LOAN CONTRIBUTION AND ASSIGNMENT AGREEMENT

BY AND BETWEEN

THE FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR FIRST NATIONAL BANK OF NEVADA

AND

FNBN-CMLCON I LLC

Dated as of February 20, 2009

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LOAN CONTRIBUTION AND ASSIGNMENT AGREEMENT

THIS LOAN CONTRIBUTION AND ASSIGNMENT AGREEMENT (as the same shall be amended or supplemented, this "**Agreement**") is made and entered into as of the 20th day of February, 2009 (the "**Effective Date**"), by and between THE FEDERAL DEPOSIT INSURANCE CORPORATION (in any capacity, "**FDIC**") AS RECEIVER FOR FIRST NATIONAL BANK OF NEVADA (including its successors and assigns, the "**Initial Member**"), and FNBN-CMLCON I LLC, a Delaware limited liability company (the "**Company**").

RECITALS

WHEREAS, on July 25, 2008, the FDIC was appointed receiver for First National Bank of Nevada (the "**Failed Bank**"); and

WHEREAS, the Initial Member owns the Loans (hereinafter defined) described on the Loan Schedule attached hereto as Attachment "A" (the "**Loan Schedule**"); and

WHEREAS, the Initial Member has determined to liquidate the Loans; and

WHEREAS, the Initial Member has formed the Company and holds the sole membership interest in the Company (the "**LLC Interest**"); and

WHEREAS, the Initial Member desires to contribute the Loans as a capital contribution to the Company, as more fully set forth herein; and

WHEREAS, the Initial Member and the Company have also entered into a Participation and Servicing Agreement as of the date hereof (the "**Participation Agreement**"), pursuant to which the Company will issue and convey to the Initial Member a participation interest in the Loans, as more fully set forth therein; and

WHEREAS, pursuant to the Limited Liability Company Interest Sale and Assignment Agreement dated of even date hereof (the "**LLC Interest Sale Agreement**"), the Initial Member has agreed to sell and transfer the LLC Interest to SGH FNB Ventures, LLC (the "**LLC Interest Transferee**") for a purchase price of $41,000,468.22 (the "**Bid Amount**"), the completion of such sale (the "**Closing**"); and

WHEREAS, the Bid Amount has been allocated among the Loans by the LLC Interest Transferee (such allocated amount with respect to a Loan, the "**Loan Value**"), as set forth on Attachment "B" (the "**Loan Value Schedule**"); and

WHEREAS, the Initial Member and the Company desire to memorialize their agreement relating to the contribution and certain other matters as set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements hereinafter contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Initial Member and the Company hereby agree as follows:

Article I
Definitions and Construction

Section 1.1 **Definitions.** For purposes of this Agreement, the following terms shall have the meanings and definitions hereinafter respectively set forth:

"**Accounting Records**" means the general ledger, supporting subsidiary ledgers and schedules, and loan servicing system records of the Initial Member.

"**Action**" means any claim, action, suit (at law or in equity), arbitration or proceeding before or by a Governmental Authority.

"**Adjusted Escrow Balance**" means, with respect to any Loan, the Escrow Balance adjusted up or down, as appropriate, to reflect the actual balance of the escrow account as reflected on the Accounting Records as of the Cut-Off Date and to correct errors reflected in the Escrow Balance due to (i) miscalculations, misapplied payments, unapplied payments, unrecorded disbursements or other accounting errors with respect to the period ending on the Cut-Off Date, (ii) the effect of any final court decree, unappealable regulatory enforcement order or other similar action of a legal or regulatory nature effective on or before the Cut-Off Date, (iii) a foreclosure sale which occurred on or before the Cut-Off Date for which the Redemption Period, if any, expired on or before the Cut-Off Date, or (iv) the portion of any Dishonored Check that was applied to (and reflected in) the Escrow Balance.

"**Adjusted Unpaid Principal Balance**" means, with respect to any Loan, the Unpaid Principal Balance adjusted up or down, as appropriate, to reflect the actual unpaid principal balance of the Loan on the Accounting Records and to correct errors reflected in the Unpaid Principal Balance due to (i) miscalculations, misapplied payments, unapplied payments, unrecorded advances of principal or other disbursements, or other accounting errors with respect to the period ending on the Cut-Off Date, (ii) the effect of any final court decree, unappealable regulatory enforcement order or other similar action of a legal or regulatory nature effective on or before the Cut-Off Date, (iii) a foreclosure sale which occurred on or before the Cut-Off Date for which the Redemption Period, if any, expired on or before the Cut-Off Date, or (iv) the portion of any Dishonored Check that was applied to (and reflected in) the Unpaid Principal Balance.

"**Adjustment Percentage**" means, with respect to any Loan, the quotient (expressed as a decimal) of the Loan Value for such Loan divided by the Unpaid Principal Balance of such Loan.

"**Affected Loan**" has the meaning given in Section 4.5(c).

"**Affidavit and Assignment of Claim**" means an Affidavit and Assignment of Claim in the form of Attachment "C" to this Agreement.

"**Affiliate**" means, with respect to any specified Person, (i) any other Person directly or indirectly controlling or controlled by or under common control with such specified Person, (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities, voting equity interests, or beneficial interests of the Person specified, (iii) any officer, director, general partner, managing member, trustee, employee or promoter of the Person specified or any Immediate Family Member of such officer, director, partner, member, trustee, employee or promoter, (iv) any corporation, partnership, limited liability company or trust for which any Person referred to in clause (ii) or (iii) acts in that capacity, or (v) any Person who is an officer, director, general partner, managing member, trustee or holder of ten percent (10%) or more of the outstanding voting securities, voting equity interests or beneficial interests of any Person described in clauses (i) through (iv); provided, however, that for purposes of this Agreement, the Initial Member shall not be deemed to be an Affiliate of the Company or of any Affiliate of the Company. For purposes of this definition, the term "**control**" (including the phrases "**controlled by**" and "**under common control with**") when used with respect to any specified Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise.

"**Agreement**" has the meaning given in the preamble, and shall include all exhibits, schedules and attachments hereto.

"**Ancillary Documents**" means the Participation Agreement, the Servicing Agreement, the Custodial Agreement, the LLC Interest Sale Agreement, the Guaranty, and the Company Operating Agreement of the Company, in each case once executed and delivered, and any and all other agreements and instruments executed and delivered contemporaneously in connection with the Closing.

"**Assignment and Lost Instrument Affidavit**" means an Assignment and Lost Instrument Affidavit in the form of Attachment "D" to this Agreement.

"**Authorized Funding Draw**" has the meaning given that term in the Participation Agreement.

"Bankruptcy Rule" means any of the rules set forth under the Federal Rules of Bankruptcy Procedure, as the same may be amended from time to time.

"**Bid Amount**" has the meaning given in the seventh recital.

"**Borrower**" means any borrower or other obligor with respect to any Loan.

"**Business Day**" means any day except a Saturday, Sunday or other day on which commercial banks in Washington, D.C. or United States federal government offices are required or authorized by Law to close.

"Closing" has the meaning given in the seventh recital.

"Collateral" means any and all real or personal property, whether tangible or intangible, securing or pledged to secure a Loan, including any account, equipment, guarantee or contract right, or other interest that is the subject of any Collateral Document.

"Collateral Document" means any pledge agreement, security agreement, personal or corporate guaranty, deed of trust, mortgage, contract for the sale of real property, assignment, collateral agreement or other agreement or document of any kind, whether an original or a copy, whether similar to or different from those enumerated, securing in any manner the performance or payment by any Borrower of its obligations or the obligations of any other Borrower under any of the Loans or the Notes evidencing the Loans.

"Collection Account" has the meaning given in the Participation Agreement.

"Company" has the meaning given in the preamble.

"Contract for Deed" means an executory contract with a third party to convey real property, including any installment land contract.

"Custodial Agreement" has the meaning given in the Participation Agreement.

"Custodial Documents" has the meaning given in the Custodial Agreement.

"Cut-Off Date" means as of the close of business on December 31, 2008.

"Deficiency Balance" means the remaining unpaid principal balance of any Note purchased hereunder after crediting to it the proceeds of a foreclosure sale.

"Dishonored Check" means any check or similar instrument that has been returned due to insufficient funds or a stop payment order.

"Document Custodian" has the meaning given in the Participation Agreement.

"Effective Date" has the meaning given in the preamble.

"Environmental Hazard" means the presence at, in or under any Mortgaged Property (whether held in fee simple estate or subject to a ground lease or otherwise, and including any improvements whether by buildings or facilities, and any personal property, fixtures, leases and other property or rights pertaining thereto), of any "hazardous substance," as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601(14), or any petroleum (including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure), at a level or in an amount that requires remediation or abatement under applicable environmental Law.

"Escrow Balance" means, with respect to any Loan, the positive escrow balance (if any) in the escrow account with respect to that Loan, as reflected on the Loan Schedule.

"**Excess Damage Liability**" has the meaning given in Section 4.5(c).

"Excess Principal" has the meaning given in Section 2.3(b).

"Failed Bank" has the meaning given in the first recital.

"FDIC" means the Federal Deposit Insurance Corporation, in any capacity.

"Foreign Jurisdiction" means any jurisdiction other than the United States, and any subdivision of or in such other jurisdiction.

"Foreign Loan" means a Loan with respect to which the Borrower or any of the Collateral is located in any Foreign Jurisdiction.

"GAAP" has the meaning given in the Participation Agreement.

"Governmental Authority" means any United States or non-United States national, federal, state, local, municipal or provincial or international government or any political subdivision of any governmental, regulatory or administrative authority, agency or commission, or judicial or arbitral body.

"Guarantor" means any guarantor of all or any portion of any Loan or all or any of any Borrower's obligations set forth and described in the Loan Documents.

"Guidelines" has the meaning given in the Participation Agreement.

"Immediate Family Member" shall mean, with respect to any individual, his or her spouse, parents, parents-in-law, grandparents, descendents, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children (whether natural or adopted), children-in-law, step children, grandchildren and grandchildren-in-law.

"Indemnified Parties" has the meaning given in Section 4.17(a).

"Initial Member" has the meaning given in the preamble.

"Law" means any applicable statute, law, ordinance, regulation, rule, code, injunction, judgment, decree or order (including any executive order) of any Governmental Authority.

"**Lien**" means any pledge, security interest, charge, restriction on or condition to transfer, voting or exercise or enjoyment of any right or beneficial interest, option, right of first refusal and any other lien, claim or encumbrance of any nature whatsoever.

"Limited Power of Attorney" means the Limited Power of Attorney in the form of Attachment "E" to this Agreement.

"LIP Account" has the meaning given in the Participation Agreement.

"LLC Interest" has the meaning given in the fourth recital.

"**LLC Interest Sale Agreement**" has the meaning given in the seventh recital.

"LLC Interest Transferee" has the meaning given in the seventh recital.

"Loan" means any loan or Participated Loan listed on the Loan Schedule, and any loan into which any listed loan or Participated Loan is refinanced, and includes with respect to each such loan or Participated Loan: (i) any obligation evidenced by a Note; (ii) all rights, powers or Liens of the Initial Member or the Failed Bank in or under the Collateral Documents; (iii) any Contract for Deed and the real property which is subject to any such Contract for Deed; and (iv) any lease and the related leased property.

"Loan Documents" means all documents, agreements, certificates, instruments and other writings (including all Collateral Documents) now or hereafter executed by or delivered or caused to be delivered by any Borrower, any Guarantor or any other obligor evidencing, creating, guaranteeing or securing, or otherwise executed or delivered in respect of, all or any part of a Loan or evidencing any transaction contemplated thereby, and all Modifications thereto.

"Loan File" means all documents pertaining to any Loan, either copies or originals, that are in the possession of the Initial Member or any of its employees or contractors responsible for the servicing of the Loan, other than (i) the original Notes and Collateral Documents and Custodial Documents (ii) confidential or privileged communications between the Initial Member or the Failed Bank and its legal counsel; provided, however, that the Loan Files do not include files maintained by other employees or agents of the Initial Member, or attorney-client or work product privileged materials held by the Initial Member's legal counsel unless in the opinion of such counsel, the disclosure of the material is not likely to result in the waiver of the attorney-client or work product privilege.

"**Loan Proceeds**" has the meaning given in the Participation Agreement.

"**Loan Schedule**" has the meaning given in the second recital.

"**Loan Value**" has the meaning given in the eighth recital.

"**Loan Value Schedule**" has the meaning given in the eighth recital.

"**Losses**" has the meaning given in Section 4.17(a).

"**Modification**" means any extension, renewal, substitution, replacement, supplement, amendment or modification of any agreement, certificate, document, instrument or other writing, whether or not contemplated in the original agreement, document or instrument.

"Mortgaged Property" means the real property Collateral, including land, fixtures and improvements, if any, securing any Loan.

"Note" means each note or promissory note, lost instrument affidavit, loan agreement, shared credit or Participated Loan agreement, intercreditor agreement, reimbursement agreement,

any other evidence of indebtedness of any kind, or any other agreement, document or instrument evidencing a Loan, and all Modifications to the foregoing.

"Obligations" means all obligations and commitments of the Initial Member relating to a Loan and arising or due or payable after the Cut-Off Date under and in accordance with any of the related Notes, Collateral Documents or Related Agreements, including any commitment to make Authorized Funding Draws or to advance funds under any letter of assurance, letter of credit or similar instrument.

"Order" has the meaning given in Section 6.1.

"Participant" has the meaning given in the Participation Agreement.

"Participant's Share" has the meaning given in the Participation Agreement.

"Participated Loan" means any Loan subject to a shared credit, participation or similar intercreditor agreement under which the Initial Member or the Failed Bank was the lead or agent financial depository institution or otherwise managed or held the credit or sold participations, or under which the Initial Member or the Failed Bank was a participating financial depository institution or purchased participations in a credit managed by another Person.

"**Participation Agreement**" has the meaning given in the sixth recital.

"Participation Interest" has the meaning given in the Participation Agreement.

"**Person**" means any individual, corporation, partnership (general or limited), limited liability company, limited liability partnership, firm, joint venture, association, joint-stock company, trust, estate, unincorporated organization, governmental or regulatory body or other entity.

"Post-Cut-Off Date Advances" has the meaning given in the Participation Agreement.

"**Pre-Approved Charges**" means the costs and expenses expressly designated as "Pre-Approved Charges" in Sections 2.7, 3.1(c), 3.1(d)(1), 3.1(e), 3.2, 4.3, 4.5(c) and 5.6 of this Agreement, and no other costs or expenses.

"Pre-Cut-Off Date Advances" has the meaning given in the Participation Agreement.

"Principal Deficiency" has the meaning given in Section 2.3(b).

"Redemption Period" means the statutory time period, if any, during which a foreclosed owner may buy back foreclosed real property from the foreclosure sale purchaser under the Law of the jurisdiction in which the property is located, which period (if the jurisdiction provides for the same) may vary among the jurisdictions which do provide for a Redemption Period.

"Related Agreement" means (i) any agreement, document or instrument (other than the Note and Collateral Documents) relating to or evidencing any obligation to pay or securing any Loan (including any equipment lease, letter of credit, bankers' acceptance, draft, system

confirmation of transaction, loan history, affidavit, general collection information, and correspondence and comments relating to any obligation), (ii) any real property or rights in or to any real property (including leases, tenancies, concessions, licenses or other rights of occupancy or use and security deposits related thereto) related to any Loan, (iii) any collection, contingency fee, and tax and other service agreements that are specific to the Loans (or any of them) and that are assignable, (iv) any letter of assurance, letter of credit or similar instrument evidencing an obligation of the Failed Bank or the Initial Member that was issued for the benefit of any Person and relates in any way to the Loan or the acquisition, development or construction of any project with respect to which the proceeds of the Loan were used or were intended to be used, and (v) any interest rate swap arrangement between the Seller or the Failed Bank and the Borrower that relates to any Loan.

"Released Parties" has the meaning given in Section 4.16(b).

"Repurchase Percentage" means, with respect to any Loan, (i) the quotient (expressed as a decimal) of the Loan Value for such Loan divided by the Unpaid Principal Balance of such Loan, *divided by* (ii) 0.20.

"Repurchase Price" means, with respect to any Loan, an amount equal to (i) the Repurchase Percentage multiplied by the unpaid principal balance of the Loan as of the date of the repurchase, *minus* (ii) unreimbursed Post-Cut-Off Date Advances, *plus* (iii) unreimbursed Servicing Expenses that have been advanced by the Company with respect to such Loan (excluding any expenses described in Section 3.04 of the Participation Agreement) as of the date of the repurchase, *minus* (iv) the amount of any positive escrow balance with respect to the Loan as of the date of the repurchase that is not transferred to the Initial Member at the time of the repurchase.

"RESPA" means the Real Estate Settlement Procedures Act of 1974, as amended, and all rules and regulations promulgated thereunder.

"Servicer" has the meaning given in the Participation Agreement.

"Servicing Agreement" has the meaning given in the Participation Agreement.

"Servicing Expenses" has the meaning given in the Participation Agreement.

"Servicing Transfer Date" means the date on which the transfer of the Loan servicing records to the Servicer's system of record is completed and the Servicer begins to service the Loans, which date shall be no later than February 27, 2009 or such other date as is agreed to by the Initial Member and the Company.

"Third Party Claim" has the meaning given such term in Section 4.17(a).

"Transfer Documents" means the endorsements and allonges to Notes, Assignment and Lost Instrument Affidavits (if applicable), assignments, deeds and other documents of assignment, conveyance or transfer required under any applicable Law to evidence the transfer to

the Company of the Loans, the Collateral and the Collateral Documents and the Initial Member's rights with respect to the Loans and the Collateral.

"Transfer Taxes" means any taxes, assessments, levies, imposts, duties, deductions, fees, withholdings or other charges of whatever nature (other than any taxes imposed on or measured by net income or any franchise taxes), including interest and penalties thereon, required to be paid to any taxing authority with respect to the transfer of the Loans, the Collateral and the Collateral Documents or the rights in the Collateral or the assignment and assumption of the Obligations thereunder.

"Uniform Commercial Code" means the Uniform Commercial Code as in effect in any applicable jurisdiction, as the same may be amended from time to time.

"**Unpaid Principal Balance**" means, with respect to any Loan, the unpaid principal balance of the Loan as stated on the Loan Schedule.

Section 1.2 **Construction.** This Agreement shall be construed and interpreted in accordance with the following:

(a) References to "Affiliates" include, only other Persons which from time to time constitute "Affiliates" of such specified Person, and do not include, at any particular time, other Persons that may have been, but at such time have ceased to be, "Affiliates" of such specified Person, except to the extent that any such reference specifically provides otherwise.

(b) The term "or" is not exclusive.

(c) A reference to a law includes any amendment, modification or replacement to such law.

(d) Accounting terms shall have the meanings assigned to them by GAAP applied on a consistent basis by the accounting entity to which they refer.

(e) References to any document, instrument or agreement (i) shall be deemed to include all appendices, exhibits, schedules and other attachments thereto and all documents, instruments or agreements issued or executed in replacement thereof, and (ii) shall mean such document, instrument or agreement, or replacement thereto, as amended, modified and supplemented from time to time in accordance with its terms and as the same is in effect at any given time.

(f) Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(g) The words "include" and "including" and words of similar import are not limiting, and shall be construed to be followed by the words "without limitation," whether or not they are in fact followed by such words.

(h) The word "during" when used with respect to a period of time shall be construed to mean commencing at the beginning of such period and continuing until the end of such period.

(i) Unless the context otherwise requires, singular nouns and pronouns when used herein shall be deemed to include the plural and vice versa and impersonal pronouns shall be deemed to include the personal pronoun of the appropriate gender.

Article II
Contribution and Conveyance of Loans

Section 2.1 **Terms and Conditions.** The Initial Member hereby conveys to the Company, and the Company hereby acquires and accepts from the Initial Member, by way of a capital contribution, without recourse, all right, title and interest of the Initial Member in and to the Loans (including all Notes, the other Loan Documents and Related Agreements) effective as of the Cut-Off Date, on a servicing-released basis (subject to the provisions of Section 3.3), and all rights in the Collateral pursuant to the Collateral Documents. The Company hereby assumes and agrees to perform and pay all of the Obligations of the Initial Member under and with respect to the Loans. The Initial Member and the Company agree that the conveyance contemplated by this Section and the other provisions of this Agreement is intended to be an absolute conveyance and transfer of ownership of the Loans by capital contribution.

Section 2.2 **Allocation of Payments; Post-Cut-Off Date Advances.** All payments and other amounts received on account of any of the Loans or Collateral on or before the Cut-Off Date shall belong to the Initial Member. Any and all proceeds received with respect to any or all of the Loans or Collateral at any time after the Cut-Off Date, including principal, interest, prepayment fees, premiums and charges, extension and exit fees, late fees, assumption fees, other fees and charges, insurance proceeds and condemnation payments (or any portion thereof) that are not used and disbursed to repair, replace or restore the related Collateral in accordance with the terms of the Loan, proceeds from sales or other dispositions of any or all of the Loans or the Collateral, and any proceeds from making a draw under any letter of credit or certificate of deposit held with respect to any Loan, provided that such draw is permitted by the terms of the Loan, shall be allocated and distributed to the Company and the Participant in accordance with the provisions of the Participation Agreement. The Company shall be liable for, and shall reimburse the Initial Member for, all Post-Cut-Off Date Advances. To the extent that Post-Cut-Off Date Advances are outstanding as of the Servicing Transfer Date, whether or not then billed, the Initial Member shall be reimbursed for the same on the Servicing Transfer Date. All Post-Cut-Off Date Advances not reimbursed on the Servicing Transfer Date shall be reimbursed by the Company to the Initial Member upon demand.

Section 2.3 **Adjustments.**

(a) At least three (3) Business Days before the Servicing Transfer Date, the Initial Member shall provide the Company with a statement setting forth, for each Loan, the Adjusted Unpaid Principal Balance and the Adjusted Escrow Balance and, if the Loan was refinanced into a permanent loan after the Cut-Off Date upon the disbursement of the final Authorized Funding Draw, the date of such refinance and the new loan number (cross-referenced to the loan number

for that Loan on the Loan Schedule). The statement shall be accompanied by an explanation of the reasons for any adjustment to any Unpaid Principal Balance or Escrow Balance.

(b) If the Adjusted Unpaid Principal Balance of any Loan exceeds the Unpaid Principal Balance of such Loan (such excess, the "**Excess Principal**"), the LLC Interest Transferee shall be liable to the Initial Member for an amount equal to the Adjustment Percentage multiplied by the Excess Principal. If the Unpaid Principal Balance of any Loan exceeds the Adjusted Unpaid Principal Balance of any Loan (such deficiency, the "**Principal Deficiency**"), the Initial Member shall be liable to the LLC Interest Transferee for an amount equal to the Adjustment Percentage multiplied by the Principal Deficiency. No adjustment will be made for any miscalculation of interest on any Loan. To the extent the Initial Member makes advances of its own funds to make Authorized Funding Draws (rather than withdrawing such funds from the LIP Account) or Post-Cut-Off Date Advances after the Cut-Off Date, the Company shall reimburse the Initial Member for all such advances.

(c) The aggregate amount owed by the LLC Interest Transferee to the Initial Member pursuant to Section 2.3(b) (excluding the amount of any Authorized Funding Draws and Post-Cut-Off Date Advances due to the Initial Member) shall be subtracted from the aggregate amount owed to the LLC Interest Transferee by the Initial Member pursuant to Section 2.3(b). If the resulting amount is a positive number, the Initial Member shall pay such amount to the LLC Interest Transferee, and if the resulting amount is a negative number, the LLC Interest Transferee shall pay such amount to the Initial Member as if such number were a positive number. In addition, an amount equal to the positive balance of any Borrower escrow accounts as of the Servicing Transfer Date shall be remitted to the Servicer (and shall not be considered to constitute Loan Proceeds under the Participation Agreement). Any monies due to the LLC Interest Transferee or the Initial Member pursuant to this Section shall be paid on the Servicing Transfer Date. The Company shall adjust its records to reflect the Adjusted Unpaid Principal Balances and the Adjusted Escrow Balances with respect to the Loans.

Section 2.4 **Rebates and Refunds.** The Company is not entitled to any rebates or refunds from the Initial Member or the Failed Bank from any pre-computed interest Loan regardless of when the Note matures. Further, on pre-computed interest Loans, neither the Initial Member nor the Failed Bank will refund any unearned discount amounts to the Company.

Section 2.5 **Interest Conveyed.** The Initial Member shall convey all of its right, title and interest in and to each Loan. In the event a foreclosure occurs after the Cut-Off Date, or occurred on or before the Cut-Off Date, but the Redemption Period had not expired on or before the Cut-Off Date, the Initial Member shall convey to the Company the Deficiency Balance, if any, together with the net proceeds, if any, of such foreclosure sale. If the Initial Member was the purchaser at such foreclosure sale, the Initial Member shall convey to the Company the Deficiency Balance, if any, together with a special warranty deed to the property purchased at such foreclosure sale. The Company acknowledges and agrees that the Company shall not acquire any interest in or to any such property which was foreclosed by the Initial Member or any of its predecessors-in-interest on or before the Cut-Off Date and for which the Redemption Period, if any, had expired on or before the Cut-Off Date.

Section 2.6 **Retained Claims and Release.** The Company and the Initial Member agree that the contribution of the Loans pursuant to this Agreement will exclude the transfer to the Company of all right, title and interest of the Initial Member and the Failed Bank in and to any and all claims of any nature whatsoever that might now exist or hereafter arise, whether known or unknown, that the Initial Member has or the Failed Bank had or that either might have, regardless of when any such claim is discovered, (a) against officers, directors, employees, insiders, accountants, attorneys, other persons employed by the Initial Member or any of its predecessors, underwriters or any other similar Persons who may have caused a loss to the Initial Member or any of its predecessors in connection with the initiation, origination or administration of a Loan, (b) against any appraisers, accountants, auditors, attorneys, investment bankers or brokers, loan brokers, deposit brokers, securities dealers or other professional individuals or entities who performed services for the Initial Member, the Failed Bank or any of its predecessors, relative to the initiation, origination or servicing of a Loan, (c) against any third parties for alleged fraud, misrepresentation or other misconduct in connection with the initiation, origination or servicing of a Loan or (d) against any appraiser or other Person with whom the Initial Member or the Failed Bank or any servicing agent contracted for services or title insurance in connection with the initiation, origination or servicing of a Loan.

Section 2.7 **Taxes.** Except as otherwise provided herein, the Company shall pay, indemnify and hold harmless the Initial Member from and against any Transfer Taxes, and shall timely file any returns required to be filed with respect to such Transfer Taxes; provided, however, that the Initial Member shall pay (and shall not be entitled to be reimbursed for) any Transfer Taxes in the nature of mortgage recording taxes and shall timely file any returns required to be filed with respect to such Transfer Taxes. Taxes paid by the Company pursuant to this Section shall constitute Pre-Approved Charges for purposes of the Participation Agreement.

Article III
Transfer of Loans, Collateral Documents and Servicing

Section 3.1 **Delivery of Documents.** The Company and the Initial Member agree to execute and deliver to one another the following:

(a) On the Effective Date, such Transfer Documents executed by the Initial Member as the Initial Member elects to deliver to the Company.

(b) Subject to the provisions of the Participation Agreement, the Initial Member shall deliver to the Document Custodian the Notes and other Custodial Documents and Collateral Documents, on or within a reasonable period of time after the Servicing Transfer Date, shall deliver the Loan Files to the Company or the Servicer.

(c) After the Effective Date, the Initial Member, in the Initial Member's sole discretion, may elect to grant a Limited Power of Attorney to selected employees of the Company. If the Initial Member elects to grant such a Limited Power of Attorney, the Initial Member will provide it to the Company within a reasonable time after the Effective Date. If the Company is granted such a Limited Power of Attorney, the Company, at the Company's expense, will prepare and execute on behalf of the Initial Member, within a reasonable time after the Effective Date, all Transfer Documents not delivered by the Initial Member to the Company

on the Effective Date. Expenses incurred by the Company in complying with the obligations set forth in the preceding sentence shall constitute Pre-Approved Charges for purposes of the Participation Agreement. All Transfer Documents prepared by the Company shall be in appropriate form suitable for filing or recording (if applicable) in the relevant jurisdiction and otherwise subject to the limitations set forth herein, and the Company shall be solely responsible for the preparation, contents and form of such documents. The Company hereby releases the Initial Member from any loss or damage incurred by the Company due to the contents or form of any documents prepared by the Company (the form of which was not provided by the Initial Member) and shall indemnify and hold harmless the Initial Member from and against any claim, action or cause of action asserted by any Person, including the Company, arising out of the contents or form of any Transfer Document (the form of which was not provided by the Initial Member), including any claim relating to the adequacy or inadequacy of any such document or instrument for the purposes thereof, and the use (or purported use) by the Company of the Limited Power of Attorney in any way not expressly permitted by its terms.

The Company shall use the following forms for endorsing or preparing allonges to Notes:

Pay to the order of
FNBN-CMLCON I LLC
Without Recourse

Federal Deposit Insurance Corporation as Receiver
for First National Bank of Nevada

By: _____
Name: _____
Title: Attorney-in-Fact

All documents of assignment, conveyance or transfer shall contain the following sentence: "This assignment is made without recourse, representation or warranty, express or implied, by the Federal Deposit Insurance Corporation in its corporate capacity or as Receiver for First National Bank of Nevada."

(d) In the event the Initial Member elects not to provide the Company with a Limited Power of Attorney in accordance with Section 3.1(c), then all Transfer Documents not delivered by the Initial Member to the Company on the Effective Date shall be prepared and executed by one of the following methods, at the Initial Member's option:

1. The Initial Member, at the Initial Member's expense, will prepare and execute all endorsements and allonges to Notes or Assignment and Lost Instrument Affidavits (if applicable) not delivered by the Initial Member to the Company on the Effective Date and provide them to the Company within a reasonable time after the Effective Date. The Company, at the Company's expense, will prepare all other Transfer Documents not delivered by the Initial Member to the Company on the Effective Date and shall deliver such documents to the Initial Member for execution within a reasonable time after the Effective Date. Expenses incurred by the Company in complying with the

obligations set forth in the preceding sentence shall constitute Pre-Approved Charges for purposes of the Participation Agreement. All Transfer Documents prepared by the Company shall be subject to the terms and conditions for Transfer Documents specified in Section 3.1(c) above. If any Transfer Document delivered by the Company to the Initial Member for execution is unacceptable to the Initial Member for any reason whatsoever, the Initial Member may return such document to the Company along with an explanation as to why the document is unacceptable to the Initial Member. When requesting execution of any such document, the Company shall furnish the Initial Member with the Loan numbers set forth on the Loan Schedule, and a copy of the Notes, a copy of the Collateral Documents or other documents to be transferred, and copies of any previous assignments of the applicable Collateral Document or other document; or

2. The Initial Member, at the Initial Member's expense, will prepare and execute all Transfer Documents not delivered by the Initial Member to the Company on the Effective Date and submit them for recordation in the applicable jurisdiction within a reasonable period of time after the Effective Date. All such documents shall be in appropriate form suitable for filing or recording (if applicable) in the relevant jurisdiction and otherwise subject to the limitations set forth herein.

(e) As to Foreign Loans, the Company, at its own expense, must retain counsel licensed in the Foreign Jurisdictions involved with the Foreign Loans. Such foreign counsel must draft the documents necessary to assign the Foreign Loans to the Company. Expenses incurred by the Company in complying with the obligations set forth in the preceding sentence shall constitute Pre-Approved Charges for purposes of the Participation Agreement. Documents presented to the Initial Member to assign Foreign Loans to the Company must be accompanied by a letter on the foreign counsel's letterhead, signed by the foreign counsel preparing those documents, certifying that those documents conform to the Law of the Foreign Jurisdiction. Each such document and instrument shall be delivered to the Initial Member in the English language, provided, however, that any document required for its purposes to be executed by the Initial Member in a language other than the English language shall be delivered to the Initial Member in such language, accompanied by a translation thereof in the English language, certified as to its accuracy by an executive officer or general counsel of the Company and, if such executive officer or general counsel shall not be fluently bilingual, by the translator thereof.

(f) Nothing contained herein or elsewhere in this Agreement shall require the Initial Member to make any agreement, representation or warranty or provide any indemnity in any such document or instrument or otherwise, nor is the Initial Member obligated to obtain any consents or approval to the sale or transfer of the Loans or the related servicing rights, if any, or the assumption by the Company of the Obligations.

(g) The Initial Member agrees to execute any additional documents required by applicable Law or necessary to effectively transfer and assign all of the Initial Member's right, title and interest in and to any and all Loans to the Company (subject to the rights of the Initial Member under the Participation Agreement). The Initial Member shall have no obligation to provide, review or execute any such additional documents unless the same shall have been requested of the Initial Member within 365 calendar days after the Effective Date.

Section 3.2 **Recordation of Documents.** The Initial Member shall use commercially reasonable efforts to submit for recordation in the appropriate land, chattel, Uniform Commercial Code, and other records of the appropriate county, state or other jurisdictions (including any Foreign Jurisdiction) Transfer Documents to effect the transfer of the Loans and the Collateral Documents to the Company. The Initial Member shall request that recorded documents be returned to the Initial Member at its notice address set forth in Section 7.3. To the extent the same is not completed by the Initial Member or there are Transfer Documents that are returned and not recorded, the Company shall be responsible for, and agrees to promptly deliver, at its expense, all appropriate documents and instruments with respect thereto for recordation or filing in the appropriate land, chattel, Uniform Commercial Code, and other records of the appropriate county, state or other jurisdictions (including any Foreign Jurisdiction) to effect the transfer of the Loans and the Collateral Documents and all rights in Collateral to the Company. The Initial Member shall also be responsible for following up on the status of Transfer Documents submitted for recordation. Expenses incurred by the Company in complying with the obligations set forth in this Section shall constitute Pre-Approved Charges for purposes of the Participation Agreement. The Initial Member shall, if such is affirmatively required under the applicable Law of a relevant Foreign Jurisdiction, take such actions as are necessary in such Foreign Jurisdiction to effect the purposes of this Article III.

Section 3.3 **Transfer of Servicing.** The Loans are conveyed to the Company on a servicing-released basis as of the Cut-Off Date. From and after the Cut-Off Date, all rights, obligations, liabilities and responsibilities with respect to the servicing of the Loans shall inure to the benefit of and be assumed by the Company, and the Initial Member shall be discharged from all responsibility and liability therefore, including any liability arising from any interim servicing provided by the Initial Member pursuant to this Section 3.3. To provide for the orderly transfer of the servicing to the Company, the Initial Member will provide, at the Initial Member's expense, interim servicing of the Loans on the Company's behalf from the Cut-Off Date through the Servicing Transfer Date. The obligations of the Initial Member to provide interim servicing for the Loans shall be as follows: (i) receive payments and post them to the system of record, (ii) maintain records reflecting payments received, (iii) provide the Company, on request, a schedule of payments processed, (iv) provide payoff information to the Company regarding particular Loans as applicable, (v) make Post-Cut-Off Date Advances, and (vi) make or withdraw funds from the LIP Account to make Authorized Funding Draws permitted under the Participation Agreement. The foregoing shall not limit the actions that the Initial Member may take with respect to any Loan while the Initial Member is providing interim servicing for the Loans. The Initial Member may engage agents of the Initial Member's own choosing to perform such interim servicing. Subject to the provisions of Sections 4.5(a) and Section 4.6, the Initial Member's performance of this interim servicing shall cease on the Servicing Transfer Date. Prior to the Servicing Transfer Date, all Loan Proceeds (including any recoveries of Pre-Cut-Off Date Advances) remaining after reimbursement of Post-Cut-Off Date Advances shall be allocated between the Participant and the Company as prescribed in Section 4.01(a) of the Participation Agreement and distributed as required by Section 4.01(b) of the Participation Agreement, with the Company's share of all remaining Loan Proceeds received in the prior calendar month remitted to the Company on or prior to the fifteenth (15) day of each month (or if the fifteenth (15th) day is not a Business Day, the immediately following Business Day of the month) commencing no later than the fifth (5th) Business Day after the Closing, to such account or

accounts as the Company may, from time to time, direct. On the Servicing Transfer Date, all Loan Proceeds received and not yet remitted to the Company or the Initial Member pursuant to this Section 3.3 shall be remitted to the Collection Account. Prior to the Servicing Transfer Date, the Initial Member shall be (and hereby is) authorized by the Company to use and withdraw funds from the Collection Account, the LIP Account and the Borrower escrow accounts in the performance of its interim servicing duties under this Section 3.3. The Company hereby ratifies any and all actions taken by the Initial Member in performance of interim servicing activities prior to the Closing Date. The Company acknowledges and agrees that the Initial Member is performing interim servicing for the Company as an accommodation to the Company and shall not have any liability for any acts or omissions taken in connection therewith (other than to correct calculation, allocation or distribution errors), and except for amounts for which the Company may be reimbursed as provided in the Participation Agreement, the Company hereby releases and forever discharges the Initial Member, the FDIC, the Failed Bank and its predecessors and all of their respective officers, directors, employees, agents, attorneys, contractors and representatives and all of their respective successors, assigns and Affiliates, from any and all claims (including any counterclaim or defensive claim), demands, causes of action, judgments or legal proceedings and remedies of whatever kind or nature that the Company had, has or might have in the future, whether known or unknown, which are related in any manner whatsoever to the servicing of the Loans (other than gross negligence or willful misconduct) at any time prior to the Servicing Transfer Date.

Article IV
Covenants, Duties and Obligations of the Company

Section 4.1 **Servicing of Loans.** From and after the Servicing Transfer Date, the Company shall service the Loans in compliance with the Participation Agreement.

Section 4.2 **Collection Agency/Contingency Fee Agreements.** The Company acknowledges and agrees that it accepts and acquires the Loans subject to any agreements with collection agencies or contingency fee agreements with attorneys (in either case that are outstanding and in effect as of the Servicing Transfer Date) that relate only to the Loans (or any of them) and are assignable, and assumes and agrees to fulfill all Obligations of the Initial Member and the Failed Bank thereunder.

Section 4.3 **Insured or Guaranteed Loans.** If any Loans being transferred pursuant to this Agreement are insured or guaranteed by any Governmental Authority, and such insurance or guaranty is not being specifically terminated by the Initial Member, the Company acknowledges and agrees that such Loans must be serviced by a servicer, lender or mortgagee approved by such Governmental Authority, if such approval is required. The Company further acknowledges and agrees that, upon assumption of the Obligations with respect to the Loans, it assumes full responsibility for determining whether or not any such insurance or guarantees are in effect on the date of this Agreement and, with respect to those Loans with respect to which any such insurance or guarantee is in effect on the date of this Agreement, the Company acknowledges and agrees that, upon assumption of the Obligations with respect to the Loans, it assumes full responsibility for taking any and all actions as may be necessary to insure such insurance or guarantees remain in full force and effect. The Company acknowledges and agrees

that, upon assumption of the Obligations with respect to the Loans, it assumes and agrees to fulfill all of the Initial Member's and the Failed Bank's Obligations under the contracts of insurance or guaranty. Any out-of-pocket fees due to any insurer or guarantor incurred by the Company to fulfill its obligations set forth in the preceding sentence shall constitute Pre-Approved Charges for purposes of the Participation Agreement.

Section 4.4 **Reporting to or for the Applicable Taxing Authorities.** The Initial Member shall be responsible for submitting all Internal Revenue Service information returns related to the Loans for all applicable periods prior to the Servicing Transfer Date. The Company shall be responsible for submitting all Internal Revenue Service information returns related to the Loans for all applicable periods commencing with the Servicing Transfer Date. Information returns include reports on Forms 1098 and 1099. The Company shall be responsible for submitting all information returns required under applicable Law of any Foreign Jurisdiction, to the extent such are required to be filed by the Company or the Initial Member under such Law, relating to the Loans, for the calendar or tax year in which the Effective Date falls and thereafter.

Section 4.5 **Loans in Litigation.**

(a) With respect to any Loan subject of any type of pending litigation as of the Closing Date, the Company shall notify the FDIC's Regional Counsel, 1601 Bryan Street, Dallas, Texas 75201-4586, within fifteen (15) Business Days before the Servicing Transfer Date of the name of the attorney selected by the Company to represent the Company's interests in the litigation. The Company shall, before the Servicing Transfer Date, notify the clerk of the court or other appropriate official and all counsel of record that ownership of the Loan was transferred from the Initial Member to the Company. Subject to the provisions of Sections 4.5(c) and 4.5(d), the Company shall have its attorney file appropriate pleadings and other documents and instruments with the court or other appropriate body before the Servicing Transfer Date, substituting the Company's attorney for the Initial Member's attorney, removing the Initial Member and the Failed Bank as a party to the litigation and substituting the Company as the real party-in-interest. Nothing contained in this Agreement shall preclude the Company from retaining the same attorney retained by the Initial Member (or the Failed Bank) to handle litigation with respect to the Loans, provided, that, with respect to litigation referred to in Section 4.5(c), the Company shall not retain the same counsel that represents the Initial Member in connection with such litigation unless the FDIC's Regional Counsel (referred to above) agrees in writing to such dual representation. Subject to the provisions of Section 4.5(b) (and the Company's compliance with its obligations therein) and Section 4.5(d), in the event the Company fails, prior to the Servicing Transfer Date, to remove the Initial Member and the Failed Bank as parties to the litigation and substitute the Company as the real party-in-interest, (1) the Initial Member may, but shall have no obligation to, continue to pursue or defend such litigation on behalf of the Company and, (2) in the event the Initial Member does continue to pursue or defend such litigation, the Company shall be liable for and hereby agrees to pay all costs and expenses incurred by the Initial Member in connection therewith, which expenses shall constitute Servicing Expenses.

(b) If the Company is unable, as a matter of applicable Law, to cause the Initial Member and the Failed Bank to be replaced by the Company as party-in-interest in any pending

litigation as required by Section 4.5(a), the Company shall so notify the FDIC's Regional Counsel, at the address specified above, no less than five (5) Business Days before the Servicing Transfer Date, and provide such evidence to such effect and stating the reasons for such failure. In any such event, (i) the Company shall cause its attorney to conduct such litigation at the Company's expense, which expense shall constitute Servicing Expenses; (ii) the Company shall cause the removal of the Initial Member and the Failed Bank and substitution of the Company as party-in-interest in such litigation at the earliest time possible under applicable Law; (iii) the Company shall use commercially reasonable efforts to cause such litigation to be resolved by judgment or settlement in as reasonably efficient a manner as practical; (iv) the Initial Member shall cooperate with the Company and the Company's attorney as reasonably required in the Initial Member's sole judgment to bring such litigation or any settlement relating thereto to a reasonable and prompt conclusion; and (v) no settlement shall be agreed upon by the Company or its agents or counsel without the express prior written consent of the Initial Member, unless such settlement includes an irrevocable and complete waiver and release of any and all potential claims against the Initial Member and the Failed Bank in relation to such litigation or the subject Loans or Obligations by any Person asserting any claim in the litigation and any Borrower, and any and all losses, liabilities, claims, causes of action, damages, demands, taxes, fees, costs and expenses relating thereto shall be paid by the Company without recourse of any kind to the Initial Member or the Failed Bank (other than to the extent the same constitute Servicing Expenses). The Company shall pay all of the costs and expenses incurred by it in connection with the actions required to be taken by it pursuant to Section 4.5(a) and this Section 4.5(b) (which expenses shall constitute Servicing Expenses), including all legal fees and expenses and court costs (which expenses shall constitute Servicing Expenses), and shall reimburse the Initial Member, upon demand, for all legal expenses the Initial Member incurs on or after the Effective Date with respect to any such litigation, including costs incurred with the dismissal thereof or withdrawal therefrom (which costs incurred by the Initial Member shall constitute Post-Cut-Off Date Advances hereunder).

(c) In the event there is asserted against the Initial Member (or the Failed Bank) or the Company any claim or action with respect to one or more Loans that is based upon or arises out of any act or omission of the Initial Member or the Failed Bank on or prior to the Cut-Off Date (and not any act or omission of or on behalf of the Company) and that alleges liability that, in the opinion of both the Initial Member and the Company, is reasonably likely to exceed the liability of the Company as the assignee and owner of the Loan after the Cut-Off Date, (i) the Company shall be responsible for and shall control and assume the defense of the Company and the Company's interest in the Loans, at the Company's own expense and by the Company's own counsel, which counsel must be reasonably satisfactory to the Initial Member; and (ii) the Initial Member shall be responsible for and shall control and assume the defense of the Initial Member and the Failed Bank at the Initial Member's own expense. To the extent their interests are not in conflict, the Company and the Initial Member shall cooperate in the defense of any such claims or action and shall use commercially reasonable efforts to work together to resolve or settle such claims or action in a manner that is mutually agreeable and in their respective best interests. The Company shall obtain the prior written approval of the Initial Member before ceasing to defend against any such claims or action. The costs and expenses incurred by the Company in connection with its defense of any claim or action described in this Section 4.5(c), including (x) reasonable attorneys' fees and expenses incurred to defend against (or investigate) the same or

pursue counterclaims or cross-claims against other parties, (y) awards or judgments assessed against the Company with respect to any such claim or action, or (z) the costs of any settlement of such claim or action, shall constitute Pre-Approved Charges for purposes of the Participation Agreement. If, as a result of any claim or action subject to the provisions of this Section 4.5(c), (i) there is entered against the Company either (1) a final, non-appealable monetary judgment holding the Company liable for damages in excess of an amount equal to the Loan Value of the Loan relating to or that is the subject of such claim (such Loan, the "**Affected Loan**") *divided by* 0.20 (such excess amount, the "**Excess Damage Liability**"), or (2) a final monetary judgment that is appealable, which the Initial Member agrees in writing need not be appealed further by the Company, and that imposes an Excess Damage Liability on the Company, or (ii) the Company enters into a final settlement agreement with the consent of the Initial Member (such consent not to be unreasonably withheld), pursuant to which the Company is obligated to pay an Excess Damage Liability, then, in any such case, the Initial Member shall reimburse the Company for the Excess Damage Liability and the Initial Member shall be entitled, at its option, to repurchase the Affected Loan at its Repurchase Price in accordance with the repurchase provisions of Article VI; provided, however, that the Initial Member shall not be liable pursuant to this sentence for any liability imposed upon the Company that arises as a result of any act or omission of the Company.

(d) The provisions of Sections 4.5(a), 4.5(b) and 4.5(c) are subject to the right of the Initial Member to retain claims pursuant to Section 2.6 of this Agreement, including any such claims as may have been asserted in litigation pending as of the date of the Closing. At the Initial Member's discretion, litigation involving any such claims shall be bifurcated, with the Initial Member remaining the real party in interest and retaining control over (and being responsible for pursuing and bearing the related costs to pursue) claims retained by it pursuant to Section 2.6 and the Company substituting itself as the real party in interest and taking control of (and being responsible for pursuing and bearing the cost of pursuing) the remainder of the litigation.

Section 4.6 **Loans in Bankruptcy.** In accordance with Bankruptcy Rules 3001 and 3002, the Company agrees to take all actions necessary to file, prior to the Servicing Transfer Date, (i) proofs of claims in pending bankruptcy cases involving any Loans for which the Initial Member or the Failed Bank has not already filed a proof of claim, and (ii) all documents required by Rule 3001 of the Federal Rules of Bankruptcy Procedure and to take all such similar actions as may be required in any relevant jurisdiction in any pending bankruptcy or insolvency case or proceeding in such jurisdiction involving any Loans in order to evidence and assert the Company's rights. The Company shall prepare and provide to the Initial Member, on or prior to the Servicing Transfer Date, an Affidavit and Assignment of Claim or any similar forms as may be required in any relevant Foreign Jurisdiction and shall be acceptable to the Initial Member, for each Loan where a Borrower under such Loan is in bankruptcy as of the Effective Date. The Company hereby releases the Initial Member and the Failed Bank from any claim, demand, suit or cause of action the Company may have as a result of any action or inaction on the part of the Initial Member or the Failed Bank with respect to such Loan. In the event the Company fails, prior to the Servicing Transfer Date, to take the actions required by this Section 4.6, (1) the Initial Member may, but shall have no obligation to, file proofs of claim or other documents as the Initial Member determines may be necessary or appropriate to evidence and assert the

Company's rights and, (2) in the event the Initial Member does take any such actions, the Company shall be liable for and hereby agrees to pay all costs and expenses incurred by the Initial Member in connection therewith (regardless of whether such costs and expenses constitute Post-Cut-Off Date Advances). The provisions of this Section are subject to the right of the Initial Member to retain claims pursuant to Section 2.6 of this Agreement, including any such claims as may have been asserted in litigation pending as of the date of the Closing. At the Initial Member's discretion, litigation involving any such claims shall be bifurcated, with the Initial Member remaining the real party-in-interest and retaining control over (and being responsible for pursuing and bearing the related costs to pursue) claims retained by it pursuant to Section 2.6 and the Company substituting itself as the real party-in-interest and taking control of (and being responsible for pursuing and bearing the cost of pursuing) the remainder of the litigation.

Section 4.7 **Loan Related Insurance.** As of the Effective Date, the Company shall cause to be put into place, for the Collateral with respect to each Loan with respect to which the Borrower has failed to maintain required insurance, fire, hurricane, flood and hazard insurance with extended coverage as is customary in the area in which the Collateral is located and in such amounts and with such deductibles as, in the reasonable judgment of the Company, are prudent. Upon the cancellation of any insurance policy maintained by the Initial Member or the Failed Bank with respect to any Loan and the receipt by the Company or the Initial Member of any refund of any premiums previously paid with respect thereto, such refunded amount shall inure to the benefit of the Borrowers with respect to the affected Loans, and such refunded amount shall be remitted to (or retained by) the Company and applied as appropriate to adjust the escrow accounts with respect to such affected Loans.

Section 4.8 **Loans with Escrow Accounts.** The Company agrees to assume, undertake and discharge any and all Obligations of the holder of the Loans with respect to any escrow, maintenance of escrow and payments from escrow of monies paid by or on account of the Borrower.

Section 4.9 **Initial Member as Lead Lender in Participated Loans.** The Company hereby agrees to assume the role of lead lender for any Participated Loan in which a portion of a Loan was participated to one or more entities and in which the Initial Member or any of its predecessors was the lead lender as of the Effective Date. The Company hereby agrees to accept any such Participated Loan subject to all participants' right, title and interest in such Participated Loan.

Section 4.10 **Contracts for Deed.** The Company agrees to comply with all Obligations set forth in any Contract for Deed contained in any Loan subject to this Agreement. Pursuant to the provisions of Section 3.1 hereof, the Initial Member may require the Company to prepare and furnish special warranty deeds for the Initial Member's approval and execution, conveying the real property subject to any such contract to the Company. Title curative work, if required, shall be at the Company's sole cost and expense.

Section 4.11 **Leases.** The Company agrees to comply with all Obligations set forth in any lease related to any Loan unless, in the opinion of the Company, complying with the

Obligations under such lease would not be in the best interests (in terms of maximizing the value of the Loan) of the Company and the Initial Member. Pursuant to the provisions of Section 3.1 hereof, the Initial Member may require the Company to prepare and furnish applicable Transfer Documents for the Initial Member's approval and execution.

Section 4.12 **Notice to Borrowers.** No later than thirty (30) days prior to the Servicing Transfer Date, the Company (or the Servicer) shall provide the Initial Member with all information necessary to allow the Initial Member to prepare and send to Borrowers a "goodbye" letter meeting the requirements of, and in accordance with, RESPA, if applicable. Based upon the information provided by the Company, the Initial Member shall send to Borrowers such "goodbye" letter. The Company (or the Servicer) shall provide a "hello" letter to Borrowers meeting the requirements of and in accordance with RESPA, if applicable. Alternatively, if the Initial Member and the Company (or the Servicer) so agree, they may send a joint "hello/goodbye" letter to Borrowers meeting the requirements of and in accordance with RESPA, if applicable. The Initial Member and the Company (and the Servicer) shall each bear their own costs and expenses incurred to comply with their respective obligations contained in this Section (or, in the case of a decision to send a joint "hello/goodbye" letter, their respective costs shall be allocated among them), and no such costs or expenses shall be considered Post-Cut-Off Date Advances hereunder or Servicing Expenses for purposes of the Participation Agreement.

Section 4.13 **Notice of Claims.** The Company shall immediately notify the Initial Member, in accordance with the notice provisions of Section 7.4, of any claim, threatened claim or litigation against the Initial Member or the Failed Bank arising out of any Loan.

Section 4.14 **Use of the FDIC's Name and Reservation of Statutory Powers.** The Company shall not use or permit the use by its agents, successors or assigns of any name or combination of letters that is similar to "FDIC" or "Federal Deposit Insurance Corporation." The Company will not represent or imply that it is affiliated with, authorized by or in any way related to the FDIC. The Company shall be entitled to assert (and claim the benefit of) the statute of limitations established under 12 U.S.C. § 1821(d)(14). However, the Company acknowledges and agrees that the assignment of any Loan or Collateral Document pursuant to the terms of this Agreement shall not constitute the assignment of any other rights, powers or privileges granted to the Initial Member pursuant to the provisions the Federal Deposit Insurance Act, including those granted pursuant to 12 U.S.C. § 1821(d), 12 U.S.C. § 1823(e) and 12 U.S.C. § 1825, all such rights and powers being expressly reserved by the Initial Member; nor shall the Company assert or attempt to assert any such right, power or privilege in any pending or future litigation involving any Loan transferred or purchased hereunder. THE COMPANY HEREBY ACKNOWLEDGES AND AGREES THAT THE DAMAGES TO BE INCURRED BY INITIAL MEMBER AS A RESULT OF THE COMPANY'S BREACH OF THIS SECTION WILL BE DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN, THAT DAMAGES WILL NOT BE AN ADEQUATE REMEDY AND THAT ANY BREACH OR THREATENED BREACH OF ANY OF THE PROVISIONS OF THIS AGREEMENT BY THE COMPANY MAY CAUSE IMMEDIATE IRREPARABLE HARM FOR WHICH THERE MAY BE NO ADEQUATE REMEDY AT LAW. ACCORDINGLY, THE PARTIES AGREE THAT, IN THE EVENT OF ANY SUCH BREACH OR THREATENED BREACH, THE INITIAL

MEMBER SHALL BE ENTITLED TO (I) IMMEDIATE AND PERMANENT EQUITABLE RELIEF (INCLUDING INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE OF THE PROVISIONS OF THIS AGREEMENT) FROM A COURT OF COMPETENT JURISDICTION (IN ADDITION TO ANY OTHER REMEDY TO WHICH IT MAY BE ENTITLED AT LAW OR IN EQUITY), AND (II) LIQUIDATED DAMAGES IN THE AMOUNT OF $25,000 FOR EACH BREACH OF THIS SECTION. THE PARTIES AGREE AND STIPULATE THAT THE INITIAL MEMBER SHALL BE ENTITLED TO EQUITABLE (INCLUDING INJUNCTIVE) RELIEF WITHOUT POSTING A BOND OR OTHER SECURITY AND THE COMPANY FURTHER WAIVES ANY DEFENSE IN ANY SUCH ACTION FOR SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF THAT A REMEDY AT LAW WOULD BE ADEQUATE AND ANY REQUIREMENT UNDER LAW TO POST SECURITY AS A PREREQUISITE TO OBTAINING EQUITABLE RELIEF.

Section 4.15 **Prior Servicer Information.** The Company acknowledges and agrees that the Initial Member might not have access to information from prior servicers of a Loan and that the Initial Member has not requested any information not in the possession of the Initial Member or its servicing contractor from any prior servicer of a Loan. The Company acknowledges and agrees that the Initial Member will not be required under the terms of this Agreement to request any information from any prior servicer.

Section 4.16 **Release of Initial Member.**

(a) Except as otherwise specifically provided in Article VI of this Agreement or in the Participation Agreement or any other Ancillary Document, the Company hereby releases and forever discharges the Initial Member, the FDIC, and the Failed Bank and all of their respective officers, directors, employees, agents, attorneys, contractors and representatives, and all of their respective successors, assigns (other than the Company) and Affiliates, from any and all claims (including any counterclaim or defensive claim), demands, causes of action, judgments or legal proceedings and remedies of whatever kind or nature that the Company had, has or might have in the future, whether known or unknown, which are related in any manner whatsoever to the Loans, the servicing of the Loans (before or after the Cut-Off Date) by the Initial Member, the Failed Bank or its predecessors, the FDIC or any Person acting on behalf of the Initial Member, the FDIC or the Failed Bank or its predecessors, or the acquisition of the Loans (other than gross negligence or willful misconduct); provided, however, that nothing contained in this Section 4.16(a) shall constitute or be interpreted as a waiver of any express right that the Company has under this Agreement or any of the Ancillary Documents.

(b) The Company agrees that it will not renew, extend, renegotiate, compromise, settle or release any Note or Loan or any right of the Company founded upon or growing out of this Agreement, except upon payment in full thereof, unless all Borrowers on said Note or Loan shall first release and discharge the FDIC, the Initial Member and the Failed Bank with respect to such Loan, and their respective agents and assigns, other than the Company (the "**Released Parties**") from all claims, demands and causes of action which any such Borrower may have against any such Released Party arising from or growing out of any act or omission occurring prior to the date of such release. The provisions of this Section shall not be applicable with respect to actions taken in order to comply with the Guidelines.

Section 4.17 **Indemnification.**

(a) The Company shall indemnify and hold harmless the Initial Member and the Initial Member's Affiliates, and their respective officers, directors, employees, partners, principals, agents and contractors (the "**Indemnified Parties**"), from and against any losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and litigation and similar costs, and other out-of-pocket expenses incurred in investigating, defending, asserting or preparing the defense or assertion of any of the foregoing), deficiencies, claims, interest, awards, judgments, penalties and fines (collectively, "**Losses**") arising out of or resulting from any breach by the Company or any of its Affiliates or any of their respective officers, directors, employees, partners, principals, agents or contractors of any of the Company's obligations under or covenants or agreements contained in this Agreement (including any claim asserted by the Initial Member against the Company to enforce its rights hereunder or by any third party), or any third-party allegation or claim based upon facts alleged that, if true, would constitute such a breach, or any gross negligence, bad faith or willful misconduct (including any act or omission constituting theft, embezzlement, breach of trust or violation of any Law). Such indemnity shall survive the termination of this Agreement. In order for an Indemnified Party to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a Loss or a claim or demand made by any Person against the Indemnified Party (a "**Third Party Claim**"), such Indemnified Party shall deliver notice thereof to the Company promptly after receipt by such Indemnified Party of written notice of the Third Party Claim, describing in reasonable detail the facts giving rise to any claim for indemnification hereunder, the amount of such claim (if known) and such other information with respect thereto as is available to the Indemnified Party and as the Company may reasonably request. The failure or delay to provide such notice, however, shall not release the Company from any of its obligations under this Section 4.17 except to the extent that it is materially prejudiced by such failure or delay.

(b) If for any reason the indemnification provided for herein is unavailable or insufficient to hold harmless the Indemnified Parties, the Company shall contribute to the amount paid or payable by the Indemnified Parties as a result of the Losses of the Indemnified Parties in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties, on the one hand, and the Company (including any Servicer or subservicer), on the other hand in connection with a breach of the Company's obligations under this Agreement.

(c) If the Company confirms in writing to the Indemnified Party within fifteen (15) days after receipt of a Third Party Claim the Company's responsibility to indemnify and hold harmless the Indemnified Party therefor, the Company may elect to assume control over the compromise or defense of such Third Party Claim at the Company's own expense and by the Company's own counsel, which counsel must be reasonably satisfactory to the Indemnified Party, provided that (i) the Indemnified Party may, if such Indemnified Party so desires, employ counsel at such Indemnified Party's own expense to assist in the handling (but not control the defense) of any Third Party Claim; (ii) the Company shall keep the Indemnified Party advised of all material events with respect to any Third Party Claim; (iii) the Company shall obtain the prior written approval of the Indemnified Party before ceasing to defend against any Third Party Claim or entering into any settlement, adjustment or compromise of such Third Party Claim involving injunctive or similar equitable relief being asserted against any Indemnified Party or any of its

Affiliates; and (iv) the Company will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment in any pending or threatened action in respect of which indemnification may be sought hereunder (whether or not any such Indemnified Party is a party to such action), unless such settlement, compromise or consent by its terms obligates the Company to satisfy the full amount of the liability in connection with such Third Party Claim and includes an unconditional release of such Indemnified Party from all liability arising out of such Third Party Claim.

(d) Notwithstanding anything contained herein to the contrary, the Company shall not be entitled to control (and if the Indemnified Party so desires, it shall have sole control over) the defense, settlement, adjustment or compromise of (but the Company shall nevertheless be required to pay all Losses incurred by the Indemnified Party in connection with such defense, settlement or compromise): (i) any Third Party Claim that seeks an order, injunction or other equitable relief against any Indemnified Party or any of its Affiliates; (ii) any action in which both the Company (or any Affiliate) and the Indemnified Party are named as parties and either the Company (or such Affiliate) or the Indemnified Party determines with advice of counsel that there may be one or more legal defenses available to it that are different from or additional to those available to the other party or that a conflict of interest between such parties may exist in respect of such action; and (iii) any matter that raises or implicates any issue relating to any power, right or obligation of the FDIC under any Law. If the Company elects not to assume the compromise or defense against the asserted liability, fails to timely and properly notify the Indemnified Party of its election as herein provided, or, at any time after assuming such defense, fails to diligently defend against such Third Party Claim in good faith, the Indemnified Party may pay, compromise or defend against such asserted liability (but the Company shall nevertheless be required to pay all Losses incurred by the Indemnified Party in connection with such defense, settlement or compromise). In connection with any defense of a Third Party Claim (whether by the Company or the Indemnified Party), all of the parties hereto shall, and shall cause their respective Affiliates to, cooperate in the defense or prosecution thereof and to in good faith retain and furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested by a party hereto in connection therewith.

(e) Under no circumstances shall any liability of the Company under the provisions of this Section 4.17 constitute a Servicing Expense or otherwise be charged to the Initial Member or Participant or be deducted from the Participant's Share.

Article V
Loans Sold "As Is" and Without Recourse

Section 5.1 **Loans Conveyed "As Is".** THE LOANS ARE CONVEYED TO THE COMPANY "AS IS" AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION, WARRANTY OR GUARANTY WHATSOEVER, INCLUDING AS TO COLLECTIBILITY, ENFORCEABILITY, VALUE OF COLLATERAL, ABILITY OF ANY OBLIGOR TO REPAY, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR FITNESS FOR A SPECIFIC PURPOSE, WHETHER EXPRESS OR IMPLIED OR BY OPERATION OF LAW, BY ANY PERSON, INCLUDING THE

INITIAL MEMBER, THE FAILED BANK OR THE FDIC, OR ANY PREDECESSORS OR AFFILIATE OF THE INITIAL MEMBER, THE FAILED BANK OR THE FDIC, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS. THE INITIAL MEMBER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE LOANS, THE COLLATERAL OR THE COLLATERAL DOCUMENTS, OR WITH RESPECT TO THE LEGALITY, VALIDITY, EFFECTIVENESS, ADEQUACY OR ENFORCEABILITY OF ANY SWAP AGREEMENT OR ANY DOCUMENTS RELATING THERETO OR TO THE CONDITION, FINANCIAL OR OTHERWISE, OF THE PARTIES TO ANY SWAP AGREEMENT OR ANY OTHER PERSON OR FOR THE PERFORMANCE AND OBSERVANCE BY THE PARTIES TO ANY SWAP AGREEMENT OR ANY OTHER PERSON OF ANY OF ITS OBLIGATIONS UNDER ANY SWAP AGREEMENT OR ANY DOCUMENTS RELATING THERETO OR WITH RESPECT TO ANY OTHER MATTER WHATSOEVER RELATING TO ANY SWAP AGREEMENT.

Section 5.2 **No Warranties or Representations with Respect to Escrow Accounts.** Without limiting the generality of Section 5.1, the Initial Member makes no warranties or representations of any kind or nature as to the sufficiency of funds held in any escrow account to discharge any obligations related in any manner to an escrow obligation, as to the accuracy of the amount of any monies held in any escrow account or as to the propriety of any previous disbursements or payments from any escrow account.

Section 5.3 **No Warranties or Representations as to Amounts of Unfunded Principal.** Without limiting the generality of Section 5.1, the Initial Member further makes no warranties or representations of any kind or nature as to the amount of any additional or future advances of principal the Company may be obligated to make.

Section 5.4 **Disclaimer Regarding Calculation or Adjustment of Interest on any Loan.** Without limiting the generality of Section 5.1, the Initial Member makes no warranties or representations of any kind or nature as to the accuracy of any calculation or adjustment of interest on any Loan, including any adjustable rate Loan, whether such calculation or adjustment is made by the FDIC, the Failed Bank, the Initial Member or any Affiliate, agent or contractor of any of the foregoing, or any predecessor-in-interest of the Initial Member or any other party.

Section 5.5 **No Warranties or Representations With Regard to Information.** The Initial Member makes no warranties or representations of any kind or nature as to the completeness or accuracy of any information provided with respect to any Loan. The Company acknowledges that, for example, and not by way of limitation, some Loan Files may be missing forms or notices, or may contain incomplete or inaccurate forms or notices, that may be required by one or more federal or state consumer protection statutes. The Company's exclusive remedies with respect to any inaccurate or incomplete information provided by the Initial Member are an adjustment in accordance with Section 2.3 or an option to repurchase under Article VI, and such exclusive remedies are available only if all other conditions theretofore expressed in this Agreement have been met.

Section 5.6 **Intervening or Missing Assignments.** The Company acknowledges and agrees that the Initial Member shall have no obligation to secure or obtain any missing intervening assignment or any assignment to the Initial Member or the Failed Bank that is not contained in the Loan File or among the Collateral Documents. Neither the absence of any intervening assignment or any assignment to the Initial Member, the FDIC or the Failed Bank, nor the existence of any Lien on the Loan or its Collateral, nor any defect in the Lien or priority of the Initial Member's or the Failed Bank's security interest in the Collateral shall give rise to any claim for purchase under Article VI. The Company shall bear all responsibility and expense of securing from the appropriate source any intervening assignment or any assignment to the Initial Member, the FDIC or the Failed Bank that may be missing from the Collateral Documents, but the cost thereof shall constitute a Pre-Approved Charge for purposes of the Participation Agreement.

Section 5.7 **No Warranties or Representations as to Documents.** The Initial Member makes no warranties or representations of any kind or nature as to the effectiveness or enforceability in any Foreign Jurisdiction of this Agreement or any other document or instrument delivered or prepared in connection herewith, whether or not prepared and executed in the forms provided herewith, all of such forms being provided for reference only.

Article VI
Repurchase by the Initial Member at the Company's Option

Section 6.1 **Repurchases at Company's Option.** The Company may, at its option, and upon satisfaction of the procedures and other requirements set forth below, require the Initial Member to repurchase a Loan, if, and only if, (x) prior to the Effective Date, one of the events described in Section 6.1(a) through (g) has occurred or (y) after the Cut-Off Date, there is issued by a court of competent jurisdiction with respect to such Loan a court order (the "**Order**") that is based upon or as a result of the acts or omissions of the Initial Member on or prior to the Cut-Off Date, and either requires the assignment and transfer of such Loan back to the Initial Member or is a final non-appealable order that holds the Company liable to a Borrower for damages (exclusive of damages arising from the Company's acts or omissions after the Servicing Transfer Date) in an amount that exceeds the unpaid principal balance of such Borrower's Loan at the time of such Order and, with respect to which, in either case, the Action in which such Order is issued meets the other conditions set forth in Section 6.1(h) below. IN NO EVENT SHALL THE OCCURRENCE OF ANY SUCH EVENT OR THE OBLIGATION TO REPURCHASE A LOAN HEREUNDER BE EVIDENCE OF BAD FAITH, MISCONDUCT OR FRAUD EVEN IN THE EVENT THAT IT IS SHOWN THAT THE INITIAL MEMBER, IN ANY CAPACITY, OR ANY AFFILIATE THEREOF, OR ANY OF THEIR RESPECTIVE DIRECTORS, EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS KNEW OR SHOULD HAVE KNOWN OF THE EXISTENCE OF ANY FACTS RELATING TO THE OCCURRENCE OF SUCH EVENT.

(a) The Borrower had been discharged in a no asset bankruptcy proceeding, there is no Collateral securing such Loan and out of which such Loan may be satisfied, and all guarantors or sureties of the Note, if any, or the obligations contained therein, have similarly been discharged in no asset bankruptcies.

(b) A court of competent jurisdiction had entered a final judgment (other than a bankruptcy decree or judicial foreclosure order) holding that neither the Borrower nor any guarantors or sureties owe an enforceable obligation to pay the holder of the Note or its assignees.

(c) The Initial Member or Failed Bank had executed and delivered to the Borrower a release of liability from all obligations under the Note.

(d) A title defect exists in connection with the property which is the subject of a Contract for Deed and which title defect requires a prior order or judgment of a court to enable the Company to convey title to such property in accordance with the terms and conditions set forth in the Contract for Deed.

(e) The Initial Member is not the owner of the Loan (or, in the case of a Participated Loan, the Initial Member is not the owner of the *pro rata* interest in such Participated Loan set forth on the attached Schedule of Loans) and such is not curable by the Initial Member so as to permit ownership of the Loan to be transferred to the Company.

(f) There exists Environmental Hazards, in which case the Company's recourse with respect to this Section 6.1(f) shall be conditioned upon: (i) the presence of Environmental Hazards not being disclosed in the Loan, Loan File or other material provided by the Initial Member to the LLC Interest Transferee prior to submission of the Bid; (ii) such Loan having an Adjusted Unpaid Principal Balance greater than $250,000.00; and, (iii) the Company delivering, along with the notice required by Section 6.2, the following, each of which must be satisfactory in form and substance to the Initial Member in its discretion:

1. A Phase I environmental assessment, from a qualified and reputable firm, of the Mortgaged Property securing the Loan; and

2. A Phase II environmental assessment or lead-based paint survey of such Collateral from a qualified and reputable firm, which assessment shall confirm (i) the existence of Environmental Hazards on such Collateral and (ii) that the regulator is likely to require such remediation; and,

3. The Company shall have submitted a written certification of the Company under penalty of perjury that no action has been taken by or on behalf of the Company (i) to initiate foreclosure proceedings or (ii) to accept a deed-in-lieu-of-foreclosure in connection with such Loan.

(g) The Initial Member or the Failed Bank, or their respective officers, directors or employees, fraudulently caused the Borrower to receive less than all of the proceeds and benefits of a Note. The Company's recourse with respect to this Section 6.1(g) shall be conditioned upon the Company delivering, along with the notice required by Section 6.2, written evidence of such fraud, which evidence must be satisfactory in form and substance to the Initial Member in its discretion.

(h) There is instituted after the Cut-Off Date any Action (i) that is asserted by more than one Borrower and any Affiliates (with multiple Borrowers with respect to Loans secured by the same Collateral being considered a single Borrower for purposes of this Section) with respect to more than one Loan (with multiple Loans secured by the same Collateral being considered a single Loan for purposes of this Section), (ii) that includes allegations of fraud on the part of the Initial Member or the Failed Bank in connection with the Initial Member's or the Failed Bank's origination of such Loans, and (iii) that names the Initial Member or the Failed Bank as a defendant and that asserts liability on the part of the Initial Member or the Failed Bank for which the Company is not liable as assignee, as a matter of law, with respect to such Loans.

Section 6.2 **Notice to Initial Member.** The Company shall notify the Initial Member of each Loan with respect to which the Company seeks to exercise its rights under Section 6.1. Such notice shall be on the Company's letterhead and include the following information: (a) the Company's tax identification number, (b) the Company's wire transfer instructions, (c) the subsection of Section 6.1 under which the Company is seeking to require the Initial Member to repurchase a Loan, and (d) a summary of the reasons the Company believes that the Loans should be repurchased by the Initial Member. The notice shall be accompanied by evidence supporting the basis for the Initial Member's repurchase of such Loan. Promptly upon request by the Initial Member, the Company shall supply the Initial Member with any additional evidence that the Initial Member may reasonably request. The Initial Member shall have no obligation to repurchase any Loan pursuant to this Article VII for which notice and all supporting evidence reasonably required by the Initial Member have not been received by the Initial Member at the addresses specified in Article VII no later than the first Business Day after the expiration of (i) in the case of any purchase demand pursuant to Section 6.1(a) through (g), 180 calendar days after the Effective Date, or in the case of a Contract for Deed, the first Business Day after the expiration of 360 calendar days after the Effective Date, and (ii) in the case of any purchase demand pursuant to Section 6.1(h), thirty (30) days after the issuance of the Order.

Section 6.3 **Re-delivery of Notes, Files and Documents.** For any Loan that qualifies for purchase under this Article, the Company shall: (a) re-endorse and deliver the Note to the Initial Member (or its designee), (b) assign all Collateral Documents associated with such Loan and reconvey any real property subject to a Contract for Deed or transferred by special warranty deed pursuant to Section 2.5, together with such other documents or instruments as shall be necessary or appropriate to convey the Loan back to the Initial Member (or its designee), (c) deliver to the Initial Member (or its designee) the Loan File, along with any additional records compiled or accumulated by the Company pertaining to the Loan, and (d) deliver to the Initial Member (or its designee) a certification, notarized and executed under penalty of perjury by a duly authorized representative of the Company, certifying that as of the date of purchase by the Initial Member none of the conditions relieving the Initial Member of its obligation to purchase the Loan as specified in Section 6.4 has occurred. The documents evidencing such conveyance shall be substantially the same as those executed pursuant to Article III of this Agreement to convey the Loan to the Company. In all cases in which the Company recorded or filed among public records any document or instrument evidencing a transfer of the Loan to the Company, the Company shall cause to be recorded or filed among such records a similar document or instrument evidencing the conveyance of the Loan to the Initial Member. Upon compliance by

the Company with the provisions hereof, the Initial Member shall pay to the Company the Repurchase Price, and such Repurchase Price shall constitute Loan Proceeds for purposes of the Participation Agreement.

Section 6.4 **Waiver of Company's Repurchase Option.** The Initial Member will be relieved of its obligation to purchase any Loan for any reason set forth in Section 6.1 if the Company: (a) except as permitted by the Guidelines and other than the permanent refinance of a Loan in connection with the final Authorized Funding Draw with respect to such Loan, modifies any of the terms of the Loan (including the terms of any Collateral Document or Contract for Deed); (b) except as permitted by the Guidelines, exercises forbearance with respect to any scheduled payment on the Loan; (c) accepts or executes new or modified lease documents assigned by the Initial Member to the Company; (d) sells, assigns or transfers the Loan or any interest therein (other than the Participation Interest issued to the Initial Member pursuant to the Participation Agreement); (e) fails to comply with the Participation Agreement in the maintenance, collection, servicing and preservation of the Loan, including delinquency prevention, collection procedures and protection of collateral as warranted; (f) initiates any litigation in connection with the Loan or the Mortgaged Property securing the Loan other than litigation to force payment or to realize on the Collateral securing the Loan; (g) completes any action with respect to foreclosure on, or accepts a deed-in-lieu of foreclosure for any Collateral securing the Loan; (h) causes, by action or inaction, the priority of title to the Loan, Mortgaged Property and other security for the Loan to be less than that conveyed by the Initial Member; (i) causes, by action or inaction, the security for the Loan to be different than that conveyed by the Initial Member, except as may be required by the terms of the Collateral Documents; (j) causes, by action or inaction, a claim of third parties to arise against the Company that, as a result of purchase under this Agreement, might be asserted against the Initial Member; (k) causes, by action or inaction, a Lien of any nature to encumber the Loan to arise; (l) is the Borrower or any Affiliate thereof under such Loan; or (m) makes any disbursement of principal or otherwise incrementally funds any Loan other than making an Authorized Funding Draw.

Article VII
Notices

Section 7.1 **Notices.** All notices, requests, demands and other communications required or permitted to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be given by certified or registered mail, postage prepaid, or, delivered by hand or by nationally recognized air courier service, in any case directed to the address of such Person as set forth in the applicable Section of this Article VII. Any such notice shall become effective when received (or receipt is refused) by the addressee, provided that any notice or communication that is received (or refused) other than during regular business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day of the recipient. From time to time, any Person may designate a new address for purposes of notice hereunder by notice to such effect to the other Persons identified in this Article VII.

Section 7.2 **Article VI Notice**. Any notice, request, demand or other communication required or permitted to be given to the Initial Member pursuant to the provisions of Article VI shall be delivered to:

Initial Member:	Manager, Capital Markets & Resolutions c/o Federal Deposit Insurance Corporation 550 17th Street, NW (Room F-7014) Washington, D.C. 20429-0002 Attention: Ralph Malami
with a copy to:	Senior Counsel FDIC Legal Division Litigation and Resolutions Branch, Receivership Section Special Issues Unit 3501 Fairfax Drive (Room E-7056) Arlington, VA 22226 Attention: David Gearin

Section 7.3 **Transfer Documents**. For purposes of designating the Company as the return addressee on Transfer Documents, the following address shall be used:

Company after Closing:	FNBN-CMLCON I LLC c/o The Sorenson Group 4393 Riverboat Road, Suite 450 Salt Lake City, UT 84123 Attention: Donald E. Wallace

Section 7.4 **All Other Notices.** Any notice, request, demand or other communication required or permitted to be given pursuant to any provision of this Agreement and that is not governed by the provisions of Section 7.2 or 7.3, shall be delivered to:

Company before Closing:	Manager, Capital Markets & Resolutions c/o Federal Deposit Insurance Corporation 550 17th Street, NW (Room F-7014) Washington, D.C. 20429-0002 Attention: Ralph Malami
with a copy to:	Senior Counsel FDIC Legal Division Litigation and Resolutions Branch, Receivership Section Special Issues Unit 3501 Fairfax Drive (Room E-7056) Arlington, VA 22226 Attention: David Gearin
Company after Closing:	FNBN-CMLCON I LLC c/o The Sorenson Group

4393 Riverboat Road, Suite 450
Salt Lake City, UT 84123
Attention: Donald E. Wallace

with a copy to: B. Ray Zoll, P.C.
8941 South 700 East
Sandy, Utah 84070
Attention: B. Ray Zoll

Initial Member: Manager, Capital Markets & Resolutions
c/o Federal Deposit Insurance Corporation
550 17th Street, NW (Room F-7014)
Washington, D.C. 20429-0002
Attention: Ralph Malami

with a copy to: Senior Counsel
FDIC Legal Division
Litigation and Resolutions Branch, Receivership Section
Special Issues Unit
3501 Fairfax Drive (Room E-7056)
Arlington, Virginia 22226
Attention: David Gearin

Article VIII
Miscellaneous Provisions

Section 8.1 **Severability**. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable in such jurisdiction only as to a particular Person or Persons and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons and/or under such particular circumstance or circumstances, as the case may be; (ii) without limitation of clause (i), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any of the remaining provisions of this Agreement. Without limitation of the preceding sentence, it is the intent of the parties to this Agreement that in the event that in any court proceeding, such court determines that any provision of this Agreement is prohibited or unenforceable in any jurisdiction (because of the duration or scope (geographic or otherwise) of such provision, or for any other reason) such court shall have the power to, and shall, (x) modify such provision (including without limitation, to the extent applicable, by limiting the duration or scope of such provision and/or the Persons against whom, and/or the circumstances under which, such provision shall be effective in such jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such

provision, as so modified, may then be enforced in such proceeding and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. Nothing in this Section is intended to, or shall, limit (1) the ability of any party to this Agreement to appeal any court ruling or the effect of any favorable ruling on appeal or (2) the intended effect of Section 8.2.

Section 8.2 **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. Nothing in this Agreement shall require any unlawful action or inaction by any party hereto.

Section 8.3 **Cost, Fees and Expenses.** Except as otherwise provided herein, each party hereto agrees to pay all costs, fees and expenses which it has incurred in connection with or incidental to the matters contained in this Agreement, including fees and disbursements to its accountants and counsel.

Section 8.4 **Waivers; Amendment and Assignment.** No provision of this Agreement may be amended or waived except in writing executed by all of the parties to this Agreement. This Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits hereof shall be binding upon, and shall inure to the benefit of the undersigned parties and their respective heirs, executors, administrators, representatives, successors and permitted assigns, and no other Person or Persons (including Borrowers or any co-lender or other Person with any interest in or liability under any of the Loans) shall have any rights or remedies under or by reason of this Agreement. Notwithstanding the foregoing, this Agreement may not be transferred or assigned without the express prior written consent of the Initial Member and any attempted assignment without such consent shall be void *ab initio*.

Section 8.5 **No Presumption**. This Agreement shall be construed fairly as to each party hereto and if at any time any such term or condition is desired or required to be interpreted or construed, no consideration shall be given to the issue of who actually prepared, drafted or requested any term or condition of this Agreement or any agreement or instrument subject hereto.

Section 8.6 **Entire Agreement**. This Agreement and the Ancillary Documents contain the entire agreement between the Initial Member (including in its capacity as Participant) and the Company and its Affiliates with respect to the subject matter hereof and supersede any and all other prior agreements, whether oral or written. In the event of a conflict between the terms of this Agreement and the terms of any Transfer Document or other document or instrument executed herewith or in connection with the transactions contemplated hereby, including, without limitation, any translation into a foreign language of this Agreement for the purpose of any Transfer Document, or any other document or instrument executed in connection herewith which is prepared for notarization, filing or any other purpose, the terms of this Agreement shall control, and furthermore, the terms of this Agreement shall in no way be or be deemed to be amended, modified or otherwise affected in any manner by the terms of such Transfer Document or other document or instrument.

Section 8.7 **Jurisdiction; Venue and Service.** The Company, for itself and its Affiliates, hereby irrevocably and unconditionally:

(a) (i) agrees that any suit, action or proceeding instituted against it by any other party with respect to this Agreement may be instituted, and that any suit, action or proceeding by it against any other party with respect to this Agreement shall be instituted, only in the Supreme Court of the State of New York, County of New York, or the U.S. District Court for the Southern District of New York or the United States District Court for the District of Columbia (and appellate courts from any of the foregoing) as the party instituting such suit, action or proceeding may in his or its sole discretion elect, (ii) consents and submits, for itself and its property, to the jurisdiction of such courts for the purpose of any such suit, action or proceeding instituted against it by any other party and (iii) agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law;

(b) agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 8.7(a) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Company at its address for notices pursuant to Article VII (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 8.7 shall affect the ability of the Company to be served process in any other manner permitted by Law;

(c) (i) waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any court specified in Section 8.7(a), (ii) waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum and (iii) agrees not to plead or claim either of the foregoing; and

(d) agrees that nothing contained in this Section 8.7 shall be construed to constitute consent to jurisdiction by the Initial Member, the Failed Bank or the FDIC in any capacity or a limitation on any removal rights the FDIC, in any capacity, may have.

Section 8.8 **Waiver of Jury Trial.** EACH OF THE COMPANY, FOR ITSELF AND ITS AFFILIATES, AND THE INITIAL MEMBER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

Section 8.9 **Counterparts; Facsimile Signatures**. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same agreement. This Agreement and any amendments hereto, to the extent signed and delivered by facsimile or other electronic means, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No signatory to this Agreement shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature or agreement was transmitted or

communicated through the use of a facsimile machine or other electronic means as a defense to the formation or enforceability of a contract and each such Person forever waives any such defense.

Section 8.10 **Headings.** Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof. All Section and paragraph references contained herein shall refer to Sections and paragraphs in this Agreement unless otherwise specified.

Section 8.11 **Compliance with Law.** Except as otherwise specifically provided herein, each party to this Agreement shall, at its own cost and expense, obey and comply with all Laws, as they may pertain to such party's performance of its obligations hereunder.

Section 8.12 **Right to Specific Performance.** THE COMPANY HEREBY ACKNOWLEDGES AND AGREES THAT THE DAMAGES TO BE INCURRED BY INITIAL MEMBER AS A RESULT OF THE COMPANY'S BREACH OF THIS AGREEMENT WILL BE DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN, THAT DAMAGES WILL NOT BE AN ADEQUATE REMEDY AND THAT ANY BREACH OR THREATENED BREACH OF ANY OF THE PROVISIONS OF THIS AGREEMENT BY THE COMPANY MAY CAUSE IMMEDIATE IRREPARABLE HARM FOR WHICH THERE MAY BE NO ADEQUATE REMEDY AT LAW. ACCORDINGLY, THE PARTIES AGREE THAT, IN THE EVENT OF ANY SUCH BREACH OR THREATENED BREACH, THE INITIAL MEMBER SHALL BE ENTITLED TO (I) IMMEDIATE AND PERMANENT EQUITABLE RELIEF (INCLUDING INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE OF THE PROVISIONS OF THIS AGREEMENT) FROM A COURT OF COMPETENT JURISDICTION (IN ADDITION TO ANY OTHER REMEDY TO WHICH IT MAY BE ENTITLED AT LAW OR IN EQUITY), AND (II) SOLELY IN THE CASE OF A BREACH OF SECTION 4.14 HEREOF, LIQUIDATED DAMAGES IN THE AMOUNT OF $25,000 FOR EACH BREACH OF SUCH SECTION. THE PARTIES AGREE AND STIPULATE THAT THE INITIAL MEMBER SHALL BE ENTITLED TO EQUITABLE (INCLUDING INJUNCTIVE) RELIEF WITHOUT POSTING A BOND OR OTHER SECURITY AND THE COMPANY FURTHER WAIVES ANY DEFENSE IN ANY SUCH ACTION FOR SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF THAT A REMEDY AT LAW WOULD BE ADEQUATE AND ANY REQUIREMENT UNDER LAW TO POST SECURITY AS A PREREQUISITE TO OBTAINING EQUITABLE RELIEF. NOTHING CONTAINED IN THIS SECTION SHALL LIMIT EITHER PARTY'S RIGHT TO ANY REMEDIES AT LAW, INCLUDING THE RECOVERY OF DAMAGES FOR BREACH OF THIS AGREEMENT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

INITIAL MEMBER:

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR FIRST NATIONAL BANK OF NEVADA

By: _____
Name: Ralph A. Malami
Title: Attorney-in-Fact

COMPANY:

FNBN-CMLCON I LLC

By: Federal Deposit Insurance Corporation as Receiver for First National Bank of Nevada, as Sole Member and Manager

By: _____
Name: Ralph A. Malami
Title: Attorney-in-Fact

ATTACHMENT "A"
to
Loan Contribution and Assignment Agreement

LOAN SCHEDULE

[Attached]

See Tab 22

ATTACHMENT "B"
to
Loan Contribution and Assignment Agreement

LOAN VALUE SCHEDULE

[Attached]

See Tab 23

ATTACHMENT "C"
to
Loan Contribution and Assignment Agreement

(For use with Loans in Bankruptcy)

(Note to Preparer: When preparing the actual Affidavit and Assignment, delete this instruction and the reference to Attachment C above.)

State of _____ §
§
County of _____ §

AFFIDAVIT AND ASSIGNMENT OF CLAIM

The undersigned, being first duly sworn, deposes and states as follows:

Federal Deposit Insurance Corporation as Receiver for First National Bank of Nevada ("Assignor"), acting by and through its duly authorized officers and agents, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged does hereby sell, transfer, assign and set over to FNBN-CMLCON I LLC ("Assignee") of *{insert the Company's address}*_____ _____, _____ and his/her/its successors and assigns, all of the Assignor's interest in any claim in the bankruptcy case commenced by or against *{insert Obligor's name}*_____("Obligor") in the *{insert appropriate U. S. Bankruptcy Court, including the district of the court, such as for the Western District of Texas,* being designated as Case Number *{insert docket number assigned case}* ("Bankruptcy Claim"), or such part of said Claim as is based on the promissory note of *{insert the names of the makers of the note exactly as they appear on the note}*, dated *{insert the date the note was made}*, and made payable to *{insert the name of the payee on the note exactly as it appears on the note}*, provided, however, that this assignment is made pursuant to the terms and conditions as set forth in that certain Loan Contribution and Assignment Agreement between the Assignor and the Assignee dated February 20, 2009 (the "Agreement").

For purposes of Bankruptcy Rule 3001, this assignment and affidavit represent the unconditional transfer of the Bankruptcy Claim or such part of the Claim as is based on the promissory note or notes above and shall constitute the statement of the transferor acknowledging the transfer and stating the consideration therefore as required by said Rule 3001.

This transfer was not for the purpose of the enhancement of any claim in a pending bankruptcy. The transfer of the debt was pursuant to the Agreement, through which numerous debts were sold; no specific amount of the total consideration was assigned to the debt that forms the basis of claim.

This assignment shall also evidence the unconditional transfer of the Assignor's interest in any security held for the claim.

IN WITNESS WHEREOF, the Assignor has caused this Affidavit and Assignment of Claim to be executed this __ day of _____, _____.

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR FIRST NATIONAL BANK OF NEVADA

By: _____
Name: _____
Title: Attorney-in-Fact

Signed and sworn to before me this ____ day of _____, 20 ___.

_____
Notary Public

_____
My Commission expires:

[SEAL]

ACKNOWLEDGMENT

STATE OF _____ §
§
COUNTY OF _____ §

Before me, the undersigned authority, a Notary Public in and for the county and state aforesaid, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, as Attorney-in-Fact of the Federal Deposit Insurance Corporation as Receiver for First National Bank of Nevada acting in the capacity stated above, and acknowledged to me that s/he executed the same as the act of the Federal Deposit Insurance Corporation as Receiver for First National Bank of Nevada, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office on this the ___ day of _____, _____.

_____
Notary Public
My Commission expires: _____

[SEAL]

ATTACHMENT "D"
to
Loan Contribution and Assignment Agreement

(Note to Preparer: When preparing the actual Affidavit delete this instruction and the reference to Attachment D above.)

STATE OF _____ §
§
COUNTY OF _____ §

ASSIGNMENT AND LOST INSTRUMENT AFFIDAVIT

Before me, the undersigned authority, personally appeared _____, who upon being duly cautioned and sworn deposes and says, to the best of his /her knowledge, as follows:

1. That s/he is the _____ for the Federal Deposit Insurance Corporation as Receiver for First National Bank of Nevada, whose address is _____ ("Initial Member").

2. That at the time of the preparation of transfer to FNBN-CMLCON I LLC (" the Company"), the Initial Member was the owner of that certain loan, obligation or interest in a loan or obligation evidenced by a promissory note, evidencing an indebtedness or evidencing rights in an indebtedness (the "Instrument"), as follows:

Loan Number: _____

Name of Maker: _____

Original Principal Balance: _____

Date of Instrument: _____

3. That the original Instrument has been lost or misplaced. The Instrument was not where it was assumed to be, and a search to locate the Instrument was undertaken, without results. Prior to the transfer to the Company the Instrument had not been assigned, transferred, pledged or hypothecated.

4. That if the Initial Member subsequently locates the Instrument, the Initial Member shall use reasonable efforts to provide written notice to the Company and deliver and endorse the Instrument to the Company in accordance with written instructions received from the Company (or such other party designated in writing by the Company).

5. That the purpose of this affidavit is to establish such facts. This affidavit shall not confer any rights or benefits, causes or claims, representations or warranties (including, without limitation, regarding ownership or title to the Instrument or the obligations evidenced thereby) upon the Company, its successors or assigns. All such rights, benefits, causes or claims, representations and warranties (if any) shall be as set forth in the Loan Contribution and Assignment Agreement between the Company and the Initial Member dated February 20, 2009.

6. That pursuant to the terms and conditions of the aforementioned Loan Contribution and Assignment Agreement the Instrument (including, without limitation, any and all rights the Initial Member may have to enforce payment and performance of the Instrument, including any rights under Section 3-309 of the Uniform Commercial Code) is hereby assigned effective as of the date hereof, without recourse, representation or warranty, to the Company. A copy of the Instrument is attached to this affidavit, if available.

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR FIRST NATIONAL BANK OF NEVADA

By: _____
Name: _____
Title: Attorney-in-Fact

Signed and sworn to before me this ____day of _____, _____.

_____
Notary Public

[SEAL]

My Commission expires: _____

ACKNOWLEDGMENT

STATE OF _____ §
§
COUNTY OF _____ §

Before me, the undersigned authority, a Notary Public in and for the county and state aforesaid, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, as Attorney-in-Fact of the Federal Deposit Insurance Corporation as Receiver for First National Bank of Nevada acting in the capacity stated above, and acknowledged to me that s/he executed the same as the act of the Federal Deposit Insurance Corporation as Receiver for First National Bank of Nevada, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office on this the _____ day of _____, 20___.

_____
Notary Public

[SEAL]

My Commission expires: _____

ATTACHMENT "E"
to
Loan Contribution and Assignment Agreement

(Note to Preparer: When preparing the actual Limited Power of Attorney, delete this instruction and the reference to Attachment E above.)

LIMITED POWER OF ATTORNEY
(_____)

KNOW ALL PERSONS BY THESE PRESENTS, that the FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR FIRST NATIONAL BANK OF NEVADA, hereafter called the "Receiver", hereby designates the individual(s) set out below (the "Attorney(s)-in-Fact") for the sole purpose of executing the documents outlined below:

_____
_____

WHEREAS, the undersigned has full authority to execute this instrument on behalf of the Receiver.

NOW THEREFORE, the Receiver grants to the above-named Attorney(s)-in-Fact the authority, subject to the limitations herein, as follows:

1. To execute, acknowledge, seal and deliver on behalf of the Federal Deposit Insurance Corporation as Receiver for First National Bank of Nevada all instruments of transfer and conveyance, appropriately completed, with all ordinary or necessary endorsements, acknowledgments, affidavits and supporting documents as may be necessary or appropriate to evidence the sale and transfer of any asset contained in the Sale enumerated above.

The form which the Attorney(s)-in-Fact shall use for endorsing promissory notes or preparing allonges to promissory notes is as follows:

Pay to the order of
FNBN-CMLCON I LLC
Without Recourse

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR FIRST
NATIONAL BANK OF NEVADA

By: _____
Name: _____
Title: _____

All other documents of assignment, conveyance or transfer shall contain this sentence: "This assignment is made without recourse, representation or warranty, express or implied, by the Receiver."

2. The Receiver further grants to each Attorney-in-Fact full power and authority to do and perform all acts necessary to carry into effect the powers granted by this Limited Power of Attorney as fully as the Receiver might or could do with the same validity as if all and every such act had been herein particularly stated, expressed and especially provided for.

This Limited Power of Attorney shall be effective from _____ and shall continue in full force and effect through _____, unless otherwise terminated by an official of the Receiver or its successors and assigns authorized to do so ("Revocation"). At such time this Limited Power of Attorney will be automatically revoked. Any third party may rely upon this document as the named individual(s)' authority to continue to exercise the powers herein granted unless a Revocation has been recorded in the public records of the jurisdiction where this Limited Power of Attorney has been recorded, or unless a third party has received actual notice of a Revocation.

IN WITNESS WHEREOF, the Federal Deposit Insurance Corporation as Receiver for First National Bank of Nevada by its duly authorized officer has caused these presents to be executed and subscribed in its name this _____ day of _____, 2009.

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR FIRST NATIONAL BANK OF NEVADA

By:_____
Name:_____
Title: _____

(CORPORATE SEAL) ATTEST:_____
Name:_____
Title: _____

Signed, sealed and delivered
in the presence of

By:_____
Name:_____
Witness

By:_____
Name:_____
Witness

ACKNOWLEDGMENT

STATE OF _____ §
§
COUNTY OF _____ §

On this _____ day of _____, 200__, before me, a Notary Public in and for the county and state aforesaid appeared _____, to me personally known, who, being by me first duly sworn did depose that s/he is Attorney-in-Fact of the Federal Deposit Insurance Corporation as Receiver for First National Bank of Nevada (the "Corporation"), in whose name the foregoing Limited Power of Attorney was executed and subscribed, and the said Limited Power of Attorney was executed and subscribed on behalf of the said Corporation by due authority of the Corporation, and the said Attorney-in-Fact acknowledged the said Limited Power of Attorney to be the free act and deed of said Corporation.

_____
Notary Public
My Commission Expires:_____