

## **CONFIDENTIAL**

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### **Financing Terms and Conditions**

Each capitalized term used, but not defined herein, has the meaning specified in the Loan Sale Agreement (the “**LSA**”) by and between the Federal Deposit Insurance Corporation, as receiver of [ ] (the “**Failed Bank**”) (the FDIC, in such capacity, the “**Receiver**”) and the buyer under the LSA (the “**Buyer**”) with respect to the loans identified therein) or in the other Transaction Documents (hereinafter defined).

These Financing Terms and Conditions (the “**Term Sheet**”) are a summary of basic business terms and conditions and do not constitute a commitment to lend. Following acceptance of a bid (the “**Bid**”) to acquire certain loans of Eligible Classes (hereinafter defined) (collectively, the “**Loans**”) for which the Buyer elects to borrow under purchase money note financing by the Receiver (the “**Facility**”), the Facility will be subject to this Term Sheet. “**Eligible Classes**” means Loans that constitute commercial real estate loans (“**CRE Loans**”); single family residential mortgage loans, excluding, for the avoidance of doubt, home equity mortgage loans and lines of credit (“**Single Family Residential Loans**”); commercial & industrial loans (“**C&I Loans**”); and such other Loans as the Receiver may determine in its sole discretion.

Any modifications of the terms provided in this Term Sheet with regard to the Facility will result in the Bid being considered to be a non-conforming Bid. If there is any ambiguity between a non-conforming Bid and this Term Sheet, this Term Sheet will control.

The Receiver will provide non-negotiable form documents for the Facility (collectively, the “**Transaction Documents**”), including, without limitation:

- (i) One or more purchase money notes from the Buyer in favor of the Receiver in an aggregate amount of the purchase money financing obtained in connection with the Loan acquisition (each individually, a “**PM Note**” and collectively, the “**PM Notes**”);
- (ii) [RESERVED]<sup>1</sup>;

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<sup>1</sup> The FDIC may require one or more forms of credit enhancement for the PM Note including, without limitation, a Letter of Credit or a Guaranty, all as determined in the sole and absolute discretion of the FDIC.

- (iii) a custodial and paying agency agreement by and among the Buyer, the Receiver, the Collateral Agent (hereinafter defined), the Custodian (hereinafter defined) and the Paying Agent (hereinafter defined) (the “**Custodial and Paying Agency Agreement**”);
- (iv) a security agreement by and among the Buyer, the Receiver and the Collateral Agent (the “**Security Agreement**”);
- (v) a deposit account control agreement by and among the Buyer, the Collateral Agent and the Paying Agent (the “**Account Control Agreement**”);
- (vi) the LSA; and
- (vii) certain other appropriate documents related thereto.

Please note that the final Transaction Documents will be available to each bidder prior to its Bid, and the bidder (and its approved Custodian and Paying Agent) must accept and agree to execute the Transaction Documents on the Closing Date (without changes) as part of the Bid. Failure to agree and to execute the Transaction Documents on the Closing Date will allow the Receiver in its sole discretion to terminate the financing contemplated by this Term Sheet.

## **I. PM Note Financing**

### **PM Note[s]:**

Any purchase money financing requested by the Buyer from the Receiver to finance its acquisition of the Loans will be evidenced by the PM Note[s]. The Buyer must advise the Receiver as part of its Bid whether it will require purchase money note financing and, if so, the amount of such financing required. The amount of the PM Note may be decreased but cannot be increased after Bid submission.

### **PM Note Amount:**

The maximum [aggregate] principal amount of the PM Note[s] will be [ ] percent ([ ]%) of the aggregate Bid Amount (hereinafter defined) specified in the Bid.

“**Bid Amount**” means an amount equal to the sum of Book Values for all Loans in a Pool multiplied by the corresponding Bid Percentage, and for each Pool Combination, the sum of the Bid Amounts for each of the Pools in that Pool Combination.

“**Bid Percentage**” means Buyer’s offer, expressed as a percentage of the aggregate Book Value (as set forth on the Schedule of Loans) for an individual Pool, including each Pool in a Pool Combination.

Any part of the Purchase Price that is not financed with the PM Note[s] must be paid in cash in accordance with the LSA.

**Interest Rate:**

The outstanding principal balance of a PM Note issued in connection with (i) Loans other than Single Family Residential Loans for which the aggregate principal amount of such Loans equals or exceeds \$[ ] will accrue interest at [RESERVED], and (ii) Single Family Residential Loans for which the aggregate principal amount of such Loans equals or exceeds \$[ ] will accrue interest at [RESERVED](each such rate, the “**Interest Rate**”).

**Maturity Date:**

With respect to any PM Note issued in connection with the financing of (i) Loans other than Single Family Residential Loans for which the aggregate principal amount of such Loans equals or exceeds \$[ ] will mature [ ] ( ) years after the Closing Date, and (ii) Single Family Residential Loans for which the aggregate principal amount of such Loans equals or exceeds \$[ ] will mature [ ] ( ) years after the Closing Date (each such date, the “**Maturity Date**”). No option to extend the applicable Maturity Date will be provided.

**Post-Closing Adjustment:**

If the Receiver is required to make any payment to the Buyer pursuant to Section 2.4.1 of the LSA, the Receiver will have the option of either making such payment in cash, by delivery of such payment to the Paying Agent (hereinafter defined) or setting off such payment against the principal of the applicable PM Note. Any such payment to the Paying Agent or any such offset against the principal of a PM Note will constitute payment to the Buyer.

**Re-Borrowings:**

Amounts repaid under the PM Note[s] cannot be re-borrowed.

**Loan Commitment Fee:**

The Buyer shall pay the Receiver on the Closing Date a loan commitment fee equal to [ ] bps of the original [aggregate] principal amount of the PM Note[s].

## **II. General Terms and Conditions Related to the Facility**

**Custodian**

A single custodian meeting the requirements herein (the “**Custodian**”) will hold all Custodial Documents (hereinafter defined) pursuant to the terms of the Custodial and Paying Agency Agreement. The Custodian must be a Qualified Custodian.

The Custodian shall at all times have in its possession and control all documents related to the Collateral (hereinafter defined), including the following: (i) notes and mortgages, (ii) assumption, modification, consolidation and extension agreements, (iii) assignments of collateral documents from the Receiver to the Buyer, (iv) assignments in blank executed by the Buyer, as assignee, to the Receiver, (v) title opinions, abstracts or insurance policies, as applicable, (vi) UCC financing statements, (vii) bailee letters, and (viii) underlying collateral documents, including pledge and security agreements, guaranties, deeds of trust, deeds, mortgages, assignments, collateral agreements, stock powers, and other documentation securing the performance by the borrower or any other obligor (collectively, the “**Custodial Documents**”). All Custodial Documents must be maintained in the United States.

**Paying Agent:**

A single paying agent meeting the requirements herein (the “**Paying Agent**”) will be responsible for making remittances on the Facility and other monthly distributions pursuant to the terms of the Custodial and Paying Agency Agreement and will further be subject to the Account Control Agreement. The Paying Agent must be a Qualified Paying Agent.

**Collateral:**

Pursuant to the Security Agreement, the Buyer will grant the Receiver, as collateral agent for the benefit of the holders of the PM Note[s] (the “**Collateral Agent**”), a perfected, first-priority security interest in (i) the Loans and (ii) all other property described in Section 3.1 of the Security Agreement (collectively, the “**Collateral**”).

The Debtors shall cause a Qualified Servicer to service, administer and otherwise manage the Loans and the Collateral in accordance with the requirements regarding servicing, administration and management of the Collateral Loans set forth in the Security Agreement and the other Transaction Documents.

The Transaction Documents will permit the Buyer to request the release of any Collateral if (i) the Buyer identifies Collateral that can be completely released, while (ii) the remaining Borrowing Base Value (hereinafter defined) is not less than [     ] percent (     %) of the aggregate amount outstanding under the Facility and all other

Facility representations, warranties and covenants by the Buyer [and *[RESERVED]*] are true and correct and currently satisfied.

**Payment of Interest:**

All accrued interest must be paid on each Distribution Date (hereinafter defined). All computations of interest will be made on the basis of a 360-day year, consisting of twelve 30-day months and, for periods of less than a full month, the actual number of days elapsed (including the first day but excluding the last day). Without limiting the foregoing, on the first Distribution Date, interest will be due and payable for the period commencing on (and including) the Bank Closing Date and continuing through (and including) the day (regardless of whether or not it is a business day) immediately prior to such first Distribution Date, and on each subsequent Distribution Date (and on the Maturity Date), interest will be due and payable for the period from (and including) the immediately preceding Distribution Date through (and including) the day (regardless of whether or not it is a business day) immediately prior to such subsequent Distribution Date (or, in the case of interest due and payable on the Maturity Date, the day (regardless of whether or not it is a business day) immediately prior to such Maturity Date).

**Distribution Date(s):**

The twenty-fifth (25<sup>th</sup>) day of each calendar month, commencing on the first occurring twenty-fifth (25<sup>th</sup>) day of the calendar month following the month in which the Closing occurs (the “**Distribution Date**”). In the event that any deadline or date for payment or performance falls on a Distribution Date that is not a business day, then such deadline or other date for payment or performance shall be automatically extended to the immediately following business day.

**Default Interest**

To the extent accrued interest, principal or any other amount due and payable to the holder of any PM Note is not paid in full on any applicable Distribution Date, or any other amount payable by the Buyer is not paid when due, such overdue amount will (without limiting the rights and remedies of the holder of such PM Note or any other notes with respect to such default) accrue interest until paid at the otherwise applicable Interest Rate plus [ ] percent ( %) per annum (the “**Default Interest Rate**”).

**Collection Account and  
Distribution Account:**

The Buyer will establish the following segregated custodial accounts with the Paying Agent, each of which will be subject to the Account Control Agreement:

- (i) For each PM Note, a custodial account for the purpose of holding income, collections or other proceeds in respect of the Collateral securing the Loans evidenced by such PM Note, including all proceeds from the Collateral collected by any third-party servicer (collectively, the “**Proceeds**”) and funding the Distribution Account (hereinafter defined) (the “**Collection Account**”); and
- (ii) For each PM Note, a custodial account for the sole purpose of holding and distributing funds deposited into such account on the applicable Distribution Date in respect of the Loans evidenced by such PM Note, in accordance with the priority of distributions set forth in the section below titled “Priority of Distributions”, or at the direction of the Collateral Agent, as more particularly set forth in the Custodial and Paying Agency Agreement (the “**Distribution Account**”); and

As soon as [the][each] Collection Account has been established, the Buyer must deposit all Proceeds into the [applicable] Collection Account within one (1) business day after receipt by the Buyer or any third-party servicer (or immediately upon receipt with respect to any non-ordinary course matters).

The funds in the Collection Account[s] may be invested in “Permitted Investments” (to be defined and specified in the Transaction Documents), and interest or other earnings thereon will be deemed to constitute principal collections for purposes of the priority of distributions. Permitted Investments are expected to consist of (i) U.S. Treasury securities (excluding U.S. Treasury Strips), (ii) securities that are fully guaranteed as to principal and interest by the full faith and credit of the United States, (iii) U.S. Treasury money market mutual funds, (iv) FDIC fully-insured accounts, and (v) mutual funds investing only in obligations of the type referred to in clauses (i) through (iv).

On the business day immediately preceding each Distribution Date, the Paying Agent must transfer from [the][each] Collection Account to the [applicable] Distribution Account amounts to be released on such Distribution Date in accordance with the priority of distributions set forth in the section below titled “Priority of Distributions” or at the direction of the Collateral Agent.

**Borrowing Base Value;**

**Mandatory Prepayment:**

The Borrowing Base Value must at all times equal or exceed [ ] percent ( %) of the aggregate amount outstanding under the Facility. “**Borrowing Base Value**” means, as of any date of determination, the aggregate unpaid principal balance of the Loans in which the Receiver has a perfected, first-priority security interest. The amount by which (i) [ ] percent ( %) of the aggregate amount outstanding under the Facility exceeds (ii) the Borrowing Base Value is the “**Borrowing Base Shortfall**”. Prior to each Distribution Date, the Buyer must deposit into the Distribution Account from its own funds an amount sufficient to eliminate any Borrowing Base Shortfall to be applied as a mandatory prepayment of the [applicable] PM Note.

**Priority of Distributions:**

On each Distribution Date, Proceeds received will (assuming no exercise of remedies by the Collateral Agent pursuant to an Event of Default) be distributed from the Distribution Account as follows:

1. First, to pay any unpaid fees and expenses of the Custodian and the Paying Agent, including any indemnification payments, owed to the Custodian and the Paying Agent;
2. Second, to the holders of the PM Note[s], on a pro rata basis, to pay all accrued and unpaid interest (including any Default Interest accrued at the Default Interest Rate) with respect to [the][such] PM Note[s].
3. Third, to the holders of the PM Note[s], on a pro rata basis, the amount sufficient to eliminate any Borrowing Base Shortfall;
4. Fourth, to pay any other amounts due under the Transaction Documents not otherwise addressed by this Section; [and]
5. [Fifth, to the Buyer, the amount equal to [ ] percent ( %) of the Proceeds remaining in the Distribution Account[s] after the completion of the distributions described in the foregoing

paragraphs 1-4, provided that both before and after making the distribution described in this paragraph 5, no Event of Default shall have occurred and be continuing;]<sup>2</sup> [and]

6. [Sixth], the remaining amount of the Proceeds to the Receiver (or any other holder of the PM Note[s]) to be applied to the outstanding principal balance of the PM Note[s].

**Optional Prepayments:** On (but only on) any Distribution Date, the Buyer may, at its option, prepay the PM Note[s], in whole or in part, without penalty. The Buyer must provide the holder[s] of [the][such] PM Note at least 20 days' prior written notice of any partial prepayment and at least 60 days' prior written notice of any prepayment in full. All partial prepayment notices must specify the amount that will be prepaid. All such voluntary prepayments must be made through the Paying Agent.

**Repurchases by Receiver:** Any Loan that is repurchased by the Receiver pursuant to the LSA will be released from the Collateral Agent's lien under the Security Agreement, and the Repurchase Price will, at the option of the Receiver, either be credited against the outstanding principal balance of the [applicable] PM Note or paid in cash to the Buyer.

**Recourse:** [The][Each] PM Note will be full recourse debt to the Buyer, and [RESERVED FOR ADDITIONAL RECOURSE DESCRIPTION].

**Closing:** All Transaction Documents will be executed and delivered, at the option of the Receiver, in person in New York, New York, at such location as the Receiver may specify, or by electronic means, on the day before the Closing, with all documentation being held in escrow and released at the time of the Closing.

**Conditions Precedent:** The acceptance of the PM Note[s] by the Receiver will be subject to, among other things:

1. Execution and delivery of the LSA, and satisfaction of all conditions contained therein;
2. At the time of Closing, execution and delivery of the PM Note[s], [RESERVED FOR ADDITIONAL RECOURSE]

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<sup>2</sup> The Receiver reserves the right, in its sole discretion, to modify or remove this provision based on the specific terms and conditions offered on each transaction.



DESCRIPTION] and the other Transaction Documents, receipt of closing legal opinions acceptable to the Receiver, including, but not limited to, security interest perfection and priority, general corporate matters and enforceability (including, without limitation, enforceability of any electronically or digitally executed Transaction Documents), and Investment Company Act matters. These opinions will be delivered at the expense of the Buyer. The Receiver will accept opinions from the in-house counsel of the Buyer, licensed to practice in the jurisdiction with respect to which the opinion is issued, as to opinion matters other than perfection and priority. If the in-house counsel is rendering an opinion as to enforceability or security interest attachment, the in-house counsel must be licensed to practice law in New York as the Transaction Documents will be governed by New York law. Opinions with respect to perfection and priority must be rendered by a law firm licensed to practice law in the jurisdiction whose law governs perfection;

3. At the time of Closing, receipt of officers' certificates and standard closing and borrowing documents and closing and borrowing certificates with respect to the Buyer [and *[RESERVED]*], each in a form acceptable to the Receiver;

4. As of the Closing, no material pending or threatened litigation against the Buyer that would reasonably be expected to adversely affect the ability of the Buyer to issue and perform its obligations under the PM Note[s] or enter into the Transaction Documents or any related documentation or to perform its obligations with respect thereto; and *[RESERVED]*.

5. Payment of all fees and expenses due as of the Closing Date.

**Other terms  
and conditions:**

The Transaction Documents will include other terms and conditions required by the Receiver, including, but not limited to: (i) reporting requirements in form and substance as determined by the Receiver (including, without limitation, monthly reports describing Collateral activity, the status and handling of any Proceeds, and monthly reports containing all data necessary to evaluate the Borrowing Base Value and whether a Borrowing Base Shortfall exists), (ii) representations and warranties by the Buyer and *[RESERVED]*, (iii) payments free of taxes and the like (other than specified excluded

taxes), and (iv) covenants regarding (A) compliance with all applicable regulatory requirements and applicable law (including, without limitation, compliance with margin regulations and anti-terrorism laws), (B) the disposition of Collateral (including without limitation regarding the disposition of Collateral to wholly-owned subsidiaries and the disposition of Collateral to non-affiliates only (among other things) solely for fair value and solely for cash upon sale), (C) indemnification of the holders of the PM Note[s], and (D) transferability, set-off, and restrictions prohibiting additional security interests in or encumbrances on the Collateral.

**Events of Default:**

The Transaction Documents will include events of default required by the Receiver (each, an “**Event of Default**”), including, without limitation:

1. The Buyer’s or [RESERVED] breach of representations, warranties or other covenants or terms and conditions of this Term Sheet and the Transaction Documents;
2. The Collateral Agent’s determination that the Buyer or [RESERVED] will be unable to meet its obligations as they generally become due;
3. Default on any payment obligation under the Transaction Documents (including without limitation the PM Note[s]);
4. Bankruptcy/insolvency/receivership of the Buyer or [RESERVED];
5. The existence of a Borrowing Base Shortfall after any Distribution Date;
6. A material adverse change in the financial condition or operations of the Buyer or [RESERVED]; and
7. The Collateral Agent ceases to have a perfected, first-priority security interest or ownership interest in any of the Collateral (or the Buyer so asserts). [; and
8. [RESERVED]

Upon the occurrence of an Event of Default, at the option of the Collateral Agent upon the direction of the holders of a specified aggregate principal amount outstanding under the PM Note[s], all

payment obligations (including payment in full of the principal amount and Monthly Interest and Default Interest that would have accrued to and including the date of such termination) will be immediately due and payable, provided that upon the occurrence of an Event of Default described in clause 4 of this Section all of the foregoing will occur automatically. *[RESERVED]*. The holders of the PM Note[s] and the Collateral Agent will be entitled to any and all remedies pursuant to the Transaction Documents and applicable law.

**Transferability:**

The Buyer will not be permitted to assign any of its rights to, or provide for the assumption of any of its liabilities by, another party with respect to the PM Note without the prior written consent of the Receiver (which consent will be in the sole discretion of the Receiver).

*[RESERVED]*

The Receiver will be permitted, without restriction, to assign, sell, transfer, securitize, participate, pledge, syndicate, or otherwise hypothecate the PM Note[s] and all of its related rights and obligations under the Transaction Documents, in whole or in part, directly or indirectly, to one or more subsequent purchasers, structured transactions, or securitization vehicles. The Buyer will agree to cooperate with and assist the Receiver (or its designee) in any such actual or proposed assignment, sale, transfer, securitization, participation, pledge, syndication or hypothecation as requested by the Receiver, including by providing information required by securities disclosure laws and as would otherwise customarily be provided in connection with the issuance and sale or securitization of debt by the Buyer, and entering into an indenture and fiscal and paying agent agreements and other agreements with respect to the PM Note[s] or the assignment, sale, transfer, securitization, participation, pledge, syndication or hypothecation thereof. The Buyer will agree to cooperate with the Receiver (or its designee) to make any amendments to the Transaction Documents to effect any such assignment, sale, transfer, securitization, participation, pledge, syndication or hypothecation; it being understood that no such amendment will increase in any material respect the financial obligations of the Buyer without the consent of the Buyer. The Buyer will also be required to provide, at its expense: (1) legal opinions, including ones similar to those

described under “Conditions Precedent”, above, and (2) officers’ certificates and standard closing documents and certificates with respect to the Buyer, each in form and substance acceptable to the Receiver, on any future dates on which the Receiver assigns, sells, transfers, securitizes, participates, pledges, syndicates or otherwise hypothecates the PM Note[s], in whole or in part. Without limiting the generality of the foregoing, the Buyer will agree that, at the request of the Receiver at any time (whether or not in connection with any sale or transfer of the PM Note[s]) and at the expense of the Buyer, it will use its commercially reasonable best efforts to make the PM Note[s] eligible for book-entry delivery and settlement through the Depository Trust Company, its nominees or successors (collectively, “DTC”) (which efforts will include without limitation making any amendments to, or exchanges of, the Transaction Documents (including without limitation the PM Note[s]) requested by the Receiver and necessary in connection with effecting such eligibility, executing any Letter of Representations and other documentation required by the DTC in connection with effecting such eligibility and securing a CUSIP number for the PM Note[s]).

**Governing Law:**

The Transaction Documents will be governed by and construed in accordance with the laws of the State of New York.

**Jurisdiction/Venue:**

The Transaction Documents will provide for jurisdiction and venue in New York and the District of Columbia and will preserve all removal and other rights of the Receiver provided under the Federal Deposit Insurance Act, as amended.

**Expenses:**

The Buyer will pay (a) all out-of-pocket expenses of the holder[s] of the PM Note[s] and the Collateral Agent (including the fees, disbursements and other charges of counsel) in connection with any workout proceeding relating to the PM Note[s] or the exercise or enforcement of any rights or remedies under the Transaction Documents, (b) all costs, expenses, and amounts due to the Custodian and the Paying Agent, including any indemnification payments due to the Custodian and/or the Paying Agent, and (c) all expenses incurred by the Buyer in connection with the PM Note[s] and in connection with any assistance, information or opinions required to be provided by it in connection with any assignment, sale, transfer, securitization, participation, pledge, syndication or hypothecation of the PM Note[s] by the Receiver (or its designee) to a successor or assign.