

for the period from and including the date of receipt of such documents to and including the day preceding the day on which payment is made. The Assuming Institution agrees to administer and manage each such Asset or asset in accordance with usual and prudent banking standards and business practices until each such Asset or asset is purchased by the Receiver. All transfers with respect to Asset or assets under this Section 3.6 shall be made as provided in Section 9.6. The Assuming Institution shall transfer all such Asset or assets and Related Liabilities to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Assuming Institution with respect to any such Asset or asset, as provided in Section 12.4.

ARTICLE IV ASSUMPTION OF CERTAIN DUTIES AND OBLIGATIONS

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

4.1 Continuation of Banking Business. For the period commencing the first banking Business Day after Bank Closing and ending no earlier than the first anniversary of Bank Closing, the Assuming Institution will provide full service banking in the trade area of the Failed Bank. Thereafter, the Assuming Institution may cease providing such banking services in the trade area of the Failed Bank, provided the Assuming Institution has received all necessary regulatory approvals. At the option of the Assuming Institution, such banking services may be provided at any or all of the Bank Premises, or at other premises within such trade area. The trade area shall be determined by the Receiver. For the avoidance of doubt, the foregoing shall not restrict the Assuming Institution from opening, closing or selling branches upon receipt of the necessary regulatory approvals, if the Assuming Institution or its successors continue to provide banking services in the trade area. Assuming Institution will pay to the Receiver, upon the sale of a branch or branches within the year following the date of this agreement, fifty percent (50%) of any franchise premium in excess of the franchise premium paid by the Assuming Institution with respect to such branch or branches.

4.2 Agreement with Respect to Credit Card Business. The Assuming Institution agrees to honor and perform, from and after Bank Closing, all duties and obligations with respect to the Failed Bank's credit card business (including issuer or merchant acquirer) debit card business, stored value and gift card business, and/or processing related to credit cards, if any, and assumes all outstanding extensions of credit or balances with respect to these lines of business.

4.3 Agreement with Respect to Safe Deposit Business. The Assuming Institution assumes and agrees to discharge, from and after Bank Closing, in the usual course of conducting a banking business, the duties and obligations of the Failed Bank with respect to all Safe Deposit Boxes, if any, of the Failed Bank and to maintain all of the necessary facilities for the use of such boxes by the renters thereof during the period for which such boxes have been rented and the rent therefore paid to the Failed Bank, subject to the provisions of the rental agreements between the Failed Bank and the respective renters of such boxes; provided that the Assuming Institution may relocate the Safe Deposit Boxes of the Failed Bank to any office of the Assuming Institution located in the trade area of the Failed Bank. The Safe Deposit Boxes shall be located and maintained in the trade area of the Failed Bank for a minimum of one year from Bank Closing.

The trade area shall be determined by the Receiver. Fees related to the safe deposit business earned prior to Bank Closing shall be for the benefit of the Receiver and fees earned after Bank Closing shall be for the benefit of the Assuming Institution.

4.4 Agreement with Respect to Safekeeping Business. The Receiver transfers, conveys and delivers to the Assuming Institution and the Assuming Institution accepts all securities and other items, if any, held by the Failed Bank in safekeeping for its customers as of Bank Closing. The Assuming Institution assumes and agrees to honor and discharge, from and after Bank Closing, the duties and obligations of the Failed Bank with respect to such securities and items held in safekeeping. The Assuming Institution shall be entitled to all rights and benefits heretofore accrued or hereafter accruing with respect thereto. The Assuming Institution shall provide to the Receiver written verification of all assets held by the Failed Bank for safekeeping within sixty (60) days after Bank Closing. The assets held for safekeeping by the Failed Bank shall be held and maintained by the Assuming Institution in the trade area of the Failed Bank for a minimum of one year from Bank Closing. At the option of the Assuming Institution, the safekeeping business may be provided at any or all of the Bank Premises, or at other premises within such trade area. The trade area shall be determined by the Receiver. Fees related to the safekeeping business earned prior to Bank Closing shall be for the benefit of the Receiver and fees earned after Bank Closing shall be for the benefit of the Assuming Institution.

4.5 Agreement with Respect to Trust Business.

(a) The Assuming Institution shall, without further transfer, substitution, act or deed, to the full extent permitted by law, succeed to the rights, obligations, properties, assets, investments, deposits, agreements, and trusts of the Failed Bank under trusts, executorships, administrations, guardianships, and agencies, and other fiduciary or representative capacities, all to the same extent as though the Assuming Institution had assumed the same from the Failed Bank prior to Bank Closing; provided that any liability based on the misfeasance, malfeasance or nonfeasance of the Failed Bank, its directors, officers, employees or agents with respect to the trust business is not assumed hereunder.

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

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

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

4.6 Agreement with Respect to Bank Premises.

(a) **Option to Purchase.** Subject to Section 3.5, the Receiver hereby grants to the Assuming Institution an exclusive option for the period of ninety (90) days commencing the day after Bank Closing to purchase any or all owned Bank Premises, including all Furniture, Fixtures and Equipment located on the Bank Premises. The Assuming Institution shall give written notice to the Receiver within the option period of its election to purchase or not to purchase any of the owned Bank Premises. Any purchase of such premises shall be effective as of the date of Bank Closing and such purchase shall be consummated as soon as practicable thereafter, and in no event later than the Settlement Date. If the Assuming Institution gives notice of its election not to purchase one or more of the owned Bank Premises within seven (7) days of Bank Closing, then, notwithstanding any other provision of this Agreement to the contrary, the Assuming Institution shall not be liable for any of the costs or fees associated with appraisals for such Bank Premises and associated Fixtures, Furniture and Equipment.

(b) **Option to Lease.** The Receiver hereby grants to the Assuming Institution an exclusive option for the period of ninety (90) days commencing the day after Bank Closing to cause the Receiver to assign to the Assuming Institution any or all leases for leased Bank Premises, if any, which have been continuously occupied by the Assuming Institution from Bank Closing to the date it elects to accept an assignment of the leases with respect thereto to the extent such leases can be assigned; provided that the exercise of this option with respect to any lease must be as to all premises or other property subject to the lease. If an assignment cannot be made of any such leases, the Receiver may, in its discretion, enter into subleases with the Assuming Institution containing the same terms and conditions provided under such existing leases for such leased Bank Premises or other property. The Assuming Institution shall give notice to the Receiver within the option period of its election to accept or not to accept an assignment of any or all leases (or enter into subleases or new leases in lieu thereof). The Assuming Institution agrees to assume all leases assigned (or enter into subleases or new leases in lieu thereof) pursuant to this Section 4.6. If the Assuming Institution gives notice of its election not to accept an assignment of a lease for one or more of the leased Bank Premises within seven (7) days of Bank Closing, then, notwithstanding any other provision of this Agreement to the contrary, the Assuming Institution shall not be liable for any of the costs or fees associated with appraisals for the Fixtures, Furniture and Equipment located on such leased Bank Premises.

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

(d) **Occupancy.** The Assuming Institution shall give the Receiver fifteen (15) days' prior written notice of its intention to vacate prior to vacating any leased Bank Premises with respect to which the Assuming Institution has not exercised the option provided in Section

4.6(b). Any such notice shall be deemed to terminate the Assuming Institution's option with respect to such leased Bank Premises.

(e) **Occupancy Costs.**

(i) The Assuming Institution agrees to pay to the Receiver, or to appropriate third parties at the direction of the Receiver, during and for the period of any occupancy by it of (x) owned Bank Premises the market rental value, as determined by the appraiser selected in accordance with the definition of Fair Market Value, and all operating costs, and (y) leased Bank Premises, all operating costs with respect thereto and to comply with all relevant terms of applicable leases entered into by the Failed Bank, including without limitation the timely payment of all rent. Operating costs include, without limitation all taxes, fees, charges, utilities, insurance and assessments, to the extent not included in the rental value or rent. If the Assuming Institution elects to purchase any owned Bank Premises in accordance with Section 4.6(a), the amount of any rent paid (and taxes paid to the Receiver which have not been paid to the taxing authority and for which the Assuming Institution assumes liability) by the Assuming Institution with respect thereto shall be applied as an offset against the purchase price thereof.

(ii) The Assuming Institution agrees during the period of occupancy by it of owned or leased Bank Premises, to pay to the Receiver rent for the use of all owned or leased Furniture and Equipment and all owned or leased Fixtures located on such Bank Premises for the period of such occupancy. Rent for such property owned by the Failed Bank shall be the market rental value thereof, as determined by the Receiver within sixty (60) days after Bank Closing. Rent for such leased property shall be an amount equal to any and all rent and other amounts which the Receiver incurs or accrues as an obligation or is obligated to pay for such period of occupancy pursuant to all leases and contracts with respect to such property. If the Assuming Institution purchases any owned Furniture and Equipment or owned Fixtures in accordance with Section 4.6(f) or 4.6(h), the amount of any rents paid by the Assuming Institution with respect thereto shall be applied as an offset against the purchase price thereof.

(f) **Certain Requirements as to Furniture, Equipment and Fixtures.** If the Assuming Institution purchases owned Bank Premises or accepts an assignment of the lease (or enters into a sublease or a new lease in lieu thereof) for leased Bank Premises as provided in Section 4.6(a) or 4.6(b), or if the Assuming Institution does not exercise such option but within twelve (12) months following Bank Closing obtains the right to occupy such premises (whether by assignment, lease, sublease, purchase or otherwise), other than in accordance with Section 4.6(a) or (b), the Assuming Institution shall (i) effective as of the date of Bank Closing, purchase from the Receiver all Furniture and Equipment and Fixtures owned by the Failed Bank at Fair Market Value and located thereon as of Bank Closing, (ii) accept an assignment or a sublease of the leases or negotiate new leases for all Furniture and Equipment and Fixtures leased by the Failed Bank and located thereon, and (iii) if applicable, accept an assignment or a sublease of any ground lease or negotiate a new ground lease with respect to any land on which such Bank Premises are located; provided that the Receiver shall not have disposed of such Furniture and Equipment and Fixtures or repudiated the leases specified in clause (ii) or (iii).

(g) **Vacating Premises.**

(i) If the Assuming Institution elects not to purchase any owned Bank Premises, the notice of such election in accordance with Section 4.6(a) shall specify the date upon which the Assuming Institution's occupancy of such premises shall terminate, which date shall not be later than ninety (90) days after the date of the Assuming Institution's notice not to exercise such option. The Assuming Institution shall promptly be responsible for relinquishing and releasing to the Receiver such premises and the Furniture and Equipment and Fixtures located thereon which existed at the time of Bank Closing, in the same condition as at Bank Closing and at the premises where it was inventoried at Bank Closing, normal wear and tear excepted. Any of the aforementioned which is missing will be charged to the Assuming Institution at the item's Fair Market Value as set out in accordance with this Agreement. By occupying any such premises after the expiration of such ninety (90)-day period, the Assuming Institution shall, at the Receiver's option, (x) be deemed to have agreed to purchase such Bank Premises, and to assume all leases, obligations and liabilities with respect to leased Furniture and Equipment and leased Fixtures located thereon and any ground lease with respect to the land on which such premises are located, and (y) be required to purchase all Furniture and Equipment and Fixtures owned by the Failed Bank and located on such premises as of Bank Closing.

(ii) If the Assuming Institution elects not to accept an assignment of the lease or sublease any leased Bank Premises, the notice of such election in accordance with Section 4.6(b) shall specify the date upon which the Assuming Institution's occupancy of such leased Bank Premises shall terminate, which date shall not be later than ninety (90) days after the date of the Assuming Institution's notice not to exercise such option. Upon vacating such premises, the Assuming Institution shall be liable for relinquishing and releasing to the Receiver such premises and the Fixtures and the Furniture and Equipment located thereon which existed at the time of Bank Closing, in the same condition as at Bank Closing, and at the premises where it was inventoried at Bank closing, normal wear and tear excepted. Any of the aforementioned which is missing will be charged to the Assuming Institution at the item's Fair Market Value as set out in accordance with this Agreement. By failing to provide notice of its intention to vacate such premises prior to the expiration of the option period specified in Section 4.6(b), or by occupying such premises after the one hundred eighty (180)-day period specified above in this paragraph (ii), the Assuming Institution shall, at the Receiver's option, (x) be deemed to have assumed all leases, obligations and liabilities with respect to such premises (including any ground lease with respect to the land on which premises are located), and leased Furniture and Equipment and leased Fixtures located thereon in accordance with this Section 4.6 (unless the Receiver previously repudiated any such lease), and (y) be required to purchase all Furniture and Equipment and Fixtures owned by the Failed Bank at Fair Market Value and located on such premises as of Bank Closing.

(h) **Furniture and Equipment and Certain Other Equipment.** The Receiver hereby grants to the Assuming Institution an option to purchase all Furniture and Equipment and/or all telecommunications and check processing equipment owned by the Failed Bank at Fair Market Value and located at any leased Bank Premises that the Assuming Institution elects to vacate or which it could have, but did not occupy, pursuant to this Section 4.6; provided that the Assuming Institution shall give the Receiver notice of its election to purchase such property at

the time it gives notice of its intention to vacate such Bank Premises or within ten (10) days after Bank Closing for Bank Premises it could have, but did not, occupy.

(i) Option to Put Bank Premises and Related Fixtures, Furniture and Equipment.

(i) For a period of ninety (90) days following Bank Closing, the Assuming Institution shall be entitled to require the Receiver to purchase any Bank Premises that is owned, directly or indirectly, by an Acquired Subsidiary and the purchase price paid by the Receiver shall be the Fair Market Value of the Bank Premises.

(ii) If the Assuming Institution elects to require the Receiver to purchase any Bank Premises that is owned, directly or indirectly, by an Acquired Subsidiary, the Assuming Institution shall also have the option, exercisable within the same ninety (90) day time period, to require the Receiver to purchase any Fixtures, Furniture and Equipment that is owned, directly or indirectly, by an Acquired Subsidiary and which is located on such Bank Premises. The purchase price paid by the Receiver shall be the Fair Market Value of the Fixtures, Furniture and Equipment.

(iii) In the event the Assuming Institution elects to exercise its option under this subparagraph, the Assuming Institution shall pay to the Receiver occupancy costs in accordance with Section 4.6(e) and shall vacate the Bank Premises in accordance with Section 4.6(g)(i).

(iv) Regardless of whether the Assuming Institution exercises any of its option under this subparagraph, the purchase price for the Acquired Subsidiary shall be adjusted by the difference between the Fair Market Value of the Bank Premises and Fixtures, Furniture and Equipment and their respective Book Value as reflected of the books and records of the Acquired Subsidiary. Such adjustment shall be made in accordance with Article VIII of this Agreement.

4.7 Agreement with Respect to Data Processing Equipment and Leases

(a) The Receiver hereby grants to the Assuming Institution an exclusive option for the period of ninety (90) days commencing the day after Bank Closing to: (i) accept an assignment from the Receiver of all leased Data Processing Equipment and (ii) purchase at Fair Market Value from the Receiver all owned Data Processing Equipment. The Assuming Institution's election under this option applies to both owned and leased Data Processing Equipment.

(b) The Assuming Institution shall (i) give written notice to the Receiver within the option period specified in Section 4.7(a) of its intent to accept or decline an assignment or sublease of all leased Data Processing Equipment and promptly accept an assignment or sublease of such Data Processing Equipment, (ii) give written notice to the appropriate lessor(s) that it has accepted an assignment or sublease of any such Data Processing Equipment that is subject to a lease, and (iii) give written notice to the Receiver within the option period specified in Section

4.7(a) of its intent to purchase all owned Data Processing Equipment and promptly pay the Receiver for the purchase of such Data Processing Equipment.

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

(d) The Assuming Institution agrees, during its period of use of any Data Processing Equipment, to pay to the Receiver or to appropriate third parties at the direction of the Receiver all operating costs with respect thereto and to comply with all relevant terms of any existing data processing leases entered into by the Failed Bank, including without limitation the timely payment of all rent, taxes, fees, charges, utilities, insurance and assessments.

(e) The Assuming Institution shall, not later than fifty (50) days after giving the notice provided in Section 4.7(b), (i) relinquish and release to the Receiver all Data Processing Equipment, in the same condition as at Bank Closing, normal wear and tear excepted, or (ii) accept an assignment or a sublease of any existing data processing lease or negotiate a new lease or license agreement under this Section 4.7 with respect to leased Data Processing Equipment, and (iii) accept ownership of all Data Processing Equipment purchased from the Receiver.

4.8 Agreement with Respect to Certain Existing Agreements.

(a) Subject to the provisions of Section 4.8(b), with respect to agreements existing as of Bank Closing which provide for the rendering of services by or to the Failed Bank, within thirty (30) days after Bank Closing, the Assuming Institution shall give the Receiver written notice specifying whether it elects to assume or not to assume each such agreement. Except as may be otherwise provided in this Article IV, the Assuming Institution agrees to comply with the terms of each such agreement for a period commencing on the day after Bank Closing and ending on: (i) in the case of an agreement that provides for the rendering of services by the Failed Bank, the date which is ninety (90) days after Bank Closing, and (ii) in the case of an agreement that provides for the rendering of services to the Failed Bank, the date which is thirty (30) days after the Assuming Institution has given notice to the Receiver of its election not to assume such agreement; provided that the Receiver can reasonably make such service agreements available to the Assuming Institution. The Assuming Institution shall be deemed by the Receiver to have assumed agreements for which no notification is timely given. The Receiver agrees to assign, transfer, convey, and deliver to the Assuming Institution all right, title and interest of the Receiver, if any, in and to agreements the Assuming Institution assumes hereunder. In the event the Assuming Institution elects not to accept an assignment of any lease (or sublease) or negotiate a new lease for leased Bank Premises under Section 4.6 and does not otherwise occupy such premises, the provisions of this Section 4.8(a) shall not apply to service agreements related to such premises. The Assuming Institution agrees, during the period it has the use or benefit of any such agreement, promptly to pay to the Receiver or to appropriate third parties at the direction of the Receiver all operating costs with respect thereto and to comply with all relevant terms of such agreement.

(b) The provisions of Section 4.8(a) regarding the Assuming Institution's election to assume or not assume certain agreements shall not apply to (i) agreements pursuant to which the Failed Bank provides mortgage servicing for others or mortgage servicing is provided to the Failed Bank by others, (ii) agreements that are subject to Sections 4.1 through 4.7 and any insurance policy or bond referred to in Section 3.5(a) or other agreement specified in Section 3.5, and (iii) consulting, management or employment agreements, if any, between the Failed Bank and its employees or other Persons. Except as otherwise expressly set forth elsewhere in this Agreement, the Assuming Institution does not assume any liabilities or acquire any rights under any of the agreements described in this Section 4.8(b).

4.9 Informational Tax Reporting. The Assuming Institution agrees to perform all obligations of the Failed Bank with respect to Federal and State income tax informational reporting related to (i) the Assets and the Liabilities Assumed, (ii) deposit accounts that were closed and loans that were paid off or collateral obtained with respect thereto prior to Bank Closing, (iii) miscellaneous payments made to vendors of the Failed Bank, and (iv) any other asset or liability of the Failed Bank, including, without limitation, loans not purchased and Deposits not assumed by the Assuming Institution, as may be required by the Receiver.

4.10 Insurance. The Assuming Institution agrees to obtain insurance coverage effective from and after Bank Closing, including public liability, fire and extended coverage insurance acceptable to the Receiver with respect to owned or leased Bank Premises that it occupies, and all owned or leased Furniture and Equipment and Fixtures and leased data processing equipment (including hardware and software) located thereon, in the event such insurance coverage is not already in force and effect with respect to the Assuming Institution as the insured as of Bank Closing. All such insurance shall, where appropriate (as determined by the Receiver), name the Receiver as an additional insured.

4.11 Office Space for Receiver and Corporation. For the period commencing on the day following Bank Closing and ending on the one hundred eightieth (180th) day thereafter, the Assuming Institution agrees to provide to the Receiver and the Corporation, without charge, adequate and suitable office space (including parking facilities and vault space), furniture, equipment (including photocopying and telecopying machines), email accounts, network access and technology resources (such as shared drive) and utilities (including local telephone service and fax machines) at the Bank Premises occupied by the Assuming Institution for their use in the discharge of their respective functions with respect to the Failed Bank. In the event the Receiver and the Corporation determine that the space provided is inadequate or unsuitable, the Receiver and the Corporation may relocate to other quarters having adequate and suitable space and the costs of relocation and any rental and utility costs for the balance of the period of occupancy by the Receiver and the Corporation shall be borne by the Assuming Institution. Additionally, the Assuming Institution agrees to pay such bills and invoices on behalf of the Receiver and Corporation as the Receiver or Corporation may direct for the period beginning on the date of Bank Closing and ending on Settlement Date. Assuming Institution shall submit it requests for reimbursement of such expenditures pursuant to Article VIII of this Agreement.

4.12 Agreement with Respect to Continuation of Group Health Plan Coverage for Former Employees of the Failed Bank.

(a) The Assuming Institution agrees to assist the Receiver, as provided in this Section 4.12, in offering individuals who were employees or former employees of the Failed Bank, or any of its Subsidiaries, and who, immediately prior to Bank Closing, were receiving, or were eligible to receive, health insurance coverage or health insurance continuation coverage from the Failed Bank (“Eligible Individuals”), the opportunity to obtain health insurance coverage in the Corporation’s FIA Continuation Coverage Plan which provides for health insurance continuation coverage to such Eligible Individuals who are qualified beneficiaries of the Failed Bank as defined in Section 607 of the Employee Retirement Income Security Act of 1974, as amended (respectively, “qualified beneficiaries” and “ERISA”). The Assuming Institution shall consult with the Receiver and not later than five (5) Business Days after Bank Closing shall provide written notice to the Receiver of the number (if available), identity (if available) and addresses (if available) of the Eligible Individuals who are qualified beneficiaries of the Failed Bank and for whom a “qualifying event” (as defined in Section 603 of ERISA) has occurred and with respect to whom the Failed Bank’s obligations under Part 6 of Subtitle B of Title I of ERISA have not been satisfied in full, and such other information as the Receiver may reasonably require. The Receiver shall cooperate with the Assuming Institution in order to permit it to prepare such notice and shall provide to the Assuming Institution such data in its possession as may be reasonably required for purposes of preparing such notice.

(b) The Assuming Institution shall take such further action to assist the Receiver in offering the Eligible Individuals who are qualified beneficiaries of the Failed Bank the opportunity to obtain health insurance coverage in the Corporation’s FIA Continuation Coverage Plan as the Receiver may direct. All expenses incurred and paid by the Assuming Institution (i) in connection with the obligations of the Assuming Institution under this Section 4.12, and (ii) in providing health insurance continuation coverage to any Eligible Individuals who are hired by the Assuming Institution and such employees’ qualified beneficiaries shall be borne by the Assuming Institution.

(c) No later than five (5) Business Days after Bank Closing, the Assuming Institution shall provide the Receiver with a list of all Failed Bank employees the Assuming Institution will not hire. Unless otherwise agreed, the Assuming Institution pays all salaries and payroll costs for all Failed Bank Employees until the list is provided to the Receiver. The Assuming Institution shall be responsible for all costs and expenses (i.e. salary, benefits, etc.) associated with all other employees not on that list from and after the date of delivery of the list to the Receiver. The Assuming Institution shall offer to the Failed Bank employees it retains employment benefits comparable to those the Assuming Institution offers its current employees.

(d) This Section 4.12 is for the sole and exclusive benefit of the parties to this Agreement, and for the benefit of no other Person (including any former employee of the Failed Bank or any Subsidiary thereof or qualified beneficiary of such former employee). Nothing in this Section 4.12 is intended by the parties, or shall be construed, to give any Person (including any former employee of the Failed Bank or any Subsidiary thereof or qualified beneficiary of such former employee) other than the Corporation, the Receiver and the Assuming Institution

any legal or equitable right, remedy or claim under or with respect to the provisions of this Section.

4.13 Agreement with Respect to Interim Asset Servicing. At any time after Bank Closing, the Receiver may establish on its books an asset pool(s) and may transfer to such asset pool(s) (by means of accounting entries on the books of the Receiver) all or any assets and liabilities of the Failed Bank which are not acquired by the Assuming Institution, including, without limitation, wholly unfunded Commitments and assets and liabilities which may be acquired, funded or originated by the Receiver subsequent to Bank Closing. The Receiver may remove assets (and liabilities) from or add assets (and liabilities) to such pool(s) at any time in its discretion. At the option of the Receiver, the Assuming Institution agrees to service, administer, and collect such pool assets in accordance with and for the term set forth in Exhibit 4.13 “Interim Asset Servicing Arrangement.”

4.14 Reserved.

4.15 Agreement with Respect to Loss Sharing. The Assuming Institution shall be entitled to require reimbursement from the Receiver for loss sharing on certain loans in accordance with the Single Family Shared-Loss Agreement attached hereto as Exhibit 4.15A and the Commercial Shared-Loss Agreement attached hereto as Exhibit 4.15B, collectively, the “Shared-Loss Agreements.” The Loans that shall be subject to the Shared-Loss Agreements are identified on the Schedules 4.15A and 4.15B, and Schedule 4.15C, Shared-Loss Securities, attached hereto.

ARTICLE V DUTIES WITH RESPECT TO DEPOSITORS OF THE FAILED BANK

5.1 Payment of Checks, Drafts and Orders. Subject to Section 9.5, the Assuming Institution agrees to pay all properly drawn checks, drafts and withdrawal orders of depositors of the Failed Bank presented for payment, whether drawn on the check or draft forms provided by the Failed Bank or by the Assuming Institution, to the extent that the Deposit balances to the credit of the respective makers or drawers assumed by the Assuming Institution under this Agreement are sufficient to permit the payment thereof, and in all other respects to discharge, in the usual course of conducting a banking business, the duties and obligations of the Failed Bank with respect to the Deposit balances due and owing to the depositors of the Failed Bank assumed by the Assuming Institution under this Agreement.

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

5.3 Notice to Depositors.

(a) Within seven (7) days after Bank Closing, the Assuming Institution shall give notice by mail to each depositor of the Failed Bank of (i) the assumption of the Deposit liabilities

of the Failed Bank, and (ii) the procedures to claim Deposits (the Receiver shall provide item (ii) to Assuming Institution). The Assuming Institution shall also publish notice of its assumption of the Deposit liabilities of the Failed Bank in a newspaper of general circulation in the country or countries in which the Failed Bank was located.

(b) Within seven (7) days after Bank Closing, the Assuming Institution shall give notices by mail to each depositor of the Failed Bank, as required under Section 2.2.

(c) If the Assuming Institution proposes to charge fees different from those fees formerly charged by the Failed Bank, the Assuming Institution shall include its fee schedule in its mailed notice.

(d) The Assuming Institution shall obtain approval of all notices and publications required by this Section 5.3 from counsel for the Receiver prior to mailing or publication.

ARTICLE VI RECORDS

6.1 Transfer of Records. In accordance with Sections 2.1 and 3.1, the Receiver assigns, transfers, conveys and delivers to the Assuming Institution, whether located on Bank Premises occupied or not occupied by the Assuming Institution or at any other location, any and all Records of the Failed Bank, other than the following:

(a) Records pertaining to former employees of the Failed Bank who were no longer employed by the Failed Bank as of Bank Closing and Records pertaining to employees of the Failed Bank who were employed by the Failed Bank as of Bank Closing and for whom the Receiver is unable to obtain a waiver to release such Records to the Assuming Institution;

(b) Records pertaining to (i) any asset or liability of the Failed Bank retained by the Receiver, or (ii) any asset of the Failed Bank acquired by the Receiver pursuant to this Agreement; and

(c) Any other Records as determined by the Receiver.

6.2 Delivery of Assigned Records. The Receiver shall deliver to the Assuming Institution all Records described in Section 6.1 as soon as practicable on or after the date of this Agreement.

6.3 Preservation of Records. The Assuming Institution agrees that it will preserve and maintain for the joint benefit of the Receiver, the Corporation and the Assuming Institution, all Records of which it has custody for such period as either the Receiver or the Corporation in its discretion may require, until directed otherwise, in writing, by the Receiver or Corporation. The Assuming Institution shall have the primary responsibility to respond to subpoenas, discovery requests, and other similar official inquiries and customer requests for lien releases with respect to the Records of which it has custody. With respect to its obligations under this Section regarding Electronically Stored Information, the Assuming Institution will complete the

Data Retention Catalog attached hereto as Schedule 6.3 and submit it to the Receiver for the Receiver's approval of the Assuming Institution's data retention plan.

6.4 Access to Records; Copies. The Assuming Institution agrees to permit the Receiver and the Corporation access to all Records of which the Assuming Institution has custody, and to use, inspect, make extracts from or request copies of any such Records in the manner and to the extent requested, and to duplicate, in the discretion of the Receiver or the Corporation, any Record pertaining to Deposit account relationships; provided that, in the event that the Failed Bank maintained one or more duplicate copies of such Records, the Assuming Institution hereby assigns, transfers, and conveys to the Corporation one such duplicate copy of each such Record without cost to the Corporation, and agrees to deliver to the Corporation all Records assigned and transferred to the Corporation under this Article VI as soon as practicable on or after the date of this Agreement. The party requesting a copy of any Record shall bear the cost (based on standard accepted industry charges to the extent applicable, as determined by the Receiver) for providing such duplicate Records. A copy of each Record requested shall be provided as soon as practicable by the party having custody thereof.

ARTICLE VII BID; INITIAL PAYMENT

The Assuming Institution has submitted to the Receiver a Deposit premium bid of 0% and an Asset premium (discount) bid of \$(26,800,000) (the "Bid Amount"). The Deposit premium bid will be applied to the total of all Assumed Deposits except for brokered, CDARS, and any market place or similar subscription services Deposits. On the Payment Date, the Assuming Institution will pay to the Corporation, or the Corporation will pay to the Assuming Institution, as the case may be, the Initial Payment, together with interest on such amount (if the Payment Date is not the day following the day of Bank Closing) from and including the day following Bank Closing to and including the day preceding the Payment Date at the Settlement Interest Rate.

ARTICLE VIII ADJUSTMENTS

8.1 Pro Forma Statement. The Receiver, as soon as practicable after Bank Closing, in accordance with the best information then available, shall provide to the Assuming Institution a pro forma statement reflecting any adjustments of such liabilities and assets as may be necessary. Such pro forma statement shall take into account, to the extent possible, (i) liabilities and assets of a nature similar to those contemplated by Section 2.1 or Section 3.1, respectively, which at Bank Closing were carried in the Failed Bank's suspense accounts, (ii) accruals as of Bank Closing for all income related to the assets and business of the Failed Bank acquired by the Assuming Institution hereunder, whether or not such accruals were reflected on the Accounting Records of the Failed Bank in the normal course of its operations, and (iii) adjustments to determine the Book Value of any investment in an Acquired Subsidiary and related accounts on the "bank only" (unconsolidated) balance sheet of the Failed Bank based on the equity method of accounting, whether or not the Failed Bank used the equity method of accounting for investments in subsidiaries, except that the resulting amount cannot be less than the Acquired

Subsidiary's recorded equity as of Bank Closing as reflected on the Accounting Records of the Acquired Subsidiary. Any Loan purchased by the Assuming Institution pursuant to Section 3.1 which the Failed Bank charged off during the period beginning the day after the Bid Valuation Date to the date of Bank Closing shall be deemed not to be charged off for the purposes of the pro forma statement, and the purchase price shall be determined pursuant to Section 3.2.

8.2 Correction of Errors and Omissions; Other Liabilities.

(a) In the event any bookkeeping omissions or errors are discovered in preparing any pro forma statement or in completing the transfers and assumptions contemplated hereby, the parties hereto agree to correct such errors and omissions, it being understood that, as far as practicable, all adjustments will be made consistent with the judgments, methods, policies or accounting principles utilized by the Failed Bank in preparing and maintaining Accounting Records, except that adjustments made pursuant to this Section 8.2(a) are not intended to bring the Accounting Records of the Failed Bank into accordance with generally accepted accounting principles.

(b) If the Receiver discovers at any time subsequent to the date of this Agreement that any claim exists against the Failed Bank which is of such a nature that it would have been included in the liabilities assumed under Article II had the existence of such claim or the facts giving rise thereto been known as of Bank Closing, the Receiver may, in its discretion, at any time, require that such claim be assumed by the Assuming Institution in a manner consistent with the intent of this Agreement. The Receiver will make appropriate adjustments to the pro forma statement provided by the Receiver to the Assuming Institution pursuant to Section 8.1 as may be necessary.

8.3 Payments. The Receiver agrees to cause to be paid to the Assuming Institution, or the Assuming Institution agrees to pay to the Receiver, as the case may be, on the Settlement Date, a payment in an amount which reflects net adjustments (including any costs, expenses and fees associated with determinations of value as provided in this Agreement) made pursuant to Section 8.1 or Section 8.2, plus interest as provided in Section 8.4. The Receiver and the Assuming Institution agree to effect on the Settlement Date any further transfer of assets to or assumption of liabilities or claims by the Assuming Institution as may be necessary in accordance with Section 8.1 or Section 8.2.

8.4 Interest. Any amounts paid under Section 8.3 or Section 8.5 shall bear interest for the period from and including the day following Bank Closing to and including the day preceding the payment at the Settlement Interest Rate.

8.5 Subsequent Adjustments. In the event that the Assuming Institution or the Receiver discovers any errors or omissions as contemplated by Section 8.2 or any error with respect to the payment made under Section 8.3 after the Settlement Date, the Assuming Institution and the Receiver agree to promptly correct any such errors or omissions, make any payments and effect any transfers or assumptions as may be necessary to reflect any such correction plus interest as provided in Section 8.4.

ARTICLE IX CONTINUING COOPERATION

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

9.2 Additional Title Documents. The Receiver, the Corporation and the Assuming Institution each agree, at any time, and from time to time, upon the request of any party hereto, to execute and deliver such additional instruments and documents of conveyance as shall be reasonably necessary to vest in the appropriate party its full legal or equitable title in and to the property transferred pursuant to this Agreement or to be transferred in accordance herewith. The Assuming Institution shall prepare such instruments and documents of conveyance (in form and substance satisfactory to the Receiver) as shall be necessary to vest title to the Assets in the Assuming Institution. The Assuming Institution shall be responsible for recording such instruments and documents of conveyance at its own expense.

9.3 Claims and Suits.

(a) The Receiver shall have the right, in its discretion, to (i) defend or settle any claim or suit against the Assuming Institution with respect to which the Receiver has indemnified the Assuming Institution in the same manner and to the same extent as provided in Article XII, and (ii) defend or settle any claim or suit against the Assuming Institution with respect to any Liability Assumed, which claim or suit may result in a loss to the Receiver arising out of or related to this Agreement, or which existed against the Failed Bank on or before Bank Closing. The exercise by the Receiver of any rights under this Section 9.3(a) shall not release the Assuming Institution with respect to any of its obligations under this Agreement.

(b) In the event any action at law or in equity shall be instituted by any Person against the Receiver and the Corporation as codefendants with respect to any asset of the Failed Bank retained or acquired pursuant to this Agreement by the Receiver, the Receiver agrees, at the request of the Corporation, to join with the Corporation in a petition to remove the action to the United States District Court for the proper district. The Receiver agrees to institute, with or without joinder of the Corporation as coplaintiff, any action with respect to any such retained or acquired asset or any matter connected therewith whenever notice requiring such action shall be given by the Corporation to the Receiver.

9.4 Payment of Deposits. In the event any depositor does not accept the obligation of the Assuming Institution to pay any Deposit liability of the Failed Bank assumed by the Assuming Institution pursuant to this Agreement and asserts a claim against the Receiver for all or any portion of any such Deposit liability, the Assuming Institution agrees on demand to provide to the Receiver funds sufficient to pay such claim in an amount not in excess of the Deposit liability reflected on the books of the Assuming Institution at the time such claim is made. Upon payment by the Assuming Institution to the Receiver of such amount, the Assuming Institution shall be discharged from any further obligation under this Agreement to pay to any such depositor the amount of such Deposit liability paid to the Receiver.

9.5 Withheld Payments. At any time, the Receiver or the Corporation may, in its discretion, determine that all or any portion of any deposit balance assumed by the Assuming Institution pursuant to this Agreement does not constitute a “Deposit” (or otherwise, in its discretion, determine that it is the best interest of the Receiver or Corporation to withhold all or any portion of any deposit), and may direct the Assuming Institution to withhold payment of all or any portion of any such deposit balance. Upon such direction, the Assuming Institution agrees to hold such deposit and not to make any payment of such deposit balance to or on behalf of the depositor, or to itself, whether by way of transfer, set-off, or otherwise. The Assuming Institution agrees to maintain the “withheld payment” status of any such deposit balance until directed in writing by the Receiver or the Corporation as to its disposition. At the direction of the Receiver or the Corporation, the Assuming Institution shall return all or any portion of such deposit balance to the Receiver or the Corporation, as appropriate, and thereupon the Assuming Institution shall be discharged from any further liability to such depositor with respect to such returned deposit balance. If such deposit balance has been paid to the depositor prior to a demand for return by the Corporation or the Receiver, and payment of such deposit balance had not been previously withheld pursuant to this Section, the Assuming Institution shall not be obligated to return such deposit balance to the Receiver or the Corporation. The Assuming Institution shall be obligated to reimburse the Corporation or the Receiver, as the case may be, for the amount of any deposit balance or portion thereof paid by the Assuming Institution in contravention of any previous direction to withhold payment of such deposit balance or return such deposit balance the payment of which was withheld pursuant to this Section.

9.6 Proceedings with Respect to Certain Assets and Liabilities.

(a) In connection with any investigation, proceeding or other matter with respect to any asset or liability of the Failed Bank retained by the Receiver, or any asset of the Failed Bank acquired by the Receiver pursuant to this Agreement, the Assuming Institution shall cooperate to the extent reasonably required by the Receiver.

(b) In addition to its obligations under Section 6.4, the Assuming Institution shall provide representatives of the Receiver access at reasonable times and locations without other limitation or qualification to (i) its directors, officers, employees and agents and those of the Subsidiaries acquired by the Assuming Institution, and (ii) its books and records, the books and records of such Subsidiaries and all Credit Files, and copies thereof. Copies of books, records and Credit Files shall be provided by the Assuming Institution as requested by the Receiver and the costs of duplication thereof shall be borne by the Receiver.

(c) Not later than ten (10) days after the Put Notice pursuant to Section 3.4 or the date of the notice of transfer of any Loan by the Assuming Institution to the Receiver pursuant to Section 3.6, the Assuming Institution shall deliver to the Receiver such documents with respect to such Loan as the Receiver may request, including without limitation the following: (i) all related Credit Documents (other than certificates, notices and other ancillary documents), (ii) a certificate setting forth the principal amount on the date of the transfer and the amount of interest, fees and other charges then accrued and unpaid thereon, and any restrictions on transfer to which any such Loan is subject, and (iii) all Credit Files, and all documents, microfiche,

microfilm and computer records (including but not limited to magnetic tape, disc storage, card forms and printed copy) maintained by, owned by, or in the possession of the Assuming Institution or any Affiliate of the Assuming Institution relating to the transferred Loan.

9.7 Information. The Assuming Institution promptly shall provide to the Corporation such other information, including financial statements and computations, relating to the performance of the provisions of this Agreement as the Corporation or the Receiver may request from time to time, and, at the request of the Receiver, make available employees of the Failed Bank employed or retained by the Assuming Institution to assist in preparation of the pro forma statement pursuant to Section 8.1.

ARTICLE X CONDITION PRECEDENT

The obligations of the parties to this Agreement are subject to the Receiver and the Corporation having received at or before Bank Closing evidence reasonably satisfactory to each of any necessary approval, waiver, or other action by any governmental authority, the board of directors of the Assuming Institution, or other third party, with respect to this Agreement and the transactions contemplated hereby, the closing of the Failed Bank and the appointment of the Receiver, the chartering of the Assuming Institution, and any agreements, documents, matters or proceedings contemplated hereby or thereby.

ARTICLE XI REPRESENTATIONS AND WARRANTIES OF THE ASSUMING INSTITUTION

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

(a) **Corporate Existence and Authority.** The Assuming Institution (i) is duly organized, validly existing and in good standing under the laws of its Chartering Authority and has full power and authority to own and operate its properties and to conduct its business as now conducted by it, and (ii) has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The Assuming Institution has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement and the performance of the transactions contemplated hereby.

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

(c) **Execution and Enforceability.** This Agreement has been duly executed and delivered by the Assuming Institution and when this Agreement has been duly authorized, executed and delivered by the Corporation and the Receiver, this Agreement will constitute the legal, valid and binding obligation of the Assuming Institution, enforceable in accordance with its terms.

(d) **Compliance with Law.**

(i) Neither the Assuming Institution nor any of its Subsidiaries is in violation of any statute, regulation, order, decision, judgment or decree of, or any restriction imposed by, the United States of America, any State, municipality or other political subdivision or any agency of any of the foregoing, or any court or other tribunal having jurisdiction over the Assuming Institution or any of its Subsidiaries or any assets of any such Person, or any foreign government or agency thereof having such jurisdiction, with respect to the conduct of the business of the Assuming Institution or of any of its Subsidiaries, or the ownership of the properties of the Assuming Institution or any of its Subsidiaries, which, either individually or in the aggregate with all other such violations, would materially and adversely affect the business, operations or condition (financial or otherwise) of the Assuming Institution or the ability of the Assuming Institution to perform, satisfy or observe any obligation or condition under this Agreement.

(ii) Neither the execution and delivery nor the performance by the Assuming Institution of this Agreement will result in any violation by the Assuming Institution of, or be in conflict with, any provision of any applicable law or regulation, or any order, writ or decree of any court or governmental authority.

(e) **Insured or Guaranteed Loans.** If any Loans being transferred pursuant to this Agreement, including the Shared-Loss Agreements, are insured or guaranteed by any department or agency of any governmental unit, federal, state or local, Assuming Institution represents that Assuming Institution has been approved by such agency and is an approved lender or mortgagee, as appropriate, if such approval is required. Assuming Institution further assumes full responsibility for determining whether or not such insurance or guarantees are in full force and effect on the date of this Agreement and with respect to those Loans whose insurance or guaranty is in full force and effect on the date of this Agreement, Assuming Institution assumes full responsibility for doing all things necessary to insure such insurance or guarantees remain in full force and effect. Assuming Institution agrees to assume all of the obligations under the contract(s) of insurance or guaranty, agrees to cooperate with the Receiver where necessary to complete forms required by the insuring or guaranteeing department or agency to effect or complete the transfer to Assuming Institution.

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

ARTICLE XII INDEMNIFICATION

12.1 Indemnification of Indemnitees. From and after Bank Closing and subject to the limitations set forth in this Section and Section 12.6 and compliance by the Indemnitees with Section 12.2, the Receiver agrees to indemnify and hold harmless the Indemnitees against any and all costs, losses, liabilities, expenses (including attorneys' fees) incurred prior to the assumption of defense by the Receiver pursuant to paragraph (d) of Section 12.2, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with claims against any Indemnitee based on liabilities of the Failed Bank that are not assumed by the Assuming Institution pursuant to this Agreement or subsequent to the execution hereof by the Assuming Institution or any Subsidiary or Affiliate of the Assuming Institution for which indemnification is provided hereunder in (a) of this Section 12.1, subject to certain exclusions as provided in (b) of this Section 12.1:

(a)

(1) claims based on the rights of any shareholder or former shareholder as such of (x) the Failed Bank, or (y) any Subsidiary or Affiliate of the Failed Bank;

(2) claims based on the rights of any creditor as such of the Failed Bank, or any creditor as such of any director, officer, employee or agent of the Failed Bank, with respect to any indebtedness or other obligation of the Failed Bank arising prior to Bank Closing;

(3) claims based on the rights of any present or former director, officer, employee or agent as such of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank;

(4) claims based on any action or inaction prior to Bank Closing of the Failed Bank, its directors, officers, employees or agents as such, or any Subsidiary or Affiliate of the Failed Bank, or the directors, officers, employees or agents as such of such Subsidiary or Affiliate;

(5) claims based on any malfeasance, misfeasance or nonfeasance of the Failed Bank, its directors, officers, employees or agents with respect to the trust business of the Failed Bank, if any;

(6) claims based on any failure or alleged failure (not in violation of law) by the Assuming Institution to continue to perform any service or activity previously performed by the Failed Bank which the Assuming Institution is not required to perform pursuant to this Agreement or which arise under any contract to which the Failed Bank was a party which the Assuming Institution elected not to assume in accordance with this Agreement and which neither the Assuming Institution nor any Subsidiary or Affiliate of the Assuming Institution has assumed subsequent to the execution hereof;

(7) claims arising from any action or inaction of any Indemnitee, including for purposes of this Section 12.1(a)(7) the former officers or employees of the Failed Bank or of any

Subsidiary or Affiliate of the Failed Bank that is taken upon the specific written direction of the Corporation or the Receiver, other than any action or inaction taken in a manner constituting bad faith, gross negligence or willful misconduct; and

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

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

(1) judgment or fine against, or any amount paid in settlement (without the written approval of the Receiver) by, any Indemnitee in connection with any action that seeks damages against any Indemnitee (a “counterclaim”) arising with respect to any Asset and based on any action or inaction of either the Failed Bank, its directors, officers, employees or agents as such prior to Bank Closing, unless any such judgment, fine or amount paid in settlement exceeds the greater of (i) the Repurchase Price of such Asset, or (ii) the monetary recovery sought on such Asset by the Assuming Institution in the cause of action from which the counterclaim arises; and in such event the Receiver will provide indemnification only in the amount of such excess; and no indemnification will be provided for any costs or expenses other than any costs or expenses (including attorneys’ fees) which, in the determination of the Receiver, have been actually and reasonably incurred by such Indemnitee in connection with the defense of any such counterclaim; and it is expressly agreed that the Receiver reserves the right to intervene, in its discretion, on its behalf and/or on behalf of the Receiver, in the defense of any such counterclaim;

(2) claims with respect to any liability or obligation of the Failed Bank that is expressly assumed by the Assuming Institution pursuant to this Agreement or subsequent to the execution hereof by the Assuming Institution or any Subsidiary or Affiliate of the Assuming Institution;

(3) claims with respect to any liability of the Failed Bank to any present or former employee as such of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank, which liability is expressly assumed by the Assuming Institution pursuant to this Agreement or subsequent to the execution hereof by the Assuming Institution or any Subsidiary or Affiliate of the Assuming Institution;

(4) claims based on the failure of any Indemnitee to seek recovery of damages from the Receiver for any claims based upon any action or inaction of the Failed Bank, its directors, officers, employees or agents as fiduciary, agent or custodian prior to Bank Closing;

(5) claims based on any violation or alleged violation by any Indemnitee of the antitrust, branching, banking or bank holding company or securities laws of the United States of America or any State thereof;

(6) claims based on the rights of any present or former creditor, customer, or supplier as such of the Assuming Institution or any Subsidiary or Affiliate of the Assuming Institution;

(7) claims based on the rights of any present or former shareholder as such of the Assuming Institution or any Subsidiary or Affiliate of the Assuming Institution regardless of whether any such present or former shareholder is also a present or former shareholder of the Failed Bank;

(8) claims, if the Receiver determines that the effect of providing such indemnification would be to (i) expand or alter the provisions of any warranty or disclaimer thereof provided in Section 3.3 or any other provision of this Agreement, or (ii) create any warranty not expressly provided under this Agreement;

(9) claims which could have been enforced against any Indemnitee had the Assuming Institution not entered into this Agreement;

(10) claims based on any liability for taxes or fees assessed with respect to the consummation of the transactions contemplated by this Agreement, including without limitation any subsequent transfer of any Assets or Liabilities Assumed to any Subsidiary or Affiliate of the Assuming Institution;

(11) except as expressly provided in this Article XII, claims based on any action or inaction of any Indemnitee, and nothing in this Agreement shall be construed to provide indemnification for (i) the Failed Bank, (ii) any Subsidiary or Affiliate of the Failed Bank, or (iii) any present or former director, officer, employee or agent of the Failed Bank or its Subsidiaries or Affiliates; provided that the Receiver, in its discretion, may provide indemnification hereunder for any present or former director, officer, employee or agent of the Failed Bank or its Subsidiaries or Affiliates who is also or becomes a director, officer, employee or agent of the Assuming Institution or its Subsidiaries or Affiliates;

(12) claims or actions which constitute a breach by the Assuming Institution of the representations and warranties contained in Article XI;

(13) claims arising out of or relating to the condition of or generated by an Asset arising from or relating to the presence, storage or release of any hazardous or toxic substance, or any pollutant or contaminant, or condition of such Asset which violate any applicable Federal, State or local law or regulation concerning environmental protection; and

(14) claims based on, related to, or arising from any asset, including a loan, acquired or liability assumed by the Assuming Institution, other than pursuant to this Agreement.

12.2 Conditions Precedent to Indemnification. It shall be a condition precedent to the obligation of the Receiver to indemnify any Person pursuant to this Article XII that such Person shall, with respect to any claim made or threatened against such Person for which such Person is or may be entitled to indemnification hereunder:

(a) give written notice to the Regional Counsel (Litigation Branch) of the Corporation in the manner and at the address provided in Section 13.7 of such claim as soon as practicable after such claim is made or threatened; provided that notice must be given on or before the date which is six (6) years from the date of this Agreement;

(b) provide to the Receiver such information and cooperation with respect to such claim as the Receiver may reasonably require;

(c) cooperate and take all steps, as the Receiver may reasonably require, to preserve and protect any defense to such claim;

(d) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Receiver the right, which the Receiver may exercise in its sole discretion, to conduct the investigation, control the defense and effect settlement of such claim, including without limitation the right to designate counsel and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of any such claim, all of which shall be at the expense of the Receiver; provided that the Receiver shall have notified the Person claiming indemnification in writing that such claim is a claim with respect to which the Person claiming indemnification is entitled to indemnification under this Article XII;

(e) not incur any costs or expenses in connection with any response or suit with respect to such claim, unless such costs or expenses were incurred upon the written direction of the Receiver; provided that the Receiver shall not be obligated to reimburse the amount of any such costs or expenses unless such costs or expenses were incurred upon the written direction of the Receiver;

(f) not release or settle such claim or make any payment or admission with respect thereto, unless the Receiver consents in writing thereto, which consent shall not be unreasonably withheld; provided that the Receiver shall not be obligated to reimburse the amount of any such settlement or payment unless such settlement or payment was effected upon the written direction of the Receiver; and

(g) take reasonable action as the Receiver may request in writing as necessary to preserve, protect or enforce the rights of the indemnified Person against any Primary Indemnitor.

12.3 No Additional Warranty. Nothing in this Article XII shall be construed or deemed to (i) expand or otherwise alter any warranty or disclaimer thereof provided under Section 3.3 or any other provision of this Agreement with respect to, among other matters, the title, value, collectibility, genuineness, enforceability or condition of any (x) Asset, or (y) asset of the Failed Bank purchased by the Assuming Institution subsequent to the execution of this Agreement by the Assuming Institution or any Subsidiary or Affiliate of the Assuming Institution, or (ii) create any warranty not expressly provided under this Agreement with respect thereto.

12.4 Indemnification of Receiver and Corporation. From and after Bank Closing, the Assuming Institution agrees to indemnify and hold harmless the Corporation and the Receiver and their respective directors, officers, employees and agents from and against any and all costs, losses, liabilities, expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any of the following:

(a) claims based on any and all liabilities or obligations of the Failed Bank assumed by the Assuming Institution pursuant to this Agreement or subsequent to the execution hereof by the Assuming Institution or any Subsidiary or Affiliate of the Assuming Institution, whether or not any such liabilities subsequently are sold and/or transferred, other than any claim based upon any action or inaction of any Indemnitee as provided in paragraph (7) or (8) of Section 12.1(a); and

(b) claims based on any act or omission of any Indemnitee (including but not limited to claims of any Person claiming any right or title by or through the Assuming Institution with respect to Assets transferred to the Receiver pursuant to Section 3.4 or 3.6), other than any action or inaction of any Indemnitee as provided in paragraph (7) or (8) of Section 12.1(a).

12.5 Obligations Supplemental. The obligations of the Receiver, and the Corporation as guarantor in accordance with Section 12.7, to provide indemnification under this Article XII are to supplement any amount payable by any Primary Indemnitor to the Person indemnified under this Article XII. Consistent with that intent, the Receiver agrees only to make payments pursuant to such indemnification to the extent not payable by a Primary Indemnitor. If the aggregate amount of payments by the Receiver, or the Corporation as guarantor in accordance with Section 12.7, and all Primary Indemnitors with respect to any item of indemnification under this Article XII exceeds the amount payable with respect to such item, such Person being indemnified shall notify the Receiver thereof and, upon the request of the Receiver, shall promptly pay to the Receiver, or the Corporation as appropriate, the amount of the Receiver's (or Corporation's) payments to the extent of such excess.

12.6 Criminal Claims. Notwithstanding any provision of this Article XII to the contrary, in the event that any Person being indemnified under this Article XII shall become involved in any criminal action, suit or proceeding, whether judicial, administrative or investigative, the Receiver shall have no obligation hereunder to indemnify such Person for liability with respect to any criminal act or to the extent any costs or expenses are attributable to the defense against the allegation of any criminal act, unless (i) the Person is successful on the merits or otherwise in the defense against any such action, suit or proceeding, or (ii) such action, suit or proceeding is terminated without the imposition of liability on such Person.

12.7 Limited Guaranty of the Corporation. The Corporation hereby guarantees performance of the Receiver's obligation to indemnify the Assuming Institution as set forth in this Article XII. It is a condition to the Corporation's obligation hereunder that the Assuming Institution shall comply in all respects with the applicable provisions of this Article XII. The Corporation shall be liable hereunder only for such amounts, if any, as the Receiver is obligated to pay under the terms of this Article XII but shall fail to pay. Except as otherwise provided above in this Section 12.7, nothing in this Article XII is intended or shall be construed to create

any liability or obligation on the part of the Corporation, the United States of America or any department or agency thereof under or with respect to this Article XII, or any provision hereof, it being the intention of the parties hereto that the obligations undertaken by the Receiver under this Article XII are the sole and exclusive responsibility of the Receiver and no other Person or entity.

12.8 Subrogation. Upon payment by the Receiver, or the Corporation as guarantor in accordance with Section 12.7, to any Indemnitee for any claims indemnified by the Receiver under this Article XII, the Receiver, or the Corporation as appropriate, shall become subrogated to all rights of the Indemnitee against any other Person to the extent of such payment.

ARTICLE XIII MISCELLANEOUS

13.1 Entire Agreement. This Agreement, the Single Family Shared-Loss Agreement, and the Commercial Shared-Loss Agreement, including the Schedules and Exhibits thereto, embodies the entire agreement of the parties hereto in relation to the subject matter herein and supersedes all prior understandings or agreements, oral or written, between the parties.

13.2 Headings. The headings and subheadings of the Table of Contents, Articles and Sections contained in this Agreement, except the terms identified for definition in Article I and elsewhere in this Agreement, are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

13.3 Counterparts. This Agreement may be executed in any number of counterparts and by the duly authorized representative of a different party hereto on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

13.4 GOVERNING LAW. THIS AGREEMENT, THE SINGLE FAMILY SHARED-LOSS AGREEMENT, AND THE COMMERCIAL SHARED-LOSS AGREEMENT AND THE RIGHTS AND OBLIGATIONS HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES OF AMERICA, AND IN THE ABSENCE OF CONTROLLING FEDERAL LAW, IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE MAIN OFFICE OF THE FAILED BANK IS LOCATED.

13.5 Successors. All terms and conditions of this Agreement shall be binding on the successors and assigns of the Receiver, the Corporation and the Assuming Institution. Except as otherwise specifically provided in this Agreement, nothing expressed or referred to in this Agreement is intended or shall be construed to give any Person other than the Receiver, the Corporation and the Assuming Institution any legal or equitable right, remedy or claim under or with respect to this Agreement or any provisions contained herein, it being the intention of the parties hereto that this Agreement, the obligations and statements of responsibilities hereunder, and all other conditions and provisions hereof are for the sole and exclusive benefit of the Receiver, the Corporation and the Assuming Institution and for the benefit of no other Person.

13.6 Modification; Assignment. No amendment or other modification, rescission, release, or assignment of any part of this Agreement, the Single Family Shared-Loss Agreement, and the Commercial Shared-Loss Agreement shall be effective except pursuant to a written agreement subscribed by the duly authorized representatives of the parties hereto.

13.7 Notice. Any notice, request, demand, consent, approval or other communication to any party hereto shall be effective when received and shall be given in writing, and delivered in person against receipt therefore, or sent by certified mail, postage prepaid, courier service, telex, facsimile transmission or email to such party (with copies as indicated below) at its address set forth below or at such other address as it shall hereafter furnish in writing to the other parties. All such notices and other communications shall be deemed given on the date received by the addressee.

Assuming Institution

NAFH National Bank
9350 South Dixie Highway
Miami, Florida 33156
Attention: R. Eugene Taylor, Chief Executive Officer

with a copy to: Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
Attention: Brian D. Christiansen

Receiver and Corporation

Federal Deposit Insurance Corporation,
Receiver of First National Bank of the South
7777 Baymeadows Way West
Jacksonville, Florida 32256
Attention: Settlement Agent

In addition, with respect to notices under Article 4.6:

with a copy to: Resolutions and Closings Manager, ORE Department

In addition, with respect to notice under Article XII:

with a copy to: Federal Deposit Insurance Corporation,
Receiver of First National Bank of the South
1601 Bryan Street, Suite 1700
Dallas, Texas 75201
Attention: Regional Counsel (Litigation Branch)

13.8 Manner of Payment. All payments due under this Agreement shall be in lawful money of the United States of America in immediately available funds as each party hereto may specify to the other parties; provided that, in the event the Receiver or the Corporation is

obligated to make any payment hereunder in the amount of \$25,000.00 or less, such payment may be made by check.

13.9 Costs, Fees and Expenses. Except as otherwise specifically 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 without limitation any fees and disbursements to its accountants and counsel; provided that the Assuming Institution shall pay all fees, costs, and expenses (other than attorneys' fees incurred by the Receiver) incurred in connection with the transfer to it of any Assets or Liabilities Assumed hereunder or in accordance herewith.

13.10 Waiver. Each of the Receiver, the Corporation and the Assuming Institution may waive its respective rights, powers or privileges under this Agreement; provided that such waiver shall be in writing; and further provided that no failure or delay on the part of the Receiver, the Corporation or the Assuming Institution to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege by the Receiver, the Corporation, or the Assuming Institution under this Agreement, nor will any such waiver operate or be construed as a future waiver of such right, power or privilege under this Agreement.

13.11 Severability. If any provision of this Agreement is declared invalid or unenforceable, then, to the extent possible, all of the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

13.12 Term of Agreement. This Agreement shall continue in full force and effect until the tenth (10th) anniversary of Bank Closing; provided that the provisions of Section 6.3 and 6.4 shall survive the expiration of the term of this Agreement; and provided further that the receivership of the Failed Bank may be terminated prior to the expiration of the term of this Agreement, and in such event, the guaranty of the Corporation, as provided in and in accordance with the provisions of Section 12.7 shall be in effect for the remainder of the term of this Agreement. Expiration of the term of this Agreement shall not affect any claim or liability of any party with respect to any (i) amount which is owing at the time of such expiration, regardless of when such amount becomes payable, and (ii) breach of this Agreement occurring prior to such expiration, regardless of when such breach is discovered.

13.13 Survival of Covenants, Etc. The covenants, representations, and warranties in this Agreement shall survive the execution of this Agreement and the consummation of the transactions contemplated hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**FEDERAL DEPOSIT INSURANCE CORPORATION,
RECEIVER OF FIRST NATIONAL BANK OF THE
SOUTH
SPARTANBURG, SOUTH CAROLINA**

BY: Redacted
NAME: Ann G. Hill
TITLE: Receiver-in-Charge

Attest:

Redacted

FEDERAL DEPOSIT INSURANCE CORPORATION

BY: Redacted
NAME: Ann G. Hill
TITLE: Attorney-in-Fact

Attest:

Redacted

NAFH NATIONAL BANK

BY: Redacted
NAME: R. Eugene Taylor
TITLE: Chief Executive Officer

Redacted

**SCHEDULE 3.2
PURCHASE PRICE OF ASSETS OR ASSETS**

- | | | |
|-----|--|-------------------------------|
| (a) | cash and receivables from depository institutions, including cash items in the process of collection, plus interest thereon: | Book Value |
| (b) | securities (exclusive of the capital stock of Acquired Subsidiaries, Shared-Loss Securities, FRB and FHLB stock), plus interest thereon: | As provided in Section 3.2(b) |
| (c) | federal funds sold and repurchase agreements, if any, including interest thereon: | Book Value |
| (d) | Loans: | Book Value |
| (e) | credit card business: | Book Value |
| (f) | Safe Deposit Boxes and related business, safekeeping business and trust business, if any: | Book Value |
| (g) | Records and other documents: | Book Value |
| (h) | Other Real Estate | Book Value |
| (i) | boats, motor vehicles, aircraft, trailers, fire arms, and repossessed collateral | Book Value |
| (j) | capital stock of any Acquired Subsidiaries and FRB and FHLB stock: | Book Value |
| (k) | amounts owed to the Failed Bank by any Acquired Subsidiary: | Book Value |
| (l) | assets securing Deposits of public money, to the extent not otherwise purchased hereunder: | Book Value |
| (m) | Overdrafts of customers: | Book Value |

- | | | |
|-----|--|-------------------------------|
| (n) | rights, if any, with respect to Qualified Financial Contracts. | As provided in Section 3.2(c) |
| (o) | rights of the Failed Bank to provide mortgage servicing for others and to have mortgage servicing provided to the Failed Bank by others and related contracts. | Book Value |
| (p) | Shared-Loss Securities | Book Value |
| (q) | Personal Computers | Fair Market Value |

assets subject to an option to purchase:

- | | | |
|-----|--------------------------|-------------------|
| (a) | Bank Premises: | Fair Market Value |
| (b) | Furniture and Equipment: | Fair Market Value |
| (c) | Fixtures: | Fair Market Value |
| (d) | Other Equipment: | Fair Market Value |

**SCHEDULE 3.5(l)
EXCLUDED SECURITIES**

1.

CUSIP	DESCRIPTION	ORIGINAL FACE/PAR
[REDACTED]	[REDACTED]	[REDACTED]

2. All Federal Reserve stock.

**SCHEDULE 4.15A
LOANS SUBJECT TO LOSS SHARING UNDER THE
SINGLE FAMILY SHARED-LOSS AGREEMENT**

This information will be provided post-closing with data as of Bank Closing.

**SCHEDULE 4.15B
LOANS SUBJECT TO LOSS SHARING UNDER THE
COMMERCIAL SHARED-LOSS AGREEMENT**

This information will be provided post-closing with data as of Bank Closing.

**SCHEDULE 4.15C
SHARED-LOSS SECURITIES**

NONE

**SCHEDULE 4.15D
SHARED-LOSS SUBSIDIARIES**

NONE

FDIC Data Management Services (DMS)

Acquirer Data Retention Catalog

Version 2.0

Failed Institution

Name
Data Center Address

Assuming Institution

Name
Address

DRC Preparation Date

DRC Preparer's Contact

Name
Designation
Phone
Email

Alternate Contact for Subsequent Data Requests (if different from above)

Name
Phone
Email

Instructions

1. Provide preparer's contact information and Bank information on the "Cover Page" tab.
2. Provide point of contact and desired procedure for data requests on the "Data Request Procedure" Tab.
3. Provide the requested application retention details on "Data Retention" tab of this workbook.
 - a. Update provided application list with any additional systems that were not included
 - b. Select the most appropriate value from the drop down list when the list is provided with applicable column.

If you need additional clarification while recording the information, please call Kevin Sheehan (FDIC) at 703-562-2012 or Leslie Bowie (FDIC) at 703-562-6262. Send the final copy of this document to Leslie Daley LDaley@FDIC.gov.

**SCHEDULE 7
ACCOUNTS EXCLUDED FROM CALCULATION
OF
DEPOSIT FRANCHISE BID PREMIUM**

The accounts identified below will pass to the Assuming Institution (unless otherwise noted). When calculating the premium to be paid on Assumed Deposits in a Purchase and Assumption transaction, the FDIC will exclude the following categories of deposit accounts:

<i>Category</i>	<i>Description</i>	<i>Amount</i>
I	Non- DO Brokered Deposits	\$0.00
II	CDARS	\$0.00
III	Market Place Deposits	<u>\$16,160,985.00</u>
	<i>Total deposits excluded from Calculation of premium</i>	<u>\$16,160,985.00</u>

Category Description

I Brokered Deposits

Brokered deposit accounts are accounts for which the “depositor of record” is an agent, nominee, or custodian who deposits funds for a principal or principals to whom “pass-through” deposit insurance coverage may be extended. The FDIC separates brokered deposit accounts into 2 categories: 1) Depository Organization (“DO”) Brokered Deposits and 2) Non-Depository Organization (“Non-DO”) Brokered Deposits. This distinction is made by the FDIC to facilitate our role as Receiver and Insurer. These terms will not appear on other “brokered deposit” reports generated by the institution.

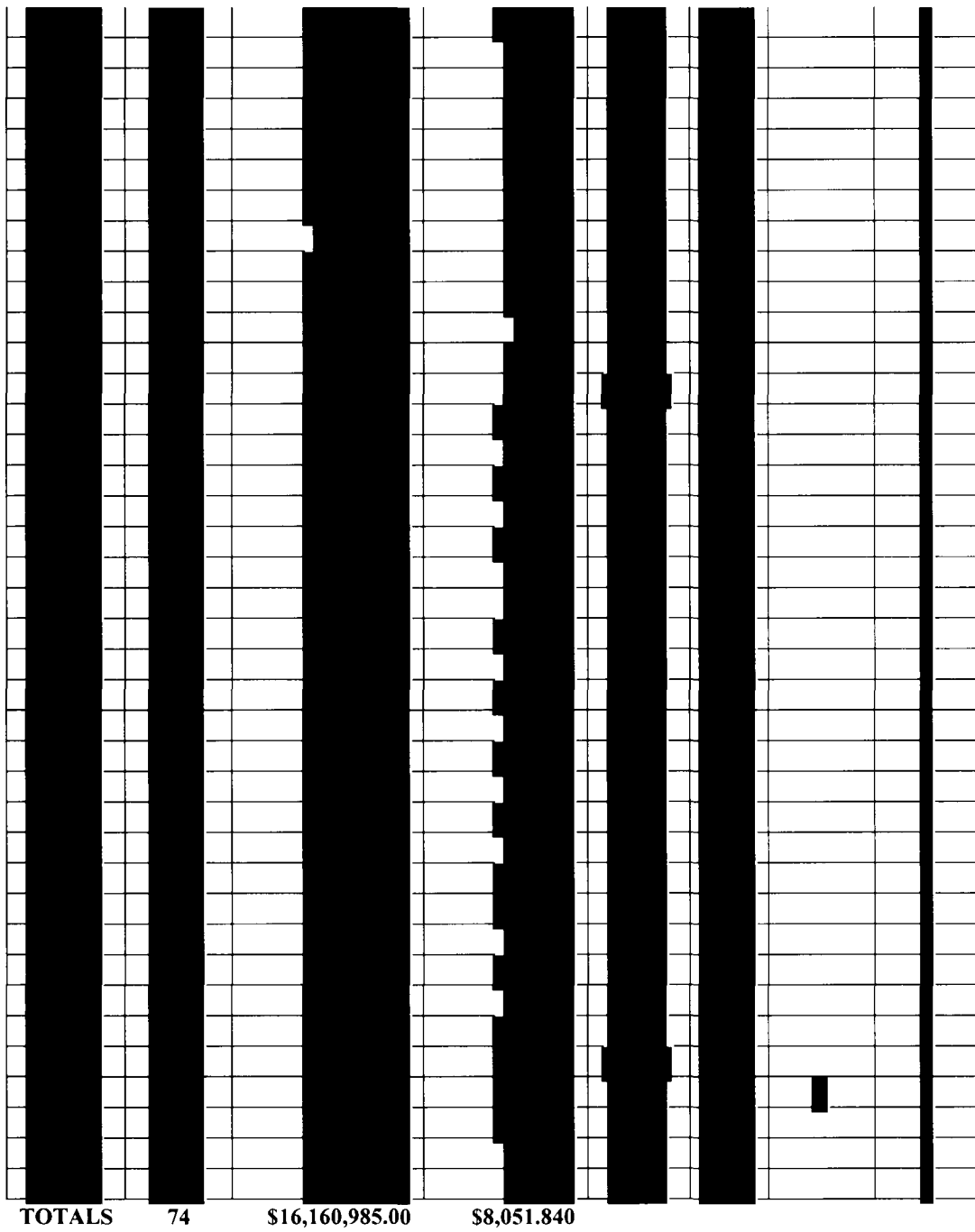
Non-DO Brokered Deposits pass to the Assuming Institution, but are excluded from Assumed Deposits when the deposit premium is calculated. Please see the attached “Schedule 7 Non-DO Broker Deposit Detail Report” for a listing of these accounts. ***This list will be updated post-closing with balances as of Bank Closing.***

DO Brokered Deposits (Cede & Co as Nominee for DTC) are typically excluded from Assumed Deposits in the Purchase and Assumption transaction. A list of these accounts is provided on Schedule 2.1(a) to this Agreement. If, however, the terms of a particular transaction are altered and the DO Brokered Deposits pass to the Assuming Institution, they will not be included in Assumed Deposits for purposes of calculating the deposit premium.

II CDARS

CDARS deposits pass to the Assuming Institution, but are excluded from Assumed Deposits when the deposit premium is calculated.

First National Bank of the South did not participate in the CDARS program as of the date of the deposit download. ***If CDARS deposits are taken between the date of the deposit download and Bank Closing, they will be identified post closing and made part of Schedule 7 to this Agreement.***



**EXHIBIT 2.3A
FINAL NOTICE LETTER**

FINAL LEGAL NOTICE
Claiming Requirements for Deposits
Under 12 U.S.C. 1822(e)

[Date]

**[Name of Unclaimed Depositor]
[Address of Unclaimed Depositor]
[Anytown, USA]**

Subject: **[XXXXX – Name of Bank
City, State] – In Receivership**

Dear **[Sir/Madam]**:

As you may know, on **[Date: Closing Date]**, the **[Name of Bank (“The Bank”)]** was closed and the Federal Deposit Insurance Corporation (“FDIC”) transferred **[The Bank’s]** accounts to **[Name of Acquiring Institution]**.

According to federal law under 12 U.S.C., 1822(e), on **[Date: eighteen months from the Closing Date]**, **[Name of Acquiring Institution]** must transfer the funds in your account(s) back to the FDIC if you have not claimed your account(s) with **[Name of Acquiring Institution]**. Based on the records recently supplied to us by **[Name of Acquiring Institution]**, your account(s) currently fall into this category.

This letter is your formal Legal Notice that you have until **[Date: eighteen months from the Closing Date]**, to claim or arrange to continue your account(s) with **[Name of Acquiring Institution]**. There are several ways that you can claim your account(s) at **[Name of Acquiring Institution]**. It is only necessary for you to take any one of the following actions in order for your account(s) at **[Name of Acquiring Institution]** to be deemed claimed. In addition, if you have more than one account, your claim to one account will automatically claim all accounts:

1. Write to **[Name of Acquiring Institution]** and notify them that you wish to keep your account(s) active with them. Please be sure to include the name of the account(s), the account number(s), the signature of an authorized signer on the account(s), name, and address. **[Name of Acquiring Institution]** address is:

[123 Main Street

Anytown, USA]

2. Execute a new signature card on your account(s), enter into a new deposit agreement with **[Name of Acquiring Institution]**, change the ownership on your account(s), or renegotiate the terms of your certificate of deposit account(s) (if any).
3. Provide **[Name of Acquiring Institution]** with a change of address form.

4. Make a deposit to or withdrawal from your account(s). This includes writing a check on any account or having an automatic direct deposit credited to or an automatic withdrawal debited from an account.

If you do not want to continue your account(s) with **[Name of Acquiring Institution]** for any reason, you can withdraw your funds and close your account(s). Withdrawing funds from one or more of your account(s) satisfies the federal law claiming requirement. If you have time deposits, such as certificates of deposit, **[Name of Acquiring Institution]** can advise you how to withdraw them without being charged an interest penalty for early withdrawal.

If you do not claim ownership of your account(s) at **[Name of Acquiring Institution by Date: eighteen months from the Closing Date]** federal law requires **[Name of Acquiring Institution]** to return your deposits to the FDIC, which will deliver them as unclaimed property to the State indicated in your address in the Failed Institution's records. If your address is outside of the United States, the FDIC will deliver the deposits to the State in which the Failed Institution had its main office. 12 U.S.C. § 1822(e). If the State accepts custody of your deposits, you will have 10 years from the date of delivery to claim your deposits from the State. After 10 years you will be permanently barred from claiming your deposits. However, if the State refuses to take custody of your deposits, you will be able to claim them from the FDIC until the receivership is terminated. If you have not claimed your insured deposits before the receivership is terminated, and a receivership may be terminated at any time, all of your rights in those deposits will be barred.

If you have any questions or concerns about these items, please contact **[Bank Employee]** at **[Name of Acquiring Institution]** by phone at **[(XXX) XXX-XXXX]**.

Sincerely,

[Name of Claims Specialist]
[Title]

**EXHIBIT 2.3B
AFFIDAVIT OF MAILING**

AFFIDAVIT OF MAILING

STATE OF

COUNTY OF

I am employed as a **[Title of Office]** by the **[Name of Acquiring Institution]**.

This will attest that on **[Date of mailing]**, I caused a true and correct copy of the Final Legal Notice, attached hereto, to owners of unclaimed deposits of **[Name of Failed Bank]**, City, State, to be prepared for deposit in the mail of the United States of America on behalf of the Federal Deposit Insurance Corporation. A list of depositors to whom the notice was mailed is attached. This notice was mailed to the depositor's last address as reflected on the books and records of the **[Name of Failed Bank]** as of the date of failure.

[Name]
[Title of Office]
[Name of Acquiring Institution]

Subscribed and sworn to before me this _____ day of [Month, Year].

My commission expires:

[Name], Notary Public

EXHIBIT 3.2(c) -- VALUATION OF CERTAIN QUALIFIED FINANCIAL CONTRACTS

A. Scope

Interest Rate Contracts - All interest rate swaps, forward rate agreements, interest rate futures, caps, collars and floors, whether purchased or written.

Option Contracts - All put and call option contracts, whether purchased or written, on marketable securities, financial futures, foreign currencies, foreign exchange or foreign exchange futures contracts.

Foreign Exchange Contracts - All contracts for future purchase or sale of foreign currencies, foreign currency or cross currency swap contracts, or foreign exchange futures contracts.

B. Exclusions

All financial contracts used to hedge assets and liabilities that are acquired by the Assuming Institution but are not subject to adjustment from Book Value.

C. Adjustment

The difference between the Book Value and market value as of Bank Closing.

D. Methodology

1. The price at which the Assuming Institution sells or disposes of Qualified Financial Contracts will be deemed to be the fair market value of such contracts, if such sale or disposition occurs at prevailing market rates within a predefined timetable as agreed upon by the Assuming Institution and the Receiver.
2. In valuing all other Qualified Financial Contracts, the following principles will apply:
 - (i) All known cash flows under swaps or forward exchange contracts shall be present valued to the swap zero coupon interest rate curve.
 - (ii) All valuations shall employ prices and interest rates based on the actual frequency of rate reset or payment.
 - (iii) Each tranche of amortizing contracts shall be separately valued. The total value of such amortizing contract shall be the sum of the values of its component tranches.

- (iv) For regularly traded contracts, valuations shall be at the midpoint of the bid and ask prices quoted by customary sources (e.g., The Wall Street Journal, Telerate, Reuters or other similar source) or regularly traded exchanges.

- (v) For all other Qualified Financial Contracts where published market quotes are unavailable, the adjusted price shall be the average of the bid and ask price quotes from three (3) securities dealers acceptable to the Receiver and Assuming Institution as of Bank Closing. If quotes from securities dealers cannot be obtained, an appraiser acceptable to the Receiver and the Assuming Institution will perform a valuation based on modeling, correlation analysis, interpolation or other techniques, as appropriate.

EXHIBIT 4.13
INTERIM ASSET SERVICING ARRANGEMENT

(a) With respect to each asset (or liability) designated from time to time by the Receiver to be serviced by the Assuming Institution pursuant to this Arrangement, including any Assets sold by the Receiver but with respect to which the Receiver has an obligation to service or provide servicing support (such being designated as “Pool Assets”), during the term of this Arrangement, the Assuming Institution shall:

(i) Promptly apply payments received with respect to any Pool Assets;

(ii) Reverse and return insufficient funds checks;

(iii) Pay (A) participation payments to participants in Loans, as and when received; and (B) tax and insurance bills on Pool Assets as they come due, out of escrow funds maintained for purposes;

(iv) Maintain accurate records reflecting (A) the payment history of Pool Assets, with updated information received concerning changes in the address or identity of the obligors and (B) usage of data processing equipment and employee services with respect to servicing duties;

(v) Send billing statements to obligors on Pool Assets to the extent that such statements were sent by the Failed Bank;

(vi) Send notices to obligors who are in default on Loans (in the same manner as the Failed Bank);

(vii) Send to the Receiver, Attention: Managing Liquidator, at the address provided in Section 13.7 of the Agreement, or to such other person at such address as the Receiver may designate, via overnight delivery: (A) on a weekly basis, weekly reports for the Pool Assets, including, without limitation, reports reflecting collections and the trial balances, transaction journals and loan histories for Pool Assets having activity, together with copies of (1) checks received, (2) insufficient funds checks returned, (3) checks for payment to participants or for taxes and insurance, (4) pay-off requests, (5) notices to defaulted obligors, and (6) data processing and employee logs and (B) any other reports, copies or information as may be periodically or from time to time requested;

(viii) Remit on a weekly basis to the Receiver, Attention: Division of Finance, Cashier Unit, Operations, at the address in (vii), via wire transfer to the account designated by the Receiver, or to such other person at such address and/or account as the Receiver may designate, all payments received on Pool Assets managed by the Assuming Institution or at such time and place and in such manner as may be directed by the Receiver;

(ix) prepare and timely file all information reports with appropriate tax authorities, and, if required by the Receiver, prepare and file tax returns and pay taxes due on or before the due date, relating to the Pool Assets; and

(x) provide and furnish such other services, operations or functions as may be required with regard to Pool Assets, including, without limitation, as may be required with regard to any business, enterprise or agreement which is a Pool Asset, all as may be required by the Receiver.

Notwithstanding anything to the contrary in this Section, the Assuming Institution shall not be required to initiate litigation or other collection proceedings against any obligor or any collateral with respect to any defaulted Loan. The Assuming Institution shall promptly notify the Receiver, at the address provided above in subparagraph (a)(vii), of any claims or legal actions regarding any Pool Asset.

(b) The Receiver agrees to reimburse the Assuming Institution for actual, reasonable and necessary expenses incurred in connection with the performance of duties pursuant to this Arrangement, including expenses of photocopying, postage and express mail, and data processing and employee services (based upon the number of hours spent performing servicing duties).

(c) The Assuming Institution shall provide the services described herein for a period of up to three hundred sixty-five (365) days after Bank Closing.

(d) At any time during the term of this Arrangement, the Receiver may, upon written notice to the Assuming Institution, remove one or more Pool Assets from the Pool, at which time the Assuming Institution's responsibility with respect thereto shall terminate.

(e) At the expiration of this Agreement or upon the termination of the Assuming Institution's responsibility with respect to any Pool Asset pursuant to paragraph (d) hereof, the Assuming Institution shall:

(i) deliver to the Receiver (or its designee) all of the Credit Documents and Pool Records relating to the Pool Assets; and

(ii) cooperate with the Receiver to facilitate the orderly transition of managing the Pool Assets to the Receiver (or its designee).

(f) At the request of the Receiver, the Assuming Institution shall perform such transitional services with regard to the Pool Assets as the Receiver may request. Transitional services may include, without limitation, assisting in any due diligence process deemed necessary by the Receiver and providing to the Receiver or its designee(s) (x) information and data regarding the Pool Assets, including, without limitation, system reports and data downloads sufficient to transfer the Pool Assets to another system or systems, and (y) access to employees of the Assuming Institution involved in the management of, or otherwise familiar with, the Pool Assets.

EXHIBIT 4.15A
SINGLE FAMILY SHARED-LOSS AGREEMENT

This agreement for the reimbursement of loss sharing on certain single family residential mortgage loans (the “Single Family Shared-Loss Agreement”) shall apply when the Assuming Institution purchases Single Family Shared-Loss Loans as that term is defined herein. The terms hereof shall modify and supplement, as necessary, the terms of the Purchase and Assumption Agreement to which this Single Family Shared-Loss Agreement is attached as Exhibit 4.15A and incorporated therein. To the extent any inconsistencies may arise between the terms of the Purchase and Assumption Agreement and this Single Family Shared-Loss Agreement with respect to the subject matter of this Single Family Shared-Loss Agreement, the terms of this Single Family Shared-Loss Agreement shall control. References in this Single Family Shared-Loss Agreement to a particular Section shall be deemed to refer to a Section in this Single Family Shared-Loss Agreement, unless the context indicates that it is intended to be a reference to a Section of the Purchase and Assumption Agreement.

ARTICLE I -- DEFINITIONS

The capitalized terms used in this Single Family Shared-Loss Agreement that are not defined in this Single Family Shared-Loss Agreement are defined in the Purchase and Assumption Agreement. In addition to the terms defined above, defined below are certain additional terms relating to loss-sharing, as used in this Single Family Shared-Loss Agreement.

“**Accounting Records**” means the subsidiary system of record on which the loan history and balance of each Single Family Shared-Loss Loan is maintained; individual loan files containing either an original or copies of documents that are customary and reasonable with respect to loan servicing, including management and disposition of Other Real Estate; the records documenting alternatives considered with respect to loans in default or for which a default is reasonably foreseeable; records of loss calculations and supporting documentation with respect to line items on the loss calculations; and, monthly delinquency reports and other performance reports customarily utilized by the Assuming Institution in management of loan portfolios.

“**Accrued Interest**” means, with respect to Single Family Shared-Loss Loans, the amount of earned and unpaid interest at the note rate specified in the applicable loan documents, limited to 90 days.

“**Affiliate**” shall have the meaning set forth in the Purchase and Assumption Agreement; provided that, for purposes of this Single Family Shared-Loss Agreement, no Third Party Servicer shall be deemed to be an Affiliate of the Assuming Institution.

“**Applicable Percentage**” means, the percentage of shared-loss the Receiver will incur with respect to this Single Family Shared-Loss Agreement, which is eighty percent (80%) until the Cumulative Loss Amount equals the SF1-4 Intrinsic Loss Estimate, and eighty percent (80%) thereafter.

“Commencement Date” means the first calendar day following Bank Closing.

“Commercial Shared-Loss Agreement” means the Commercial Shared-Loss Agreement attached to the Purchase and Assumption Agreement as Exhibit 4.15B.

“Cumulative Loss Amount” means the sum of all Monthly Loss Amounts less the sum of all Recovery Amounts.

“Customary Servicing Procedures” means procedures (including collection procedures) that the Assuming Institution (or, to the extent a Third Party Servicer is engaged, the Third Party Servicer) customarily employs and exercises in servicing and administering mortgage loans for its own accounts and the servicing procedures established by FNMA or FHLMC (as in effect from time to time), which are in accordance with accepted mortgage servicing practices of prudent lending institutions.

“Deficient Loss” means the determination by a court in a bankruptcy proceeding that the value of the collateral is less than the amount of the loan in which case the loss will be the difference between the then unpaid principal balance (or the NPV of a modified loan that defaults) and the value of the collateral so established.

“Examination Criteria” means the loan classification criteria employed by, or any applicable regulations of, the Assuming Institution’s Chartering Authority at the time such action is taken, as such criteria may be amended from time to time.

“Final Shared-Loss Month” means the calendar month in which the tenth anniversary of the Commencement Date occurs.

“Foreclosure Loss” means the loss realized when the Assuming Institution has completed the foreclosure on a Single Family Shared-Loss Loan and realized final recovery on the collateral through liquidation and recovery of all insurance proceeds. Each Foreclosure Loss shall be calculated in accordance with the form and methodology specified in Exhibits 2c(1)-(3).

“Holding Company” means any company owning Shares of the Assuming Institution that is a holding company pursuant to the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.* or the Home Owner’s Loan Act, 12 U.S.C. 1461 *et seq.*

“Home Equity Loan” means a loan or funded or unfunded portions of a line of credit secured by a mortgage on a one-to four-family residences or stock of cooperative housing association, where the Failed Bank did not have a first lien on the same property as collateral.

“Investor-Owned Residential Loan” means a Loan, excluding advances made pursuant to a Home Equity Loan, that is secured by a mortgage on a one- to four family residences or stock of cooperative housing associations that is not owner-occupied or the borrower’s primary residence.

“**Loss**” means a Foreclosure Loss, Restructuring Loss, Short Sale Loss, Portfolio Loss, Modification Default Loss or Deficient Loss.

“**Loss Amount**” means the dollar amount of loss incurred and reported on the Monthly Certificate for a Shared-Loss Loan.

“**Modification Default Loss**” means the loss calculated in Exhibits 2a(1)-(3) for single family loans previously modified pursuant to this Single Family Shared-Loss Agreement that subsequently default and result in a foreclosure, short sale or Deficient Loss.

“**Modification Guidelines**” has the meaning provided in Section 2.1(a) of this Single Family Shared-Loss Agreement.

“**Monthly Certificate**” has the meaning provided in Section 2.1(b) of this Single Family Shared-Loss Agreement.

“**Monthly Loss Amount**” means the sum of all Foreclosure Losses, Restructuring Losses, Short Sale Losses, Portfolio Losses, Modification Default Losses and Deficient Losses realized by the Assuming Institution for any Shared Loss Month.

“**Monthly Shared-Loss Amount**” means the change in the Cumulative Shared-Loss Amount from the beginning of each month to the end of each month.

“**Net Loss Amount**” means the sum of Cumulative Loss Amounts under this Single Family Shared-Loss Agreement and Aggregate Net Charge-Offs under the Commercial Shared-Loss Agreement.

“**Neutral Member**” has the meaning provided in Section 2.1(f)(ii) of this Single Family Shared-Loss Agreement.

“**Portfolio Loss**” means the loss realized on either (i) a portfolio sale of Single Family Shared-Loss Loans in accordance with the terms of Article IV or (ii) the sale of a loan with the consent of the Receiver as provided in Section 2.7.

“**Recovery Amount**” means, with respect to any period prior to the Termination Date, the amount of collected funds received by the Assuming Institution that (i) are applicable against a Foreclosure Loss calculated in accordance with Exhibits 2c(1)-(3), or (iii) gains realized from a Section 4.1 sale of Single Family Shared-Loss Loans for which the Assuming Institution has previously received a Restructuring Loss payment from the Receiver (iv) or any incentive payments from national programs paid to an investor or borrower on loans that have been modified or otherwise treated (short sale or foreclosure) in accordance with Exhibit 5.

“**Related Loans**” has the meaning set forth in Section 3.1.

“**Restructuring Loss**” means the loss on a modified or restructured loan measured by the difference between (a) the principal, Accrued Interest, tax and insurance advances, third party or other fees due on a loan prior to the modification or restructuring, and (b) the net present value of estimated cash flows on the modified or restructured loan, discounted

at the Then-Current Interest Rate. Each Restructuring Loss shall be calculated in accordance with the form and methodology attached as Exhibits 2a(1)-(3), as applicable.

“Restructured Loan” means a Single Family Shared-Loss Loan for which the Assuming Institution has received a Restructuring Loss payment from the Receiver. This applies to owner occupied and investor owned residences.

“Servicing Officer” has the meaning provided in Section 2.1(b) of this Single Family Shared-Loss Agreement.

“SF1-4 Intrinsic Loss Estimate” means total losses under this Single Family Shared-Loss Agreement in the amount of thirty million dollars (\$30,000,000.00).

“Shared Loss Loan” means a Single Family Shared-Loss Loan, Investor-Owned Residential Loan, Restructured Loan or Home Equity Loan, and any Commitment with respect to those loans.

“Shared-Loss Month” means each calendar month between the Commencement Date and the last day of the month in which the tenth anniversary of the Commencement Date occurs, provided that the first Shared-Loss Month shall begin on the Commencement Date and end on the last day of that month.

“Shares” means common stock and any instrument which by its terms is currently convertible into common stock, or which may become convertible into common stock.

“Short-Sale Loss” means the loss resulting from the Assuming Institution’s agreement with the mortgagor to accept a payoff in an amount less than the balance due on the loan (including the costs of any cash incentives to borrower to agree to such sale or to maintain the property pending such sale), further provided that each Short-Sale Loss shall be calculated in accordance with the form and methodology specified in Exhibits 2b(1)-(3).

“Single Family Shared-Loss Loan” means a single family one-to-four owner-occupied residential mortgage loan, excluding Home Equity Loans, that is secured by a mortgage on a one-to four family residence or stock of a cooperative housing association.

“Termination Date” means the last day of the Final Shared-Loss Month.

“Then-Current Interest Rate” means the most recently published Freddie Mac survey rate for 30-year fixed-rate loans for Investor-Owned Loans or such other interest rate approved by the Receiver.

“Third Party Servicer” means any servicer appointed from time to time by the Assuming Institution or any Affiliate of the Assuming Institution to service the Shared-Loss Loans on behalf of the Assuming Institution, the identity of which shall be given to the Receiver prior to or concurrent with the appointment thereof.

“Total Intrinsic Loss Estimate” means the sum of the SF1-4 Intrinsic Loss Estimate in the Single Family Shared-Loss Agreement, and the Commercial Intrinsic Loss Estimate in the Commercial Shared-Loss Agreement, expressed in dollars.

ARTICLE II -- SHARED-LOSS ARRANGEMENT

2.1 Shared-Loss Arrangement.

(a) Loss Mitigation and Consideration of Alternatives.

(i) For each Single Family Shared-Loss Loan in default or for which a default is reasonably foreseeable, the Assuming Institution shall undertake reasonable and customary loss mitigation efforts, in accordance with any of the following programs selected by Assuming Institution in its sole discretion, Exhibit 5 (FDIC Mortgage Loan Modification Program), the United States Treasury’s Home Affordable Modification Program Guidelines or any other modification program approved by the United States Treasury Department, the Corporation, the Board of Governors of the Federal Reserve System or any other governmental agency (it being understood that the Assuming Institution can select different programs for the various Single Family Shared-Loss Loans) (such program chosen, the “Modification Guidelines”). After selecting the applicable Modification Guideline for each such Single Family Shared-Loss Loan, the Assuming Institution shall document its consideration of foreclosure, loan restructuring under the applicable Modification Guideline chosen, and short-sale (if short-sale is a viable option) alternatives and shall select the alternative the Assuming Institution believes, based on its estimated calculations, will result in the least Loss. If unemployment or underemployment is the primary cause for default or for which a default is reasonably foreseeable, the Assuming Institution may consider the borrower for a temporary forbearance plan which reduces the loan payment to an affordable level for at least six (6) months.

(ii) Losses on Home Equity Loans shall be shared under the charge-off policies of the Assuming Institution’s Examination Criteria as if they were Single Family Shared-Loss Loans.

(iii) Losses on Investor-Owned Residential Loans shall be treated as Restructured Loans, and with the consent of the Receiver can be restructured under terms separate from the Exhibit 5 standards. Please refer to Exhibits 2a (1)-(2) for guidance in Calculation of Loss for Restructured Loans. Losses on Investor-Owned Residential Loans will be treated as if they were Single Family Shared-Loss Loans.

(iv) The Assuming Institution shall retain its loss calculations for the Shared-Loss Loans and such calculations shall be provided to the Receiver upon request. For the avoidance of doubt and notwithstanding anything herein to the contrary, (x) the Assuming Institution is not required to modify or restructure any Shared-Loss Loan on more than one occasion and (y) the Assuming Institution is not required to consider any alternatives with respect to any Shared-Loss Loan in the process of foreclosure as of Bank Closing if the Assuming Institution can document that a loan modification is not cost effective and shall be entitled to continue such foreclosure measures and recover the Foreclosure Loss as provided herein, and (z) the Assuming Institution shall have a transition period of up to 90 days after Bank Closing to implement the Modification

Guidelines, during which time, the Assuming Institution may submit claims under such guidelines as may be in place at the Failed Bank.

(b) **Monthly Certificates.**

Not later than fifteen (15) days after the end of each Shared-Loss Month, beginning with the month in which the Commencement Date occurs and ending in the Final Shared-Loss Month, the Assuming Institution shall deliver to the Receiver a certificate, signed by an officer of the Assuming Institution involved in, or responsible for, the administration and servicing of the Shared-Loss Loans whose name appears on a list of servicing officers furnished by the Assuming Institution to the Receiver, (a “Servicing Officer”) setting forth in such form and detail as the Receiver may reasonably specify (a “Monthly Certificate”):

- (i) (A) a schedule substantially in the form of Exhibit 1 listing:
 - (i) each Shared-Loss Loan for which a Loss Amount (calculated in accordance with the applicable Exhibit) is being claimed, the related Loss Amount for each Shared-Loss Loan, and the total Monthly Loss Amount for all Shared-Loss Loans;
 - (ii) each Shared-Loss Loan for which a Recovery Amount was received, the Recovery Amount for each Shared-Loss Loan, and the total Recovery Amount for all Shared-Loss Loans;
 - (iii) the total Monthly Loss Amount for all Shared-Loss Loans minus the total monthly Recovery Amount for all Shared-Loss Loans;
 - (iv) the Cumulative Loss Amount as of the beginning and end of the month;
 - (v) the Monthly Shared Loss Amount;
 - (vi) the result obtained in (v) times the Applicable Percentage, which is the amount to be paid under Section 2.1(d) of this Single Family Shared-Loss Agreement by the Receiver to the Assuming Institution if the amount is a positive number, or by the Assuming Institution to the Receiver if the amount is a negative number;
- (ii) for each of the Shared-Loss Loans for which a Loss is claimed for that Shared-Loss Month, a schedule showing the calculation of the Loss Amount using the form and methodology shown in Exhibits 2a(1)-(3), Exhibit 2b, or Exhibits 2c(1)-(2), as applicable.
- (iii) For each of the Restructured Loans where a gain or loss is realized in a sale under Section 4.1 or 4.2, a schedule showing the calculation using the form and methodology shown in Exhibits 2d(1)-(2).

(iv) a portfolio performance and summary schedule substantially in the form shown in Exhibit 3.

(c) **Monthly Data Download.** Not later than fifteen (15) days after the end of each month, beginning with the month in which the Commencement Date occurs and ending with the Final Shared-Loss Month, Assuming Institution shall provide Receiver:

(i) the servicing file in machine-readable format including but not limited to the fields shown on Exhibit 2.1(c) for each outstanding Single Family Shared-Loss Loan, as applicable; and

(ii) an Excel file for ORE held as a result of foreclosure on a Single Family Shared-Loss Loan listing:

- (A) Foreclosure date
- (B) Unpaid loan principal balance
- (C) Appraised value or BPO value, as applicable
- (D) Projected liquidation date

Notwithstanding the foregoing, the Assuming Institution shall not be required to provide any of the foregoing information to the extent it is unable to do so as a result of the Failed Bank's or Receiver's failure to provide information required to produce the information set forth in this Section 2.1(c); provided that the Assuming Institution shall, consistent with Customary Servicing Procedures seek to produce any such missing information or improve any inaccurate information previously provided to it.

(d) **Payments With Respect to Shared-Loss Assets.** Not later than fifteen (15) days after the date on which the Receiver receives the Monthly Certificate, the Receiver shall pay to the Assuming Institution, in immediately available funds, an amount equal to the Applicable Percentage of the Monthly Shared-Loss Amount reported on the Monthly Certificate. If the total Monthly Shared-Loss Amount reported on the Monthly Certificate is a negative number, the Assuming Institution shall pay to the Receiver in immediately available funds the Applicable Percentage of that amount.

(e) **Limitations on Shared-Loss Payment.** The Receiver shall not be required to make any payments pursuant to Section 2.1(d) with respect to any Foreclosure Loss, Restructuring Loss, Short Sale Loss, Deficient Loss, or Portfolio Loss that the Receiver determines, based upon the criteria set forth in this Single Family Shared-Loss Agreement (including the analysis and documentation requirements of Section 2.1(a)) or Customary Servicing Procedures, should not have been effected by the Assuming Institution; provided, however, (x) the Receiver must provide notice to the Assuming Institution detailing the grounds for not making such payment, (y) the Receiver must provide the Assuming Institution with a reasonable opportunity to cure any such deficiency and (z) (1) to the extent curable, if cured, the Receiver shall make payment with respect to the properly effected Loss, and (2) to the extent not curable, shall not constitute grounds for the Receiver to withhold payment as to all other Losses (or portion of Losses) that are properly payable pursuant to the terms of this Single Family Shared-Loss Agreement. In the event that the Receiver does not make any payment with respect

to Losses claimed pursuant to Section 2.1(d), the Receiver and Assuming Institution shall, upon final resolution, make the necessary adjustments to the Monthly Shared-Loss Amount for that Monthly Certificate and the payment pursuant to Section 2.1(d) above shall be adjusted accordingly.

(f) **Payments by Wire-Transfer.** All payments under this Single Family Shared-Loss Agreement shall be made by wire-transfer in accordance with the wire-transfer instructions on Exhibit 4.

(g) **Payment in the Event Losses Fail to Reach Expected Level.** If the asset premium (discount) bid is less than negative five per cent [(5%)], then on the date that is 45 days following the last day (such day, the “True-Up Measurement Date”) of the calendar month in which the tenth anniversary of the calendar day following Bank Closing occurs, or upon the final disposition of all Shared Loss Assets under this Single Family Shared-Loss Agreement at any time after the termination of the Commercial Shared-Loss Agreement, the Assuming Institution shall pay to the Receiver fifty percent (50%) of any positive amount resulting from the following calculation:

A - (B + C + D), where

A equals 20% of the Total Intrinsic Loss Estimate;

B equals 20% of the Net Loss Amount;

C equals 25% of the asset premium (discount) bid, expressed in dollars, of total Shared Loss Assets on Schedules 4.15A and 4.15B at Bank Closing; and

D equals 3.5% of total Shared Loss Assets on Schedules 4.15A and 4.15B at Bank Closing.

The Assuming Institution shall deliver to the Receiver not later than 30 days following the True-Up Measurement Date, a schedule, signed by an officer of the Assuming Institution, setting forth in reasonable detail the foregoing calculation, including the calculation of the Net Loss Amount.

(h) **Payments as Administrative Expenses.** Payments from the Receiver with respect to this Single Family Shared-Loss Agreement are administrative expenses of the Receiver. To the extent the Receiver needs funds for shared-loss payments respect to this Single Family Shared-Loss Agreement, the Receiver shall request funds under the Master Loan and Security Agreement, as amended (“MLSA”), from FDIC in its corporate capacity. The Receiver will not agree to any amendment of the MLSA that would prevent the Receiver from drawing on the MLSA to fund shared-loss payments.

2.2 Auditor Report; Right to Audit.

(a) Within the time period permitted for the examination audit pursuant to 12 CFR Section 363 after the end of each fiscal year during which the Receiver makes any payment to the Assuming Institution under this Single Family Shared-Loss Agreement, the Assuming Institution shall deliver to the Receiver a report signed by its independent public accountants

stating that they have reviewed the terms of this Single Family Shared-Loss Agreement and that, in the course of their annual audit of the Assuming Institution's books and records, nothing has come to their attention suggesting that any computations required to be made by the Assuming Institution during such fiscal year pursuant to this Article II were not made by the Assuming Institution in accordance herewith. In the event that the Assuming Institution cannot comply with the preceding sentence, it shall promptly submit to the Receiver corrected computations together with a report signed by its independent public accountants stating that, after giving effect to such corrected computations, nothing has come to their attention suggesting that any computations required to be made by the Assuming Institution during such year pursuant to this Article II were not made by the Assuming Institution in accordance herewith. In such event, the Assuming Institution and the Receiver shall make all such accounting adjustments and payments as may be necessary to give effect to each correction reflected in such corrected computations, retroactive to the date on which the corresponding incorrect computation was made.

(b) The Assuming Institution shall perform on an annual basis an internal audit of its compliance with the provisions of this Article II and shall provide the Receiver and the Corporation with copies of the internal audit reports and access to internal audit workpapers related to such internal audit.

(c) The Receiver or the FDIC in its corporate capacity ("Corporation"), its contractors and their employees, and its agents may perform an audit or audits to determine the Assuming Institution's compliance with the provisions of this Single Family Shared-Loss Agreement, including this Article II, by providing not less than ten (10) Business Days' prior written notice. Assuming Institution shall provide access to pertinent records and proximate working space in Assuming Institution's facilities. The scope and duration of any such audit shall be within the reasonable discretion of the Receiver or the Corporation, but shall in no event be administered in a manner that unreasonably interferes with the operation of the Assuming Institution's business. The Receiver or the Corporation, as the case may be, shall bear the expense of any such audit. In the event that any corrections are necessary as a result of such an audit or audits, the Assuming Institution and the Receiver shall make such accounting adjustments and payments as may be necessary to give retroactive effect to such corrections.

2.3 Withholdings. Notwithstanding any other provision in this Article II, the Receiver, upon the direction of the Director (or designee) of the Federal Deposit Insurance Corporation's Division of Resolutions and Receiverships, may withhold payment for any amounts included in a Monthly Certificate delivered pursuant to Section 2.1, if in its good faith and reasonable judgment there is a reasonable basis under the requirements of this Single Family Shared-Loss Agreement for denying the eligibility of an item for which reimbursement or payment is sought under such Section. In such event, the Receiver shall provide a written notice to the Assuming Institution detailing the grounds for withholding such payment. At such time as the Assuming Institution demonstrates to the satisfaction of the Receiver, in its reasonable judgment, that the grounds for such withholding of payment, or portion of payment, no longer exist or have been cured, then the Receiver shall pay the Assuming Institution the amount withheld which the Receiver determines is eligible for payment, within fifteen (15) Business Days.

2.4 Books and Records. The Assuming Institution shall at all times during the term

of this Single Family Shared-Loss Agreement keep books and records sufficient to ensure and document compliance with the terms of this Single Family Shared-Loss Agreement, including but not limited to (a) documentation of alternatives considered with respect to defaulted loans or loans for which default is reasonably foreseeable, (b) documentation showing the calculation of loss for claims submitted to the Receiver, (c) retention of documents that support each line item on the loss claim forms, and (d) documentation with respect to the Recovery Amount on loans for which the Receiver has made a loss-share payment

2.5 Information. The Assuming Institution shall promptly provide to the Receiver such other information, including but not limited to, financial statements, computations, and bank policies and procedures, relating to the performance of the provisions of this Single Family Shared-Loss Agreement, as the Receiver may reasonably request from time to time.

2.6 Tax Ruling. The Assuming Institution shall not at any time, without the Receiver's prior written consent, seek a private letter ruling or other determination from the Internal Revenue Service or otherwise seek to qualify for any special tax treatment or benefits associated with any payments made by the Receiver pursuant to this Single Family Shared-Loss Agreement.

2.7 Loss of Shared-Loss Coverage on Shared-Loss Loans. The Receiver shall be relieved of its obligations with respect to a Shared-Loss Loan upon payment of a Foreclosure Loss amount, or a Short Sale Loss amount with respect to such Single Family Shared-Loss Loan, or upon the sale without FDIC consent of a Single Family Shared-Loss Loan by Assuming Institution to a person or entity that is not an Affiliate. The Assuming Institution shall provide the Receiver with timely notice of any such sale. Failure to administer any Shared-Loss Loan or Loans in accordance with Article III shall at the discretion of the Receiver constitute grounds for the loss of shared loss coverage with respect to such Shared-Loss Loan or Loans. Notwithstanding the foregoing, a sale of the Single Family Shared-Loss Loan, for purposes of this Section 2.7, shall not be deemed to have occurred as the result of (i) any change in the ownership or control of Assuming Institution or the transfer of any or all of the Single Family Shared-Loss Loan(s) to any Affiliate of Assuming Institution, (ii) a merger by Assuming Institution with or into any other entity, or (iii) a sale by Assuming Institution of all or substantially all of its assets.

ARTICLE III - RULES REGARDING THE ADMINISTRATION OF SHARED-LOSS LOANS

3.1 Agreement with Respect to Administration. The Assuming Institution shall (and shall cause any of its Affiliates to which the Assuming Institution transfers any Shared-Loss Loans to) manage, administer, and collect the Shared-Loss Loans while owned by the Assuming Institution or any Affiliate thereof during the term of this Single Family Shared-Loss Agreement in accordance with the rules set forth in this Article III. The Assuming Institution shall be responsible to the Receiver in the performance of its duties hereunder and shall provide to the Receiver such reports as the Receiver reasonably deems advisable, including but not limited to the reports required by Sections 2.1, 2.2 and 3.3 hereof, and shall permit the Receiver to monitor the Assuming Institution's performance of its duties hereunder.

3.2 Duties of the Assuming Institution.

(a) In the performance of its duties under this Article III, the Assuming Institution shall:

- (i) manage and administer each Shared-Loss Loan in accordance with Assuming Institution's usual and prudent business and banking practices and Customary Servicing Procedures;
- (ii) exercise its best business judgment in managing, administering and collecting amounts owed on the Shared-Loss Loans;
- (iii) use commercially reasonable efforts to maximize Recoveries with respect to Losses on Shared-Loss Loans without regard to the effect of maximizing collections on assets held by the Assuming Institution or any of its Affiliates that are not Shared-Loss Loans;
- (iv) retain sufficient staff (in Assuming Institution's discretion) to perform its duties hereunder; and
- (v) other than as provided in Section 2.1(a), comply with the terms of the Modification Guidelines for any Single Family Shared-Loss Loans meeting the requirements set forth therein. For the avoidance of doubt, the Assuming Institution may propose exceptions to Exhibit 5 (the FDIC Loan Modification Program) for a group of Loans with similar characteristics, with the objectives of (1) minimizing the loss to the Assuming Institution and the FDIC and (2) maximizing the opportunity for qualified homeowners to remain in their homes with affordable mortgage payments.

(b) Any transaction with or between any Affiliate of the Assuming Institution with respect to any Shared-Loss Loan including, without limitation, the execution of any contract pursuant to which any Affiliate of the Assuming Institution will manage, administer or collect any of the Shared-Loss Loans will be provided to FDIC for informational purposes and if such transaction is not entered into on an arm's length basis on commercially reasonable terms such transaction shall be subject to the prior written approval of the Receiver.

3.3 Shared-Loss Asset Records and Reports. The Assuming Institution shall establish and maintain such records as may be appropriate to account for the Single Family Shared-Loss Loans in such form and detail as the Receiver may reasonably require, and to enable the Assuming Institution to prepare and deliver to the Receiver such reports as the Receiver may from time to time request regarding the Single Family Shared-Loss Loans and the Monthly Certificates required by Section 2.1 of this Single Family Shared-Loss Agreement.

3.4 Related Loans.

(a) Assuming Institution shall use its best efforts to determine which loans are "Related Loans," as hereinafter defined. The Assuming Institution shall not manage, administer or collect any "Related Loan" in any manner that would have the effect of increasing the amount of any collections with respect to the Related Loan to the detriment of the Shared-Loss Loan to which such loan is related. A "Related Loan" means any loan or extension of credit to an Obligor of a Shared-Loss Loan held by the Assuming Institution at any time on or prior to the end of the Final Shared-Loss Month.

(b) The Assuming Institution shall prepare and deliver to the Receiver with the Monthly Certificates for the calendar months ending June 30 and December 31, a schedule of all Related Loans on the Accounting Records of the Assuming Institution as of the end of each such semi-annual period.

3.5 Legal Action; Utilization of Special Receivership Powers. The Assuming Institution shall notify the Receiver in writing (such notice to be given in accordance with Article V below and to include all relevant details) prior to utilizing in any legal action any special legal power or right which the Assuming Institution derives as a result of having acquired an asset from the Receiver, and the Assuming Institution shall not utilize any such power unless the Receiver shall have consented in writing to the proposed usage. The Receiver shall have the right to direct such proposed usage by the Assuming Institution and the Assuming Institution shall comply in all respects with such direction. Upon request of the Receiver, the Assuming Institution will advise the Receiver as to the status of any such legal action. The Assuming Institution shall immediately notify the Receiver of any judgment in litigation involving any of the aforesaid special powers or rights.

3.6 Third Party Servicer. The Assuming Institution may perform any of its obligations and/or exercise any of its rights under this Single Family Shared-Loss Agreement through or by one or more Third Party Servicers, who may take actions and make expenditures as if any such Third Party Servicer was the Assuming Institution hereunder (and, for the avoidance of doubt, such expenses incurred by any such Third Party Servicer on behalf of the Assuming Institution shall be included in calculating Losses to the extent such expenses would be included in such calculation if the expenses were incurred by Assuming Institution); provided, however, that the use thereof by the Assuming Institution shall not release the Assuming Institution of any obligation or liability hereunder.

ARTICLE IV – PORTFOLIO SALE

4.1 Assuming Institution Portfolio Sales of Remaining Shared-Loss Loans. The Assuming Institution shall have the right, with the consent of the Receiver, to liquidate for cash consideration, from time to time in one or more transactions, all or a portion of Shared-Loss Loans held by the Assuming Institution at any time prior to the Termination Date (“Portfolio Sales”). If the Assuming Institution exercises its option under this Section 4.1, it must give sixty (60) days notice in writing to the Receiver setting forth the details and schedule for the Portfolio Sale, which shall be conducted by means of sealed bid sales to third parties, not including any of the Assuming Institution’s affiliates, contractors, or any affiliates of the Assuming Institution’s contractors. Sales of Restructured Loans shall be sold in a separate pool from Shared-Loss Loans that have not been restructured. Other proposals for the sale of a Shared-Loss Loan or Shared-Loss Loans submitted by the Assuming Institution will be considered by the Receiver on a case-by-case basis.

4.2 Assuming Institution’s Liquidation of Remaining Shared-Loss Loans. In the event that the Assuming Institution does not conduct a Portfolio Sale pursuant to Section 4.1, the Receiver shall have the right, exercisable in its sole and absolute discretion, to require the Assuming Institution to liquidate for cash consideration, any Shared-Loss Loans held by the Assuming Institution at any time after the date that is six months prior to the Termination Date.

If the Receiver exercises its option under this Section 4.2, it must give notice in writing to the Assuming Institution, setting forth the time period within which the Assuming Institution shall be required to liquidate the Shared-Loss Loans. The Assuming Institution will comply with the Receiver's notice and must liquidate the Shared-Loss Loans as soon as reasonably practicable by means of sealed bid sales to third parties, not including any of the Assuming Institution's affiliates, contractors, or any affiliates of the Assuming Institution's contractors. The selection of any financial advisor or other third party broker or sales agent retained for the liquidation of the remaining Shared-Loss Loans pursuant to this Section shall be subject to the prior approval of the Receiver, such approval not to be unreasonably withheld, delayed or conditioned.

4.3 Calculation of Sale Gain or Loss. For Shared-Loss Loans that are not Restructured Loans, gain or loss on the sales under Section 4.1 or Section 4.2 will be calculated as the sale price received by the Assuming Institution less the unpaid principal balance of the remaining Shared-Loss Loans. For any Restructured Loan included in the sale gain or loss on sale will be calculated as (a) the sale price received by the Assuming Institution less (b) the net present value of estimated cash flows on the Restructured Loan that was used in the calculation of the related Restructuring Loss plus (c) Loan principal payments collected by the Assuming Institution from the date the Loan was restructured to the date of sale. (See Exhibits 2d(1)-(2) for example calculations).

ARTICLE V -- LOSS-SHARING NOTICES GIVEN TO RECEIVER AND PURCHASER

All notices, demands and other communications hereunder shall be in writing and shall be delivered by hand or overnight courier, receipt requested, addressed to the parties as follows:

If to Receiver, to:

Federal Deposit Insurance Corporation as Receiver
for First National Bank of the South
Division of Resolutions and Receiverships
550 17th Street, N.W.
Washington, D.C. 20429
Attention: Ralph Malami, Manager, Capital
Markets

with a copy to:

Federal Deposit Insurance Corporation as Receiver
for First National Bank of the South
Room E7056
3501 Fairfax Drive
Arlington, Virginia 22226
Attention: Special Issues Unit

With respect to a notice under Section 3.5 of this Single Family Shared-Loss Agreement, copies of such notice shall be sent to:

Federal Deposit Insurance Corporation
Legal Division
1601 Bryan St.
Dallas, Texas 75201
Attention: Regional Counsel

If to Assuming Institution, to:

NAFH National Bank
9350 South Dixie Highway
Miami, Florida 33156
Attention: R. Eugene Taylor, Chief Executive
Officer

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
Attention: Brian D. Christiansen

Such Persons and addresses may be changed from time to time by notice given pursuant to the provisions of this Article V. Any notice, demand or other communication delivered pursuant to the provisions of this Article V shall be deemed to have been given on the date actually received.

ARTICLE VI -- MISCELLANEOUS

6.1. Expenses. Except as otherwise expressly provided herein, all costs and expenses incurred by or on behalf of a party hereto in connection with this Single Family Shared-Loss Agreement shall be borne by such party whether or not the transactions contemplated herein shall be consummated.

6.2 Successors and Assigns; Specific Performance. This Single Family Shared-Loss Agreement, and all of the terms and provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns only. The Receiver may assign or otherwise transfer this Single Family Shared-Loss Agreement and the rights and obligations of the Receiver hereunder (in whole or in part) to the Federal Deposit Insurance Corporation in its corporate capacity without the consent of Assuming Institution. Notwithstanding anything to the contrary contained in this Single Family Shared-Loss Agreement, except as is expressly permitted in this Section 6.2, the Assuming Institution may not assign or otherwise transfer this Single Family Shared-Loss Agreement or any of the Assuming Institution's rights or obligations hereunder (in whole or in part), or sell or transfer of any subsidiary of the Assuming Institution holding title to Shared-Loss Assets or Shared-Loss Securities, without the prior written consent of the Receiver, which consent may be granted or withheld by the Receiver in its sole and absolute discretion. An assignment or transfer of this Single Family Shared-Loss Agreement includes:

(i) a merger or consolidation of the Assuming Institution with or into another company, if the shareholders of the Assuming Institution will own less than sixty-six and two-thirds percent (66.66 %) of the equity of the consolidated entity;

(ii) a merger or consolidation of the Assuming Institution's Holding Company with or into another company, if the shareholders of the Holding Company will own less than sixty-six and two-thirds percent (66.66 %) of the equity of the consolidated entity;

(iii) the sale of all or substantially all of the assets of the Assuming Institution to another company or person; or

(iv) a sale of shares by any one or more shareholders that will effect a change in control of the Assuming Institution, as determined by the Receiver with reference to the standards set forth in the Change in Bank Control Act, 12 U.S.C. 1817(j).

For the avoidance of doubt, any transaction under this Section 6.2 that requires the Receiver's consent that is made without consent of the Receiver hereunder will relieve the Receiver of any of its obligations under this Single Family Shared-Loss Agreement.

No Loss shall be recognized under this Single Family Shared-Loss Agreement as a result of any accounting adjustments that are made due to or as a result of any assignment or transfer of this Single Family Shared-Loss Agreement or any merger, consolidation, sale or other transaction to which the Assuming Institution, its Holding Company or any Affiliate is a party, regardless of whether the Receiver consents to such assignment or transfer in connection with such transaction pursuant to this Section 6.2.

6.3 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATING TO OR IN CONNECTION WITH THIS SINGLE FAMILY SHARED-LOSS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

6.4 No Third Party Beneficiary. This Single Family Shared-Loss Agreement and the Exhibits hereto are for the sole and exclusive benefit of the parties hereto and their respective permitted successors and permitted assigns and there shall be no other third party beneficiaries, and nothing in this Single Family Shared-Loss Agreement or the Exhibits shall be construed to grant to any other Person any right, remedy or Claim under or in respect of this Single Family Shared-Loss Agreement or any provision hereof.

6.5 Consent. Except as otherwise provided herein, when the consent of a party is required herein, such consent shall not be unreasonably withheld or delayed.

6.6 Rights Cumulative. Except as otherwise expressly provided herein, the rights of each of the parties under this Single Family Shared-Loss Agreement are cumulative, may be exercised as often as any party considers appropriate and are in addition to each such party's rights under the Purchase and Sale Agreement and any of the related agreements or under law. Except as otherwise expressly provided herein, any failure to exercise or any delay in exercising any of such rights, or any partial or defective exercise of such rights, shall not operate as a waiver or variation of that or any other such right.

ARTICLE VII DISPUTE RESOLUTION

7.1 Dispute Resolution Procedures.

(a) In the event a dispute arises about the interpretation, application, calculation of Loss, or calculation of payments or otherwise with respect to this Single Family Shared-Loss

Agreement (“SF Shared-Loss Dispute Item”), then the Receiver and the Assuming Institution shall make every attempt in good faith to resolve such items within sixty (60) days following the receipt of a written description of the SF Shared-Loss Dispute Item, with notification of the possibility of taking the matter to arbitration (the date on which such 60-day period expires, or any extension of such period as the parties hereto may mutually agree to in writing, herein called the “Resolution Deadline Date”). If the Receiver and the Assuming Institution resolve all such items to their mutual satisfaction by the Resolution Deadline Date, then within thirty (30) days following such resolution, any payment due as a result of such resolution shall be made arising from the settlement of the SF Shared-Loss Dispute.

(b) If the Receiver and the Assuming Institution fail to resolve any outstanding SF Shared-Loss Dispute Items by the Resolution Deadline Date, then either party may notify the other of its intent to submit the SF Shared-Loss Dispute Item to arbitration pursuant to the provisions of this Article VII. Failure of either party to submit pursuant to paragraph (c) hereof any unresolved SF Shared-Loss Dispute Item to arbitration within thirty (30) days following the Resolution Deadline Date (the date on which such thirty (30) day period expires is herein called the “Arbitration Deadline Date”) shall extinguish that party’s right to submit the non-submitted SF Shared-Loss Dispute Item to arbitration, and constitute a waiver of the submitting party’s right to dispute such non-submitted SF Shared-Loss Dispute Item (but not a waiver of any similar claim which may arise in the future).

(c) If a SF Shared-Loss Dispute Item is submitted to arbitration, it shall be governed by the rules of the American Arbitration Association (the “AAA”), except as otherwise provided herein. Either party may submit a matter for arbitration by delivering a notice, prior to the Arbitration Deadline Date, to the other party in writing setting forth:

- (i) A brief description of each SF Shared-Loss Dispute Item submitted for arbitration;
- (ii) A statement of the moving party’s position with respect to each SF Shared-Loss Dispute Item submitted for arbitration;
- (iii) The value sought by the moving party, or other relief requested regarding each SF Shared-Loss Dispute Item submitted for arbitration, to the extent reasonably calculable; and
- (iv) The name and address of the arbiter selected by the moving party (the “Moving Arbiter”), who shall be a neutral, as determined by the AAA.

Failure to adequately include any information above shall not be deemed to be a waiver of the parties’ right to arbitrate so long as after notification of such failure the moving party cures such failure as promptly as reasonably practicable.

(d) The non-moving party shall, within thirty (30) days following receipt of a notice of arbitration pursuant to this Section 7.1, deliver a notice to the moving party setting forth:

- (i) The name and address of the arbiter selected by the non-moving party (the “Respondent Arbiter”), who shall be a neutral, as determined by the AAA;
- (ii) A statement of the position of the respondent with respect to each Dispute

(iv) except for Portfolio Sales, the sale or other disposition of Other Real Estate, or Additional ORE to a Person other than an Affiliate of the Assuming Institution conducted in a commercially reasonable and prudent manner, or any other sales or dispositions consented to by the Receiver, losses incurred on the sale or other disposition of Shared-Loss Assets or Shared-Loss Securities to any Person shall not constitute Charge-Offs.

“Commencement Date” means the first calendar day following Bank Closing.

“Commercial Intrinsic Loss Estimate” means total losses under this Commercial Shared-Loss Agreement in the amount of ninety three million dollars (\$ 93,000,000.00).

“Consumer Loans” means loans to individuals for household, family and other personal expenditures, not secured by real estate, including but not limited to loans for (i) purchase of private automobiles, pickup trucks, household appliances, furniture, trailers and boats; (ii) repairs or improvements to the borrower’s residence not secured by real estate; (iii) educational expenses, including student loans, whether or not guaranteed by the United States or any state; (iv) medical expenses; (v) taxes; (v) vacations; (vi) personal (non business) debt consolidation; (vii) purchases of mobile homes not combined with real property to be used as a residence; and (viii) other personal expenditures. Consumer Loans can be installment loans, demand loans, single payment time loans, regardless of size or maturity, and regardless of whether the loans are made by the consumer loan department or by any other department within the Failed Bank. Consumer Loans also include retail installment sales paper purchased by the Failed Bank from merchants or dealers, finance companies and others, and extensions of credit pursuant to a credit card plan or debit card plan.

“Environmental Assessment” means an assessment of the presence, storage or release of any hazardous or toxic substance, pollutant or contaminant with respect to the collateral securing a Shared-loss Loan that has been fully or partially charged off.

“Examination Criteria” means the loan classification criteria employed by, or any applicable regulations of, the Assuming Institution’s Chartering Authority at the time such action is taken, as such criteria may be amended from time to time.

“Failed Bank Charge-Offs/Write-Downs” means, with respect to any Asset, an amount equal to the aggregate amount of reversals or charge-offs of Accrued Interest and charge-offs and write-downs of principal effected by the Failed Bank with respect to that Asset as reflected on the Accounting Records of the Failed Bank.

“FDIC Party” has the meaning provided in Section 2.1(f)(ii) of this Commercial Shared-Loss Agreement.

“Holding Company” means any company owning Shares of the Assuming Institution that is a holding company pursuant to the Bank Holding Company Act Of 1956, 12 U.S.C. 1841 *et seq.* or the Home Owner’s Loan Act, 12 U.S.C. 1461 *et seq.*

“Net Charge-Offs” means, with respect to any period, an amount equal to the aggregate amount of Charge-Offs for such period less the amount of Recoveries for such period.

“Net Loss Amount” means the sum of all Aggregate Net Charge-Offs under this Commercial Shared-Loss Agreement and the Cumulative Loss Amounts under the Single Family Shared-Loss

Shared-Loss Assets held by the Assuming Institution (“Portfolio Sales”). If the Assuming Institution exercises its option under this Section 4.1, it must give thirty (30) days notice in writing to the Receiver setting forth the details and schedule for the Portfolio Sale which shall be conducted by means of sealed bid sales to third parties, not including any of the Assuming Institution’s affiliates, contractors, or any affiliates of the Assuming Institution’s contractors.

4.2 Calculation of Sale Gain or Loss. For Shared-Loss Assets gain or loss on the sales under Section 4.1 will be calculated as the aggregate sales price received by the Assuming Institution less the aggregate book value of the remaining Shared-Loss Assets.

ARTICLE V -- LOSS-SHARING NOTICES GIVEN TO CORPORATION AND/OR RECEIVER

As a supplement to the notice provisions contained in Section 13.7 of the Purchase and Assumption Agreement, any notice, request, demand, consent, approval, or other communication (a “Notice”) given to the Corporation and/or the Receiver in the loss-sharing context shall be given as follows:

5.1 With respect to a Notice under Section 2 and Sections 3.1-3.5 of this Commercial Shared-Loss Agreement:

Federal Deposit Insurance Corporation
Division of Resolutions and Receiverships
550 17th Street, N.W.
Washington, D.C. 20429
Attention: Assistant Director, Franchise and Asset Marketing

5.2 With respect to a Notice under Section 3.6 of this Commercial Shared-Loss Agreement:

Federal Deposit Insurance Corporation Legal Division
1601 Bryan Street
Dallas, Texas 75201
Attention: Regional Counsel

with a copy to:
Federal Deposit Insurance Corporation Legal Division
550 17th Street, N.W.
Washington, D.C. 20429
Attention: Senior Counsel (Special Issues Group)

ARTICLE VI – MISCELLANEOUS

6.1 Expenses. Except as otherwise expressly provided herein, all costs and expenses incurred by a party hereto in connection with this Commercial Shared-Loss Agreement shall be borne by such party, whether or not the transactions contemplated herein shall be consummated.

6.2 Successors and Assigns; Specific Performance. This Commercial Shared-Loss Agreement, and all of the terms and provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns only. The Receiver may assign or otherwise transfer this Commercial Shared-Loss Agreement and the rights and obligations of the Receiver hereunder

(in whole or in part) to the Federal Deposit Insurance Corporation in its corporate capacity without the consent of Assuming Institution. Notwithstanding anything to the contrary contained in this Commercial Shared-Loss Agreement, except as is expressly permitted in this Section 6.2, the Assuming Institution may not assign or otherwise transfer this Commercial Shared-Loss Agreement or any of the Assuming Institution's rights or obligations hereunder (in whole or in part), or sell or transfer of any subsidiary of the Assuming Institution holding title to Shared-Loss Assets or Shared-Loss Securities, without the prior written consent of the Receiver, which consent may be granted or withheld by the Receiver in its sole and absolute discretion. An assignment or transfer of this Commercial Shared-Loss Agreement includes:

(i) a merger or consolidation of the Assuming Institution with or into another company, if the shareholders of the Assuming Institution will own less than sixty-six and two-thirds percent (66.66 %) of the equity of the consolidated entity;

(ii) a merger or consolidation of the Assuming Institution's Holding Company with or into another company, if the shareholders of the Holding Company will own less than sixty-six and two-thirds percent (66.66 %) of the equity of the consolidated entity;

(iii) the sale of all or substantially all of the assets of the Assuming Institution to another company or person; or

(iv) a sale of shares by any one or more shareholders that will effect a change in control of the Assuming Institution, as determined by the Receiver with reference to the standards set forth in the Change in Bank Control Act, 12 U.S.C. 1817(j).

For the avoidance of doubt, any transaction under this Section 6.2 that requires the Receiver's consent that is made without consent of the Receiver hereunder will relieve the Receiver of any of its obligations under this Commercial Shared-Loss Agreement.

No Loss shall be recognized under this Commercial Shared-Loss Agreement as a result of any accounting adjustments that are made due to or as a result of any assignment or transfer of this Commercial Shared-Loss Agreement or any merger, consolidation, sale or other transaction to which the Assuming Institution, its Holding Company or any Affiliate is a party, regardless of whether the Receiver consents to such assignment or transfer in connection with such transaction pursuant to this Section 6.2.

6.3 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATING TO OR IN CONNECTION WITH THIS COMMERCIAL SHARED-LOSS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

6.4 No Third Party Beneficiary. This Commercial Shared-Loss Agreement and the Exhibits hereto are for the sole and exclusive benefit of the parties hereto and their respective permitted successors and permitted assigns and there shall be no other third party beneficiaries, and nothing in Commercial Shared-Loss Agreement or the Exhibits shall be construed to grant to any other Person any right, remedy or claim under or in respect of this Commercial Shared-Loss Agreement or any provision hereof.

6.5 Consent. Except as otherwise provided herein, when the consent of a party is required herein, such consent shall not be unreasonably withheld or delayed.

6.6 Rights Cumulative. Except as otherwise expressly provided herein, the rights of each of the parties under this Commercial Shared-Loss Agreement are cumulative, may be exercised as often as any party considers appropriate and are in addition to each such party's rights under the Purchase and Sale Agreement and any of the related agreements or under law. Except as otherwise expressly provided herein, any failure to exercise or any delay in exercising any of such rights, or any partial or defective exercise of such rights, shall not operate as a waiver or variation of that or any other such right.

Exhibit 1

For the commercial and other pool, the FDIC reporting requirement includes the following:

- A quarterly loan level download for all loans in the asset pool
- A quarterly asset level download of commercial ORE
- A quarterly certificate report that includes 3 sections:
 - 1: A summary report of total covered losses for the quarter and the derivation of the FDIC portion of the covered loss
 - 2: A summary report on the commercial and other portfolio and covered losses and recoveries
 - 3: A performance report on the outstanding commercial and other pool assets under loss share
- A quarterly listing of assets with covered losses

A blank version of the quarterly certificate report is shown below.

CERTIFICATE
QUARTERLY SUMMARY
FOR COMM AND OTHER SHARED-LOSS AGREEMENT

FDIC - RECEIVER OF _____

PURCHASE AND ASSUMPTION AGREEMENT DATED: _____

Shared-Loss Quarter Ended: _____
(Dollars)

Calculation of Amount Due from (to) FDIC

	0%	80%	95%	Total
FDIC % Share				
Carry forward from other types of assets:				
1. Cumulative losses from single family loans	0	0	0	0
2. Cumulative losses from securities	0	0	0	0
3. Cumulative loss from non-single family	0	0	0	0
4. Total cumulative losses at beg of quarter	0	0	0	0
5. Covered losses (gains) during quarter	0	0	0	0
6. Cumulative loss at end of quarter	0	0	0	0
FDIC % Share	x 0%	x 80%	x 95%	
7. Amount Due from (to) FDIC	0 +	0 +	0 =	*
Memo. threshold for recovery percentage	0	0	0	

Preparer name: _____

Preparer title: _____

Officer name: _____

Officer title: _____

Date: _____

Preparer signature _____

Officer signature _____

CERTIFICATE
QUARTERLY SUMMARY
FOR COMM AND OTHER SHARED-LOSS AGREEMENT

FDIC - RECEIVER OF
 _____ BANK

PURCH AND ASSUMPTION AGREEMENT DATED: _____ BANK

Shared-Loss Quarter Ended: _____ (Dollars)

	Commercial Real Estate Loans		C & I Loans	ORE & oth repts assets	This Quarter		Total	FDIC Adjustments	Cumulative at end of Quarter
	Const & Dev	Other			Consumer Loans	Other Loans			
PART A. Opening/Closing/Net Shared-Loss Asset Balances									
1. Opening Balance	0	0	0	0	0	0	0	0	0
2. Adjustments: a) Transfers	0	0	0	0	0	0	0	0	0
b) Reclassifications	0	0	0	0	0	0	0	0	0
c) Other	0	0	0	0	0	0	0	0	0
3. Adjusted Opening Balance	0	0	0	0	0	0	0	0	0
4. Add: a) Assumed Commitment Advances	0	0	0	0	0	0	0	0	0
b) Permitted Advances	0	0	0	0	0	0	0	0	0
c) Capital Expenditures	0	0	0	0	0	0	0	0	0
d) Recoveries	0	0	0	0	0	0	0	0	0
5. Less: a) Prior Collections (payoffs and amort)	0	0	0	0	0	0	0	0	0
b) Sales	0	0	0	0	0	0	0	0	0
c) Charge-Offs (excluding acc int)	0	0	0	0	0	0	0	0	0
d) Qualifying loss on sales	0	0	0	0	0	0	0	0	0
6. Net Reduction/Increase Amount	0	0	0	0	0	0	0	0	0
7. Closing Balance	0	0	0	0	0	0	0	0	0
PART B. Charge-Offs, Recoveries & Reimbursable Expenses									
8. Charge-offs: a) Principal (from 5c and 3d)	0	0	0	0	0	0	0	0	0
b) Acc int (up to 90 days)	0	0	0	0	0	0	0	0	0
9. Total Charge-Offs	0	0	0	0	0	0	0	0	0
10. Less Recoveries	0	0	0	0	0	0	0	0	0
11. Net Charge-Offs/Recoveries	0	0	0	0	0	0	0	0	0
12. A/E Reimbursable Expenses	0	0	0	0	0	0	0	0	0
13. Less Offsetting Income	0	0	0	0	0	0	0	0	0
14. Shared-Loss Debt (Credit) Amount	0	0	0	0	0	0	0	0	0

Failed Bank Name _____
 Performance Status: Commercial and Other Loans
 Quarter ending _____
 (Dollars)

Number of Loans / Properties	Performing	Delinquent			In Foreclosure	Reposessed Assets *	Total
		30-59 days					
		60-89 days	90+ days				
Construction & Development	0	0	0	0	0	0	0
Other Comm Real Estate	0	0	0	0	0	0	0
Total Comm Real Estate	0	0	0	0	0	0	0
C&I	0	0	0	0	0	0	0
Consumer Loans	0	0	0	0	0	0	0
Other Loans	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0

\$ Balance (000s)	Performing	Delinquent			In foreclosure	Reposessed Assets *	Total
		30-59 days					
		60-89 days	90+ days				
Construction & Development	0	0	0	0	0	0	0
Other Comm Real Estate	0	0	0	0	0	0	0
Total Comm Real Estate	0	0	0	0	0	0	0
C&I	0	0	0	0	0	0	0
Consumer Loans	0	0	0	0	0	0	0
Other Loans	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0

* ORE for CRE loans; other types of reposessed assets for other types of loans.
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