

Division of Resolutions and Receiverships

Washington Mutual Bank

Closing Book

Institution Number: 10015

Institution Location: Henderson, NV

Date of Closing: September 25, 2008

*Partial
b(4)
b(5)
b(6)*

Confidential Information Confidential Information

Transaction Recap

Washington Mutual Bank

Henderson, NV

In all the transactions offered by the FDIC, the Whole Bank Purchase and Assumption Agreement will be tailored to the winning bid. In all transactions, all assets are purchased by the acquirer and the preferred stock is excluded from the transaction. The legal documents will be the governing documents for this transaction.

The FDIC is offering five alternative transaction structures:

1. All liabilities are assumed except the preferred stock.
 2. All liabilities are assumed, except the preferred stock and the subordinated debt.
 3. All liabilities are assumed except the preferred stock, the subordinated debt and the senior debt.
 4. All deposits and secured liabilities are assumed by the acquirer.
 5. All insured deposits and secured liabilities are assumed.
- The bid for alternatives 1, 2, or 3 must be at least the FDIC's administrative costs of the closing equal to \$_____. (amount to be provided).

Assets Purchased: The Assuming Bank will purchase all assets whether or not on the books of the Bank, except for those that are specifically excluded under Article III of the Whole Bank agreement. In general, all assets are acquired at book value with the exception of securities which are purchased at fair market value.

Leased Premises: The Assuming Bank has a 90 day option to cause the Receiver to assign to the Assuming Bank any or all leased Bank Premises which have been continuously occupied by the Assuming Bank from the closing date to the date assignment is elected.

Furniture, Fixtures and Equipment: The Assuming Bank shall purchase all FF&E located on premises purchased, leased or subleased.

Notice to Vacate Leased Premises: If the Assuming Bank elects not to accept an assignment

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of the lease or sublease any leased Bank Premises, the Assuming Bank must provide notice specifying the date of occupancy termination, which will be no more than 90 days after date of notice.

10. Excluded Assets: Assets listed in Section 3.5 of the Purchase and Assumption Agreement are specifically excluded, but not limited to:

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- (1) Any financial institution bonds, banker's blanket bonds, or public liability, fire, or extended coverage insurance policy or any other insurance policy of the Failed Bank, or premium refund, unearned premium derived from cancellation, or any proceeds payable with respect to any of the foregoing;
 - (2) Any interest, right, action, claim, or judgment against (i) any officer, director, employee, accountant, attorney, or any other Person employed or retained by the Failed Bank or any Subsidiary of the Failed Bank on or prior to Bank Closing arising out of any act or omission of such Person in such capacity, (ii) any underwriter of financial institution bonds, banker's blanket bonds or any other insurance policy of the Failed Bank, (iii) any shareholder or holding company of the Failed Bank, or (iv) any other Person whose action or inaction may be related to any loss (exclusive of any loss resulting from such Person's failure to pay on a Loan made by the Failed Bank) incurred by the Failed Bank; provided, that for the purposes hereof, the acts, omissions or other events giving rise to any such claim shall have occurred on or before Bank Closing, regardless of when any such claim is discovered and regardless of whether any such claim is made with respect to a financial institution bond, banker's blanket bond, or any other insurance policy of the Failed Bank in force as of Bank Closing;
 - (3) Any criminal/restitution orders issued in favor of the Failed Bank;
11. Deposits: Assumed deposits will include accrued, but unpaid interest and other liabilities as appropriate under the provisions of the Purchase and Assumption Agreement.
12. Employee Benefit Plans: all employee benefit plans transfer to the acquirer.
13. Litigation: The Receiver will retain all non-asset related defensive litigation and the Assuming Bank will keep all offensive litigation.
14. Contracts: The Assuming Bank will be given a 120-day option to identify and notify the Receiver of the contracts to be repudiated.
- Confidential Information

PURCHASE AND ASSUMPTION AGREEMENT

BANK

WHOLE

AMONG
FEDERAL DEPOSIT INSURANCE CORPORATION,

RECEIVER OF WASHINGTON MUTUAL BANK,
HENDERSON, NEVADA

FEDERAL DEPOSIT INSURANCE CORPORATION

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

OF
SEPTEMBER 25, 2008

DATED AS

ARTICLE I

ARTICLE II

2.1

2.2

2.3

2.4

2.5

ARTICLE III

3.1

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3.3

3.4

3.5

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IV

ARTICLE

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PURCHASE AND ASSUMPTION AGREEMENT

BANK

WHOLE

THIS AGREEMENT, made and entered into as of the 25th day of September, 2008, by and among the FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER of WASHINGTON MUTUAL BANK, HENDERSON, NEVADA (the "Receiver"),

the laws of

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, organized under

business in Seattle, Washington (the "Assuming Ban"), and the FEDERAL DEPOSIT INSURANCE CORPORATION,

the United States of America, and having its principal place of

the United States of America and having its principal office in

organized under the laws of

Washington, D.C., acting in its corporate capacity (the "Corporation").

WITNESSETH:

WHEREAS, on Ban Closing, the Chartering Authority closed Washington Mutual

Ban (the "Failed Ban") pursuant to applicable law and the Corporation was appointed Receiver

thereof; and

WHEREAS, the Assuming Ban desires to purchase substantially all of the assets and

the Failed Ban on the terms and conditions set forth in this Agreement; and

assume all deposit and substantially all other liabilities of

provide

WHEREAS, pursuant to 12 U.S.c. Section 1823(c)(2)(A), the Corporation may

assistance to the Assuming Ban to facilitate the transactions contemplated by this Agreement, which assistance may include indemnification pursuant to Article XII; and

WHEREAS, the Board of Directors of the Corporation (the "Board") has determined to

provide assistance to the Assuming Ban on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, the Board has determined pursuant to 12 U.S.C. Section 1823(c)(4)(A) that the Corporation to provide insurance coverage for the insured deposits in the Failed Ban and is the least costly to the deposit insurance fund of all possible methods for meeting such obligation.

such assistance is necessary to meet the obligation of

the mutual promises herein set forth and other

NOW THEREFORE, in consideration of

valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings set forth in this Article I, or elsewhere in this Agreement. As used herein, words impairing the singular include the plural and vice versa.

"Accounting Records" means the general ledger and subsidiary ledgers and supporting schedules which support the general ledger balances.

the Failed Ban acquired

"Acquired Subsidiaries" means Subsidiaries of

pursuant to Section 3 .1.

"Adversely Classified" means, with respect to any Loan or security, a Loan or security which has been designated in the most recent report of examination as

"Substandard,"

"Doubtful" or "Loss" by the Failed Ban's appropriate Federal or State Chartering Authority or regulator.

"Affiliate" of any Person means any director, officer, or employee of that Person and any other Person (i) who is directly or indirectly controlling, or controlled by, or under direct or indirect common control with, such Person, or (ii) who is an affiliate of such Person as the

the Bank Holding Company Act of 1956, as amended,

term "affiliate" is defined in Section 2 of

12 U.S.c. Section 1841.

"Agreement" means this Purchase and Assumption Agreement by and among the Assuming Ban, the Corporation and the Receiver, as amended or otherwise modified from time

to time.

the Failed Ban purchased pursuant to Section 3.1.
this

"Assets" means all assets of

Assets owned by Subsidiaries of the Failed Ban are not "Assets" within the meaning of
definition.

"Assumed Deposits" means Deposits.

the Failed Ban on the date on

"Bank Closing" means the close of business of

which the Chartering Authority closed such institution.

"Bank Premises" means the banking houses, drive-in banking facilities, and
teller facilities (staffed or automated) together with appurtenant parking, storage
and service
facilities and structures connecting remote facilities to banking houses, and land on
which the

foregoing are located, that are owned or leased by the Failed Ban and that are
occupied by the

Ban Closing.

Failed Ban as of

"Bid Amount" has the meaning provided in Article VII.

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"Book Value" means, with respect to any Asset and any Liability Assumed, the the Failed Bank. The Book Value of

dollar amount thereof stated on the Accounting Records of

Bank Closing after adjustments made by the Assuming Bank

any item shall be determined as of

for normal operational and timing differences in accounts, suspense items, unposted debits and credits, and other similar adjustments or corrections and for setoffs, whether voluntary or involuntary. The Book Value of a Subsidiary of the Failed Bank acquired by the Assuming Bank shall be determined from the investment in subsidiar and related accounts on the "ban only"

(unconsolidated) balance sheet of the Failed Ban based on the equity method of accounting.

Without limiting the generality of the foregoing, (i) the Book Value of a Liability Assumed shall

Ban Closing, and (ii) the Book Value of a

include all accrued and unpaid interest thereon as of

Loan shall reflect adjustments for eared interest, or unearned interest (as it relates to the "rule of 78s" or add-on-interest loans, as applicable), if any, as of Bank Closing, adjustments for the

portion of earned or unearned loan-related credit life and/or disability insurance premiums, if Ban Closing, and adjustments for Failed Ban

any, attributable to the Failed Bank as of

any, in each case as determined for financial reporting purposes. The Book Value of an Asset shall not include any adjustment for loan premiums, discounts or any related deferred

Advances, if

the Failed Ban.

income or fees, or general or specific reserves on the Accounting Records of

"Business Day" means a day other than a Saturday, Sunday, Federal legal holiday the State where the Failed Ban is located, or a day on which

or legal holiday under the laws of

the principal office of the Corporation is closed.

"Chartering Authority" means (i) with respect to a national ban, the Office of the Currency, (ii) with respect to a Federal savings association or savings the Comptroller of

Thrft Supervision, (iii) with respect to a ban or savings institution charered ban, the Office of

a State, the agency of such State charged with primar responsibility for regulating and/or

closing bans or savings institutions, as the case may be, (iv) the Corporation in accordance with appointment, or (v) the appropriate Federal

by

12 U.S.C. Section 1821(c), with regard to self

baning agency in accordance with 12 US.c. 1821(c)(9).

"Commitment" means the unfunded portion of a line of credit or other commitment reflected on the books and records of the Failed Ban to make an extension of credit

(or additional advances with respect to a Loan) that was legally binding on the Failed Ban as of

Ban Closing, other than extensions of credit pursuant to the credit card business and overdraft

protection plans of the Failed Ban, if any.

"Credit Documents" mean the agreements, instruments, certificates or other documents at any time evidencing or otherwise relating to, governing or executed in connection

with or as security for, a Loan, including without limitation notes, bonds, loan agreements, letter of credit applications, lease financing contracts, baner's acceptances, drafts, interest protection agreements, currency exchange agreements, repurchase agreements, reverse repurchase agreements, guarantees, deeds of trust, mortgages, assignments, security agreements, pledges, subordination or priority agreements, lien priority agreements, undertakings, security instruments, certificates, documents, legal opinions, paricipation agreements and intercreditor agreements, and all amendments, modifications, renewals, extensions, rearrangements, and

the foregoing.

substitutions with respect to any of

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"Credit File" means all Credit Documents and all other credit, collateral, or the Assuming Ban, or any of its insurance documents in the possession or custody of

Subsidiaries or Affiliates, relating to an Asset or a Loan included in a Put Notice, or copies of any thereof.

"Data Processing Lease" means any lease or licensing agreement, binding on the which is data processing equipment or computer hardware or software used in connection with data processing activities. A lease or licensing agreement for computer software used in connection with data processing activities shall whether such lease or licensing agreement also

Failed Ban as of Bank Closing, the subject of

constitute a Data Processing Lease regardless of

covers data processing equipment.

"Deposit" means a deposit as defined in 12 U.S.C. Section 1813(1), including without limitation, outstanding cashier's checks and other official checks and all uncollected

the Failed

items included in the depositors' balances and credited on the books and records of

those deposit

Ban; provided, that the term "Deposit" shall not include all or any portion of

the Receiver or the Corporation, (i) may be required to

balances which, in the discretion of

satisfy it for any liquidated or contingent liability of any depositor arising from an unauthorized or unlawful transaction, or (ii) may be needed to provide payment of any liability

of any depositor to the Failed Ban or the Receiver, including the liability of any depositor as a director

the liability is or can be determined as

or officer of the Failed Ban, whether or not the amount of

Ban Closing.

of

"Failed Bank Advances" means the total sums paid by the Failed Ban to (i) protect its lien position, (ii) pay ad valorem taxes and hazard insurance, and (iii) pay credit life

insurance, accident and health insurance, and vendor's single interest insurance.

"Fixtures" means those leasehold improvements, additions, alterations and Ban Premises and which were acquired, added, built,

installations constituting all or a part of

the holder of legal title

installed or purchased at the expense of the Failed Ban, regardless of

Ban Closing.

thereto as of

"Furniture and Equipment" means the furniture and equipment (other than leased data processing equipment, including hardware and software), leased or owned by the

Ban Closing, including without

the Failed Ban as of

Failed Ban and reflected on the books of

limitation automated teller machines, caretaking, furniture, office machinery (including personal computers), shelving, office supplies, telephone, surveillance and security systems, and arork.

Section 12.1(b),

"Indemnities" means, except as provided in paragraph (11) of

the Assuming Ban other than any

(i) the Assuming Ban, (ii) the Subsidiaries and Affiliates of
the

Subsidiaries or Affiliates of the Failed Ban that are or become Subsidiaries or
Affiliates of

the Assuming Ban and

Assuming Ban, and (iii) the directors, officers, employees and agents of

its Subsidiaries and Affiliates who are not also present or former directors, officers,
employees or
agents of the Failed Ban or of any Subsidiary or Affiliate of the Failed Bank.

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"Initial Payment" means the payment made pursuant to Article VII, the amount
the Bid Amount is positive, the Bid Amount plus the Required

of which shall be either (i) if

the Bid Amount is negative, the Required Payment minus the Bid Amount. The

Payment or (ii) if

the Initial Payment

Initial Payment shall be payable by the Corporation to the Assuming Ban if

is a negative amount. The Initial Payment shall be payable by the Assuming Ban to
the

the Initial Payment is positive.

Corporation if

indebtedness legally owed by an Obligor

"Legal Balance" means the amount of

with respect to a Loan, including principal and accrued and unpaid interest, late fees, attorneys' fees and expenses, taxes, insurance premiums, and similar charges, if any.

"Liabilities Assumed" has the meaning provided in Section 2.1.

"Lien" means any mortgage, lien, pledge, charge, assignment for security purposes, security interest, or encumbrance of any kind with respect to an Asset, including any conditional sale agreement or capital lease or other title retention agreement relating to such Asset.

the following owed to or held by the Failed Ban as of

"Loans" means all of

Ban Closing:

the Accounting

(i) loans (including loans which have been charged off the Failed Ban in whole or in part prior to Ban Closing), participation agreements,

Records of

interests in participations, overdrafts of customers (including but not limited to overdrafts made

pursuant to an overdraft protection plan or similar extensions of credit in connection with a deposit account), revolving commercial lines of credit, home equity lines of credit, Commitments, United States and/or State-guaranteed student loans, and lease financing contracts;

(ii) all Liens, rights (including rights of set-off), remedies, powers, privileges, demands, claims, priorities, equities and benefits owned or held by, or accruing or to accrue to or

the obligations or instruments referred to in clause (i) above,

for the benefit of, the holder of

including but not limited to those arising under or based upon Credit Documents, casualty insurance policies and binders, standby letters of credit, mortgagee title insurance policies and binders, payment bonds and performance bonds at any time and from time to time existing with

the obligations or instruments referred to in clause (i) above; and

respect to any of

(iii) all amendments, modifications, renewals, extensions, refinancings, and refundings of or for any of the foregoing;

provided, that there shall be excluded from the definition of "Loans" amounts owing under

Qualified Financial Contracts.

"Obligor" means each Person liable for the full or partial payment or performance of any Loan, whether such Person is obligated directly, indirectly, primarily, secondarily, jointly, or severally.

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"Other Real Estate" means all interests in real estate (other than Ban Premises and Fixtures), including but not limited to mineral rights, leasehold rights, condominium and cooperative interests, air rights and development rights that are owned by the Failed Ban.

"Payment Date" means the first Business Day after Ban Closing.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any

agency or political subdivision thereof, excluding the Corporation.

"Primary Indemnitor" means any Person (other than the Assuming Ban or any its Affiliates) who is obligated to indemnify or insure, or otherwise make payments (including payments on account of claims made against) to or on behalf of any Person in connection with the claims covered under Article XII, including without limitation any insurer issuing any directors and officers liability policy or any Person issuing a financial institution bond or baner's

of

blanet bond.

"Proforma" means producing a balance sheet that reflects a reasonably accurate the Failed Ban through the date of closing. The Proforma financial financial statement of

both the Assuming Ban and the Receiver.

statements serve as a basis for the opening entries of

"Put Date" has the meaning provided in Section 3.4.

"Put Notice" has the meaning provided in Section 3.4.

"Qualified Financial Contract" means a qualified financial contract as defined in 12 U.S.C. Section 1821(e)(8)(D).

"Record" means any document, microfiche, microfilm and computer records (including but not limited to magnetic tape, disc storage, card forms and printed copy) of the Failed Ban generated or maintained by the Failed Ban that is owned by or in the possession of the Receiver at Ban Closing.

"Related Liability" with respect to any Asset means any liability existing and Ban Closing for (i) indebtedness the Failed Ban as of

reflected on the Accounting Records of

secured by mortgages, deeds of trust, chattel mortgages, security interests or other liens on or affecting such Asset, (ii) ad valorem taxes applicable to such Asset, and (iii) any other obligation determined by the Receiver to be directly related to such Asset.

"Related Liability Amount" with respect to any Related Liability on the books

of the Assuming Ban, means the amount of such Related Liability as stated on the Accounting

the Assuming Ban (as maintained in accordance with generally accepted accounting Records of

which the Related Liability Amount is being determined. With respect to a liability that relates to more than one asset, the amount of such Related Liability shall be allocated among such assets for the purpose of determining the Related Liability Amount with

principles) as of the date as of

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respect to anyone of such assets. Such allocation shall be made by specific allocation, where determinable, and otherwise shall be pro rata based upon the dollar amount of such assets stated

the entity that owns such asset.

on the Accounting Records of

"Required Payment" means \$50,000,000.00.

"Repurchase Price" means with respect to any Asset or asset, which shall be determined by the Receiver, the lesser of (a) or (b):

(a) (i) in the event of a negative Bid Amount, the amount paid by the Assuming Bank, discounted by a percentage equal to the quotient produced by dividing the

the Failed
Ban;

Assuming Ban's Bid Amount by the aggregate Book Value of the Risk Assets of

(ii) in the event of a negative Bid Amount, the amount resulting from (a)(i), above, or in the event of a positive Bid Amount, the amount paid by the Assuming Ban,

(x) for a Loan, shall be decreased by any portion of the Loan classified "loss" and by one-half of any portion of the Loan classified "doubtful" as of the date of Ban Closing, and (y) for any

Asset or asset, including a Loan, decreased by the amount of any money received with respect

thereto since Ban Closing and, if the Asset is a Loan or other interest bearing or earning asset,

the resulting amount shall then be increased or decreased, as the case may be, by interest or discount (whichever is applicable) accrued from and after Ban Closing at the lower of: (i) the contract rate with respect to such Asset, or (ii) the Settlement Interest Rate; net proceeds received by or due to the Assuming Ban from the sale of collateral, any forgiveness of debt, or otherwise shall be deemed money received by the Assuming Ban; or

(b) the dollar amount thereof stated on the Accounting Records of the Assuming Ban as of the date as of which the Repurchase Price is being determined, as

maintained in accordance with generally accepted accounting principles, and, if the asset is a

and adjusted in the same maner as the Book
Value of a Failed Ban Loan would be adjusted hereunder.

Loan, regardless of the Legal Balance thereof

Provided, however, (b), above, shall not be applicable and the Bid Amount shall be considered to have been positive for Loans repurchased pursuant to Section 3.4(a).

"Risk Assets" means (i) all Loans purchased hereunder, excluding (a) New Loans and (b) Loans to the extent secured by Assumed Deposits (and not included in (i)(a)), plus (ii) the Accrued Interest Receivable, Prepaid Expense, and Other Assets.

"Safe Deposit Boxes" means the safe deposit boxes of the Failed Ban, if any, including the removable safe deposit boxes and safe deposit stacks in the Failed Ban's vault(s),

all rights and benefits (other than fees collected prior to Ban Closing) under rental agreements with respect to such safe deposit boxes, and all keys and combinations thereto.

"Settlement Date" means the first Business Day immediately prior to the day which is one hundred eighty (180) days after Ban Closing, or such other date prior thereto as

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may be agreed upon by the Receiver and the Assuming Bank. The Receiver, in its discretion,

may extend the Settlement Date.

"Settlement Interest Rate" means, for the first calendar quarter or portion thereof during which interest accrues, the rate determined by the Receiver to be equal to the equivalent coupon issue yield on twenty-six (26)-week United States Treasury Bills in effect as

Ban Closing as published in The Wall Street Journal; provided, that if no such equivalent of

Ban Closing, the equivalent coupon issue yield for such

coupon issue yield is available as of

Treasury Bills most recently published in The Wall Street Journal prior to Ban Closing shall be used. Thereafter, the rate shall be adjusted to the rate determined by the Receiver to be equal to

the first day of each

the equivalent coupon issue yield on such Treasury Bills in effect as of

succeeding calendar quarter during which interest accrues as published in The Wall Street

Journal.

"Subsidiary" has the meaning set forth in Section 3(w)(4) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(w)(4), as amended.

II

ASSUMPTION OF LIABILITIES

ARTICLE

2.1 Liabilities Assumed by Assuming Bank. Subject to Sections 2.5 and 4.8, the Assuming Bank expressly assumes at Book Value (subject to adjustment pursuant to Article the Failed Bank which are

the liabilities of

VII) and agrees to pay, perform, and discharge, all of

Bank Closing, including the

the Failed Bank as of

reflected on the Books and Records of

Assumed Deposits and all liabilities associated with any and all employee benefit plans, except

as listed on the attached Schedule 2.1, and as otherwise provided in this Agreement (such

liabilities referred to as "Liabilities Assumed"). Notwithstanding Section 4.8, the Assuming

the Failed Bank.

Bank specifically assumes all mortgage servicing rights and obligations of

WaMuClosingBook.txt

2.2 Interest on Deposit Liabilities. The Assuming Ban agrees that it will assume all Ban Closing, and it will accrue and pay interest on Deposit liabilities assumed pursuant to Section 2.1 at the same rate(s) and on the same terms as agreed to by the

deposit contracts as of

Failed Ban as existed as of Ban Closing. If such Deposit has been pledged to secure an

obligation of the depositor or other party, any withdrawal thereof shall be subject to the terms of the agreement governing such pledge.

2.3 Unclaimed Deposits. If, within eighteen (18) months after Ban Closing, any the Failed Ban does not claim or arrange to continue such depositor's Deposit

depositor of

assumed pursuant to Section 2.1 at the Assuming Ban, the Assuming Ban shall, within fifteen

(15) Business Days after the end of such eighteen (18)-month period, (i) refund to the Corporation the full amount of each such Deposit (without reduction for service charges), (ii)

provide to the Corporation an electronic schedule of all such refunded Deposits in such form as

may be prescribed by the Corporation, and (iii) assign, transfer, convey and deliver to the

the Assuming Ban in and to Records previously transferred to the Assuming Ban and other records generated or maintained by the Assuming

Receiver all right, title and interest of

the

Ban pertaining to such Deposits. During such eighteen (18)-month period, at the request of

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Corporation, the Assuming Bank promptly shall provide to the Corporation schedules

of unclaimed deposits in such form as may be prescribed by the Corporation.

2.4 Omitted.

2.5 Borrower Claims. Notwithstanding anything to the contrary in this Agreement, any liability associated with borrower claims for payment of or liability to any borrower for to any borrower, whether or not such

relief

monetary relief, or that provide for any other form of

liability is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, judicial or extra-judicial, secured or unsecured, whether asserted affirmatively or defensively, related in any way to any loan or commitment to lend made by the Failed Bank prior to failure, or to any loan made by a third

party in connection with a loan which is or was held by the Failed Bank, or otherwise arising in

connection with the Failed Bank's lending or loan purchase activities are specifically not assumed by the Assuming Bank.

ARTICLE III PURCHASE OF ASSETS

3.1 Assets Purchased by Assuming Bank. Subject to Sections 3.5, 3.6 and 4.8, the Assuming Bank hereby purchases from the Receiver, and the Receiver hereby sells, assigns, the Receiver

transfers, conveys, and delivers to the Assuming Bank, all right, title, and interest of

the assets (real, personal and mixed, wherever located and however acquired) including all subsidiaries, joint ventures, partnerships, and any and all other business

in and to all of

the Failed

combinations or arrangements, whether active, inactive, dissolved or terminated, of

Bank Closing. Assets are

the Failed Bank as of

Ban whether or not reflected on the books of

purchased hereunder by the Assuming Ban subject to all liabilities for indebtedness collateralized by Liens affecting such Assets to the extent provided in Section 2.1. The

subsidiaries, joint ventures, partnerships, and any and all other business combinations or arrangements, whether active, inactive, dissolved or terminated being purchased by the Assuming Ban includes, but is not limited to, the entities listed on Schedule 3.1a. Notwithstanding

Section 4.8, the Assuming Ban specifically purchases all mortgage servicing rights and

the Failed Ban.

obligations of

3.2 Asset Purchase Price.

the Failed Ban subject to an option to purchase by the Assuming

(a) All Assets and assets of Ban shall be purchased for the amount, or the amount resulting from the method specified for

determining the amount, as specified on Schedule 3.2, except as otherwise may be provided

the Failed Ban subject to an option to purchase or other asset purchased for which no purchase price is specified on Schedule 3.2 or otherwise herein shall be purchased at its Book Value. Loans or other assets charged off the Accounting Records of the

zero.

herein. Any Asset, asset of

Failed Ban prior to the date of Ban Closing shall be purchased at a price of

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(b) The purchase price for securities (other than the capital stock of any Acquired Subsidiary) purchased under Section 3.1 by the Assuming Ban shall be the market value thereof Bank Closing, which market value shall be (i) the "Mid/Last", or "Trade" (as

applicable), as of

the trading day effective on Bank

market price for each such security quoted at the close of

Closing as published electronically by Bloomberg, L.P.; (ii) provided, that if such market price is not available for any such security, the Assuming Bank will submit a bid for each such security within three days of notification/id request by the Receiver (unless a different time period is

agreed to by the Assuming Ban and the Receiver) and the Receiver, in its sole discretion will

accept or reject each such bid; and (iii) further provided in the absence of an acceptable bid from the Assuming Ban, each such security shall not pass to the Assuming Ban and shall be deemed to be an excluded asset hereunder.

(c) Qualified Financial Contracts shall be purchased at market value determined in Exhibit 3.2(c). Any costs associated with such valuation shall be shared equally by the Receiver and the Assuming Ban.

accordance with the terms of

3.3 Manner of Conveyance; Limited Warranty; Nonrecourse; Etc. THE CONVEYANCE OF ALL ASSETS, INCLUDING REAL AND PERSONAL PROPERTY INTERESTS, PURCHASED BY THE ASSUMING BAN UNDER THIS AGREEMENT SHALL BE MADE, AS NECESSARY, BY RECENER'S DEED OR RECENER'S BILL OF SALE, "AS IS", "WHERE IS", WITHOUT RECOURSE AND, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, WITHOUT ANY WARRANTIES WHATSOEVER WITH RESPECT TO SUCH ASSETS, EXPRESS OR IMPLIED, WITH RESPECT TO TITLE, ENFORCEABILITY, COLLECTIBILITY, DOCUMENTATION OR FREEDOM FROM LIENS OR ENCUMBRANCES (IN WHOLE OR IN PART), OR ANY OTHER MATTERS.

3.4 Puts of Assets to the Receiver.

(a) Omitted.

(b) Puts Prior to the Settlement Date. During the period from Ban Closing to and including the Business Day immediately preceding the Settlement Date, the Assuming Ban shall be entitled to require the Receiver to purchase any Asset which the Assuming Ban can establish

Ban Closing. The Assuming Ban shall

is evidenced by forged or stolen instruments as of

transfer all such Assets to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Assuming Ban with respect to any such Asset, as provided in Section 12.4.

(c) Notices to the Receiver. In the event that the Assuming Bank elects to require the Receiver to purchase one or more Assets, the Assuming Bank shall deliver to the Receiver a notice (a "Put Notice") which shall include:

(i) a list of all Assets that the Assuming Bank requires the Receiver to purchase;

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(ii) a list of all Related Liabilities with respect to the Assets identified pursuant to (i) above; and

the estimated Repurchase Price of each Asset identified

(iii) a statement of
the applicable Put Date.

pursuant to (i) above as of

Such notice shall be in the form prescribed by the Receiver or such other form to which the Receiver shall consent. As provided in Section 9.6, the Assuming Bank shall deliver to the Receiver such documents, Credit Files and such additional information relating to the subject

the Put Notice as the Receiver may request and shall provide to the Receiver full access to all other relevant books and records.

matter of

(d) Purchase by Receiver. The Receiver shall purchase Loans that are specified in the Put Notice and shall assume Related Liabilities with respect to such Loans, and the transfer of such Loans and Related Liabilities shall be effective as of a date determined by the Receiver

the Credit Files

which date shall not be later than thirty (30) days after receipt by the Receiver of

with respect to such Loans (the "Put Date").

(e) Purchase Price and Payment Date. Each Loan purchased by the Receiver pursuant to this Section 3.4 shall be purchased at a price equal to the Repurchase Price of such

Loan less the Related Liability Amount applicable to such Loan, in each case determined as of the applicable Put Date. If the difference between such Repurchase Price and such Related

Liability Amount is positive, then the Receiver shall pay to the Assuming Ban the amount of

such difference; if the difference between such amounts is negative, then the Assuming Ban

shall pay to the Receiver the amount of such difference. The Assuming Ban or the Receiver, as

the case may be, shall pay the purchase price determined pursuant to this Section 3.4(e) not later

than the twentieth (20th) Business Day following the applicable Put Date, together with interest

on such amount at the Settlement Interest Rate for the period from and including such Put Date

to and including the day preceding the date upon which payment is made.

(f) Servicing. The Assuming Ban shall administer and manage any Asset subject to purchase by the Receiver in accordance with usual and prudent banking standards and business practices until such time as such Asset is purchased by the Receiver.

(g) Reversals. In the event that the Receiver purchases an Asset (and assumes the Related Liability) that it is not required to purchase pursuant to this Section 3.4, the Assuming

Ban shall repurchase such Asset (and assume such Related Liability) from the Receiver at a

price computed so as to achieve the same economic result as would apply if the Receiver had

never purchased such Asset pursuant to this Section 3.4.

3.5 Assets Not Purchased by Assuming Bank. The Assuming Ban does not purchase, acquire or assume, or (except as otherwise expressly provided in this Agreement)

obtain an option to purchase, acquire or assume under this Agreement the assets or Assets listed

on the attached Schedule 3.5.

3.6 Assets Essential to Receiver.

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(a) The Receiver may refuse to sell to the Assuming Ban, or the Assuming Bank the Receiver set forth in a written notice to the Assuming Bank, to

agrees, at the request of

the Assuming Ban's right, title and interest in and to, any Asset or asset essential to the Receiver as determined by the Receiver in its discretion (together with all Credit Documents evidencing or pertaining thereto), which may include any Asset or asset that the Receiver determines to be:

assign, transfer, convey, and deliver to the Receiver all of

the

(i) made to an officer, director, or other Person engaging in the affairs of Failed Ban, its Subsidiaries or Affiliates or any related entities of any of

the foregoing;

(ii) the subject of any investigation relating to any claim with respect to any item described in Section 3.5(a) or (b), or the subject of, or potentially the subject of, any legal proceedings;

(iii) made to a Person who is an Obligor on a loan owned by the Receiver or the Corporation in its corporate capacity or its capacity as receiver of any institution;

(iv) secured by collateral which also secures any asset owned by the Receiver; or

the Failed Ban not purchased by the Assuming

(v) related to any asset of the Failed Ban not assumed

by the Assuming Ban under Article II.

Ban under this Article II or any liability of

(b) Each such Asset or asset purchased by the Receiver shall be purchased at a price equal to the Repurchase Price thereof less the Related Liability Amount with respect to any Related Liabilities related to such Asset or asset, in each case determined as of the date of the notice provided by the Receiver pursuant to Section 3.6(a). The Receiver shall pay the Assuming

Ban not later than the twentieth (20th) Business Day following receipt of related Credit

Documents and Credit Files together with interest on such amount at the Settlement Interest Rate for the period from and including the date of receipt of such documents to and including the day

preceding the day on which payment is made. The Assuming Ban agrees to administer and

manage each such Asset or asset in accordance with usual and prudent banking standards and business practices until each such Asset or asset is purchased by the Receiver. All transfers with respect to Asset or assets under this Section 3.6 shall be made as provided in Section 9.6. The Assuming Ban shall transfer all such Asset or assets and Related Liabilities to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Assuming Ban with respect to any such Asset or asset, as provided in Section 12.4.

IV

ARTICLE

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ASSUMPTION OF CERTAIN DUTIES AND OBLIGATIONS

The Assuming Bank agrees with the Receiver and the Corporation as follows:

4.1 Continuation of Banking Business. The Assuming Bank agrees to provide full the Failed Ban commencing on the first banking business the Assuming Bank, such

service banking in the trade area of

day (including a Saturday) after Ban Closing. At the option of

the Ban Premises, or at other premises within

banking services may be provided at any or all of

such trade area.

4.2 Agreement with Respect to Debit and Credit Card Business. The Assuming Ban agrees to honor and perform, from and after Ban Closing, all duties and obligations with respect to the Failed Ban's debit and credit card business, and/or processing

related to debit and credit cards, if any, and assumes all outstanding extensions of credit with respect thereto.

4.3 Agreement with Respect to Safe Deposit Business. The Assuming Ban assumes and agrees to discharge, from and after Ban Closing, in the usual course of conducting the Failed Ban with respect to all Safe Deposit

a banking business, the duties and obligations of

Boxes, if any, of the Failed Ban and to maintain all of the necessary facilities for the use of such boxes by the renters thereof during the period for which such boxes have been rented and the rent the rental agreements between the

therefor paid to the Failed Ban, subject to the provisions of

Failed Ban and the respective renters of such boxes; provided, that the Assuming Ban may

the Assuming Ban located

relocate the Safe Deposit Boxes of the Failed Ban to any office of

the Failed Ban. Fees related to the safe deposit business collected prior to in the trade area of

the Receiver and fees collected after Ban Closing shall

Ban Closing shall be for the benefit of

the Assuming Ban.

be for the benefit of

4.4 Agreement with Respect to Safekeeping Business. The Receiver transfers, conveys and delivers to the Assuming Ban and the Assuming Ban accepts all securities and Ban Closing.

other items, if any, held by the Failed Ban in safekeeping for its customers as of

The Assuming Bank assumes and agrees to honor and discharge, from and after Ban Closing,

the Failed Ban with respect to such securities and items held in safekeeping. The Assuming Ban shall be entitled to all rights and benefits heretofore accrued or hereafter accruing with respect thereto; provided, that, fees related to the safekeeping business

the Receiver and fees collected after

the duties and obligations of

collected prior to Ban Closing shall be for the benefit of

Ban Closing shall be for the benefit of the Assuming Ban. The Assuming Ban shall provide

to the Receiver written verification of all assets held by the Failed Ban for safekeeping within sixty (60) days after Ban Closing.

4.5 Agreement with Respect to Trust Business.

(a) The Assuming Ban shall, without further transfer, substitution, act or deed, to the full extent permitted by law, succeed to the rights, obligations, properties, assets, investments,

the Failed Ban under trusts, executorships, administrations, guardianships, and agencies, and other fiduciar or representative capacities, all to the same extent as though the Assuming Ban had assumed the same from the Failed Ban prior to Ban

deposits, agreements, and trusts of

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Closing; provided, that any liability based on the misfeasance, malfeasance or nonfeasance of the Failed Bank, its directors, officers, employees or agents with respect to the trust business is not

assumed hereunder.

(b) The Assuming Bank shall, to the full extent permitted by law, succeed to, and be entitled to take and execute, the appointment to all executorships, trusteeships, guardianships and other fiduciary or representative capacities to which the Failed Ban is or may be named in wills, whenever probated, or to which the Failed Bank is or may be named or appointed by any other instrument.

(c) In the event additional proceedings of any kind are necessary to accomplish the transfer of such trust business, the Assuming Ban agrees that, at its own expense, it will take whatever action is necessary to accomplish such transfer. The Receiver agrees to use

reasonable efforts to assist the Assuming Ban in accomplishing such transfer.

(d) The Assuming Ban shall provide to the Receiver written verification of the assets held in connection with the Failed Ban's trust business within sixty (60) days after Ban Closing.

Closing.

4.6 Agreement with Respect to Bank Premises.

(a) Option to Lease. The Receiver hereby grants to the Assuming Ban an exclusive option for the period of ninety (90) days commencing the day after Ban Closing to cause the Receiver to assign to the Assuming Ban any or all leases for leased Ban Premises, if any,

which have been continuously occupied by the Assuming Bank from Ban Closing to the date it the leases with respect thereto to the extent such leases can be

elects to accept an assignment of

this option with respect to any lease must be as to all

assigned; provided, that the exercise of

premises or other property subject to the lease. If an assignment cannot be made of any such

leases, the Receiver may, in its discretion, enter into subleases with the Assuming Ban containing the same terms and conditions provided under such existing leases for such leased

Ban Premises or other property. The Assuming Ban shall give notice to the Receiver within the option period of its election to accept or not to accept an assignment of any or all leases (or enter

into subleases or new leases in lieu thereof). The Assuming Ban agrees to assume all leases assigned (or enter into subleases in lieu thereof) pursuant to this Section 4.6.

(b) Facilitation. The Receiver agrees to facilitate the assumption, assignment or sublease of leases or the negotiation of new leases by the Assuming Ban; provided, that neither the Receiver nor the Corporation shall be obligated to engage in litigation, make payments to the Assuming Ban or to any third party in connection with facilitating any such assumption,

assignment, sublease or negotiation or commit to any other obligations to third

paries.

(c) Occupancy. The Assuming Ban shall give the Receiver fifteen (15) days' prior written notice of its intention to vacate prior to vacating any leased Ban Premises with respect

to which the Assuming Ban has not exercised the option provided in Section 4.6(a). Any such notice shall be deemed to terminate the Assuming Ban's option with respect to such leased Ban Premises.

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(d) Occupancy Costs.

(i) The Assuming Bank agrees, during the period of any occupancy by it of the

leased Bank Premises, to pay to the Receiver, or to appropriate third parties at the direction of

Receiver, all operating costs with respect thereto and to comply with all relevant terms of

applicable leases entered into by the Failed Bank, including without limitation the timely

payment of all rent, taxes, fees, charges, utilities, insurance and assessments.

(ii) The Assuming Ban agrees during the period of occupancy by it of leased Ban Premises to pay to the Receiver rent for the use of all leased Furniture and Equipment and

all owned or leased Fixtures located on such Bank Premises for the period of such occupancy.

Rent for such property owned by the Failed Bank shall be the market rental value thereof, as

determined by the Receiver within sixty (60) days after Ban Closing. Rent for such leased

property shall be an amount equal to any and all rent and other amounts which the Receiver

incurs or accrues as an obligation or is obligated to pay for such period of occupancy pursuant to

the Assuming Ban purchases any owned

all leases and contracts with respect to such property. If

Fixtures in accordance with Section 4.6(f), the amount of any rents paid by the Assuming Ban

with respect thereto shall be applied as an offset against the purchase price thereof.

the

(e) Certain Requirements as to Furniture, Equipment and Fixtures. If Assuming Ban accepts an assignment of the lease (or enters into a sublease or a new lease in lieu thereof) for leased Ban Premises, or if the Assuming Ban does not exercise such option but within twelve (12) months following Ban Closing obtains the right to occupy such premises

(whether by assignment, lease, sublease, purchase or otherwise), other than in accordance with

the leases or

Section 4.6(a), the Assuming Ban shall (i) accept an assignment or a sublease of

negotiate new leases for all Furniture and Equipment and Fixtures leased by the Failed Ban and

located thereon, and (ii) if applicable, accept an assignment or a sublease of any ground lease or negotiate a new ground lease with respect to any land on which such Ban Premises are located; provided, that the Receiver shall not have disposed of such Furniture and Equipment and Fixtures or repudiated the leases specified in clause (i) or (ii).

the Assuming Ban elects not to accept an assignment of

(f) Vacating Premises. If the lease or sublease any leased Ban Premises, the notice of such election in accordance with Section 4.6(a) shall specify the date upon which the Assuming Ban's occupancy of such leased Ban Premises shall terminate, which date shall not be later than the date which is one hundred eighty (180) days after Ban Closing. Upon vacating such premises, the Assuming Ban shall relinquish and release to the Receiver such premises and the Fixtures located thereon in the same

condition as at Ban Closing, normal wear and tear excepted. By failing to provide notice of its

intention to vacate such premises prior to the expiration of the option period specified in Section 4.6(a), or by occupying such premises after the one hundred eighty (180)-day period specified

above in this paragraph, the Assuming Ban shall, at the Receiver's option, (x) be deemed to

.have assumed all leases, obligations and liabilities with respect to such premises

(including any

ground lease with respect to the land on which premises are located), and leased Furniture and

Equipment and leased Fixtures located thereon in accordance with this Section 4.6 (unless the

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Receiver previously repudiated any such lease), and (y) be required to purchase all Fixtures

Ban Closing.

owned by the Failed Ban and located on such premises as of

(g) Omitted.

4.7 Agreement with Respect to Leased Data Processing Equipment

(a) The Receiver hereby grants to the Assuming Ban an exclusive option for the ninety (90) days commencing the day after Ban Closing to accept an assignment from

period of

the Receiver of any or all Data Processing Leases to the extent that such Data Processing Leases

can be assigned.

(b) The Assuming Ban shall (i) give written notice to the Receiver within the option period specified in Section 4.7(a) of its intent to accept an assignment or sublease of any or all Data Processing Leases and promptly accept an assignment or sublease of such Data Processing

Leases, and (ii) give written notice to the appropriate lessor(s) that it has accepted an assignment

or sublease of any such Data Processing Leases.

(c) The Receiver agrees to facilitate the assignment or sublease of Data Processing Leases or the negotiation of new leases or license agreements by the Assuming Ban; provided, that neither the Receiver nor the Corporation shall be obligated to engage in litigation or make payments to the Assuming Ban or to any third party in connection with facilitating any such

assumption, assignment, sublease or negotiation.

(d) The Assuming Ban agrees, during its period of use of any property subject to a Data Processing Lease, to pay to the Receiver or to appropriate third parties at the direction of the Receiver all operating costs with respect thereto and to comply with all relevant terms of the applicable Data Processing Leases entered into by the Failed Ban, including without limitation the timely payment of all rent, taxes, fees, charges, utilities, insurance and assessments.

(e) The Assuming Ban shall, not later than fifty (50) days after giving the notice provided in Section 4.7(b), (i) relinquish and release to the Receiver all property subject to the relevant Data Processing Lease, in the same condition as at Ban Closing, normal wear and tear excepted, or (ii) accept an assignment or a sublease thereof or negotiate a new lease or license agreement under this Section 4.7.

4.8 Agreement with Respect to Certain Existing Agreements.

With respect to agreements existing as of Ban Closing which provide for the rendering of services by or to the Failed Ban, within one hundred twenty (120) days after Ban Closing, the Assuming Ban shall give the Receiver written notice specifying whether it elects to assume or not to assume each such agreement. Except as may be otherwise provided in this Article N, the Assuming Ban agrees to comply with the terms of each such agreement for a period commencing on the day after Ban Closing and ending on: (i) in the case of an agreement that

provides for the rendering of services by the Failed Ban, the date which is ninety (90) days after

Ban Closing, and (ii) in the case of an agreement that provides for the rendering of services to

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the Failed Bank, the date which is thirty (30) days after the Assuming Bank has given notice to the Receiver of its election not to assume such agreement; provided, that the Receiver can reasonably make such service agreements available to the Assuming Bank. The Assuming Ban shall be deemed by the Receiver to have assumed agreements for which no notification is timely given. The Receiver agrees to assign, transfer, convey, and deliver to the Assuming Ban all

the Receiver, if any, in and to agreements the Assuming Ban assumes right, title and interest of

hereunder. In the event the Assuming Bank elects not to accept an assignment of any lease (or

sublease) or negotiate a new lease for leased Ban Premises under Section 4.6 and does not

this Section 4.8 shall not apply to service agreements related to such premises. The Assuming Ban agrees, during the period it has the use or benefit of any such agreement, promptly to pay to the Receiver or to appropriate third parties

otherwise occupy such premises, the provisions of

the Receiver all operating costs with respect thereto and to comply with allat the direction of

relevant terms of such agreement. This paragraph shall not apply with respect to deposit

contracts which are expressly assumed by the Assuming Ban under Section 2.2 of this Agreement.

4.9 Informational Tax Reporting. The Assuming Ban agrees to perform all the Failed Ban with respect to Federal and State income tax informational reporting related to (i) the Assets and the Liabilities Assumed, (ii) deposit accounts that were closed and loans that were paid off or collateral obtained with respect thereto prior to Ban

obligations of

Closing, (iii) miscellaneous payments made to vendors of the Failed Ban, and (iv) any other

asset or liability ofthe Failed Bank, including, without limitation, loans not purchased and Deposits not assumed by the Assuming Ban, as may be required by the Receiver.

Under a private letter ruling (PLR) issued to the FDIC in Januar of 1988, the Internal Revenue Service will allow the Assuming Ban to report for the Failed Ban transactions under its own TIN for the entire year 2008; there is no need to dual-report for different payors in pre- v. post-closing date periods.

The Assuming Ban agrees to prepare on behalf ofthe Receiver all required Federal and State

compliance and income/franchise tax returns for the Failed Ban and acquired subsidiar entities

Ban Closing. The returns will be provided to the Receiver within the statutorily requiredas of

filing timeframe.

4.10 Insurance. The Assuming Ban agrees to obtain insurance coverage effective from and after Ban Closing, including public liability, fire and extended coverage insurance acceptable to the Receiver with respect to leased Ban Premises that it occupies, and all leased Furniture and Equipment and Fixtures and leased data processing equipment (including hardware and software) located thereon, in the event such insurance coverage is not already in force and

Ban Closing. All such insurance shall, where appropriate (as determined by the Receiver), name the Receiver as an additional insured.

effect with respect to the Assuming Ban as the insured as of

4.11 Office Space for Receiver and Corporation. For the period commencing on the day following Ban Closing and ending on the one hundred eightieth (180th) day thereafter, the Assuming Ban agrees to provide to the Receiver and the Corporation, without charge, adequate

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and suitable office space (including parking facilities and vault space), furniture, equipment

(including photocopying and telecopying machines) and utilities (including local telephone service and a dedicated broadband or T-1 internet service) at the Bank Premises occupied by the

their respective functions with respect to the

Assuming Bank for their use in the discharge of

Failed Bank. In the event the Receiver and the Corporation determine that the space provided is inadequate or unsuitable, the Receiver and the Corporation may relocate to other quarters having adequate and suitable space and the costs of relocation and any rental and utility costs for the

the period of occupancy by the Receiver and the Corporation shall be borne by the balance of

Assuming Bank.

4.12 Omitted.

4.13 Omitted.

ARTICLE V

DUTIES WITH RESPECT TO DEPOSITORS OF THE FAILED BANK

5.1 Payment of Checks, Drafts and Orders. Subject to Section 9.5, the Assuming Ban agrees to pay all properly drawn checks, drafts and withdrawal orders of depositors of the Failed Ban presented for payment, whether drawn on the check or draft forms provided by the Failed Ban or by the Assuming Ban, to the extent that the Deposit balances to the credit of

respective makers or drawers assumed by the Assuming Ban under this Agreement are sufficient to permit the payment thereof, and in all other respects to discharge, in the usual course

the Failed Ban with respect to

of conducting a banking business, the duties and obligations of

the Failed Ban assumed by the

the Deposit balances due and owing to the depositors of

Assuming Ban under this Agreement.

5.2 Certain Agreements Related to Deposits. Subject to Section 2.2, the Assuming Ban agrees to honor the terms and conditions of any written escrow or mortgage servicing agreement or other similar agreement relating to a Deposit liability assumed by the Assuming Ban pursuant to this Agreement.

5.3 Notice to Depositors.

(a) Within thirty (30) days after Bank Closing, the Assuming Ban shall give (i) the Failed

its assumption of the Deposit liabilities of

the Failed Ban of

notice to depositors of

Ban, and (ii) any notice required under Section 2.2, by mailing to each such depositor a notice with respect to such assumption and by advertising in a newspaper of general circulation in the

county or counties in which the Failed Ban was located. The Assuming Ban agrees that it will

obtain prior approval of all such notices and advertisements from counsel for the Receiver and that such notices and advertisements shall not be mailed or published until such approval is received.

the Failed Ban

(b) The Assuming Ban shall give notice by mail to depositors of concerning the procedures to claim their deposits, which notice shall be provided to the

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Assuming Ban by the Receiver or the Corporation. Such notice shall be included with the notice to depositors to be mailed by the Assuming Bank pursuant to Section 5.3(a).

(c) If the Assuming Ban proposes to charge fees different from those charged by the the

Failed Ban before it establishes new deposit account relationships with the depositors of

Failed Ban, the Assuming Bank shall give notice by mail of such changed fees to such depositors.

ARTICLE VI

RECORDS

6.1 Transfer of Records.

(a) In accordance with Section 3.1, the Receiver assigns, transfers, conveys and the

delivers to the Assuming Ban the following Records pertaining to the Deposit liabilities of

Failed Ban assumed by the Assuming Ban under this Agreement, except as provided in Section 6.4:

(i) signature cards, orders, contracts between the Failed Ban and its depositors and Records of similar character;

(ii) passbooks of depositors held by the Failed Ban, deposit slips, cancelled checks and withdrawal orders representing charges to accounts of depositors;

and the following Records pertaining to the Assets:

(iii) records of deposit balances carried with other banks, bankers or trust companies;

(iv) Loan and collateral records and Credit Files and other documents;
(v) deeds, mortgages, abstracts, surveys, and other instruments or records of title pertaining to real estate or real estate mortgages;

(vi) signature cards, agreements and records pertaining to Safe Deposit Boxes, if

any; and

(vii) records pertaining to the credit card business, trust business or safekeeping business of the Failed Bank, if any.

(b) The Receiver, at its option, may assign and transfer to the Assuming Bank by a other

single blanket assignment or otherwise, as soon as practicable after Bank Closing, any

Records not assigned and transferred to the Assuming Bank as provided in this Agreement, including but not limited to loan disbursement checks, general ledger tickets, official bank

tapes) and paid out loan files.

checks, proof transactions (including proof

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6.2 Delivery of Assigned Records. The Receiver shall deliver to the Assuming Bank all Records described in (i) Section 6.1 (a) as soon as practicable on or after the date of this

Agreement, and (ii) Section 6.1 (b) as soon as practicable after making any assignment described

therein.

6.3 Preservation of Records. The Assuming Bank agrees that it will preserve and the Receiver, the Corporation and the Assuming Bank, all

maintain for the joint benefit of

which it has custody for such period as either the Receiver or the Corporation in its discretion may require, until directed otherwise, in writing, by the Receiver or Corporation. The Assuming Bank shall have the primary responsibility to respond to subpoenas, discovery

Records of

which it has custody.

requests, and other similar official inquiries with respect to the Records of

6.4 Access to Records; Copies. The Assuming Ban agrees to permit the Receiver and the Corporation access to all Records of which the Assuming Ban has custody, and to use, inspect, make extracts from or request copies of any such Records in the manner and to the extent requested, and to duplicate, in the discretion of the Receiver or the Corporation, any

microfilm or microfiche pertaining to Deposit account relationships; provided, that in the event that the Failed Ban maintained one or more duplicate copies of such microfilm or microfiche Records, the Assuming Ban hereby assigns, transfers, and conveys to the Corporation one such duplicate copy of each such Record without cost to the Corporation, and agrees to deliver to the Corporation all Records assigned and transferred to the Corporation under this Article VI as soon as practicable on or after the date of this Agreement. The party requesting a copy of any Record shall bear the cost (based on standard accepted industry charges to the extent applicable, as determined by the Receiver) for providing such duplicate Records. A copy of each Record requested shall be provided as soon as practicable by the party having

Record in the form of

custody thereof.

ARTICLE VII BID; INITIAL PAYMENT

The Assuming Ban has submitted to the Receiver a positive bid of \$1,888,000,000.00 for the Assets purchased and Liabilities Assumed hereunder (the "Bid Amount"). On the Payment Date, the Assuming Ban will pay to the Corporation, or the Corporation will pay to the Assuming

the Payment Date is not the day following the day of Ban Closing) from and including the day following Ban Closing to and including the day preceding the Payment Date at the Settlement Interest Rate.

Ban, as the case may be, the Initial Payment, together with interest on such amount

(if

ARTICLE VIII
PROFORMA

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The Assuming Bank, as soon as practical after Bank Closing, in accordance with the best information then available, shall provide to the Receiver a Proforma Statement of Condition

the Failed Bank as shown on the Failed Bank's books and records as of Ban Closing and reflecting which assets and liabilities are passing to the Assuming Ban and which assets and liabilities are to be retained by the Receiver. In addition, the Assuming Bank is to provide to the Receiver, in a standard data request as defined by the Receiver, an electronic database of all loans, deposits, and subsidiaries and other business Bank Closing. See Schedule 3.1a.

indicating all assets and liabilities of

combinations owned by the Failed Bank as of

IX
CONTINUING COOPERATION

ARTICLE

9.1 General Matters. The parties hereto agree that they will, in good faith and with their best efforts, cooperate with each other to carry out the transactions contemplated by this Agreement and to effect the purposes hereof.

9.2 Additional Title Documents. The Receiver, the Corporation and the Assuming Ban each agree, at any time, and from time to time, upon the request of any party hereto, to

execute and deliver such additional instruments and documents of conveyance as shall be

reasonably necessary to vest in the appropriate party its full legal or equitable title in and to the

property transferred pursuant to this Agreement or to be transferred in accordance herewith. The

Assuming Bank shall prepare such instruments and documents of conveyance (in form and

substance satisfactory to the Receiver) as shall be necessary to vest title to the Assets in the

Assuming Bank. The Assuming Bank shall be responsible for recording such instruments and

documents of conveyance at its own expense.

9.3 Claims and Suits.

(a) The Receiver shall have the right, in its discretion, to (i) defend or settle any claim or suit against the Assuming Bank with respect to which the Receiver has indemnified the

Assuming Bank in the same manner and to the same extent as provided in Article XII, and (ii)

defend or settle any claim or suit against the Assuming Bank with respect to any Liability

Assumed, which claim or suit may result in a loss to the Receiver arising out of or related to this

Agreement, or which existed against the Failed Bank on or before Bank Closing. The exercise by

the Receiver of any rights under this Section 9.3(a) shall not release the Assuming Bank with

respect to any of its obligations under this Agreement.

(b) In the event any action at law or in equity shall be instituted by any Person against the Receiver and the Corporation as codefendants with respect to any asset of the Failed Bank

retained or acquired pursuant to this Agreement by the Receiver, the Receiver agrees, at the

Corporation, to join with the Corporation in a petition to remove the action to the

United States District Court for the proper district. The Receiver agrees to institute, with or

without joinder of the Corporation as complaintiff, any action with respect to any such retained or

acquired asset or any matter connected therewith whenever notice requiring such action shall be

given by the Corporation to the Receiver.

request of

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9.4 Payment of Deposits. In the event any depositor does not accept the obligation of the Failed Bank assumed by the Assuming

the Assuming Bank to pay any Deposit liability of

Ban pursuant to this Agreement and asserts a claim against the Receiver for all or any portion of

any such Deposit liability, the Assuming Bank agrees on demand to provide to the Receiver

the Deposit liability reflected on

funds sufficient to pay such claim in an amount not in excess of

the books of the Assuming Ban at the time such claim is made. Upon payment by the Assuming Ban to the Receiver of such amount, the Assuming Bank shall be discharged from any further obligation under this Agreement to pay to any such depositor the amount of such Deposit liability paid to the Receiver.

9.5 Withheld Payments. At any time, the Receiver or the Corporation may, in its discretion, determine that all or any portion of any deposit balance assumed by the Assuming Ban pursuant to this Agreement does not constitute a "Deposit" (or otherwise, in its discretion,

determine that it is the best interest of the Receiver or Corporation to withhold all or any portion

of any deposit), and may direct the Assuming Ban to withhold payment of all or any portion of

any such deposit balance. Upon such direction, the Assuming Ban agrees to hold such deposit

and not to make any payment of such deposit balance to or on behalf of the depositor, or to itself,

transfer, set-off, or otherwise. The Assuming Ban agrees to maintain the "withheld payment" status of any such deposit balance until directed in writing by the Receiver

whether by way of

the Receiver or the Corporation, the

or the Corporation as to its disposition. At the direction of

Assuming Ban shall return all or any portion of such deposit balance to the Receiver or the Corporation, as appropriate, and thereupon the Assuming Ban shall be discharged from any further liability to such depositor with respect to such returned deposit balance.

If such deposit balance has been paid to the depositor prior to a demand for return by the Corporation or the Receiver, and payment of such deposit balance had not been previously withheld pursuant to this Section, the Assuming Ban shall not be obligated to return such deposit balance to the Receiver or the Corporation. The Assuming Ban shall be obligated to reimburse the Corporation or the Receiver, as the case may be, for the amount of any deposit balance or portion thereof paid by the Assuming Ban in contravention of any previous direction to withhold payment of such deposit

which was withheld pursuant to this

balance or return such deposit balance the payment of

Section.

9.6 Proceedings with Respect to Certain Assets and Liabilities.

(a) In connection with any investigation, proceeding or other matter with respect to the Failed Ban

the Failed Ban retained by the Receiver, or any asset of

any asset or liability of

acquired by the Receiver pursuant to this Agreement, the Assuming Ban shall cooperate to the

extent reasonably required by the Receiver.

(b) In addition to its obligations under Section 6.4, the Assuming Ban shall provide the Receiver access at reasonable times and locations without other limitation

representatives of

the Subsidiaries

or qualification to (i) its directors, officers, employees and agents and those of

acquired by the Assuming Ban, and (ii) its books and records, the books and records of such

books, records and Credit Files

Subsidiaries and all Credit Files, and copies thereof. Copies of

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shall be provided by the Assuming Bank as requested by the Receiver and the costs of duplication thereof shall be borne by the Receiver.

(c) Not later than ten (10) days after the Put Notice pursuant to Section 3.4 or the date

transfer of any Loan by the Assuming Bank to the Receiver pursuant to Section 3.6, the Assuming Bank shall deliver to the Receiver such documents with respect to such Loan

as the Receiver may request, including without limitation the following: (i) all related Credit

Documents (other than certificates, notices and other ancillary documents), (ii) a certificate

of the notice of

interest, fees and

the transfer and the amount of setting forth the principal amount on the date of

other charges then accrued and unpaid thereon, and any restrictions on transfer to which any such

Loan is subject, and (iii) all Credit Files, and all documents, microfiche, microfilm and computer

records (including but not limited to magnetic tape, disc storage, card forms and printed copy)

the

the Assuming Ban or any Affiliate of maintained by, owned by, or in the possession of

Assuming Ban relating to the transferred Loan.

9.7 Information. The Assuming Ban promptly shall provide to the Corporation such other information, including financial statements and computations, relating to the performance

of the provisions of this Agreement as the Corporation or the Receiver may request from time to

the Failed Ban employed

the Receiver, make available employees of

time, and, at the request of

the pro forma statement pursuant to

or retained by the Assuming Ban to assist in preparation of

Section 8.1.

X
CONDITION PRECEDENT

ARTICLE

the parties to this Agreement are subject to the Receiver and the Corporation having received at or before Ban Closing evidence reasonably satisfactory to each of any necessary approval, waiver, or other action by any governmental authority, the board of directors of the Assuming Ban, or other third party, with respect to this Agreement and the

The obligations of

the

the Failed Ban and the appointment of transactions contemplated hereby, the closing of

the Assuming Ban, and any agreements, documents, matters or Receiver, the chartering of

proceedings contemplated hereby or thereby.

XI

ARTICLE

REPRESENTATIONS AND WARRANTIES OF THE ASSUMING BANK

The Assuming Ban represents and warrants to the Corporation and the Receiver as follows:

(a) Corporate Existence and Authority. The Assuming Ban (i) is duly organized, validly existing and in good standing under the laws of its Chartering Authority and has full power and authority to own and operate its properties and to conduct its business as now

conducted by it, and (ii) has full power and authority to execute and deliver this Agreement and

to perform its obligations hereunder. The Assuming Bank has taken all necessary corporate

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this Agreement and the

action to authorize the execution, delivery and performance of

performance of the transactions contemplated hereby.

(b) Third Party Consents. No governmental authority or other third party consents (including but not limited to approvals, licenses, registrations or declarations) are required in connection with the execution, delivery or performance by the Assuming Bank of this Agreement, other than such consents as have been duly obtained and are in full force and effect.

(c) Execution and Enforceability. This Agreement has been duly executed and delivered by the Assuming Bank and when this Agreement has been duly authorized, executed and delivered by the Corporation and the Receiver, this Agreement will constitute the legal, valid

the Assuming Bank, enforceable in accordance with its terms and binding obligation of

(d) Compliance with Law.

(i) Neither the Assuming Bank nor any of its Subsidiaries is in violation of any statute, regulation, order, decision, judgment or decree of, or any restriction imposed by, the United States of America, any State, municipality or other political subdivision or any agency of any of the foregoing, or any court or other tribunal having jurisdiction over the Assuming Bank or any of its Subsidiaries or any assets of any such Person, or any foreign government or agency thereof having such jurisdiction, with respect to the conduct of the business of the Assuming

the Assuming Bank or any of its Subsidiaries, which, either individually or in the aggregate with all other such violations, would materially and adversely affect the business, operations or condition (financial

Bank or of any of its Subsidiaries, or the ownership of the properties of

the Assuming Bank to perform, satisfy or

observe any obligation or condition under this Agreement.

or otherwise) of the Assuming Ban or the ability of

(ii) Neither the execution and delivery nor the performance by the Assuming Ban of this Agreement will result in any violation by the Assuming Ban of, or be in conflict

with, any provision of any applicable law or regulation, or any order, writ or decree of any court

or governmental authority.

e) Representations Remain True. The Assuming Ban represents and warrants that it has executed and delivered to the Corporation a Purchaser Eligibility Certification and Confidentiality Agreement and that all information provided and representations made by or on behalf of the Assuming Ban in connection with this Agreement and the transactions contemplated hereby, including, but not limited to, the Purchaser Eligibility Certification and Confidentiality Agreement (which are affirmed and ratified hereby) are and remain true and correct in all material respects and do not fail to state any fact required to make the information contained therein not misleading.

ARTICLE XII
INDEMNIFICATION

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12.1 Indemnification of Indemnitees. From and after Bank Closing and subject to the limitations set forth in this Section and Section 12.6 and compliance by the Indemnitees with Section 12.2, the Receiver agrees to indemnify and hold harmless the Indemnitees against any and all costs, losses, liabilities, expenses (including attorneys' fees) incurred prior to the assumption of defense by the Receiver pursuant to paragraph (d) of Section 12.2, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with claims

the Failed Ban that are not assumed by the

by the

against any Indemnitee (1) based on liabilities of

Assuming Ban pursuant to this Agreement or subsequent to the execution hereof

Assuming Bank or any Subsidiar or Affiliate of the Assuming Bank for which indemnification

this Section 12.1 or (2) described in Section 12.1(a) below
subj ect in each case to certain exclusions as provided in (b) of this Section 12.1:
is provided hereunder in (a) of

(a)
(1) claims based on the rights of any shareholder or former shareholder as such of the Failed Ban;
(x) the Failed Ban, or (y) any Subsidiar or Affliate of
(2) claims based on the rights of any creditor as such of the Failed Ban, or any creditor as such of any director, offcer, employee or agent of the Failed Ban or any Affiliate of the Failed Ban or any
the Failed Ban, with respect to any indebtedness or other obligation of

Affliate of the Failed Ban arsing prior to Ban Closing;

(3) claims based on the rights of any present or former director, offcer, employee or agent as such of the Failed Ban or of any Subsidiary or Affliate of the Failed Ban;
the Failed

(4) claims based on any action or inaction prior to Ban Closing of the

Ban, its directors, officers, employees or agents as such, or any Subsidiar or Affiliate of

Failed Ban, or the directors, offcers, employees or agents as such of such Subsidiar or Affliate;

the Failed

(5) claims based on any malfeasance, misfeasance or nonfeasance of the Failed

Ban, its directors, offcers, employees or agents with respect to the trust business of

Ban, if any;

(6) claims based on any failure or alleged failure (not in violation of law) by the Assuming Ban to continue to perform any service or activity previously performed by the Failed

Ban which the Assuming Ban is not required to perform pursuant to this Agreement or which

arise under any contract to which the Failed Ban was a party which the Assuming Ban elected not to assume in accordance with this Agreement and which neither the Assuming Ban nor any Subsidiary or Affiliate of the Assuming Ban has assumed subsequent to the execution hereof;

(7) claims arising from any action or inaction of any Indemnitee, including for the Failed Ban or of any

purposes of this Section 12.1(a)(7) the former officers or employees of

Subsidiary or Affiliate of the Failed Ban that is taken upon the specific written direction of the

Corporation or the Receiver, other than any action or inaction taken in a manner constituting bad

faith, gross negligence or willful misconduct; and

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the Failed Bank whose deposit

(8) claims based on the rights of any depositor of has been accorded "withheld payment" status and/or returned to the Receiver or Corporation in accordance with Section 9.5 and/or has become an "unclaimed deposit" or has been returned to the Corporation or the Receiver in accordance with Section 2.3;

(9) claims asserted by, or derivatively by any shareholder on behalf of, the Failed bidding, negotiation, execution and

Ban's parent company based on the process of

the transactions contemplated by this Agreement, provided that (x) the amount consummation of

the indemnification paid or payable pursuant to this clause (9) shall not exceed \$500,000,000, and (y) the indemnification provided by this clause (9) shall cover only those claims specifically

of

the transactions contemplated by this Agreement.

enumerated in the FDIC's approval of

(b) provided, that, with respect to this Agreement, except for paragraphs (7), (8) and (9) of Section 12.1 (a), no indemnification will be provided under this Agreement for any:

(1) judgment or fine against, or any amount paid in settlement (without the written consent of the Receiver) by, any Indemnitee in connection with any action that seeks damages against any Indemnitee (a "counterclaim") arising with respect to any Asset and based on any action or inaction of either the Failed Bank, its directors, officers, employees or agents as such prior to Bank Closing, unless any such judgment, fine or amount paid in settlement exceeds the greater of (i) the Repurchase Price of such Asset, or (ii) the monetary recovery sought on such

Asset by the Assuming Bank in the cause of action from which the counterclaim arises; and in

such event the Receiver will provide indemnification only in the amount of such excess; and no

indemnification will be provided for any costs or expenses other than any costs or expenses

(including attorneys' fees) which, in the determination of the Receiver, have been actually and reasonably incurred by such Indemnitee in connection with the defense of any such counterclaim; and it is expressly agreed that the Receiver reserves the right to intervene, in its discretion, on its behalf and/or on behalf of the Receiver, in the defense of any such counterclaim;

approval of

the Failed Bank that is

(2) claims with respect to any liability or obligation of the Failed Bank expressly assumed by the Assuming Bank pursuant to this Agreement or subsequent to the

the Assuming Bank;

execution hereof by the Assuming Bank or any Subsidiary or Affiliate of

the Failed Bank to any present or former

(3) claims with respect to any liability of the Failed Bank, which

employee as such of the Failed Bank or of any Subsidiary or Affiliate of

liability is expressly assumed by the Assuming Bank pursuant to this Agreement or subsequent to

the Assuming Bank;

