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**OPINION OF THE COURT OF APPEALS OF
THE STATE OF OKLAHOMA
(AUGUST 12, 2022)**

IN THE COURT OF CIVIL APPEALS OF THE
STATE OF OKLAHOMA
DIVISION III

GAREY WEBB,

Plaintiff/Appellant,

v.

U.S. BANK NATIONAL ASSOCIATION AS
TRUSTEE FOR CRMSI REMIC SERIES 2006-03
REMIC PASS-THROUGH CERTIFICATES,
SERIES 2006-03,

Defendant/Appellee.

Case No. 119,508

Appeal from the District Court
of Wagoner County, Oklahoma

Before: Honorable Dennis N. SHOOK, Trial Judge,
MITCHELL, V.C.J., and SWINTON, J..

AFFIRMED

OPINION BY THOMAS E. PRINCE,
PRESIDING JUDGE:

¶1 Appellant Garey Webb challenges the trial court's denial of his Petition to Vacate a foreclosure

judgment. In April, 2018, Appellee, U.S. Bank National Association as Trustee for CRMSI REMIC Series 2006-03 Pass-Through Certificates Series 2006-03, secured a judgment of foreclose on certain residential property owned by Webb. Webb, alleging that the judgment had been obtained through fraud, filed a verified Petition seeking to have the foreclosure vacated. Following an evidentiary hearing, the trial court denied Webb's Petition. The issues center around re-litigation of claims previously litigated in the underlying foreclosure action. Thus, the record compels that this Court affirm the decision of the trial court.

BACKGROUND

¶2 In September, 2006, Mikla Ennis and Nola Duncan ("Borrowers") purchased residential property in Broken Arrow, Oklahoma. To finance the property, Borrowers executed a promissory mortgage note with Citicorp Trust for \$190,497.63, at 7.57 percent annual interest.

¶3 In 2008, Borrowers responded to a roadside advertisement offering assistance with mortgage payments. When Borrowers called the number on the advertisement, they reached the Appellant, Garey Webb. Webb advised Borrowers that he would be able to "help with the house." On May 21, 2008, Borrowers signed a quitclaim deed, conveying the property to Webb. Borrowers moved out of the home in 2009 and Webb moved in (although the record is unclear when Webb took occupancy of the property). The note and the associated monthly mortgage were never officially assumed by Webb. Borrowers, still responsible for the mortgage on the property, did not make any additional mortgage payments and defaulted on the note. No

payments have been made on the note since March, 2010.

¶4 On September 18, 2008, CitiMortgage, successor by merger with CitiFinancial Mortgage Company, brought an action against Borrowers, as well as any occupants of the property, seeking to foreclose the mortgage on the subject property.¹ Borrowers did not respond to the lawsuit and the trial court granted judgment by default. An appeal followed in which the issue was whether the mortgagor had standing to pursue the foreclosure without proof presented in the trial court that the mortgagor was the holder of the note when it filed the foreclosure petition. A separate division of this Court reversed the default judgment and the denial of Borrowers' Motion to Vacate.² The underlying foreclosure action was ultimately dismissed without prejudice.

¶5 A second foreclosure action was filed by Appellee, U.S. Bank National Association as Trustee for CRMSI REMIC Series 2006-03 Pass-Through Certificates Series 2006-03 ("U.S. Bank"), in July, 2015.³ Webb responded in the second foreclosure action by alleging that U.S. Bank did not have standing to foreclose and challenging the validity of the documentation regarding the transfer of the note from the prior holder. The trial court granted U.S. Bank's motion for

¹ The first foreclosure action was filed in Wagoner County District Court on or about September 18, 2008, and assigned Case No. CJ-08-1165.

² The appellate case No. was 109,821.

³ The second foreclosure action was filed in Wagoner County District Court on or about July 24, 2015, and assigned Case No. CJ-15-250.

summary judgment on January 29, 2018. Webb filed a Motion to Vacate Judgment on February 28, 2018, which was denied by the trial court on April 25, 2018. No appeal was initiated in the second foreclosure action.

¶6 Five days later, on April 30, 2018, Webb filed a Verified Petition to Vacate and Set Aside a January 29, 2018 Journal Entry of Judgment against U.S. Bank.⁴ Following discovery, including the depositions of Mikla Ennis and Webb, in December, 2019, U.S. Bank moved for sanctions against Webb for failure to comply with discovery. At hearing on August 26, 2020, the trial court reserved ruling on the sanctions requested by U.S. Bank and set the matter for an evidentiary hearing on September 8, 2020. Webb's counsel contacted Bank's counsel on August 31, 2020, to request a continuance of the September 8th hearing, which was rejected. Webb then filed a Motion for Pre-trial Order and for Continuance (on September 3, 2020). The trial court denied Webb's Motion for Pre-Trial Order and for Continuance, and conducted an evidentiary hearing on the Verified Petition on September 8, 2020. The entry by the court clerk on the docket for that date shows that the trial court requested additional submissions by the Parties within ten days. A Minute Order was entered on October 28, 2020, which states, in part, that the trial court found that Webb had

⁴ The full title of the Verified Petition was "Garey Webb's Verified Petition to Vacate and Set Aside a January 29, 2018 Journal Entry of Judgment and for Sanctions for Fraud on the Court, for Malicious Use of Process, Fraud and Deceit, and the Intentional Infliction of Emotional Distress." It was filed in Wagoner County District Court on or about April 30, 2018, and assigned Case No. CJ-18-156.

failed to prove by clear and convincing evidence that U.S. Bank engaged in fraudulent conduct warranting vacation of the foreclosure judgment and denied Webb's Verified Petition. A Journal Entry, reflecting the trial court ruling of October 28, 2020, was entered on March 15, 2021. This timely appeal was filed by Webb.

STANDARD OF REVIEW

¶7 The standard of review of a trial court's order denying a petition to vacate is whether the lower court abused its discretion. *Patel v. OMH Med. Ctr., Inc.*, 1999 OK 33, ¶20, 987 P.2d 1185, 1194. An abuse of discretion occurs when a court bases its decision on an erroneous conclusion of law, or where there is no rational basis in evidence for the ruling. *Fent v. Oklahoma Natural Gas Co.*, 2001 OK 35, ¶12, 27 P.3d 477, 481. Review for abuse of discretion includes an appellate review of both issues of law and fact. *Boston v. Buchanan*, 2003 OK 114, ¶16, 89 P.3d 1034, 1040.

ANALYSIS

¶8 Although Webb's Petition in Error presents twelve issues to be raised on appeal, his Br.-in-chief only argues three propositions:⁵ (a) whether the trial court abused its discretion in finding that Webb did not present clear and convincing evidence of fraud; (b) whether the trial court abused its discretion in denying Webb's Verified Petition to Vacate when

⁵ See *In re Adoption of M.J.S.*, 2007 OK 44, 162 P.3d 211, 217 (“[a]ssignments of error not argued or supported in the brief with citations of authority are treated as waived.”).

only a photocopy of the original note was admitted into evidence during the evidentiary hearing; and (c) whether the trial court abused its discretion in denying Webb's motion for a pre-trial conference order and for continuance of the September 8, 2020, evidentiary hearing. We address each issue in turn.

¶9 Webb first argues that Bank was not actually in possession of the claimed interest of the note, and thus had no standing to bring a foreclosure action. After a review of the record, we disagree. To commence a foreclosure action in Oklahoma, a plaintiff must demonstrate it has a right to enforce the note. *Gill v. First Nat. Bank & Trust Co. of Oklahoma City*, 1945 OK 181, 159 P.2d 717. Absent a showing of ownership, the party seeking foreclosure lacks standing. *Id.* A foreclosing entity has the burden of proving it is a "person entitled to enforce an instrument" by showing it was "(i) the holder of the instrument, (ii) a non-holder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 12A-3-309 or subsection (d) of Section 12A-3-418 of this title." *HSBC Bank USA, Nat. Ass'n v. Lyon*, 2012 OK 10, ¶5, 276 P.3d 1002, 1004-05. See 12A 0.5. § 3-301.

¶10 For a party to demonstrate it is the 'holder' of the note, "[it] must establish . . . possession of the note and that the note is either 'payable to bearer' (a blank indorsement) or to an identified person that is the person in possession (a special indorsement). Therefore, both possession of the note and an indorsement on the note or attached allonge are required in order for one to be a 'holder' of the note." *HSBC Bank*

USA, *Nat. Ass'n v. Lyon*, 2012 OK 10, 6, 276 P.3d 1002, 1005.

¶11 Here, U.S. Bank attached a copy of the note, endorsed in blank, to the foreclosure petition (in the second foreclosure proceeding). Moreover, the original “wet-ink” note (via its counsel) was made available for inspection to the trial court during the hearing on September 8, 2020. The blank endorsement of the note was executed by Paul DeGruccio, an employee of CitiTrust Bank. The record demonstrates through testimony by a CitiMortgage corporate representative that DeGruccio was authorized to execute an indorsement on behalf of CitiTrust Bank.⁶ The mere fact, as Webb argues, that the note may have been endorsed after Borrowers defaulted, but before U.S. Bank filed its second foreclosure petition is not evidence of fraud. Rather, attaching a copy of a facially enforceable note to a foreclosure petition establishes a *prima facie* case of standing. *Deutsche Bank Nat. Tr. Co. v. Roesler*, 2015 OK CIV APP 36, ¶ 15, 348 P.3d 707, 712. Further, Oklahoma jurisprudence clearly establishes that the transfer of a note creates a right to enforce an associated mortgage. *Id.*

¶12 The record demonstrates that the trial court did not abuse its discretion in finding that Webb failed to present any evidence of fraud, or any evidence that refutes U.S. Bank’s standing to bring the foreclosure action. Additionally, this issue was litigated in the

⁶ U.S. Bank National Association is the master servicer of the mortgage of the subject property. CitiMortgage is the sub-servicer of the mortgage. Prior to the latest foreclosure litigation, U.S. Bank National Association granted power of attorney to CitiMortgage, enabling it to bring legal actions, including foreclosure actions, on behalf of U.S. Bank.

second foreclosure action and resolved against Webb. Thus, because U.S. Bank was the holder of the endorsed note at the time the second foreclosure action was filed, it possessed standing to bring the foreclosure action.

¶13 Webb also argues that the trial court erred by denying his petition to vacate because Bank relied on a photocopy of the note, rather than admitting the original copy of the note into evidence.⁷ We disagree. A foreclosing party may, at the time of filing a foreclosure petition, attach a photocopy of a suitably endorsed note demonstrating possession and a right to enforce. *Deutsche Bank Nat. Tr. Co. v. Roesler*, 2015 OK CIV APP 36, ¶12, 348 P.3d 707, 712; *see also Wells Fargo Bank, N.A. v. Taylor*, 2018 OK CIV APP 24, ¶7, 417 P.3d 1212, 1215. Further, U.S. Bank established during the evidentiary hearing on September 8, 2020, that it was and remained in possession of the original, “wet-ink” note (via its counsel) and offered to present the original note to the trial court for inspection. Thus, we find that the use of a photocopy of the note to establish standing did not result in any error or irregularity, and find the trial court did not err by permitting U.S. Bank to admit a copy of the note into evidence on September 8, 2020.

⁷ Webb attempts to argue that 12 O.S. § 2056(E), supports his position. Section 2056, however, pertains to motions for summary judgment. Because this is an appeal from a final order of the trial court, and not from the trial court’s granting of summary judgment, § 2056 is inapplicable. Webb’s reliance on *MidFirst Bank v. Wilson*, 2013 OK CIV APP 15, 295 P.3d 1142 is also unpersuasive, as that case also was an appeal from summary judgment addressing the standard there for authentication of documents.

¶14 Finally, Webb argues that the trial court abused its discretion in denying his “Motion for Pretrial Order and to Continue September 8, 2020 Trial”. The granting of a continuance is within the sound discretion of the trial court and refusal to grant a continuance is not reversible error unless an abuse of discretion is shown. *Bookout v. Great Plains Reg’l Med. Ctr.*, 1997 OK 38, 939 P.2d 1131, 1134. In this case, the trial court set the September 8, 2020, hearing on Webb’s Petition to Vacate on June 29, 2020, allowing Webb more than two months to prepare for the hearing. The transcript of the June 29, 2020, hearing demonstrates that the trial judge announced, at that time, that he intended to conduct an evidentiary hearing (*i.e.*, a bench trial) to determine the Petition to Vacate.⁸ When the trial judge initially announced the trial date as August 10, 2020, Webb’s counsel stated that “I think September would be better”.⁹ Then, when the trial judge offered a setting on September 8, 2020, Webb’s counsel stated that “[O]ther of those dates is fine with me . . .” and agreed to conduct the hearing remotely.¹⁰ Additionally, at no time during this hearing did Webb’s counsel object to the trial judge’s stated intent to determine the Petition to Vacate via a bench trial. The authority cited by Webb in his September 2, 2020, “Motion for Pretrial Order and to Continue September 8, 2020 Trial” was Local District Court Rule 9.1., Rules of Cherokee and Wagoner Counties, that states, in part, that: “[i]n any case where any party believes that a formal pre-trial hearing would be beneficial,

⁸ Tr. June 29, 2020, p. 15.

⁹ Tr. June 29, 2020, p. 16.

¹⁰ Tr. June 29, 2020, p. 16.

the assigned judge will schedule same”. We, however, reject Webb’s complaint about the absence of a pre-trial conference, notwithstanding Local Court Rule 9.1, in light of his unreasonable delay from June 29, 2020 to September 2, 2020, to request a scheduling conference (*i.e.*, submitting the request a mere 6 days before the scheduled hearing), and also grounded on the fact that he did not challenge the trial setting (without a pre-trial conference) during the hearing on June 29, 2020.¹¹ Moreover, at the conclusion of the evidentiary hearing, the trial court kept the evidentiary record open for an additional ten days for the submission of some identified evidentiary materials and for additional briefing. Accordingly, we find the trial court did not abuse its discretion in denying Webb’s September 2, 2020, motion.

CONCLUSION

¶15 Because we find the trial court exercised sound discretion in denying Webb’s Petition to Vacate, we affirm the Journal Entry of Judgment entered herein on March 15, 2021.

MITCHELL, V.C.J., and SWINTON, J., concur.

¹¹ See *Flandermeyer v. Bonner*, 2006 OK 87, ¶15, 152 P.3d 195, 200-01 (“[a]lthough the trial judge court, in the exercise of sound discretion controls the disposition of the cause on its docket, this discretion is not unfettered . . . and we will not hesitate to provide remediation whenever docket management offends fundamental fairness, due process, and the right to a speedy and certain remedy.”).

**ORDER OF THE SUPREME COURT OF
OKLAHOMA ISSUING MANDATE
(SEPTEMBER 7, 2022)**

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

GAREY WEBB,

Plaintiff/Appellant,

v.

U.S. BANK NATIONAL ASSOCIATION AS
TRUSTEE FOR CRMSI REMIC SERIES 2006-03
REMIC PASS-THROUGH CERTIFICATES,
SERIES 2006-03,

Defendant/Appellee.

Supreme Court Case Number: 119508

Lower Court Case Number: CJ-2018-156

Lower Court: Wagoner County District Court

MANDATE

On the 7th day of September, 2022, the Honorable Chief Justice Richard Darby of the Oklahoma Supreme Court ordered the Clerk of the Supreme Court to issue mandate, pursuant to the rules of the Oklahoma Supreme Court, in the above-styled-appeal from the Wagoner County District Court.

App.12a

On appeal, the following judgment was entered on August 12nd (sic), 2022:

AFFIRMED

Costs of \$0.00 are taxed and allowed pursuant to Section 978 of Title 12 of the Oklahoma Statutes and the rules of the Oklahoma Supreme Court.

Therefore, the Wagoner County District Court is directed to enter of record the above judgment and to issue process or take further action as required by the order or opinion issued in this appeal.

JOHN D. HADDEN
Clerk of the Appellate Courts

By LaDonna Johnson
Deputy

**JOURNAL ENTRY OF JUDGMENT
OF THE DISTRICT COURT,
WAGONER COUNTY, OKLAHOMA
(MARCH 15, 2021)**

IN THE DISTRICT COURT OF WAGONER
COUNTY STATE OF OKLAHOMA

GAREY WEBB,

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION AS
TRUSTEE FOR CRMSI REMIC SERIES 2006-03
REMIC PASS-THROUGH CERTIFICATES,
SERIES 2006-03,

Defendant.

Case No. CJ-2018-156

Before: Dennis N. SHOOK, Judge.

This matter came on for the final evidentiary hearing before the Court on the 8th day of September, 2020 (the “Evidentiary Hearing”), on the Petition to Vacate filed by Plaintiff Garey Webb (“Plaintiff”). Plaintiff appeared through counsel, Janet Roloff, and U.S. Bank National Association as Trustee for CRMSI REMIC Series 2006-03 REMI Pass-Through Certificates, Series 2006-03 (the “Bank”) appeared through counsel, Lysbeth L. George and Kelly Kinser. The

Court, upon considering the evidence, and after consideration of the post-trial briefs submitted by counsel for each party, as well as the related exhibits, deposition transcripts, and arguments of record, being duly advised of the premises herein and for the reasons set forth herein, FINDS and ORDERS:

That Plaintiff's Petition to Vacate should be and is hereby denied.

The Court FINDS that Plaintiff failed to prove by clear and convincing evidence that the Bank engaged in fraudulent conduct warranting vacation of the Judgment pursuant to 12 O.S. § 1031(4).

The Court FURTHER FINDS that Plaintiff's Petition to Vacate should be and is hereby denied.

The Court FURTHER FINDS that judgment entered in the Foreclosure case is valid and enforceable and that, following entry of this Journal Entry of Judgment, the subject property may be set for sheriff sale upon application to the Court in the Foreclosure Case.

The Court FURTHER FINDS that the Motion for Sanctions filed by the Bank which requested dismissal of the Petition to Vacate is hereby moot as a consequence of the Court's ruling denying the Petition to Vacate. Therefore, the Bank's Motion to Vacate is hereby denied as moot.

Based upon the foregoing findings and the record submitted herein, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff's Petition to Vacate is denied and judgment is hereby rendered in favor of the Bank.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Defendant may submit an application for an award of attorneys fees and costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Judgment entered in the Foreclosure Case should be and is hereby determined to be valid and enforceable to the full extent of the law and that the Bank is entitled to proceed with sale of the subject property and to present the same for confirmation before this Court in accordance with the Judgment entered in the Foreclosure Case.

IT IS SO ORDERED.

Dated this 15th day of March 2021.

By:

/s/ Hon. Dennis N. Shook
Judge of the District Court

APPROVED AS TO FORM:

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App.16a

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ATTORNEYS FOR GAREY WEBB

**MINUTE ORDER OF THE DISTRICT COURT,
WAGONER COUNTY, OKLAHOMA DENYING
MOTION TO VACATE
(OCTOBER 28, 2020)**

IN THE DISTRICT COURT OF WAGONER
COUNTY STATE OF OKLAHOMA

GAREY WEBB,

Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION AS
TRUSTEE FOR CRMSI REMIC SERIES 2006-03
REMIC PASS-THROUGH CERTIFICATES,
SERIES 2006-03,

Defendant.

Case No. CJ-2018-156

Before: Dennis N. SHOOK, Judge.

On September 16, 2020 there came on for hearing the Plaintiff, Gary Webb's, Motion to Vacate that Journal Entry of Judgment entered in Wagoner County Case No. CJ-2015-250. The Plaintiff appeared in person and with his attorney, Janet D. Roloff, and the Defendant appeared through its attorneys, Lysbeth George and Kelly Kinser. The Court, after hearing testimony of witnesses including the deposition testimony of

the Plaintiff taken on May 16, 2019, FINDS AND ORDERS:

The Plaintiff has failed to prove by clear and convincing evidence that the Defendant engaged in fraudulent conduct warranting vacation of the Judgment pursuant to *12 O.S., Section 1031 (4)*, therefore, Plaintiff's Motion to Vacate is denied. IT IS SO ORDERED.

The Defendant's Motion for Sanctions which requested dismissal of the Plaintiff's Motion to Vacate is now moot as a consequence of the Court's ruling in the preceding paragraph, therefore, Defendant's Motion for Sanctions is denied. IT IS SO ORDERED.

Defendant may submit an Application for an award of attorney fees and costs. IT IS SO ORDERED.

Counsel for the Defendant shall prepare a Journal Entry reflecting the terms and provisions of this Minute Order. IT IS SO ORDERED.

/s/ Dennis N. Shook
Judge of the District Court

**POOLING AND SERVICING AGREEMENT
FOR CITICORP RESIDENTIAL MORTGAGE
SECURITIES, INC. REMIC PASS-THROUGH
CERTIFICATES, SERIES 2006-3,
RELEVANT EXCERPTS
(NOVEMBER 1, 2006)**

Exhibit 4.1

EXECUTION COPY

CITICORP RESIDENTIAL MORTGAGE
SECURITIES, INC., Depositor

CITIMORTGAGE, INC.,
Servicer and Certificate Administrator

U.S. BANK NATIONAL ASSOCIATION, Trustee

and

CITIBANK, N.A.,

Paying Agent, Certificate Registrar
and Authenticating Agent

POOLING AND SERVICING AGREEMENT

Dated as of November 1, 2006

**REMIC PASS-THROUGH CERTIFICATES,
SERIES 2006-3**

THIS POOLING AND SERVICING AGREEMENT (“this Pooling Agreement” or “this Agreement”), dated as of November 1, 2006, among CITICORP RESIDENTIAL MORTGAGE SECURITIES, INC., a Delaware corporation, as depositor (“CRMSI” or the “Depositor”), CITIMORTGAGE, INC., a New York corporation, as servicer (the “Servicer”) and

certificate administrator (the “Certificate Administrator”), U.S. BANK NATIONAL ASSOCIATION, a national banking association, as trustee (the “Trustee”), and CITIBANK, N.A., a national banking association, as paying agent (the “Paying Agent”), certificate registrar (the “Certificate Registrar”) and authenticating agent (the “Authenticating Agent”).

WITNESSETH THAT:

In the regular course of their business, certain affiliates of CRMSI originate and acquire Mortgage loans. CRMSI, the Servicer and the Trustee wish to set forth the terms and conditions pursuant to which CRMSI will sell to the Trust Fund the Mortgage Loans listed on Exhibit B hereto. Certificates will be issued to Holders evidencing ownership interests in such Trust Fund and the Servicer will manage and service such Mortgage Loans. In consideration of the mutual agreements herein contained, CRMSI, the Servicer and the Trustee agree as follows:

ARTICLES I-XI

INCORPORATION BY REFERENCE

Those certain Standard Terms for Pooling and Servicing Agreements dated as of November 1, 2006 (the “Standard Terms”), a copy of which is attached hereto, as amended, superseded and supplemented hereby, are incorporated by reference herein as if set forth in full. Such Standard Terms, as so amended, superseded and supplemented, are hereby affirmed by, and shall constitute a part of this Agreement between, the parties hereto. For purposes of this Pooling Agreement and the Certificates *executed* and delivered hereunder, the terms “this Agreement,” “here-

in,” “hereof” and words of similar import shall refer to this Pooling Agreement including the Standard Terms as incorporated herein with such modifications or amendments for the related series of Certificates as may be set forth in this Pooling Agreement.

[. . .]

ARTICLE I

DEFINITIONS

[NOTE: RELEVANT TERMS ONLY]

Section 1.01 Definitions.

Whenever used in this Agreement, the following words and phrases, unless otherwise specified in Article XII or unless the context otherwise requires, shall have the following meanings, and the definitions of such terms are applicable to the singular as well as the plural form of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Defined terms used in this Standard Terms Document and not defined herein have the respective meanings ascribed thereto in Article XII.

CODE: The Internal Revenue Code of 1986, as it may be amended from time to time, any successor statutes thereto, and applicable U.S. Department of the Treasury temporary or final regulations issued pursuant thereto.

COMMISSION: The Securities and Exchange Commission.

CRMSI: Citicorp Residential Mortgage Securities, Inc., a corporation organized and existing under the laws of the State of Delaware, or its successors in interest.

CUSTODIAN: The person identified in Article XII or its successors in interest named pursuant to the Mortgage File Custodial Agreement. The Custodian may be the Trustee, any Affiliate of the Trustee or the Depositor or an independent entity.

DEPOSITOR: CRMSI, or its successors in interest.

HOLDER: Has the same meaning as "Certificateholder".

ISSUE DATE: The date on which Certificates are first executed, authenticated and delivered, as specified in Article XII. For the Avoidance of doubt, unless otherwise specified in Article XII, the Issue Date shall be the Closing Date as defined in Section 12.02.

LOST NOTE AFFIDAVIT: For any Mortgage Loan for which the original Mortgage Note has been permanently lost, misplaced or destroyed and has not been replaced, an affidavit of the Originator or an Affiliate of the Originator certifying that the original Mortgage Note has been lost, misplaced or destroyed (attaching a copy of such Mortgage Note) and indemnifying the Trust Fund against any loss, cost or liability resulting from the failure to deliver such original Mortgage Note.

MERS: Mortgage Electronic Registration Systems, Inc. and its successors in interest.

MORTGAGE: For any Mortgage Loan, the mortgage, deed of trust or other security instrument creating a first lien on and an interest in real property securing a Mortgage Note.

MORTGAGE DOCUMENTS: All documents contained in the Mortgage Files.

MORTGAGE FILE: The mortgage documents listed in Section 2.01 pertaining to a particular Mortgage Loan and any additional documents required to be added to such documents pursuant to this Agreement.

MORTGAGE LOAN: At any time, the indebtedness of a Mortgagor evidenced by a Mortgage Note which is secured by real property and which is sold and assigned to the Trustee and held at such time in the Trust Fund pursuant to this Agreement, the Mortgage Loans originally so held being identified in Exhibit B.

MORTGAGE LOAN SCHEDULE: The list of Mortgage Loans transferred to the Trustee as part of the Trust Fund, the original list being attached hereto as Exhibit B.

MORTGAGE NOTE: For a Mortgage Loan, the promissory note or other evidence of indebtedness of the Mortgagor.

MORTGAGED PROPERTY: Any real property subject to a Mortgage.

MORTGAGOR: The obligor or obligors on a Mortgage Note.

OPINION OF COUNSEL: A written opinion of counsel, who (unless otherwise specified) may be counsel for, or an employee of, the Depositor or an Affiliate thereof, which counsel shall be reasonably acceptable to the addressee.

ORIGINATOR: Citicorp Trust Bank, fsb.

PERMITTED ACTIVITIES: The primary activities of the trust created hereunder, which shall be (a) holding

Mortgage Loans sold by the Depositor and other assets of the Trust Fund, including any credit enhancement and passive derivative financial instruments, (b) issuing Certificates and other interests in the assets of the Trust Fund, (c) receiving collections on the Mortgage Loans and making payments on Certificates and interests in accordance with the provisions of this Agreement and (d) engaging in other activities that are necessary or incidental to accomplish these limited purposes.

POOLING AGREEMENT: The Pooling Agreement (as defined in the preamble to this Standard Terms Document) entered into with respect to a particular series of Certificates and into which this Standard Terms Document is incorporated by reference.

REGULATION AB: Subpart 229.1100-Asset Backed Securities (Regulation AB), 17 C.F.R. ss.ss. 229.1100-229.1123, as such may be amended from time to time, and subject to such clarification and interpretation as have been provided by the Securities and Exchange Commission in the adopting release (Asset-Backed Securities, Securities Act Release No. 33-8518, 70 Fed. Reg. 1,506, 1,531 (Jan. 7, 2005)) or by the staff of the Securities and Exchange Commission, or as may be provided by the Securities and Exchange Commission or its staff from time to time.

REMIC: A “real estate mortgage investment conduit” within the meaning of Code Section 860D. References to the “REMIC” are to the Constituent REMICs constituting one or more portions of the Trust Fund.

REMIC PROVISIONS: The provisions of the federal income tax law relating to REMICs, appearing at Code Sections 860A through 860G, and related provisions and regulations promulgated thereunder, as may be in effect from time to time.

TRUSTEE: The Person executing this Agreement as Trustee, or its successor

TRUST FUND: The corpus of the trust created by this Agreement, consisting of the Mortgage Loans, the Certificate Account, the Collection Account, each REMIC Account, any REO Property, any Primary Mortgage Insurance Certificates, any other insurance policies with respect to the Mortgage Loans, any investment earnings on amounts in any Investment Account and any other property or rights specified in Article XII as being part of the Trust Fund.

[. . .]

Section 12.01. General Terms for Certificates.

Section 12.02. Additional Terms and Definitions.

The Certificates shall have and be subject to the following additional specific terms:

CLOSING DATE. November 29, 2006.

CUT-OFF DATE. The Cut-Off Date is the beginning of business on November 1, 2006.

ISSUE DATE. The Issue Date is November 29, 2006.

STARTUP DAY. The Startup Day will be the Issue Date.

TRUST. The Trust Created by this Agreement, which shall be named the Citicorp Residential Mortgage Trust Series 2006-3.

ARTICLE II

CONVEYANCE OF TRUST FUND; ORIGINAL ISSUANCE OF CERTIFICATES

Section 2.01 Conveyance of Trust Fund.

CRMSI, concurrently with the execution and delivery of this Agreement, does hereby sell, transfer, assign, set over and otherwise convey to the Trustee without recourse, all the right, title and interest of CRMSI in and to the Trust Fund, including without limitation all of the right, title and interest of CRMSI in the Mortgage Loans, including all amounts (other than Non-Transferred Interest Amounts) received or receivable by CRMSI on or with respect to the Mortgage Loans on or after the Cut-Off Date (but not payments of principal and interest received on the Mortgage Loans on or before the Cut-Off Date and not any Prepayment Charges received or receivable with respect to any Mortgage Loan), together with all of its right, title and interest in and to the proceeds of any title, hazard or other insurance policies, or Primary Mortgage Insurance Certificates, related to such Mortgage Loans. The transfer of the Mortgage Loans hereunder is absolute and is intended by the parties hereto as a sale. It is the intention of CRMSI that all Mortgage Loans transferred to the Trust Fund be removed from CRMSI's assets and estate. If the transfer of the Mortgage Loans is instead characterized as a pledge and not as a sale, then (x) CRMSI shall be deemed to have granted to the Trustee a first priority security interest in all of CRMSI's right, title and interest in and to such the Mortgage Loans and other assets of the Trust Fund and (y) it is the intention of the parties that this Agreement constitute

a security agreement under applicable law in favor of the Trustee, as secured party hereunder. CRMSI shall not transfer any additional property to the Trust Fund except as expressly permitted by this Agreement.

(a)

(1) In connection with such transfer and assignment of Mortgage Loans, CRMSI does herewith deliver to the Trustee (or to the Custodian on behalf of the Trustee) to be held in trust the following documents or instruments with respect to each Mortgage Loan so transferred and assigned (except where, and to the extent, CRMSI is complying with Section 2.01(b)):

- (i) The Mortgage Note, endorsed (whether by means of an allonge or otherwise) by manual or facsimile signature without recourse by the Originator or an Affiliate of the Originator in blank or to the Trustee showing a complete chain of endorsements from the named payee to the Trustee or from the named payee to the Affiliate of the Originator and from such Affiliate to the Trustee or, for any lost, misplaced or destroyed Mortgage Note, an original Lost Note Affidavit, provided that endorsement is not required where MERS is the named payee or the nominee of the named payee;
- (ii) The original recorded Mortgage with evidence of recording thereon, or a copy of the Mortgage certified by the public recording office in those jurisdictions where the public recording office retains the original;

- (iii) Any original assumption or modification agreement applicable to the Mortgage;
- (iv) An assignment from the Originator to the Trustee in recordable form (subject to proviso (x) below) of the Mortgage, which may be included, where permitted by local law, in a blanket assignment or assignments of the Mortgage to the Trustee, including any intervening assignments and showing a complete chain of title from the original mortgagee named under the Mortgage to CRMSI or an Affiliate of CRMSI and to the Trustee, provided that (x) any blanket assignment delivered pursuant to this clause (a)(1)(iv) shall not be in recordable form but shall be delivered together with a limited power of attorney to authorize the Custodian, on behalf of the Trustee, and the Trustee to act for the Originator in preparing, executing, delivering and recording in the name of the Trustee any instruments for recording assignments of the related Mortgages to the Trustee, (y) if the Mortgage is registered with MERS, only assignments from the originator of the Mortgage to MERS will be required and (z) if the Mortgage was originated with MERS as the original mortgagee, no interim assignment will be required; and
- (v) Either (x) the original or a copy of the title insurance policy (which may be a certificate or a short form policy relating to a master policy of title insurance) or the title searches pertaining to the Mortgaged Property, or in the event such original title policy is unavail-

able, a copy of the preliminary title report and the lender's recording instructions, with the original to be delivered within 180 days of the Issue Date or other evidence of title or (y) in jurisdictions where such practice is customary and acceptable, an attorney's opinion as to title or an insured title report.

(2) In addition, CRMSI, concurrently with the execution and delivery of this Agreement and in connection with such transfer and assignment of Mortgage Loans shall deposit in the Collection Account the amount of all payments received by CRMSI after the Cut-Off Date and prior to the Issue Date with respect to the Mortgage Loans, to the extent such payments are being transferred and assigned to the Trustee hereunder, except any portion of such payments on Mortgage Loans (including servicing fees) of a type not required to be deposited as specified in Article XII.

(b) In instances where an original recorded Mortgage cannot be delivered to the Trustee by the Issue Date, due to a delay in the recording, CRMSI may (a) in lieu of delivering such original recorded Mortgage referred to in clause (a)(1)(ii) above, deliver to the Trustee a copy thereof, provided that CRMSI certifies that the original Mortgage has been delivered to a title insurance company for recordation after receipt of its policy of title insurance or binder therefor (which may be a certificate relating to a master policy of title insurance), and (b) in lieu of delivering the completed assignment in recordable form referred to in clause (a)(1)(iv) above to the Trustee, deliver such assignment to the Trustee completed except for recording information. In such instances, CRMSI will

deliver the original recorded Mortgage and completed assignment (if applicable) to the Trustee promptly upon receipt thereof. In instances where an original recorded Mortgage or assignment has been lost or misplaced, CRMSI or the related title insurance company may deliver, in lieu thereof, a copy of such Mortgage or assignment bearing recordation information. In instances where the original or a copy of the title insurance policy referred to in clause (a)(1)(v)(x) above pertaining to a Mortgaged Property cannot be delivered to the Trustee by the Issue Date because such policy is not yet available, CRMSI may deliver to the Trustee a binder with respect to such policy and deliver the original or a copy of such policy to the Trustee when available. In instances where an original assumption or modification agreement cannot be delivered to the Trustee by the Issue Date, CRMSI may deliver a certified copy thereof, and will deliver the original assumption or modification agreement to the Trustee promptly upon receipt thereof.

CRMSI agrees, at its own expense, to prepare (or to cause the Servicer to prepare) each assignment referred to in clause (a)(1)(iv) above and deliver a copy of each such assignment to the Trustee as soon as practicable but not later than 60 days after the Issue Date. CRMSI intends to effect (or to cause the Servicer to effect) recordation of each such assignment (or to supply the Trustee with evidence of recordation) as soon as practicable after the Issue Date in the appropriate public office for real property records in each jurisdiction in which such recordation is required by a Rating Agency. In addition, in the event that on a Distribution Date a Mortgage Loan is 90 days Delinquent, if recordation of assignment is

required by any Rating Agency under its then current ratings criteria, then CRMSI shall effect recordation of an assignment of the related Mortgage to the Trustee promptly thereafter. Except as provided in this paragraph, neither CRMSI nor the Originator or any Affiliate of the Originator shall have any obligation to record any assignment of any Mortgage in order to name the Trustee as mortgagee of record. The preceding sentence shall not be in derogation of the obligation of CRMSI, the Originator and Affiliates of the Originator to record (and supply the Trustee with evidence thereof) assignments of Mortgages required in order that CRMSI, the Originator or an Affiliate of the Originator be shown as mortgagee of record of each Mortgage.

In the case of Mortgage Loans which have been prepaid in full after the Cut-Off Date and prior to the Issue Date, CRMSI, in lieu of delivering the above documents to the Trustee (or to the Custodian on behalf of the Trustee), herewith delivers to the Trustee (or to the Custodian on behalf of the Trustee) a Request for Release as set forth in Section 3.12(a). In connection with such transfer and delivery of the balance of the Trust Fund, CRMSI, concurrently with the execution and delivery of this Agreement, shall deposit into the Collection Account cash in the amount (if any) specified in Article XII.

Wherever it is provided in this Section 2.01 that any document, evidence or information relating to a Mortgage Loan be delivered or supplied to the Trustee, CRMSI or the Servicer, as applicable, shall do so by delivery thereof to the Custodian, to be held on behalf of the Trustee. The functions of the Trustee under this Agreement with respect to the custody, acceptance,

inspection and release of the Mortgage Files (including the review provided for in Section 2.02) shall be performed by the Custodian, on behalf of the Trustee.

(c) The parties hereto acknowledge and agree that it is not intended that any mortgage loan be included in the Trust Fund that is a “High-Cost” or “Covered” mortgage loan as defined by the U.S. Home Ownership and Equity Protection Act of 1994, as amended, or any other applicable local, state or federal predatory or abusive lending laws.

Section 2.02 Acceptance by Trustee.

The Trustee, by execution and delivery hereof, acknowledges receipt, subject to the review described in the following paragraph, of the documents and other property referred to in Section 2.01 and declares that the Trustee holds and will hold such documents and other property, including property yet to be received in the Trust Fund, in trust, upon the trusts herein set forth, for the benefit of all present and future Certificateholders.

The Trustee (or the Custodian on the Trustee’s behalf) shall, for the benefit of the Certificateholders, review each Mortgage File within 120 days after the Issue Date, to ascertain that all required documents have been executed, received and recorded, if applicable, and that such documents relate to the Mortgage Loans identified in Exhibit B. If in the course of such review the Trustee finds a document or documents constituting a part of a Mortgage File to be defective in any material respect, the Trustee shall promptly so notify CRMSI, whereupon CRMSI shall have a period of 180 days within which to correct or cure any such defect (including correction or cure by sub-

stitution if permitted by Section 2.04). If any such material defect has not been corrected or cured, CRMSI will, not later than 180 days after the Trustee's notice respecting such defect, repurchase the related Mortgage Loan from the Trustee at a price (the "Loan Repurchase Price") equal to (i) the Loan Balance of such Mortgage Loan as of the date of repurchase, plus, (ii) to the extent not previously advanced by the Servicer, accrued and unpaid interest thereon at the Mortgage Note Rate to (but not including) the date of repurchase, plus (iii) any unreimbursed payments with respect to such Mortgage Loan, to the extent not covered in (ii) above, as part of a Servicing Advance or a Periodic Interest Advance, plus (iv) any unreimbursed costs, penalties or damages incurred by the Trustee or the Trust Fund in connection with any violation of applicable predatory or abusive lending laws with respect to such Mortgage Loan or otherwise incurred in connection with such material defect. Notwithstanding the preceding two sentences, any material defect that causes a Mortgage Loan to fail to constitute a "qualified mortgage" within the meaning of Code Section 860G(a)(3) shall either be corrected or cured by CRMSI or, failing such correction or cure, CRMSI shall repurchase such Mortgage Loan at the Loan Repurchase Price (or, if within two years of the Startup Day, or such other period as may be permitted by the REMIC Provisions, substitute a Qualified Substitute Mortgage Loan therefor pursuant to Section 2.04) no later than 90 days after the discovery of such material defect. Any such repurchase shall be considered a prepayment in full of such Mortgage Loan on date of repurchase and shall be deposited by CRMSI in the Collection Account and, upon receipt by the Trustee of written notification of such deposit

signed by an Authorized Officer of CRMSI, the Trustee shall release to CRMSI or its designee the related Mortgage File and shall execute and deliver such instruments of transfer or assignment furnished to the Trustee, in each case without recourse, as CRMSI shall reasonably request, to vest in CRMSI or such designee any Mortgage Loan so released. Any repurchase by CRMSI of a Mortgage Loan hereunder shall be deemed to include the right to receive any Scheduled Payment or other remittance thereon payable or received after the date of repurchase, and the Trustee or the Paying Agent shall, upon receipt thereof, promptly remit the amount of such Scheduled Payment or other remittance to CRMSI. It is understood and agreed that the obligation of CRMSI to repurchase any Mortgage Loan or make a substitution therefor pursuant to Section 2.04 as to which a material defect in a constituent document exists shall constitute the sole remedy against CRMSI with respect to such defect available to the Certificateholders or the Trustee on behalf of the Certificateholders.

Section 2.03 Representations and Warranties of CRMSI and CMI.

(a) CRMSI makes the representations and warranties set forth in Article XIV to the Trustee (which representations are incorporated by reference herein as though set forth below in this Section 2.03(a)) and, in addition, CRMSI hereby represents and warrants to the Trustee that:

- (i) The information set forth in Exhibit B was true and correct in all material respects as of the Cut-Off Date.

- (ii) As of the Issue Date, each Mortgage is a valid first lien on the property securing the related Mortgage Note subject only to (a) the lien of current real property taxes and assessments, (b) covenants, conditions and restrictions, rights of way, easements and other matters of public record as of the date of recording of such Mortgage, such exceptions appearing of record being acceptable to mortgage lending institutions generally or specifically referred to in the title insurance policy or reflected in the appraisal obtained in connection with the origination of the related Mortgage Loan and (c) other matters to which like properties are commonly subject that do not in the aggregate materially interfere with the benefits of the security intended to be provided by such Mortgage.
- (iii) Immediately prior to the transfer of the Mortgage Loans to the Trustee, CRMSI has good title to, and is the sole owner of, each Mortgage Loan (except as set forth in clause (v) below) and immediately upon the transfer and assignment herein contemplated, CRMSI will have taken all steps necessary so that the Trustee will have good title to, and will be the sole owner of, each Mortgage Loan (except as set forth in clause (v) below).
- (iv) As of the Cut-Off Date, except as stated in Article XIV, no payment of principal or interest on or in respect of any Mortgage Loan is more than 30 days Delinquent.
- (v) As of the Issue Date, there is no mechanics' lien or claim for work, labor or material

affecting the premises subject to any Mortgage which is or may be a lien prior to, or equal with, the lien of such Mortgage except those which are insured against by the title insurance policy or report referred to in (x) below.

- (vi) As of the Issue Date, there is no delinquent tax or assessment lien against any Mortgaged Property.
- (vii) As of the Issue Date, there is no valid offset, defense or counterclaim to any Mortgage Note or Mortgage, including the obligation of the Mortgagor to pay the unpaid principal and interest on such Mortgage Note.
- (viii) As of the Issue Date, each Mortgaged Property is free of substantial damage.
- (ix) Each Mortgage Loan, at the time it was originated, complied in all material respects with applicable State, local and federal laws, including, but not limited to, all applicable usury, equal credit opportunity and disclosure laws and all applicable Predatory Lending Laws.
- (x) A lender's title insurance policy or binder (which policy was issued in standard ALTA or equivalent form), insured title report or other assurance of title customary in the relevant jurisdiction, was issued on the date of the origination of each Mortgage Loan and, as of the Issue Date, each such policy, binder, report or assurance is valid and remains in full force and effect.

- (xi) The Mortgage Loans conform in all material respects with the descriptions thereof in the Prospectus relating to the Certificates.
- (xii) The original principal balance of each Mortgage Loan was not more than 100% of the Original Value of such Mortgage Loan.
- (xiii) For each Mortgage where a Lost Note Affidavit has been delivered to the Trustee, the related original Mortgage Note is no longer in existence.
- (xiv) As of the Issue Date, each Mortgage was recorded (or was in the process of being recorded) in the name of CRMSI or an Affiliate of CRMSI.
- (xv) No Mortgage has been satisfied, canceled, subordinated or rescinded, in whole or in part, and the related Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such satisfaction, release, cancellation, subordination or rescission.
- (xvi) No fraud or material misrepresentation with respect to the origination of a Mortgage Loan has been committed by CRMSI or any Affiliate of CRMSI;
- (xvii) The proceeds of each Mortgage Loan have been fully disbursed and there is no requirement for future advances thereunder.
- (xviii) As of the date of origination and as of the Cut-Off Date, to the best of CRMSI's knowl-

edge, each Mortgaged Property was lawfully occupied.

- (xix) The servicing and collection practices used in connection with each Mortgage Loan have been in all material respects in accordance with applicable law.
- (xx) As of the Cut-Off Date, there was no proceeding pending or, to CRMSI's knowledge, threatened for the total or partial condemnation of a Mortgaged Property.
- (xxi) As of the Cut-Off Date, no Mortgagor was a debtor in any state or federal bankruptcy or insolvency proceeding.
- (xxii) The Mortgage Documents for all Mortgage Loans have been delivered to the Custodian or will be so delivered within a reasonable time after receipt thereof from a settlement agent or recording officer.
- (xxiii) No Mortgage Loan contains provisions pursuant to which Scheduled Payments are paid or partially paid with funds deposited in any separate account established by the Originator or any other person on behalf of the Mortgagor, or contains any similar provisions which may constitute a "buydown" provision.
- (xxiv) No Mortgage Loan is a high cost loan under the Predatory Lending Law of any jurisdiction in which a Mortgaged Property is located. No Mortgage Loan is a "High Cost Loan" or "Covered Loan," as such terms are defined in the current version of Standard

& Poor's LEVELS(R) Glossary, (Version 5.7 Revised). No Mortgage Loan originated on or after October 1, 2002 through March 6, 2003 is governed by the Georgia Fair Lending Act.

- (xxv) Each Mortgage Loan is a "qualified mortgage" within the meaning of Section 860G (a)(3) of the Code.
- (xxvi) Each Mortgage Loan was originated by an entity described in Section 3(a)(41)(A)(ii) of the Exchange Act.
- (xxvii) As of the Issue Date, no Mortgage or Mortgage Note has been modified in any material respect, except by a written instrument that has been recorded or submitted for recordation, if necessary, to protect the interests of the Certificateholders and the original or a copy of which has been delivered to the Custodian.
- (xxviii) To the best of CRMSI's knowledge, at the Issue Date, the improvements upon each Mortgaged Property are covered by a valid and existing hazard insurance policy with a generally acceptable carrier that provides for fire and extended coverage and coverage for such other hazards as are customary in the area where the Mortgaged Property is located.
- (xxix) To the best of CRMSI's knowledge, at the Issue Date, if the Mortgaged Property is in an area identified in the Federal Register by the Federal Emergency Management Agency as having special flood hazards, a flood insurance policy in a form meeting the requirements of

the current guidelines of the Flood Insurance Administration is in effect with respect to such Mortgaged Property with a generally acceptable carrier.

- (xxx) The Mortgage Loans were not selected from the Originator's portfolio of non-prime and sub-prime residential mortgage loans on the Cut-Off Date in a manner believed to be adverse to the interests of the Certificateholders.

The representations and warranties set forth in, or incorporated by reference in, this Section 2.03(a) shall survive delivery of the Mortgage Loans to the Trustee. Upon discovery by CRMSI, the Certificate Administrator or the Trustee of a breach of any of the foregoing representations and warranties that materially and adversely affects the interests of the Certificateholders in the related Mortgage Loan (including any Mortgage Loan substituted for a nonconforming Mortgage Loan pursuant to Section 2.04), the party discovering such breach shall give prompt written notice to the other parties hereto. If within 60 days of the date of such notice of breach or, with the prior written consent of a Responsible Officer of the Trustee, such longer period specified in such consent, CRMSI does not cure such breach in all material respects (including by substitution of one or more Qualified Substitute Mortgage Loans if permitted by Section 2.04), CRMSI shall repurchase such Mortgage Loan from the Trustee. With respect to the representations and warranties described in this Section 2.03(a) that are made to the best of CRMSI's knowledge, if it is discovered by any of CRMSI, the Certificate Administrator or the Trustee that the substance of

such representation and warranty is inaccurate and such inaccuracy materially and adversely affects the interests of the Certificateholders in the related Mortgage Loan, notwithstanding CRMSI's lack of knowledge with respect to the substance of such representation or warranty, such inaccuracy shall be deemed a breach of the applicable representation or warranty.

Any such repurchase of a Mortgage Loan by CRMSI shall be accomplished in the manner set forth in Section 2.02 and at the Loan Repurchase Price. Any such repurchase shall be considered a prepayment in full of such Mortgage Loan on date of repurchase and shall be deposited by CRMSI in the Collection Account and, upon receipt by the Trustee of written notification of such deposit signed by an Authorized Officer of CRMSI, the Trustee shall release to CRMSI or its designee the related Mortgage File and shall execute and deliver such instruments of transfer or assignment, in each case without recourse, as CRMSI shall reasonably request, to vest in CRMSI or such designee any Mortgage Loan so released. Any repurchase by CRMSI of a Mortgage Loan hereunder shall be deemed to include the right to receive any Scheduled Payment or other remittance thereon payable or received after the date of repurchase, and the Trustee or the Paying Agent shall, upon receipt thereof, promptly remit the amount of such Scheduled Payment or other remittance to CRMSI. It is understood and agreed that the obligation of CRMSI to repurchase or substitute (as provided in Section 2.04) any Mortgage Loan as to which a breach occurred and is continuing shall constitute the sole remedy against CRMSI respecting such breach available to

the Certificateholders or the Trustee on behalf of the Certificateholders.

(b) CMI hereby represents and warrants to the Trustee as follows:

- (i) It is a corporation validly existing and in good standing under the laws of the State of New York and is duly authorized and qualified to transact any and all business contemplated by this Agreement to be conducted by the Servicer.
- (ii) It has the full corporate power and authority to service each Mortgage Loan and to execute, deliver and perform, and to enter into and consummate the transactions contemplated by this Agreement and has duly authorized, by all necessary corporate action on its part, the execution, delivery and performance of this Agreement.
- (iii) The execution and delivery of this Agreement by it, the servicing of the Mortgage Loans by it under this Agreement, and the fulfillment of or compliance with the terms hereof are in the ordinary course of business of the Servicer and will not (A) result in a material breach of any term or provision of the charter or by-laws of the Servicer or (B) materially conflict with, result in a material breach, violation or acceleration of, or result in a material default under, the terms of any other material agreement or instrument to which it is a party or by which it may be bound, or (C) constitute a material violation of any statute, order or regulation applicable to it of

any court, regulatory body, administrative agency or governmental body having jurisdiction over it.

- (iv) It is a HUD-approved mortgagee.
- (v) No litigation is pending or, to the best of its knowledge, threatened, against the Servicer that would materially and adversely affect the execution, delivery or enforceability of this Agreement or its ability to service the Mortgage Loans or to perform any of its other obligations under this Agreement in accordance with the terms hereof.

Section 2.04 Substitution of Qualified Substitute Mortgage Loans for Nonconforming Mortgage Loans.

(a) CRMSI shall have the right, in an event requiring a repurchase pursuant to Section 2.02 or 2.03(a), to substitute one or more Qualified Substitute Mortgage Loans for any one or more nonconforming Mortgage Loans, any such substitution to take place on the Business Day designated by CRMSI (the “Substitution Day”) occurring before a date two years after the Startup Day, subject to the Trustee receiving an Officer’s Certificate of CRMSI attaching as an exhibit a supplemental Mortgage Loan schedule (the “Supplemental Mortgage Loan Schedule”) setting forth the same type of information as appears on the Mortgage Loan Schedule and representing as to the accuracy thereof and confirming that the representations and warranties contained in Section 2.03(a) (other than paragraphs (i) and (xi) thereof) are true and correct in all material respects with respect to the Qualified Substitute Mortgage Loans on and as

of the Substitution Day, provided that remedies for the inaccuracy of such representation are limited as set forth in Sections 2.02, 2.03(a) and this 2.04. CRMSI shall also deposit or cause to be deposited on the Substitution Day (i) an amount equal to any unreimbursed costs, penalties or damages incurred by the Trustee or the Trust Fund in connection with any violation of applicable predatory or abusive lending laws with respect to such nonconforming Mortgage Loan or Loans and (ii) any Substitution Adjustment Amount with respect to such Qualified Substitute Mortgage Loan or Loans.

(b) In the event that, on the Substitution Day, any Prepaid Installments have been deposited for such replaced Mortgage Loan, the full amount of such Prepaid Installments shall be paid on the Substitution Day to CRMSI from the Collection Account.

(c) Concurrently with the satisfaction of the conditions set forth in Section 2.04(a) and the grant of such Qualified Substitute Mortgage Loans to the Trustee pursuant to Section 2.04(a), (A) Exhibit B to this Agreement shall be deemed to be amended to exclude all Mortgage Loans being replaced by such Qualified Substitute Mortgage Loans and to include, pursuant to Section 10.01, the information set forth on the Supplemental Mortgage Loan Schedule with respect to such Qualified Substitute Mortgage Loans, and all references in this Agreement to Mortgage Loans shall include such Qualified Substitute Mortgage Loans and (B) the Trustee shall release to CRMSI or its designee the nonconforming Mortgage Loan or Loans and related Mortgage Files and execute and deliver such instruments of transfer or assignment as may be required to transfer, without recourse, to

CRMSI or such designee such nonconforming Mortgage Loan or Loans.

Section 2.05 [Reserved].

Section 2.06 Authentication of Certificates.

The Trustee has authenticated and delivered or caused to be authenticated and delivered to or upon a Depositor Order, in exchange for the Mortgage Loans, concurrently with the transfer and assignment to the Trustee of the Mortgage Loans, Certificates duly authenticated by the Trustee or an Authenticating Agent in authorized denominations evidencing the entire ownership of the Trust Fund.

Section 2.07 Permitted Activities.

The Trust is created for the object and purposes of engaging in Permitted Activities.

Section 2.08 Additional Representations.

CRMSI represents and warrants that

(a) The Mortgage Notes constitute “instruments” within the meaning of the Delaware Uniform Commercial Code. All original executed Mortgage Notes have been or will be delivered to the Trustee (or the Custodian on its behalf) in accordance with this Agreement.

(b) The Mortgage File Custodial Agreement provides that the Custodian is holding the Mortgage Notes that evidence the Mortgage Loans solely on behalf of and for the benefit of the Trustee and the Holders of Certificates.

(c) None of the Mortgage Notes has any marks or notations indicating that it has been pledged, assigned or otherwise conveyed to any person other than CRMSI and the Trustee.

(d) CRMSI has not authorized the filing of, and is not aware of, any financing statement against CRMSI that includes a description of the Mortgage Loans or the Mortgage Notes.