager shall seek to obtain the best prices and execution for all orders placed with respect to the Collateral, considering all circumstances that are relevant in its reasonable determination. Subject to the objective of obtaining best prices and execution, the Collateral Manager may take into consideration research and other brokerage services furnished to the Collateral Manager or its Affiliates by brokers and dealers that are not Affiliates of the Collateral Manager. Such services may be used by the Collateral Manager or its Affiliates in connection with its other advisory activities or investment

operations. The Collateral Manager may aggregate sales and purchase orders of securities placed with respect to the Collateral with similar orders being made simultaneously for other accounts managed by the Collateral Manager or with accounts of the Affiliates of the Collateral Manager if in the Collateral Manager's reasonable judgment such aggregation shall result in an overall economic benefit to the Issuer, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses. In the event that a sale or purchase of a Collateral Debt Security (in accordance with the terms of the Indenture) occurs as part of any aggregate sale or purchase order, the objective of the Collateral Manager (and any of its Affiliates involved in such transactions) shall be to allocate the executions among the relevant accounts in an equitable manner over time (taking into account constraints imposed by the Eligibility Criteria in the Indenture).

In addition to the foregoing, but subject to the provisions of Section 2 and the limitations of Sections 4 and 5 and Section 12.3(a) of the Indenture, the objective of obtaining best prices and execution and to the provisions of applicable law, the Collateral Manager may, on behalf of the Issuer, direct the Trustee to acquire any and all of the Collateral Debt Securities or other Collateral from, or sell Collateral Debt Securities or other Collateral or to any Person (including, without limitation, the Initial Purchaser and its Affiliates).

- (r) **Agency Cross Transactions.** The Issuer understands that a broker may from time to time sell assets to the Issuer or purchase assets from the Issuer as broker both for the Issuer and another Person on the other side of the transaction, in which case such broker will act as broker for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding, both parties to such transactions. So long as the Collateral Manager and such broker satisfies its duties and obligations to the Issuer under this Agreement and applicable law, the Issuer hereby authorizes and consents to such broker engaging in such transactions and acting in such capacities.
- (s) **Auction Call Redemption.** The Collateral Manager shall perform such services and take such actions as are expressly required to be performed or taken by the Collateral Manager pursuant to the provisions of Section 9.5 of and Schedule F to the Indenture; **provided** that the Issuer shall not consent to any amendment of Section 9.5 of or Schedule F to the Indenture without the prior written consent of the Collateral Manager to the extent that such amendment would affect any material obligation of the Collateral Manager thereunder.
- (t) **Rating Agencies.** The Collateral Manager shall consult with the Rating Agencies at such times as may be reasonably requested by the Rating Agencies and provide the Rating Agencies with any information reasonably requested in connection with the Rating Agencies' maintenance of their ratings of the Notes or Combination Securities. The Collateral Manager shall not disclose Standard & Poor's confidential private credit assessments to any third party, including investors.

- (u) **Hedge Agreements.** The Collateral Manager shall (i) with respect to any USD Collateral Debt Securities that are Fixed Rate Collateral Debt Securities and any Non-USD Collateral Debt Securities, cause (or shall have caused) the Issuer to enter into one or more Hedge Agreements (or replacements therefor) in connection with the acquisition and ownership thereof by the Issuer in order to enable the Issuer to comply with its obligations with respect to such Collateral Debt Securities set forth in the Indenture and (ii) monitor the performance of the relevant Hedge Counterparty under each Hedge Agreement, including, without limitation, the continuing ability of such counterparty to perform its obligations thereunder and otherwise comply with the applicable ratings requirements set forth in the Indenture and/or the applicable Hedge Agreement.

#### **ADDITIONAL ACTIVITIES OF THE COLLATERAL MANAGER**

- 3. Subject to Section 2(k), nothing herein shall prevent the Collateral Manager or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Issuer and its Affiliates, the Trustee, the Noteholders, the Combination Securityholders, the Preference Shareholders or any other Person to the extent permitted by applicable law. Without prejudice to the generality of the foregoing, the Collateral Manager and any current shareholders, directors, officers, members, employees and agents of the Collateral Manager or its Affiliates may, among other things, and subject to any limitations specified in the Indenture:
  - (a) **Serve as Directors of Issuer etc.** Serve as directors (whether supervisory or managing), officers, partners, members, employees, agents, nominees or signatories for the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Issuer, its Affiliates or any issuer of any obligations included in the Collateral or their respective Affiliates, pursuant to their respective Governing Instruments; **provided** that (i) such activity will not have a material adverse effect on the enforceability of the Issuer's or the Trustee's rights with respect to the Collateral or the ability of the Issuer to comply with any of its obligations under the Indenture; and (ii) nothing in this paragraph shall be deemed to limit the duties of the Collateral Manager set forth in Section 2.
  - (b) **Receive Fees.** Receive fees from the issuer of any obligations included in the Collateral or their respective Affiliates; **provided** that (i) in the judgment of the Collateral Manager, the activity giving rise to such fees will not have a material adverse effect on the enforceability of the Collateral or the ability of the Issuer to comply with any of its obligations under the Indenture; and (ii) if any portion of such fees are related to purchase by the Issuer of any obligations included in the Collateral, such portion of such fees shall be applied to the purchase price of such obligations.

- (c) **Be a Creditor.** Subject to Section 9(b)(iii), be a secured or unsecured creditor of, and/or hold an equity interest in, the Issuer, its Affiliates or any issuer of any obligation included in the Collateral; **provided** that the Collateral Manager may not hold any of such interests if the existence of such interest would require registration of the Issuer as an “investment company” under the Investment Company Act or violate the Indenture or any provisions of Federal or applicable state law or any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer.
- (d) **Be a Member of Creditors’ Committee.** Serve as a member of any “creditors’ committee” with respect to any obligation included in the Collateral which has become or, in the Collateral Manager’s reasonable opinion, may become a Defaulted Security.
- (e) [RESERVED].
- (f) **Engage in Other Businesses.** Furnish investment management and advisory services to others, including Persons that may have investment policies similar to those followed by the Collateral Manager with respect to the Collateral and which may own securities of the same class, or which are the same type, as the Collateral Debt Securities or other securities of the issuers of Collateral Debt Securities. Any action taken by the Collateral Manager with respect to the Collateral will not be proprietary to the Issuer. The Collateral Manager will be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Collateral.
- (g) **Purchase Certain Securities.** Unless the Collateral Manager determines in its judgment that such purchase or sale is appropriate and otherwise in accordance with the requirements of this Agreement and the Indenture, the Collateral Manager may refrain from directing the purchase or sale hereunder of securities issued by (i) Persons of which the Collateral Manager, its Affiliates or any of its or their officers, directors, members or employees are directors or officers, (ii) Persons for which the Collateral Manager or any of its Affiliates acts as financial adviser or underwriter or (iii) Persons about which the Collateral Manager or any of its Affiliates has information that the Collateral Manager deems confidential or nonpublic or otherwise might prohibit it from trading such securities in accordance with applicable law.
- (h) **Knowledge in Collateral Manager’s Possession.** The Issuer acknowledges that certain employees of the Collateral Manager and its Affiliates may possess information relating to certain issuers that have issued obligations included in the Collateral, that is not known to employees of the Collateral Manager who are responsible for monitoring the Collateral and performing the other obligations of the Collateral Manager hereunder. The Collateral Manager will be required to act hereunder with respect to any information within its possession only if such information was known or should reasonably have been known to those

employees of the Collateral Manager responsible for performing the obligations of the Collateral Manager hereunder.

#### **CONFLICTS OF INTEREST**

4.

- (a) **Acquisitions from or Dispositions to the Collateral Manager.** On and after the Restatement Effective Date, the Collateral Manager shall not direct the Issuer or the Trustee to acquire any Collateral Debt Security from the Collateral Manager or any of its Affiliates as principal or to sell any Collateral Debt Security to the Collateral Manager or any of its Affiliates as principal.
- (b) **Acquisitions from Certain Accounts and Portfolios.** On and after the Restatement Effective Date, the Collateral Manager shall not direct that the Issuer acquire any Collateral Debt Security for inclusion in the Collateral directly from any account or portfolio for which the Collateral Manager serves as investment advisor, or direct that the Issuer sell any Collateral Debt Security directly to any account or portfolio for which the Collateral Manager serves as investment advisor (provided that this Section 4 shall not prevent the Collateral Manager from purchasing from an Affiliate a portion of any obligation to be included in the Collateral which has been purchased in the name of such Affiliate as part of an aggregated order in compliance with Section 2(q) if (i) either (A) such obligation is being purchased at initial issuance or within 30 days thereafter or (B) such security is being purchased in a secondary market transaction at a purchase price not greater than the average of the ask prices quoted by at least two leading Independent dealers in the relevant market, (ii) the price and other terms on which the portion of such obligation to be included in the Collateral is purchased by the Issuer are identical to those applicable to the purchase by such Affiliate, (iii) the portion of such obligations to be included in the Collateral and the terms on which they are to be purchased are identified to the Trustee at or prior to the time such Affiliate commits to any third party to purchase such obligations, and the portion to be included in the Collateral is transferred to the Issuer simultaneously with the purchase by such Affiliate or as soon thereafter as possible given all reasonable and good faith efforts of the Collateral Manager and considering all reasonable circumstances and (iv) the purchase satisfies the requirements of Section 5(a)).
- (c) **“Trade Walls”.** The Collateral Manager may, consistent with applicable law, adopt “trade walls” and other procedures for the purpose of minimizing restrictions on the ability of the Collateral Manager to perform the services to be provided hereunder as a consequence of the acquisition or possession by it, by reason of its other business activities, of other material non-public information.
- (d) **Purchase of Preference Shares.** One or more of the Collateral Manager and its Affiliates may purchase a portion of the Preference Shares. In certain circumstances, the interests of the Issuer and/or the Noteholders with respect to

matters as to which the Collateral Manager is advising the Issuer may conflict with the foregoing interests of the Collateral Manager. The Issuer hereby acknowledges and consents to various potential and actual conflicts of interest that may exist with respect to the Collateral Manager as described above; **provided** that nothing in this Section 4 shall be construed as altering the duties of the Collateral Manager as set forth in this Agreement.

#### **LIMITS OF COLLATERAL MANAGER RESPONSIBILITY; INDEMNITIES**

5. (a) **Asset Acquisition.** When purchasing, entering into, managing, selling or terminating CDO Obligations, Other ABS, Guaranteed Corporate Debt Securities or Corporate Debt Securities on behalf of the Issuer, the Collateral Manager shall be deemed to have observed the restrictions in clause (9) of Section 12.2 of the Indenture as to the manner of acquisition if it satisfies each of the following requirements:
  - (i) Except as provided in this Section 5(a), the Collateral Manager does not acquire or commit to acquire CDO Obligations, Other ABS, Guaranteed Corporate Debt Securities or Corporate Debt Securities from (A) the obligor or issuer or (B) any seller that has not purchased and at least partially funded such obligation or security. The Collateral Manager does not acquire or commit to acquire such obligations or securities from itself or any of its Affiliates or any account or portfolio for which the Collateral Manager (whether or not acting in its capacity as Collateral Manager) or any of its Affiliates serves as investment advisor unless the seller (a) acquired the obligation or security in a manner that would have satisfied these requirements if it were the Issuer or (b) regularly acquires obligations or securities of the same type for its own account, could have held the obligation or security for its own account consistent with its investment policies, holds the obligation or security for at least 90 days and during that period does not commit to sell or identify such obligation or security as intended for sale to the Issuer.
  - (ii) The Collateral Manager acquires or commits to acquire CDO Obligations, Other ABS, Guaranteed Corporate Debt Securities or Corporate Debt Securities from the obligor or issuer or from a seller that has not purchased and funded such obligation or security only if:
    - (A) The obligation or security is issued pursuant to an effective registration statement under the Securities Act in an underwriting or placement where neither the Collateral Manager nor an Affiliate of the Collateral Manager acted as an underwriter or placement agent; or
    - (B) The obligation or security is privately placed under Rule 144A or Section 4(2) of the Securities Act and is described in at least one of the following clauses:

- (x) The Collateral Manager and its Affiliates do not participate in the placement;(y) The Collateral Manager and its employees do not participate in the placement, and the Issuer does not acquire the obligation or security from the Collateral Manager or an Affiliate other than an Affiliate that regularly acquires obligations or securities for its own account, could have held its entire amount of the obligation or security for its own account consistent with its investment policies, holds the obligation or security for at least 90 days and during that period does not commit to sell or identify such an obligation or security as intended for sale to the Issuer; or
  - (z) The Collateral Manager and its Affiliates neither participate in negotiating or structuring the terms of the obligation or security nor at issuance acquire or commit to acquire more than 33% of the aggregate principal amount of such obligations or securities or any other class of obligations or securities offered by the obligor or issuer in the same or any related offering (unless persons unrelated to the Collateral Manager and its Affiliates purchase more than 50% of the aggregate principal amount of such obligations or securities or such class at substantially the same time and on substantially the same terms as the Issuer purchases).
- (iii) The Collateral Manager makes purchases or commitments to purchase unissued or unfunded securities otherwise permitted by this Section 5(a) only if the purchase price is fixed at the time of the commitment and the commitment is subject to there being no material adverse change in the condition of the obligor or issuer or in the financial markets.
  - (iv) The Collateral Manager acquires an obligation or security only if, for U.S. Federal income tax purposes, it has reasonably determined that (A) the asset is debt, (B) the only obligors or issuers are corporations, (C) no obligor or issuer is engaged in a trade or business within the United States or (D) the obligor or issuer is a grantor trust all assets of which are obligations or securities that the Issuer could have acquired directly under this Section 5(a). For purposes of determining whether any criterion in this Section 5(a)(iv) is satisfied, the Collateral Manager may rely on a legal opinion included in (or described in) the offering documents pursuant to which the CDO Obligation, Other ABS, Guaranteed Corporate Debt Security or Corporate Debt Security was issued to the effect that such criterion will be satisfied, provided that no change that would have a material effect on the satisfaction of such criterion has occurred in the

terms of the CDO Obligation, Other ABS, Guaranteed Corporate Debt Security or Corporate Debt Security or the activities or any of the organizational documents of the issuer, as applicable, before the CDO Obligation, Other ABS, Guaranteed Corporate Debt Security or Corporate Debt Security is acquired.

- (b) **Entry into Hedge Agreements.** When entering into Hedge Agreements on behalf of the Issuer, the Collateral Manager shall be deemed to have observed the restrictions in Section 16.1(a) of the Indenture as to net income taxes and withholding taxes if each Hedge Agreement (or replacement therefor) (i) provides for payments determined solely by reference to interest rates and/or currency exchange rates applied to a stated notional amount and not by reference to any other factors and (ii) either (A) does not provide for any “upfront” or other nonperiodic payments or (B) provides that the Issuer may not assign its rights and/or obligations under such Hedge Agreement.
- (c) **Limits on Responsibility.** None of the Collateral Manager, its Affiliates and any of their respective directors, officers, agents, stockholders, members, partners or employees shall be responsible for any action or inaction of the Issuer or the Trustee in following or declining to follow any advice, recommendation or direction of the Collateral Manager. None of the Collateral Manager, its Affiliates and any of their respective directors, officers, stockholders, agents, members, partners or employees shall be liable to the Issuer, the Trustee, the Preference Share Paying Agent, the Noteholders, the Combination Securityholders, the Preference Shareholders, the Initial Purchaser or any other Person for any expenses, losses, claims, damages, judgments, assessments, charges, demands, costs or other liabilities (collectively, *Liabilities*) incurred by the Issuer, the Trustee, the Preference Share Paying Agent, the Noteholders, the Combination Securityholders the Preference Shareholders, the Initial Purchaser or any other Person that arise out of or in connection with the performance by the Collateral Manager of its duties hereunder or the terms of the Indenture applicable to the Collateral Manager or for any decrease in the value of the Collateral, except by reason of acts or omissions constituting bad faith, willful misconduct or gross negligence in the performance, or reckless disregard of the obligations of the Collateral Manager hereunder or under the Indenture. The matters described in the immediately preceding sentence are collectively referred to for purposes of this Section 5 as *Collateral Manager Breaches*.
- (d) **Issuer Indemnity.** The Issuer shall indemnify and hold harmless (the Issuer in such case, the *Indemnifying Party*) the Collateral Manager, its Affiliates and each of the directors, officers, stockholders, partners, members, agents and employees of the Collateral Manager or any of their respective Affiliates (such parties collectively in such case, the *Indemnified Parties*) from and against any and all Liabilities, and will reimburse each such Indemnified Party for all reasonable fees and expenses (including reasonable fees and expenses of counsel, accountants, auditors, record keepers, consultants and other professionals) (collectively, the *Expenses*) as such Expenses are incurred in investigating, preparing, pursuing or



defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the **Actions**), caused by, or arising out of or in connection with, the issuance of the Securities, the transactions contemplated by the Offering Circular, dated August 24, 2004 relating to the Securities (the **Offering Circular**), the Indenture or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party; **provided** that no Indemnified Party shall be indemnified for any Liabilities or Expenses it incurs as a result of any acts or omissions by any Indemnified Party constituting a Collateral Manager Breach. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this Section 5 shall be payable solely out of the Collateral in accordance with the priorities set forth in the Indenture and shall survive termination of this Agreement.

- (e) **Indemnification Procedures.** With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this Section 5, such Indemnified Party shall (or with respect to Indemnified Parties that are directors, officers, stockholders, partners, members, agents and employees of the Collateral Manager or the Issuer or any of their respective Affiliates, as the case may be, the Collateral Manager or the Issuer, as the case may be, shall cause such Indemnified Party to):
- (i) give written notice to the Indemnifying Party of such claim within ten days after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party shall specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; **provided** that the failure of any Indemnified Party to provide such notice to the Indemnifying Party shall not relieve the Indemnifying Party of its obligations under this Section 5 unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defenses by reason of such failure;
  - (ii) at the Indemnifying Party's expense, provide the Indemnifying Party such information and cooperation with respect to such claim as the Indemnifying Party may reasonably require, including making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;
  - (iii) at the Indemnifying Party's expense, cooperate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defense to such claim;
  - (iv) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its own expense, to participate in the investigation, defense and settlement of such

claim;

- (v) neither release or settle any such claim nor make any admission with respect thereto (other than routine or incontestable admissions or factual admissions the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed); **provided** that the Indemnifying Party shall have advised such Indemnified Party that such Indemnified Party is entitled to be indemnified hereunder with respect to such claim; and
- (vi) upon reasonable prior notice, afford to the Indemnifying Party the right, in its sole discretion and at its sole expense, to assume the defense of such claim, including the right to designate counsel reasonably acceptable to the Indemnified Party and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of such claim; **provided** that if the Indemnifying Party assumes the defense of such claim, it shall not be liable for any fees and expenses of counsel for any Indemnified Party incurred thereafter in connection with such claim except that if such Indemnified Party reasonably determines that counsel designated by the Indemnifying Party has a conflict of interest, such Indemnifying Party shall pay the reasonable fees and disbursements of one counsel (in addition to any local counsel) separate from its own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances.
- (f) **Waiver of Indemnification.** In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party shall not be entitled to appoint counsel to represent such Indemnified Party nor shall the Indemnifying Party reimburse such Indemnified Party for any costs of counsel to such Indemnified Party.
- (g) **No Limitation on Other Rights.** Nothing herein shall in any way constitute a waiver or limitation of any rights which the Issuer may have under any U.S. Federal or state securities laws.
- (h) **Hedge Agreements.** Subject to Section 5(c), no provision of this Agreement shall require the Collateral Manager to expend or risk its own funds or otherwise incur any financial liability in connection with the performance by the Issuer of its obligations under any Hedge Agreement.

## CONFIDENTIALITY

6. The Collateral Manager shall keep confidential any and all information obtained in connection with the services rendered hereunder and shall not disclose any such information to non-Affiliated third parties except (a) with the prior written consent of the Issuer, (b) such information as a Rating Agency shall reasonably request in connection with its rating of any of the Securities, (c) as required by law, regulation, court order or the rules or regulations of any self-regulating organization, body or official having jurisdiction over the Collateral Manager, or pursuant to this Agreement, the Indenture or the Collateral Administration Agreement, (d) to its professional advisors, (e) such information as shall have been publicly disclosed other than in violation of this Agreement, (f) such information concerning an issuer of, or obligor under, a Collateral Debt Security, Equity Security, U.S. Agency Security or Eligible Investment to the extent required to be disclosed in connection with the administration of such Collateral Debt Security, Equity Security, U.S. Agency Security or Eligible Investment, (g) such information as was in the Collateral Manager's possession prior to the date such information was obtained in connection with the services rendered hereunder or (h) such information that was or is obtained or independently developed by the Collateral Manager on a non-confidential basis, as long as the Collateral Manager does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto, provided that (i) in no event shall the Collateral Manager be required to disclose to any party any information with respect to a particular Collateral Debt Security, Equity Security, U.S. Agency Security or Eligible Investment that the Issuer or the Collateral Manager is obligated by the terms of any Governing Instruments or other underlying documentation for such Collateral Debt Security, Equity Security, U.S. Agency Security or Eligible Investment to refrain from so disclosing and (ii) the Issuer hereby acknowledges and agrees that certain employees of the Collateral Manager may have or obtain information that, by virtue of the Collateral Manager's internal policies relating to confidential communications, cannot or may not be used by the Collateral Manager on behalf of the Issuer.

Notwithstanding the foregoing, the Collateral Manager (and each of its employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the U.S. federal income tax treatment and tax structure of the transactions contemplated hereby or by the Indenture and all materials of any kind, including opinions or other tax analyses, that are provided to such party relating to such tax treatment and tax structure. Furthermore, this authorization to disclose the tax treatment and tax structure does not permit disclosure of information identifying a Co-Issuer, the Collateral Manager or any other party to the transactions contemplated hereby or by the Indenture, or the pricing (except to the extent that pricing is relevant to tax structure or tax treatment) of the Offering.

## FEES AND PAYMENTS

7. (a) **Collateral Management Fee.** The Issuer shall pay to the Collateral Manager, for services rendered and performance of its obligations under this Agreement, (i) the Collateral Management Fee and (ii) any Incentive Collateral Management Fee which shall be payable, in each case, in such amounts and at such times as set forth in the Indenture, subject to Section 7(e) of this Agreement. The provisions of the Indenture setting forth the amounts and times referred to in the preceding sentence shall not be amended without the consent of the Collateral Manager. If on any Distribution Date there are insufficient funds to pay the Collateral Management Fee (and/or any other amounts due and payable to the Collateral Manager) in full, the amount not so paid shall be deferred and shall be payable on the first succeeding Distribution Date on which funds are available therefor in accordance with and subject to the Priority of Payments. Any unpaid Collateral Management Fee that is deferred due to the operation of the Priority of Payments will not accrue interest.

(b) **Expenses.** The Collateral Manager shall be responsible for the ordinary expenses incurred in the performance of its obligations under this Agreement; **provided** that (i) any expenses incurred by the Collateral Manager in connection with the execution hereof and appointment as Collateral Manager, (ii) any extraordinary costs and expenses incurred by the Collateral Manager in the performance of such obligations (including, without limitation, expenses and costs incurred in effecting or directing repurchases and sales of Collateral Debt Securities and Eligible Investments, negotiating with issuers of Collateral Debt Securities as to proposed modifications or waivers, taking action or advising the Trustee with respect to the Issuer's exercise of any rights and remedies in connection with the Collateral Debt Securities and Eligible Investments, including in connection with an Offer or default, participating in committees or other groups formed by creditors of an issuer of Collateral Debt Securities, and consulting with and providing each Rating Agency with any information in connection with its maintenance of the Ratings of the Notes or Combination Securities), and causing compliance with the tax matters set forth in Section 9(b)(x), to the extent such expenses are reimbursable to the Collateral Manager by the Issuer as Administrative Expenses pursuant to the terms of the Indenture and (iii) reasonable travel expenses (airfare, meals, lodging and other transportation) undertaken in connection with the performance by the Collateral Manager of its duties pursuant to this Agreement and the Indenture shall be reimbursed by the Issuer to the extent funds are available therefor in accordance with and subject to the limitations contained in the Indenture.

(c) **Manner of Payment.** Payments under this Agreement to the Collateral Manager will be made to an account as specified by the Collateral Manager to the Trustee in U.S. Dollars and in freely transferable and immediately available funds. The Collateral Manager may change its account for receiving a payment by giving notice to the Issuer and the Trustee at least five Business Days prior to the scheduled date for the payment to which such change applies. All payments under

this Agreement to the Collateral Manager will be made without set-off, deduction or counterclaim.

(d) **Payment on Termination.** If this Agreement is terminated pursuant to Section 11 or otherwise, the fees payable to the Collateral Manager shall be prorated for any partial periods between Distribution Dates during which this Agreement was in effect and shall be due and payable on the first Distribution Date following the date of such termination, subject to the limitations contained in the Indenture.

(e) Notwithstanding any other provision contained in this Section 7 or the Indenture to the contrary, in the event that the Collateral Manager resigns pursuant to Section 11(b), then the resigning Collateral Manager shall not be entitled to any Collateral Management Fee or Incentive Collateral Management Fee (whether deferred or not) on any Distribution Date following the date of such resignation. The fee arrangements set forth in this Section 7 are intended to comply with Code section 457A, and the foregoing provisions and any action taken related thereto shall be construed accordingly.

## REPRESENTATIONS

8.

(a) **Basic Representations.** Each party represents to the other party that:

(i) **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required to deliver by this Agreement and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance; and this Agreement has been, and each other such documentation will be, duly executed and delivered by it.

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or breach any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets the violation or breach of which, in the case of the Collateral Manager, would have a material adverse effect on the business operations, assets or financial condition of the Collateral Manager.

(iv) **Consents.** All governmental and other Consents that are required to have

been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such Consents have been complied with.

- (v) **Obligations Binding.** This Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).
  - (vi) **Absence of Certain Events.** No Termination Event or Potential Termination Event with respect to it has occurred and is continuing, and no Termination Event or Potential Termination Event would occur as a result of its entering into or performing its obligations under this Agreement.
  - (vii) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that would have a material adverse effect on the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement.
- (b) **Representations of the Collateral Manager.** In the case of the Collateral Manager:
- (i) **Absence of Certain Fee Arrangements.** Neither the Collateral Manager nor any of its Affiliates has, and neither it nor any of its Affiliates will establish or maintain, any arrangements or relationships with any broker, broker-dealer, other securities intermediary or third party pursuant to which the Collateral Manager or any of its Affiliates is or may become entitled to receive any portion of the commissions or fees paid to such Persons by the Issuer (or paid by another party on behalf of the Issuer) in connection with the acquisition or sale of any Collateral on behalf of the Issuer, other than those Persons, arrangements and relationships which have been disclosed in writing to the Issuer on or prior to the date hereof (or will, prior to any establishment or maintenance thereof after the date hereof, be disclosed in writing to the Issuer).
  - (ii) **Best Execution.** The Collateral Manager will not use any procedures in discharging its obligations hereunder that the Collateral Manager knows, in view of the investment criteria and limitations set forth herein and in the Indenture, are inequitable or inferior to the procedures employed for any other Person or account for which the Collateral Manager discharges obligations (either alone or in conjunction with others) similar to those undertaken by the Collateral Manager hereunder.

- (iii) **Offering Circular.** The Collateral Manager makes no representation, express or implied, with respect to the Offering Circular or any other marketing materials or other offering documentation relating to the Securities provided to any Person prior to the Restatement Effective Date.
  - (iv) **Investment Advisor.** The Collateral Manager is registered as an investment advisor under the Advisers Act.
  - (v) **Compliance with Investment Criteria.** All Collateral Debt Securities, Eligible Investments and U.S. Agency Securities purchased by the Collateral Manager on behalf of the Issuer (i) will satisfy, as the case may be, the definition of “Collateral Debt Security”, “Eligible Investment” or “U.S. Agency Security”, as applicable as of the date of purchase or as otherwise specified in the Indenture and (ii) will satisfy, as the case may be, all terms and conditions applicable to such purchases as set forth either herein or in the Indenture as of the date of purchase.
- (c) **Representations of the Issuer.** In the case of the Issuer:
- (i) **Status under Securities Laws.** It is a “qualified institutional buyer” as defined in Rule 144A under the Securities Act. It is a “qualified purchaser” as defined in Section 3(c)(7) of the Investment Company Act and Rule 2a-51 promulgated thereunder.
  - (ii) **Not an Investment Company.** It is not required to register as an “investment company” under the Investment Company Act.
  - (iii) **True Copies Delivered.** True and complete copies of the Indenture and the Issuer’s Governing Instruments have been delivered to the Collateral Manager.

## AGREEMENTS

9. (a) **Basic Agreements.** Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement:
- (i) **Maintain Authorizations.** It will maintain in full force and effect all Consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement and will use all reasonable efforts to obtain any that may become necessary in the future.
  - (ii) **Compliance with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement.
- (b) **Agreements of the Collateral Manager.** The Collateral Manager agrees with the Issuer that from and after the Restatement Effective Date:

- (i) **Notice of Termination Event or Potential Termination Event.** The Collateral Manager will promptly notify the Issuer, the Trustee and each Rating Agency if any Termination Event or Potential Termination Event shall occur with respect to the Collateral Manager.
- (ii) **Notice of Breach of Representation etc.** The Collateral Manager will promptly notify the Issuer, the Trustee and each Rating Agency if any representation, warranty or certification (other than that found in Section 8(a)(vi) hereof) previously made by the Collateral Manager would, if repeated on any subsequent date, be incorrect or misleading in any material respect.
- (iii) **Obligations of Collateral Manager.** Unless otherwise specifically required by any provision of the Indenture or this Agreement or by applicable law, the Collateral Manager shall use all reasonable efforts to ensure that no action is taken by it, and it shall not intentionally or with reckless disregard take any action, which would (A) materially adversely affect the Issuer or the Co-Issuer for purposes of Cayman Islands law, Delaware law, United States Federal or state law or any other law known to the Collateral Manager to be applicable to the Issuer or the Co-Issuer, (B) not be permitted under the Issuer Charter or the Co-Issuer's certificate of incorporation or by-laws, (C) violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Issuer or the Co-Issuer including any Delaware, United States Federal, state or other applicable securities law the violation of which has or could reasonably be expected to have a material adverse effect on the Issuer, the Co-Issuer, the Collateral, any Noteholder or any Combination Securityholder, (D) require registration of the Issuer or the Co-Issuer or the pool of Collateral as an "investment company" under the Investment Company Act or (E) cause the Issuer or the Co-Issuer to violate the terms of the Indenture or any other agreement contemplated by the Indenture. The Collateral Manager covenants that it shall comply in all material respects with all laws and regulations applicable to it in connection with the performance of its duties under this Agreement. Notwithstanding anything in this Agreement, the Collateral Manager shall not take any discretionary action that would reasonably be expected to cause an Event of Default under the Indenture.

If the Collateral Manager is ordered by the Issuer to take any action that the Collateral Manager determines would result in one or more of the consequences set forth above, the Collateral Manager shall promptly notify the Issuer and the Trustee of the Collateral Manager's judgment that such action would have one or more of the consequences set forth above and that it need not take such action unless the Administrator again requests the Collateral Manager to do so and the Trustee and the Holders of a Majority of the Controlling Class of Notes and a Majority-In-Interest of Preference Shares shall have consented thereto in writing. Notwithstanding any such request, the Collateral Manager need not take any such action unless valid and enforceable arrangements satisfactory to



it are made to insure or indemnify the Collateral Manager and its Affiliates and their respective directors, officers, stockholders, partners, members, agents and employees from any liability it may incur as a result of such action. The Collateral Manager and its Affiliates and their respective directors, officers, stockholders, partners, members, agents and employees shall not be liable to the Issuer except as provided in Section 5(c). Notwithstanding anything contained in this Agreement to the contrary, any indemnification or insurance provided for in this Section 9(b)(iii) will be payable out of the Collateral in accordance with the Priority of Payments.

- (iv) **No Petition.** It will not institute, or join any other Person in instituting any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under Federal or state bankruptcy or similar laws of any jurisdiction against the Issuer or the Co-Issuer until at least one year and one day after the payment in full of all Notes issued under the Indenture and of the Aggregate Liquidation Preference of the Preference Shares or, if longer, the applicable preference period then provided by law; **provided** that nothing in this clause (iv) shall preclude, or be deemed to estop, the Collateral Manager (A) from taking any action prior to the expiration of such period in (x) any case or proceeding voluntarily filed or commenced by the Issuer or the Co-Issuer, as the case may be, or (y) any involuntary insolvency proceeding filed or commenced against the Issuer or the Co-Issuer, as the case may be, by a Person other than the Collateral Manager or an Affiliate thereof or (B) from commencing against the Issuer or the Co-Issuer or any properties of the Issuer or the Co-Issuer any legal action which is not a bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceeding.
- (v) **Records.** The Collateral Manager shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by a representative of the Issuer, the Trustee, each Rating Agency and the Independent accountants appointed by the Issuer pursuant to the Indenture at a mutually agreed time during normal business hours and upon not less than three Business Days' prior notice.
- (vi) **Public Announcements.** At no time will the Collateral Manager, without the prior written consent of the Initial Purchaser (which consent shall not be unreasonably withheld), make a public announcement concerning the issuance of the Securities, details of the investment performance of the Issuer or any of the terms of the Indenture, the Notes, the Combination Securities or the Preference Shares if such public announcement would violate applicable Federal securities laws or regulations absent the registration of the Securities under Section 5 of the Securities Act.

- (vii) **No Recourse.** The Issuer's obligations hereunder will be solely the obligations of the Issuer, and the Collateral Manager will not have any recourse to any Affiliate of the Issuer or any of the directors, officers, members, shareholders or partners of the Issuer or any of its Affiliates with respect to any claims, losses, damages, liabilities, indemnities or other obligations in connection with any transactions contemplated hereby. Recourse in respect of any obligations of the Issuer hereunder will be limited to the Collateral as provided in the Indenture and on the exhaustion thereof all claims against the Issuer arising from this Agreement or any transactions contemplated hereby shall be extinguished.
- (viii) **Place of Business.** The Collateral Manager will not change the location from which it performs its duties under this Agreement from Westport, Connecticut if such change in location would cause material adverse tax consequences to the Issuer or Co-Issuer.
- (ix) **Contents of Noteholder Report.** The Collateral Manager will use reasonable efforts to ensure that each Noteholder Report delivered by the Issuer to the Noteholders pursuant to Section 10.7(b) of the Indenture will contain the statement required by the final paragraph of Section 10.7(b) of the Indenture.
- (x) **Tax Matters.** The Collateral Manager shall, or shall cause a firm of Independent certified public accountants of recognized national reputation to: (1) at the Issuer's expense, prepare on behalf of the Issuer any U.S. Federal, state or local income tax or information returns and any non-U.S. income tax or information returns that the Issuer may from time to time be required to file under applicable law (each a **Tax Return**), (2) deliver, at least ten days before any applicable time limit (giving effect to extensions), each Tax Return, properly completed, to the Administrator for signature by an Authorized Officer of the Issuer, (3) file or deliver such Tax Return on behalf of the Issuer within any applicable time limit (giving effect to extensions) with any authority or Person as required under applicable law, (4) prepare the information described in Section 7.1(c) and (d) of the Preference Share Agency Agreement, (5) make any elections, as needed, to preserve the status of the Issuer as a corporation for U.S. Federal income tax purposes due to a change in U.S. Federal income tax laws; (6) on behalf of the Issuer, provide (or cause to be provided) to each issuer of (or counterparty with respect to) an item included in the Collateral (or, as appropriate, provide or cause to be provided to the relevant tax authority or tax authorities) any tax forms or certifications that the Issuer is able to provide to avoid or minimize withholding or imposition of income or withholding tax at the time such item included in the Collateral is purchased (or entered into) by the Issuer and thereafter as required by law or as reasonably required by each issuer (or counterparty); and (7) on behalf of the Issuer, take any steps necessary to obtain a refund of withholding taxes imposed on any item included in the Collateral. The

Collateral Manager shall be entitled to reimbursement from the Issuer in connection with the foregoing to the extent provided for in the Indenture in accordance with the definition of Administrative Expenses.

- (xi) **Provision of information to Initial Purchaser.** The Collateral Manager will respond in a timely manner to all reasonable requests by the Initial Purchaser for market valuation data with respect to the Collateral and will provide (or cause to be provided), upon request, to the Initial Purchaser, each report delivered by the Issuer to the Collateral Manager pursuant to the Indenture.
  
- (c) **Agreements of the Issuer.** The Issuer agrees with the Collateral Manager that:
  - (i) **Notice from the Issuer to the Collateral Manager of Certain Events.** The Issuer will promptly notify the Collateral Manager if (x) any Termination Event or Potential Termination Event shall occur with respect to the Issuer or (y) any representation, warranty or certification previously made by the Issuer would, if repeated on any subsequent date, be incorrect or misleading in any material respect.
  
  - (ii) **Delivery of Amended Documents.** The Issuer will deliver a true and complete copy of each amendment to the Issuer's Governing Instruments and the Indenture as promptly as practicable after its adoption or amendment.
  
  - (iii) **Amendments to Indenture.** The Issuer will not permit any amendment to the Indenture that alters the material rights or obligations of the Collateral Manager in any respect, unless the Collateral Manager has been given prior written notice of such amendment and has consented thereto in writing.

#### **TERMINATION EVENTS**

- 10. **Termination Events.** The occurrence at any time of any of the following events constitutes a *Termination Event*:
  - (a) the Collateral Manager knowingly and willfully breaches, or knowingly and willfully takes any action that violates any provision of this Agreement or any term of the Indenture applicable to it;
  
  - (b) the Collateral Manager breaches in any material respect any provision of this Agreement or any terms of the Indenture applicable to it and fails to cure such breach within 30 days after notice of such failure is given to the Collateral Manager unless, if such failure is remediable, the Collateral Manager has taken action that the Collateral Manager in good faith believes will remedy, and that does in fact remedy, such failure within 90 days after notice of such failure is given to the Collateral Manager;

- (c) the Collateral Manager (A) ceases to be able to, or admits in writing its inability to, pay its debts when and as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or takes advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or (E) is adjudicated as insolvent or to be liquidated;
- (d) (i) the occurrence of an act by the Collateral Manager that constitutes fraud or criminal activity in the performance of its obligations under this Agreement, or (ii) the Collateral Manager or any of its executive officers who are primarily responsible for the administration of the Collateral shall be indicted for a felony offense materially relating to advisory services with respect to the Collateral; **provided** that any indictment arising from practices that have become the subject of contemporaneous actions against multiple investment advisers shall not constitute a Termination Event for purposes of this clause (d):
  - (A) unless such indictment otherwise meets the requirements of this clause (d), and
  - (B) until more than 120 days have expired since the commencement of such indictment during which period the Collateral Manager has failed to cure such indictment; for purposes this clause (B), an indictment shall be deemed to be cured if (1) the Collateral Manager enters into an agreement of settlement with any authority that has commenced an indictment, which agreement is entered into without prejudice to the Collateral Manager or without admission of fault or wrongdoing by the Collateral Manager or (2) the Collateral Manager removes direct responsibility for the administration of the Collateral from each employee of the Collateral Manager that is the subject of the applicable indictment;
- (e) an Event of Default occurs under the Indenture (other than an Event of Default described in paragraphs (c), (d), (e), (f), (g) and (h) of Section 5.1 of the Indenture) as a result of the breach by the Collateral Manager of any provision of this Agreement or any section of the Indenture applicable to it;
- (f) either of the Co-Issuers or the pool of Collateral becomes an investment company required to be registered under the Investment Company Act resulting from actions taken or recommended by the Collateral Manager and such requirement has not been eliminated after a period of 45 days; or
- (g) the Collateral Manager consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or

transferee Person fails to assume all the obligations of the Collateral Manager under this Agreement by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement.

## **TERMINATION**

11. (a) **Automatic Termination.** This Agreement will automatically terminate upon the earliest to occur of:
- (i) the winding up and liquidation of the Issuer; and
  - (ii) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation as provided in the Indenture, the Preference Share Agency Agreement and the Issuer Charter.
- (b) **Resignation by the Collateral Manager.** Notwithstanding any other provision hereof to the contrary, the Collateral Manager may resign, upon 90 days' written notice to the Issuer, the Trustee and each Hedge Counterparty; **provided** that (i) no such termination or resignation shall be effective until such time as specified in Section 11(e) of this Agreement and (ii) the Collateral Manager may resign with immediate effect if, due to a change in any applicable law or regulation, the performance by the Collateral Manager of its duties under this Agreement or the Indenture would violate such law or regulation.
- (c) **Removal of Collateral Manager Without Cause.** So long as any Class A Notes or Class B Notes are Outstanding, the Collateral Manager may be removed by the Issuer at the direction of Holders of at least 66-2/3% in Aggregate Outstanding Amount of the Controlling Class of Notes (excluding any Notes or Combination Securities held by the Collateral Manager or any of its Affiliates) if the Class A/B Overcollateralization Test is less than 100% as of the immediately preceding Determination Date, upon not less than 45 days' prior written notice to the Collateral Manager.
- (d) **Termination for Cause.** This Agreement may be terminated upon 15 Business Days' prior written notice by the Issuer at the direction, given at any time when a Termination Event has occurred and is continuing, of (i) Holders of at least 66 2/3% in Aggregate Outstanding Amount of the Controlling Class of Notes (excluding any Notes held by the Collateral Manager or any of its Affiliates) and (ii) a Special-Majority-in-Interest of Preference Shareholders (excluding any Preference Shares held by the Collateral Manager or any of its Affiliates).
- (e) **Termination or Resignation not Effective until Replacement Manager Appointed.** No termination of this Agreement, and no resignation or removal of the Collateral Manager under this Agreement, will be effective unless (i) a successor Collateral Manager (the **Replacement Manager**) has agreed in writing to assume all of the Collateral Manager's duties and obligations hereunder and (ii) the Replacement Manager is not objected to by Holders of at least a Majority of

the Controlling Class of Notes or a Majority-in-Interest of Preference Shareholders (excluding any Notes or Preference Shares held by the Collateral Manager or any of its Affiliates) within 30 days after notice (as provided in Section 14.3 of the Indenture). In addition, no removal or resignation of the Collateral Manager while any Notes are Outstanding will be effective until the appointment by the Issuer of a Replacement Manager (i) that is an established institution that is legally qualified and has the capacity to act as Collateral Manager under this Agreement or any replacement of this Agreement, as successor to the Collateral Manager hereunder or thereunder and to assume all of the responsibilities, duties and obligations of the Collateral Manager hereunder and under the applicable terms of the Indenture; (ii) the appointment of which, and its performance of the duties specified in this Agreement, will not cause the Issuer or the Co-Issuer or the pool of Collateral to become subject to income or withholding tax that would not have been imposed but for such appointment, (iii) the appointment of which, and its performance of the duties specified in this Agreement, will not cause the Issuer or the Co-Issuer or the pool of Collateral to become required to register under the provisions of the Investment Company Act, and (iv) with respect to the appointment of which the Rating Condition has been satisfied. No Replacement Manager may be proposed unless such Replacement Manager is prepared and able to assume the duties of the Collateral Manager within 60 days after the date of notice of termination or resignation, and the Collateral Manager will not be released from its obligations under this Agreement until such Replacement Manager has assumed the duties of Collateral Manager. The Issuer, the Trustee, the retiring Collateral Manager and the Replacement Manager shall take such action consistent with this Agreement and the terms of the Indenture as shall be necessary to effect any such succession. If the Collateral Manager shall resign and a Replacement Manager shall not have assumed all of the Collateral Manager's duties and obligations within 180 days after such resignation, then the resigning Collateral Manager may petition any court of competent jurisdiction for the appointment of a Replacement Manager, which appointment shall not require the consent of, nor be subject to the approval of, the Issuer or any Holder.

- (f) **Action Upon Termination.** Upon the effective date of termination of this Agreement, the Collateral Manager shall as soon as practicable:
- (i) deliver to the Issuer all property and documents of the Trustee or the Issuer or otherwise relating to the Collateral then in the custody of the Collateral Manager; and
  - (ii) deliver to the Trustee an accounting with respect to the books and records delivered to the Trustee or the Replacement Manager appointed pursuant to Section 11(e).
- (g) **Cooperation in Proceedings.** The Collateral Manager agrees that, notwithstanding any termination, it shall reasonably cooperate in any Proceeding arising in connection with this Agreement, the Indenture or any of the Collateral

(excluding any such Proceeding in which claims are asserted against the Collateral Manager or any Affiliate of the Collateral Manager) so long as the Collateral Manager shall have been offered reasonable security, indemnity or other provision against the cost, expenses and liabilities (including reasonable fees and expenses of any counsel, accountants or other professionals) that might be incurred in connection therewith.

- (h) **Remedies.** In the event of removal of the Collateral Manager pursuant to this Agreement by the Issuer or, to the extent so provided in the Indenture, by the Trustee, the Issuer shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Issuer or, to the extent so provided in the Indenture, the Trustee may by notice in writing to the Collateral Manager as provided under this Agreement terminate all the rights and obligations of the Collateral Manager under this Agreement (except those that survive termination pursuant to Section 11(i)).
- (i) **Effect of Termination.** If this Agreement is terminated pursuant to this Section 11, notwithstanding such termination, the Collateral Manager shall remain liable (subject to Section 5) for its acts or omissions hereunder arising prior to termination and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable attorneys' fees) in respect of or arising out of a breach of the representations and warranties made by the Collateral Manager in Sections 8(a) and 8(b) or from any failure of the Collateral Manager to comply with the provisions of Section 11(f).

## ASSIGNMENTS

- 12. (a) **Assignment by the Collateral Manager.** Except as provided in Section 2(p) and Section 12(c), no rights or obligations under this Agreement (or any interest herein) may be assigned or delegated by the Collateral Manager (by operation of law or otherwise) unless such assignment or delegation (i) is consented to in writing by the Issuer, (ii) will not cause the Issuer, the Co-Issuer or the pool of Collateral to become subject to income or withholding tax that would not have been imposed but for such assignment and (iii) satisfies the Rating Condition; **provided** that a Majority of the Controlling Class or a Majority-in-Interest of Preference Shareholders does not object to such assignment or delegation (except that the Collateral Manager may assign all of its rights and responsibilities hereunder to an Affiliate without the consent of the Issuer, the Trustee or any Noteholder). In addition, no rights or obligations under this Agreement (or any interest herein) may be assigned or delegated by the Collateral Manager (by operation of law or otherwise) unless such assignment or delegation does not constitute an "assignment" as defined in Section 202(a)(1) of the Advisers Act and Rule 202(a)(1) thereunder. Any purported assignment or delegation that is not in compliance with this Section will be void. Any assignment or delegation consented to as provided above shall bind the transferee in the same manner as the Collateral Manager is bound. In addition, in the case of any assignment and delegation of all rights and obligations hereunder, the

transferee shall execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such transferee as Collateral Manager. Upon the execution and delivery of such a counterpart by the transferee, the Collateral Manager shall be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under Section 5 prior to such assignment or delegation and except with respect to its obligations under Section 12(d).

- (b) **Assignment by the Issuer.** No rights or obligations under this Agreement (or any interest herein) may be assigned or delegated by the Issuer (by operation of law or otherwise) without the prior written consent of the Collateral Manager and the Trustee, except in the case of assignment and delegation by the Issuer to (i) an entity which is a successor to the Issuer permitted under the Indenture, in which case such successor organization shall be bound hereunder and by the terms of said assignment and delegation in the same manner as the Issuer is bound thereunder or (ii) the Trustee as contemplated by the Indenture (and, in connection therewith, the Collateral Manager agrees to be bound by Article 15 of the Indenture). In the event of any permitted assignment by the Issuer, the Issuer shall use its best efforts to cause its successor to execute and deliver to the Collateral Manager such documents as the Collateral Manager shall consider reasonably necessary to effect fully such assignment. Any purported assignment that is not in compliance with this Section 12 will be void. The Collateral Manager hereby consents to the matters set forth in Article 15 of the Indenture.
- (c) **Successor to Collateral Manager's Business.** The Collateral Manager may assign all of its rights and obligations under this Agreement to an Affiliate without the consent of the Issuer, the Trustee, any Noteholder or any Combination Securityholder; **provided** that the Collateral Manager shall, so long as the delivery of such notice will not result in the breach of any confidentiality undertaking of the Collateral Manager and is permitted by applicable laws and regulations, give notice of any such assignment to Standard & Poor's within 30 days of the effective date of such assignment. Any corporation, partnership or limited liability company into which the Collateral Manager may be merged or converted or with which it may be consolidated, or any corporation, partnership or limited liability company resulting from any merger, conversion or consolidation to which the Collateral Manager shall be a party, or any corporation, partnership or limited liability company succeeding to all or substantially all of the collateral management business of the Collateral Manager, shall be the successor to the Collateral Manager without any further action by the Collateral Manager, the Issuer, the Trustee, the Noteholders, the Combination Securityholders, the Preference Shareholders or any other Person.
- (d) **Survival of Certain Obligations.** Upon the effectiveness of any assignment or delegation pursuant to Section 12(a) or Section 12(c), the Collateral Manager shall remain liable (but subject to Section 5) for its acts or omissions hereunder arising prior to such assignment or delegation and for any expenses, losses, damages, liabilities, demands, charges and claims (including reasonable



attorneys' fees) in respect of or arising out of a breach prior to such assignment or delegation of the representations and warranties made by the Collateral Manager in Sections 8(a) and 8(b).

- (e) **Consent to Posting of Documents on Repository.** The Collateral Manager hereby consents to (a) the posting of the Indenture and any Hedge Agreement and the Monthly Reports and Noteholder Report to be delivered pursuant to the Indenture and any amendments or other modifications to any such documents and agreements on the Repository for use in the manner provided in the Repository; and (b) the display of its name on the Repository in connection therewith.

#### MISCELLANEOUS

- 13. (a) **Benefit of the Agreement.** The Collateral Manager agrees that its obligations hereunder shall be enforceable by the Issuer, or, where applicable, by the Trustee on behalf of the Noteholders, or the requisite percentage of Noteholders as provided herein or in the Indenture.
- (b) **Binding Nature of Agreement; Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein.
- (c) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (d) **Conflict with Indenture.** Subject to the penultimate sentence of Section 2(k), in the event that this Agreement requires any action to be taken with respect to any matter and the Indenture requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Indenture in respect thereof shall control.
- (e) **Priority of Payments.** The Collateral Manager agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Indenture shall be due and payable only in accordance with the priorities set forth in the Indenture.
- (f) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless (i) such amendment, modification or waiver is made in writing in accordance with Section 14.4 of the Indenture (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of electronic messages on an electronic messaging system; and (ii) following any such amendment, modification or waiver, this Agreement satisfies the Rating Condition.

- (g) **Survival of Representations, Warranties and Indemnities.** Each representation and warranty made or deemed to be made herein or pursuant hereto, and each indemnity provided for hereby, shall survive indefinitely.
- (h) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (i) **Counterparts.** This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
- (j) **Severability.** In case any provision in this Agreement shall be invalid, illegal or unenforceable as written, such provision shall be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; **provided** that if there is no basis for such a construction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision substantially impairs the basis of the bargain for one of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby.
- (k) **Written Disclosure Statement.** The Issuer acknowledges receipt of Part 2A and 2B of the Collateral Manager's Form ADV, as required by Rule 204-3 under the Advisers Act, on or before the date of execution of this Agreement.
- (l) **Third Party Beneficiary.** The Collateral Manager agrees that the Initial Purchaser is the intended third party beneficiary of Section 9(b)(xi).
- (m) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (n) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.
- (o) **Limited Recourse.** The obligations of the Issuer hereunder are limited recourse obligations of the Issuer, payable solely from the Collateral and following the exhaustion of the Collateral, any claims of the Collateral Manager hereunder shall be extinguished.

## **COSTS AND EXPENSES**

14. The costs and expenses (including the fees and disbursements of counsel and accountants) incurred by each party in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incident thereto, shall be borne by the Issuer. Subject to Section 5(c), a party that defaults in the performance of any of its obligations hereunder will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and stamp or other documentary taxes, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement, including, but not limited to, costs of collection.

## **NOTICES**

15. (a) **Effectiveness.** Unless expressly provided otherwise herein, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (including by telecopy) and shall be deemed to have been duly given in the case of a telecopy notice, when received in legible form or when personally delivered, or in the case of a mailed notice, upon receipt, transmitted or addressed as set forth in Schedule I to this Agreement.
- (b) **Change of Details.** Any party may alter the address or telecopy number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 15 for the giving of notice.

## **GOVERNING LAW AND JURISDICTION**

16. (a) **Governing Law.** This Agreement shall be construed in accordance with, and this Agreement and all matters arising out of or relating in any way whatsoever to this Agreement (whether in contract, tort or otherwise) shall be governed by, the law of the State of New York.
- (b) **Jurisdiction.** With respect to any suit in equity, action at law or other proceeding relating to this Agreement or any matter between the parties arising under or in connection with this Agreement (*Proceedings*), each party irrevocably (i) submits to the non-exclusive jurisdiction of the Supreme Court of the State of New York sitting in the Borough of Manhattan and the United States District Court for the Southern District of New York, and any appellate court from any thereof and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party. Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction, nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

- (c) **Service of Process.** Each party irrevocably appoints the process agent (if any) specified under its name in Schedule I to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's process agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 15 (excluding by telecopy). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.
- (d) **Waiver of Jury Trial Right. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING.** Each party hereby (i) certifies that no representative, agent or attorney of the other has represented, expressly or otherwise, that the other would not, in the event of a Proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this paragraph.

#### **RESTATEMENT EFFECTIVE DATE**

17. The Issuer and the Collateral Manager acknowledge and agree that, from and after the Restatement Effective Date:
- (a) Dock Street shall accept and assume all of the rights, protections, indemnities, interests and obligations of the Collateral Manager under this Agreement and the Operative Documents; provided, that in no event shall Dock Street, its Affiliates or any of their respective directors, officers, agents, stockholders, members, partners or employees be liable for any of the Predecessor Collateral Manager's or the Original Collateral Manager's obligations and liabilities under or in connection with the First Amended and Restated Collateral Management Agreement, the Original Collateral Management Agreement or the Operative Documents arising during or relating to the period prior to the Restatement Effective Date.
- (b) Dock Street shall be entitled to all Collateral Management Fees and Incentive Collateral Management Fees calculated as provided in the Indenture, prorated as of the Restatement Effective Date for any partial periods between Distribution Dates.
- (c) All references in the Operative Documents to (i) the "Collateral Manager" or any term of similar import and all references in any other documents necessary or incidental to carrying out the terms of the Operative Documents shall refer to Dock Street Capital Management LLC as successor Collateral Manager, and (ii) the "Management Agreement" or any term of similar import and all references in any other documents necessary or incidental to carrying out the terms of the Operative Documents shall refer to this Agreement.

## DEFINITIONS

18. As used in this Agreement:

*Actions* has the meaning specified in Section 5(d).

*Advisers Act* means the United States Investment Advisers Act of 1940, as amended.

*Affiliate* means, in relation to any specified Person, any other Person controlled, directly or indirectly, by the specified Person, any other Person that controls, directly or indirectly, the specified Person or any other Person directly or indirectly under common control with the specified Person; **provided** that no Person shall be an Affiliate of the Issuer solely by reason of being an Affiliate of the Administrator in its capacity as share trustee with respect to the ordinary shares of the Issuer. For this purpose, *control* of any Person means ownership of a majority of the voting power of the Person.

*Agreement* has the meaning specified in the preamble hereto.

*Business Day* means a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any payment, in the place where the account to which the payment is to be made is located and, if different, in the principal financial center, if any, of the currency of payment and (b) in relation to any notice or other communication, in the city specified in the address for notice provided by the recipient.

*Collateral Manager Breaches* has the meaning specified in Section 5(c).

*Consent* means a consent, approval, action, authorization, exemption, notice, filing, registration or exchange control consent.

*Expenses* has the meaning specified in Section 5(d).

*First Amended and Restated Collateral Management Agreement* has the meaning specified in the preamble hereto.

*Governing Instruments* means the memorandum, articles or certificate of incorporation or association and by-laws, if applicable, in the case of a corporation, or the partnership agreement, in the case of a partnership, or the certificate of formation and limited liability company agreement, in the case of a limited liability company.

*law* means any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and *lawful* and *unlawful* will be construed accordingly.

*Liabilities* has the meaning specified in Section 5(c).

*Offering Circular* has the meaning specified in Section 5(d).

*Operative Documents* means this Agreement, the Indenture, the Preference Share Agency

Agreement, the Collateral Administration Agreement and the Securities and any other document or instrument entered into in connection with the foregoing.

***Original Collateral Management Agreement*** has the meaning specified in the preamble hereto.

***Original Collateral Manager*** has the meaning specified in the preamble hereto.

***Potential Termination Event*** means any event which, with the giving of notice or the lapse of time or both, would constitute a Termination Event.

***Predecessor Collateral Manager*** has the meaning specified in the preamble hereto.

***Proceedings*** has the meaning specified in Section 16(b). ***Replacement Manager*** has the meaning specified in Section 11(e).

***Restatement Effective Date*** has the meaning specified in the preamble hereto.

***Securities*** has the meaning specified in the Preliminary Statement hereto.

***Tax Return*** has the meaning specified in Section 9(b)(x).

***Termination Event*** has the meaning specified in Section 10.

IN WITNESS WHEREOF the parties have executed this document with effect from the

Executed as a Deed by  
CRYSTAL COVE CDO, LTD.

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

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

DOCK STREET CAPITAL MANAGEMENT LLC

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

*[Signature Page to Second Amended and Restated Collateral Management Agreement]*

## SCHEDULE I

### Notice Information:

Crystal Cove CDO, Ltd.  
c/o Fund Fiduciary Partners Limited  
2<sup>nd</sup> Floor, Harbour Centre  
42 North Church Street  
George Town, Grand Cayman  
Cayman Islands  
Phone Number: 345/947-5845  
Attention: The Directors; andrew.childe@fundfiduciaries.com

Dock Street Capital Management LLC  
575 –B Riverside Avenue  
Westport, CT 06880  
Phone Number: (212) 457-8258  
Fax Number: (212) 457-8269  
Attention: David Crowle

Wells Fargo Bank, National Association, as Trustee  
9062 Old Annapolis Road  
Columbia, Maryland 21045  
Phone Number: 410-884-2000  
Fax Number: 410-715-4513  
Attention: CDO Trust Services-Crystal Cove CDO, Ltd.

If to the Noteholders, in accordance with Section 14.3 of the Indenture, at their respective addresses set forth on the Note Register.

### Process Agent:

CRYSTAL COVE CDO, LTD.

CT Corporation System  
111 8th Avenue  
New York, New York 10019

DOCK STREET CAPITAL MANAGEMENT LLC

None.