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# PURCHASE AND ASSUMPTION AGREEMENT

## WHOLE BANK

## ALL DEPOSITS

**THIS AGREEMENT**, made and entered into as of the 25th day of October, 2019, by and among the **FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER of RESOLUTE BANK, MAUMEE, OHIO** (the “**Receiver**”), **BUCKEYE STATE BANK** organized under the laws of the state of Ohio, and having its principal place of business in Powell, Ohio (the “**Assuming Institution**”), and the **FEDERAL DEPOSIT INSURANCE CORPORATION**, organized under the laws of the United States of America and having its principal office in Washington, D.C., acting in its corporate capacity (the “**Corporation**”).

## R E C I T A L S

- A. On the Bank Closing Date, the Chartering Authority closed **RESOLUTE BANK** (the “**Failed Bank**”) pursuant to applicable law and the Corporation was appointed Receiver thereof.
- B. The Assuming Institution desires to purchase certain assets and assume certain deposits and other liabilities of the Failed Bank on the terms and conditions set forth in this Agreement.
- C. Pursuant to 12 U.S.C. § 1823(c)(2)(A), the Corporation may provide assistance to the Assuming Institution to facilitate the transactions contemplated by this Agreement, which assistance may include indemnification pursuant to Article XII.
- D. The Board of Directors of the Corporation (the “**Board**”) has determined to provide assistance to the Assuming Institution on the terms and subject to the conditions set forth in this Agreement.
- E. The Board has determined pursuant to 12 U.S.C. § 1823(c)(4)(A) that such assistance is necessary to meet the obligation of the Corporation to provide insurance coverage for the insured deposits in the Failed Bank and is the least costly to the deposit insurance fund of all possible methods for meeting such obligation.

**NOW, THEREFORE**, in consideration of the mutual promises herein set forth and other valuable consideration, the parties hereto agree as follows:

## A G R E E M E N T

### ARTICLE I. GENERAL.

**1.1. Purpose.** The purpose of this Agreement is to set forth requirements regarding, among other things, the terms and conditions on which the Assuming Institution purchases certain assets and assumes certain liabilities of the Failed Bank.

**1.2. [Reserved.]**

**1.3. Defined Terms.** Capitalized terms used in this Agreement shall have the meanings set forth or referenced in this Section 1.3. As used herein, words imparting the singular include the plural and vice versa.

**“Accounting Records”** means the general ledger and subsidiary ledgers and supporting schedules which support the general ledger balances.

**“Acquired Assets”** means all assets of the Failed Bank purchased pursuant to this Agreement. Assets owned by Subsidiaries of the Failed Bank are not “Acquired Assets” within the meaning of this definition by virtue of being owned by such Subsidiaries.

**“Acquired Subsidiary”** or **“Acquired Subsidiaries”** means one or more, as applicable, Subsidiaries of the Failed Bank acquired pursuant to Section 3.1.

**“Affiliate”** of any Person means any director, officer, or employee of that Person and any other Person (i) who is directly or indirectly controlling, or controlled by, or under direct or indirect common control with, such Person, or (ii) who is an affiliate of such Person as the term “affiliate” is defined in § 2(k) of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841.

**“Agreement”** means this Purchase and Assumption Agreement by and among the Assuming Institution, the Corporation and the Receiver, as amended or otherwise modified from time to time.

**“Assumed Deposits”** means Deposits.

**“Assuming Institution”** has the meaning set forth in the introduction to this Agreement.

**“Bank Closing Date”** means the close of business of the Failed Bank on the date on which the Chartering Authority closed such institution.

**“Bank Premises”** means the banking buildings, drive-in banking facilities, teller facilities (staffed or automated), storage and service facilities, structures connecting remote facilities to banking houses, land on which the foregoing are located and unimproved land, together with any adjacent parking, that are owned or leased by the Failed Bank and that have formerly been utilized, are currently utilized, or as of the Bank Closing Date, are intended to be utilized in the future by the Failed Bank as shown on the Failed Bank Records.

**“Bank Premises Operating Costs”** means expenses related to Bank Premises, Fixtures, Furniture and Equipment, and Specialty Assets, including, without limitation, all taxes, fees, charges, maintenance, utilities, waste disposal, insurance, and assessments, to the extent not included in the rental rate or rent.

**“Bank Premises Surrender Date”** means, with respect to each specific Bank Premises, the date selected by the Assuming Institution to surrender such Bank Premises to the Receiver, which date shall be no later than the first day after the Receiver is satisfied that all of the conditions for surrender of such Bank Premises set forth in this Agreement have been met; provided that, unless otherwise provided in this Agreement, such date shall not be more than 150 days after the Bank Closing Date.

**“Bid Amount”** has the meaning set forth in Article VII.

**“Bid Form”** means Exhibit “A” to the bid instructions provided to the Assuming Institution.

**“Bid Valuation Date”** means August 7, 2019.

“**Board**” has the meaning set forth in Recital D.

“**Book Value**” means, with respect to any Acquired Asset and any Liability Assumed, the dollar amount thereof stated on the Failed Bank Records. The Book Value of any item shall be determined as of the Bank Closing Date after adjustments made by the Receiver for differences in accounts, suspense items, unposted debits and credits and other similar adjustments, charge-off adjustments as provided in Section 8.1, or corrections and for setoffs, whether voluntary or involuntary. The Book Value of an Acquired Subsidiary shall be determined from the investment in subsidiary and related accounts on the “bank only” (unconsolidated) balance sheet of the Failed Bank based on the Equity Method of Accounting. Without limiting the generality of the foregoing, (i) the Book Value of a Liability Assumed shall include all accrued and unpaid interest thereon as of the Bank Closing Date, and (ii) the Book Value of a Loan shall reflect adjustments for earned interest, or unearned interest (as it relates to the “rule of 78s” or add-on-interest loans, as applicable), if any, as of the Bank Closing Date, adjustments for the portion of earned or unearned loan-related credit life and/or disability insurance premiums, if any, attributable to the Failed Bank as of the Bank Closing Date, and adjustments for Failed Bank Advances, if any, in each case as determined for financial reporting purposes. The Book Value of an Acquired Asset shall not include any adjustment for loan premiums, discounts or any related deferred income, fees or expenses, or general or specific reserves on the Failed Bank Records.

“**Business Day**” means a day other than a Saturday, Sunday, federal legal holiday or legal holiday under the laws of the state where the Failed Bank is located, or a day on which the principal office of the Corporation is closed.

“**Chartering Authority**” means (i) with respect to a national bank, a federal savings association or savings bank, the Office of the Comptroller of the Currency, (ii) with respect to a bank or savings institution chartered by a state, the agency of such state charged with primary responsibility for regulating and/or closing banks or savings institutions, as the case may be, (iii) the Corporation in accordance with 12 U.S.C. § 1821(c)(4), with regard to self-appointment, or (iv) the appropriate federal banking agency in accordance with 12 U.S.C. § 1821(c)(9).

“**Commitment**” means the unfunded portion of a line of credit or other commitment reflected on the Failed Bank Records to make an extension of credit (or additional advances with respect to a Loan) that was legally binding on the Failed Bank as of the Bank Closing Date, other than extensions of credit pursuant to the credit card business and overdraft protection plans of the Failed Bank, if any.

“**Corporation**” has the meaning set forth in the introduction to this Agreement.

“**Counterclaim**” has the meaning set forth in Section 12.1(b).

“**Credit Documents**” means the agreements, instruments, certificates or other documents at any time evidencing or otherwise relating to, governing or executed in connection with or as security for, a Loan, including without limitation notes, bonds, loan agreements, letter of credit applications, lease financing contracts, banker’s acceptances, drafts, interest protection agreements, currency exchange agreements, repurchase agreements, reverse repurchase agreements, guarantees, deeds of trust, mortgages, assignments, security agreements, pledges, subordination or priority agreements, lien priority agreements, undertakings, security instruments, certificates, documents, legal opinions, participation agreements and intercreditor agreements, and all amendments, modifications, renewals, extensions, rearrangements, and substitutions with respect to any of the foregoing.

**“Credit File”** means all Credit Documents and all other credit, collateral or insurance documents in the possession or custody of the Assuming Institution, or any of its Subsidiaries or Affiliates, relating to an Acquired Asset or a Loan included in a Put Notice, or copies of any such documents.

**“Deposit”** means a deposit as defined in 12 U.S.C. § 1813(l), including without limitation, outstanding cashier’s checks and other official checks and all uncollected items included in the depositors’ balances and credited on the Failed Bank Records; provided that the term “Deposit” shall not include all or any portion of those deposit balances which, in the discretion of the Receiver or the Corporation, (i) may be required to satisfy it for any liquidated or contingent liability of any depositor arising from an unauthorized or unlawful transaction, or (ii) may be needed to provide payment of any liability of any depositor to the Failed Bank or the Receiver, including the liability of any depositor as a director or officer of the Failed Bank, whether or not the amount of the liability is or can be determined as of the Bank Closing Date.

**“Deposit Secured Loan”** means a loan in which the only collateral securing the loan is Assumed Deposits or deposits at other insured depository institutions.

**“Electronically Stored Information”** means any system backup tapes, any electronic mail (whether on an exchange or other similar system), any data on personal computers and any data on server hard drives.

**“Eligible Individuals”** has the meaning set forth in Section 4.12.

**“Eligible Overdraft”** means a customer overdraft that (i) was in existence on the Bank Closing Date with (ii) a balance of greater than \$500, and (iii) was not made pursuant to an overdraft protection plan or similar extension of credit.

**“Equity Method of Accounting”** means the carrying value of a bank’s investment in a subsidiary is originally recorded at cost but is adjusted periodically to record as income the bank’s proportionate share of the subsidiary’s earnings or losses and decreased by the amount of cash dividends or similar distributions received from the subsidiary. Acquired Subsidiaries with negative equity will be restated to \$1 pursuant to the Equity Method of Accounting.

**“ERISA”** has the meaning set forth in Section 4.12.

**“Failed Bank”** has the meaning set forth in Recital A.

**“Failed Bank Advances”** means the total sums paid by the Failed Bank to (i) protect its lien position, (ii) pay ad valorem taxes and hazard insurance and (iii) pay premiums for credit life insurance, accident and health insurance and vendor’s single interest insurance.

**“Failed Bank Assessment Area”** means the most recent Community Reinvestment Act (“CRA”) assessment area of the Failed Bank reflected in the Information Package.

**“Failed Bank Records”** means records as defined in 12 C.F.R. § 360.11(a)(3).

**“Fair Market Value”** means the probable price at which relevant personal property would change hands between a willing buyer and a willing seller (neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts) as determined as of the Bank Closing Date by an appraiser chosen by the Receiver.

**“FDIC Office Space”** means 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 (or other location acceptable to the Receiver) for the Receiver and the Corporation to use in the discharge of their respective functions with respect to the Failed Bank.

**“Final Legal Notice”** has the meaning set forth in Section 2.3(a).

**“Fixtures”** means those leasehold improvements, additions, alterations and installations constituting all or a part of Bank Premises (including without limitation Safe Deposit Boxes and automated teller machines that are affixed to a Bank Premises and may be not removed without causing structural damage to such Bank Premises) and which were acquired, added, built, installed or purchased at the expense of the Failed Bank, regardless of the holder of legal title thereto as of the Bank Closing Date.

**“Furniture and Equipment”** means the furniture and equipment (other than Safe Deposit Boxes, Personal Computers, Owned Data Management Equipment, Specialty Assets, and motor vehicles), leased or owned by the Failed Bank and reflected on the Failed Bank Records as of the Bank Closing Date and located on or at Bank Premises, including without limitation automated teller machines (to the extent they are not Fixtures), furniture, office machinery, shelving, office supplies, telephone, surveillance and security systems, ancillary equipment and artwork.

**“GSE”** means a government sponsored enterprise.

**“Indemnitees”** means, except as provided in Section 12.1(b)(xi), (i) the Assuming Institution, (ii) the Subsidiaries and Affiliates of the Assuming Institution, other than any Subsidiaries or Affiliates of the Failed Bank that are or become Subsidiaries or Affiliates of the Assuming Institution, and (iii) the directors, officers, employees and agents of the Assuming Institution and its Subsidiaries and Affiliates who are not also present or former directors, officers, employees or agents of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank.

**“Information Package”** means the most recent compilation of financial and other data with respect to the Failed Bank, including any amendments or supplements thereto, provided to the Assuming Institution by the Corporation on the web site used by the Corporation to market the Failed Bank to potential acquirers.

**“Initial Payment”** means the payment made pursuant to Article VII (based on the best information available as of the Bank Closing Date), the amount of which shall be either (i) if the Bid Amount is positive, the aggregate Book Value of the Liabilities Assumed minus the sum of the aggregate purchase price of the Acquired Assets (including any Bank Premises, Other Real Estate, Other Real Estate Subsidiaries, and Optional Loan Pools purchased via the Bid Form) as determined pursuant to Section 3.2 and the positive Bid Amount, or (ii) if the Bid Amount is negative, the sum of the aggregate Book Value of the Liabilities Assumed and the negative Bid Amount minus the aggregate purchase price of the Acquired Assets (including any Bank Premises, Other Real Estate, Other Real Estate Subsidiaries, and Optional Loan Pools purchased via the Bid Form). The Initial Payment shall be payable by the Corporation to the Assuming Institution if (i) the Liabilities Assumed are greater than the sum of the positive Bid Amount and the aggregate purchase price of the Acquired Assets, or if (ii) the sum of the Liabilities Assumed



and the negative Bid Amount are greater than the aggregate purchase price of the Acquired Assets. The Initial Payment shall be payable by the Assuming Institution to the Corporation if (i) the Liabilities Assumed are less than the sum of the positive Bid Amount and the aggregate purchase price of the Acquired Assets, or if (ii) the sum of the Liabilities Assumed and the negative Bid Amount is less than the aggregate purchase price of the Acquired Assets. Such Initial Payment shall be subject to adjustment as provided in Article VIII.

**“Leased Data Management Equipment”** means any equipment, computer hardware, computer software (and the lease or licensing agreements related thereto), computer networking equipment, printers, fax machines, copiers, document scanners, data tape systems, data tapes, DVDs, CDs, flash drives, telecommunications and check processing equipment and any other electronic storage media leased by the Failed Bank at Bank Closing Date which is, was, or could have been used by the Failed Bank in connection with data management activities.

**“Liabilities Assumed”** has the meaning provided in Section 2.1.

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

**“Loan”** or **“Loans”** means, individually or collectively, all of the following owed to or held by the Failed Bank as of the Bank Closing Date:

(a) loans (including loans which have been charged off the Failed Bank Records in whole or in part prior to and including the Bid Valuation Date), participation agreements, interests in participations, overdrafts of customers (including but not limited to overdrafts made pursuant to an overdraft protection plan or similar extensions of credit in connection with a deposit account), revolving commercial lines of credit, home equity lines of credit, Commitments, United States and/or state-guaranteed student loans and lease financing contracts;

(b) all Liens, rights (including rights of set-off), remedies, powers, privileges, demands, claims, priorities, equities and benefits owned or held by, or accruing or to accrue to or for the benefit of, the holder of the obligations or instruments referred to in clause (a) above, including but not limited to those arising under or based upon Credit Documents, casualty insurance policies and binders, standby letters of credit, mortgagee title insurance policies and binders, payment bonds and performance bonds at any time and from time to time existing with respect to any of the obligations or instruments referred to in clause (a) above; and

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

**“Market Value”** has the meaning given in the regulation prescribing the standards for real estate appraisals used in federally related transactions, 12 C.F.R. § 323.2(g), and, accordingly, means the most probable price which an interest in real property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the assumed consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- (a) Buyer and seller are typically motivated;
- (b) Both parties are well informed or well advised, and acting in what they consider their own best interests;
- (c) A reasonable time is allowed for exposure in the open market;
- (d) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (e) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale;

as determined as of the Bank Closing Date by an appraiser chosen by the Receiver. With respect to Bank Premises purchased using this valuation method, the Receiver will select the appraiser within seven days after the Bank Closing Date and will pay any costs and fees associated with such determination. The Market Value will be determined no later than 60 days after the Bank Closing Date.

**“New Loan”** means a Loan made by the Failed Bank after the Bid Valuation Date that is not (i) a continuation, amendment, modification, renewal, extension, refinancing, restructuring or refunding of or for any then-existing Loan or (ii) a customer overdraft.

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

**“Other Real Estate”** means all interests in real estate (other than Bank Premises and Fixtures), including but not limited to mineral estates, leasehold rights, condominium and cooperative interests, easements, air rights, water rights, and development rights that are owned by the Failed Bank as of Bid Valuation Date.

**“Other Real Estate Subsidiaries”** means those Subsidiaries listed on the Bid Form, if any.

**“Owned Data Management Equipment”** means any equipment, computer hardware, computer software, computer networking equipment, printers, fax machines, copiers, document scanners, data tape systems, data tapes, DVDs, CDs, flash drives, telecommunications and check processing equipment and any other electronic storage media owned by the Failed Bank at Bank Closing Date which is, was, or could have been used by the Failed Bank in connection with data management activities.

**“Payment Date”** means the first Business Day after the Bank Closing Date.

**“Person”** means any individual, corporation, partnership, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof, excluding the Corporation.

**“Personal Computer(s)”** means computers based on a microprocessor generally designed to be used by one person at a time and which usually store informational data on that

computer's internal hard drive or attached peripheral, and associated peripherals (such as keyboard, mouse, etc.). A personal computer can be found in various configurations such as laptops, net books, and desktops.

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

**“Pro Forma”** means a balance sheet that reflects a reasonably accurate financial statement of the Failed Bank through the Bank Closing Date and serves as a basis for the opening entries of both the Assuming Institution and the Receiver.

**“Proprietary Software”** means computer software developed for and owned by the Failed Bank for its own purpose and use.

**“Put Date”** has the meaning set forth in Section 3.4(d).

**“Put Notice”** has the meaning set forth in Section 3.4(c).

**“Qualified Beneficiaries”** has the meaning set forth in Section 4.12.

**“Qualified Financial Contract”** means a qualified financial contract as defined in 12 U.S.C. § 1821(e)(8)(D).

**“Receiver”** has the meaning set forth in the introduction to this Agreement.

**“Related Liability”** with respect to any Acquired Asset means any liability existing and reflected on the Failed Bank Records as of the Bank Closing Date for (i) indebtedness secured by mortgages, deeds of trust, chattel mortgages, security interests or other liens on or affecting such Acquired Asset, (ii) ad valorem taxes applicable to such Acquired Asset and (iii) any other obligation determined by the Receiver to be directly related to such Acquired Asset.

**“Related Liability Amount”** with respect to any Related Liability on the books of the Assuming Institution, means the amount of such Related Liability as stated on the Failed Bank Records of the Assuming Institution (as maintained in accordance with generally accepted accounting principles) as of the date as of which the Related Liability Amount is being determined. With respect to a liability that relates to more than one Acquired Asset, the amount of such Related Liability shall be allocated among such Acquired Assets for the purpose of determining the Related Liability Amount with respect to any one of such Acquired Assets.

Such allocation shall be made by specific allocation, where determinable, and otherwise shall be pro rata based upon the dollar amount of such Acquired Assets stated on the Failed Bank Records of the entity that owns such Acquired Asset.

**“Repurchase Price”** means, with respect to any Acquired Asset, an amount equal to the sum of (i) the purchase price of the Acquired Asset as determined pursuant to Section 3.2 and either (ii) minus the pro rata Acquired Asset discount or plus the pro rata Acquired Asset premium, if any, (ii) adjusted (A) for any advances and interest on such Acquired Asset after the Bank Closing Date and (B) by subtracting the total amount received by the Assuming Institution

for such Acquired Asset after the Bank Closing Date, regardless of how applied (iii) plus total disbursements of principal made by the Receiver not otherwise included in the Book Value. For (x) New Loans, Deposit Secured Loans and Eligible Overdrafts put back to the Receiver pursuant to Section 3.4 or (y) Acquired Assets sold pursuant to Section 3.7 and repurchased by the Receiver pursuant to Section 3.6, the Repurchase Price shall not take into account the pro rata Acquired Asset discount or premium, if any. The Repurchase Price for Eligible Overdrafts shall include adjustments for credits or deposits received after the Bank Closing Date and prior to the date of put back.

**“Safe Deposit Boxes”** means the safe deposit boxes of the Failed Bank, if any, including the removable safe deposit boxes and safe deposit stacks in the Failed Bank’s vault(s), all rights and benefits under rental agreements with respect to such safe deposit boxes, and all keys and combinations thereto.

**“Settlement Date”** means the first Business Day immediately prior to the day which is three hundred sixty-five (365) days after the Bank Closing Date, or such other date prior thereto as may be agreed upon by the Receiver and the Assuming Institution. The Receiver, in its discretion, may extend the Settlement Date.

**“Settlement Interest Rate”** means, for the first calendar quarter or portion thereof during which interest accrues, the rate determined by the Receiver to be equal to the investment rate on twenty-six (26)-week United States Treasury Bills as published on the Bank Closing Date by the United States Treasury on the TreasuryDirect.gov website; provided, that if no such Investment Rate is published the week of the Bank Closing Date, the investment rate for such Treasury Bills most recently published by the United States Treasury on TreasuryDirect.gov prior to the Bank Closing Date shall be used. Thereafter, the rate shall be adjusted to the rate determined by the Receiver to be equal to the Investment Rate on such Treasury Bills in effect as of the first day of each succeeding calendar quarter during which interest accrues as published by the United States Treasury on the TreasuryDirect.gov website.

**“Specialty Assets”** means assets owned by the Failed Bank, reflected on the Failed Bank Records as of the Bank Closing Date, located on or at Bank Premises, and with a greater value than more traditional furniture and equipment and similar assets, including without limitation fine art and high end decorative art, classic and antique motor vehicles, rare books, rare coins, airplanes, boats, jewelry, collectible firearms, cultural artifacts, sculptures, and Proprietary Software. “Specialty Assets” does not include repossessed collateral.

**“Subsequently Occupied Space”** has the meaning set forth in Section 4.6(f).

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

**“Underserved Area”** means a census tract designated as an underserved middle-income nonmetropolitan tract on the most recent List of Middle-Income Non-Metropolitan Distressed or Underserved Geographies as published by the Federal Financial Institutions Examination Council (“FFIEC”) on the FFIEC website. A list of Bank Premises, if any, located in an Underserved Market is attached as Schedule 4.1(b).

## **ARTICLE II. ASSUMPTION OF LIABILITIES.**

**2.1. Liabilities Assumed by Assuming Institution.** The Assuming Institution expressly assumes at Book Value (subject to adjustment pursuant to Article VIII) and agrees to pay, perform and discharge, all of the following liabilities of the Failed Bank as of the Bank Closing Date, except as otherwise provided in this Agreement (such liabilities referred to as “**Liabilities Assumed**”):

(a) Assumed Deposits, except those Deposits specifically listed on Schedule 2.1(a); provided, that as to any Deposits of public money which are Assumed Deposits, the Assuming Institution agrees to properly secure such Deposits with such Acquired Assets as appropriate which, prior to the Bank Closing Date, were pledged as security by the Failed Bank, or with assets of the Assuming Institution, if such securing Acquired Assets, if any, are insufficient to properly secure such Deposits;

(b) liabilities for indebtedness incurred by the Failed Bank, reflected on the Accounting Records of the Failed Bank on the Bank Closing Date, and secured by any perfected Lien on or affecting any Acquired Asset; provided, that the amount of any liability assumed pursuant to this Section 2.1(b) (x) shall be limited to the market value (as determined by the Receiver) of the Acquired Assets securing such liability and (y) is not subject to adjustment pursuant to Article VIII;

(c) all borrowings from, and obligations and indebtedness to Federal Reserve Banks and Federal Home Loan Banks, if any, whether currently owed, or conditional or not yet matured, including but not limited to, if applicable, (i) advances, including principal, interest, and any prepayment fees, costs and expenses; (ii) letters of credit, including any reimbursement obligations; (iii) acquired member assets programs, including representations, warranties, credit enhancement obligations and servicing obligations; (iv) affordable housing programs, including retention agreements and other contracts and monitoring obligations; (v) swaps and other derivatives; and (vi) safekeeping and custody agreements, provided, that the assumption of any liability pursuant to this Section 2.1(c) shall be limited to the market value of the assets securing such liability as determined by the Receiver; and overdrafts, debit balances, service charges, reclamations and adjustments to accounts with the Federal Reserve Banks as reflected on the books and records of any such Federal Reserve Bank within ninety (90) days after the Bank Closing Date, if any;

(d) ad valorem taxes (prorated through the Bank Closing Date), whether or not reflected on the Failed Bank Records, applicable to any Acquired Asset; provided, that the assumption of any ad valorem taxes pursuant to this Section 2.1(d) shall be limited to an amount equal to the market value of the Acquired Asset to which such taxes apply as determined by the Receiver;

(e) liabilities, if any, for federal funds purchased, repurchase agreements and overdrafts in accounts maintained with other depository institutions (including any accrued and unpaid interest thereon computed to and including the Bank Closing Date); provided, that the assumption of any liability pursuant to this Section 2.1(e) shall be limited to the market value of the Acquired Assets securing such liability as determined by the Receiver;

(f) United States Treasury tax and loan note option accounts, if any;

(g) liabilities for any acceptance or commercial letter of credit provided, that the assumption of any liability pursuant to this Section 2.1(g) shall be limited to the market value of the Acquired Assets securing such liability as determined by the Receiver;

(h) liabilities for any “standby letters of credit” as defined in 12 C.F.R. § 337.2(a) issued by the Failed Bank in connection with an Acquired Asset, but excluding any other standby letters of credit;

(i) duties and obligations assumed pursuant to this Agreement including without limitation those relating to the Failed Bank Records, credit card business, debit card business, stored value and gift card business, overdraft protection plans, safe deposit business, safekeeping business and trust business, if any;

(j) liabilities, if any, for Commitments with respect to Loans that are purchased pursuant to this Agreement;

(k) liabilities, if any, for amounts owed to any Acquired Subsidiary;

(l) liabilities, if any, with respect to Qualified Financial Contracts;

(m) reserved; and

(n) any deferred revenue, income or fees recorded on the general ledger of the Failed Bank as of the Bank Closing Date attributable to any business assumed pursuant to Section 4.2, 4.3, 4.4, or 4.5 of this Agreement, excluding any deferred income or revenue relative to FASB 91 – Loan Fees and Costs associated with originating or acquiring Loans and initial direct costs of leases.

**2.2. Interest on Deposit Liabilities.** The Assuming Institution agrees that, from and after the Bank Closing Date, it will accrue and pay interest on Assumed Deposits pursuant to Section 2.1 at a rate(s) it shall determine; provided, that for non-transaction Deposit liabilities such rate(s) shall not be less than the lowest rate offered by the Assuming Institution to its depositors for non-transaction deposit accounts. The Assuming Institution shall permit each depositor to withdraw, without penalty for early withdrawal, all or any portion of such depositor’s Deposit, whether or not the Assuming Institution elects to pay interest in accordance with any deposit agreement formerly existing between the Failed Bank and such depositor; and further provided, that if such Deposit has been pledged to secure an obligation of the depositor or other party, any withdrawal thereof shall be subject to the terms of the agreement governing such pledge. The Assuming Institution shall give notice to such depositors as provided in Section 5.3 of the rate(s) of interest which it has determined to pay and of such withdrawal rights.

**2.3. Unclaimed Deposits.**

(a) Final Legal Notice. Fourteen (14) months following the Bank Closing Date, the Assuming Institution will provide the Receiver a listing of all deposit accounts, including the type of account, not claimed by the depositor. The Receiver will review the list and authorize the Assuming Institution to act on behalf of the Receiver to send a Final Legal Notice in a form substantially similar to Exhibit 2.3A (the “**Final Legal Notice**”) to the owner(s) of the unclaimed deposits reminding them of the need to claim or arrange to continue their account(s) with the Assuming Institution. The Assuming Institution will send the Final Legal Notice to the depositors within fifteen (15) days following notification of the Receiver’s authorization. The Assuming Institution will prepare an Affidavit of Mailing in a form

substantially similar to Exhibit 2.3B and will forward the Affidavit of Mailing to the Receiver after mailing out the Final Legal Notice to the owner(s) of unclaimed deposit accounts.

(b) Unclaimed Deposits. If, within eighteen (18) months after the Bank Closing Date, any depositor of the Failed Bank does not claim or arrange to continue such depositor's Assumed Deposits at the Assuming Institution, the Assuming Institution shall, within fifteen (15) Business Days after the end of such eighteen (18) month period, (i) refund to the Receiver the full amount of each such Deposit (without reduction for service charges), (ii) provide to the Receiver a schedule of all such refunded Deposits in such form as may be prescribed by the Receiver, and (iii) assign, transfer, convey, and deliver to the Receiver, all right, title and interest of the Assuming Institution in and to the Failed Bank Records previously transferred to the Assuming Institution and other records generated or maintained by the Assuming Institution pertaining to such Deposits. During such eighteen (18) month period, at the request of the Receiver, the Assuming Institution promptly shall provide to the Receiver schedules of unclaimed Deposits in such form as may be prescribed by the Receiver.

**2.4. Employee Plans**. Except as provided in Section 4.12, the Assuming Institution shall have no liabilities, obligations or responsibilities under the Failed Bank's health care, bonus, vacation, pension, profit sharing, deferred compensation, 401k or stock purchase plans or similar plans, if any, unless the Receiver and the Assuming Institution agree otherwise subsequent to the date of this Agreement.

### **ARTICLE III. PURCHASE OF ASSETS.**

**3.1. Assets Purchased by Assuming Institution**. With the exception of certain assets expressly excluded in Sections 3.5 and 3.6, the Assuming Institution hereby purchases from the Receiver, and the Receiver hereby sells, assigns, transfers, conveys and delivers to the Assuming Institution, all right, title and interest of the Receiver in and to all of the assets (real, personal and mixed, wherever located and however acquired) including all subsidiaries, joint ventures, partnerships and any and all other business combinations or arrangements, whether active, inactive, dissolved or terminated, of the Failed Bank whether or not reflected on the books of the Failed Bank as of the Bank Closing Date. The Assuming Institution purchases all Acquired Assets subject to all liabilities for indebtedness collateralized by Liens affecting such Acquired Assets to the extent provided in Section 2.1.

#### **3.2. Asset Purchase Price**

(a) Determination of Asset Purchase Price. All Acquired Assets and assets of the Failed Bank subject to an option to purchase by the Assuming Institution shall be purchased for the amount, or the amount resulting from the method specified for determining the amount, as specified on Schedule 3.2, except as otherwise may be provided herein. Any Acquired Asset for which no purchase price is specified on Schedule 3.2 or otherwise herein shall be purchased at its Book Value. The purchase price for Acquired Subsidiaries shall be adjusted pursuant to Section 4.6(i)(iv), if applicable.

(b) Purchase Price for Securities. The purchase price for any security (other than the capital stock of any Acquired Subsidiary and Federal Home Loan Bank stock) purchased under Section 3.1 by the Assuming Institution shall consist of the market price (as defined below) of the security as of the Bank Closing Date, multiplied by the bank's ownership interest in the security (see Calculation of Purchase Price below) and shall include accrued interest, where applicable, as noted below.

(i) Definition of Market Price: The market price for any security shall be (i) the market price for that security quoted at the close of the trading day effective on the Bank Closing Date as published electronically by Bloomberg, L.P., or alternatively, at the discretion of the Receiver, by IDC/Financial Times (FT) Interactive Data; (ii) provided that if such market price is not available for such security, the Assuming Institution will submit a written purchase price bid for such security within three days of notification/bid request by the Receiver (unless a different time period is agreed to by the Assuming Institution and the Receiver) and the Receiver, in its sole and absolute discretion, will accept or reject each such purchase price bid; (iii) further provided that in the absence of an acceptable bid from the Assuming Institution, or in the event that a security is deemed essential to the Receiver as determined by the Receiver in its discretion (see Section 3.6 Retention or Repurchase of Assets Essential to the Receiver), such security shall not pass to the Assuming Institution and shall be deemed to be an excluded asset hereunder and listed on Schedule 3.5(l).

(ii) Calculation of Purchase Price. The bank's ownership interest in a security will be quantified one of two ways: (i) number of shares or other units, as applicable (in the case of equity securities) or (ii) par value or notational amount, as applicable (in the case of non-equity securities). As a result, the purchase price (except where determined pursuant to clause (ii) of the preceding paragraph) shall be calculated one of two ways, depending on whether or not the security is an equity security: (i) the purchase price for an equity security shall be calculated by multiplying the number of shares or other units by the applicable market price per unit; and (ii) the purchase price for a non-equity security shall be an amount equal to the applicable market price (expressed as a decimal), multiplied by the par value for such security (based on the payment factor most recently widely available). The purchase price also shall include accrued interest as calculated below (see Calculation of Accrued Interest), except to the extent the parties may otherwise expressly agree, pursuant to clause (ii) of the preceding paragraph. If the factor used to determine the par value of any security for purposes of calculating the purchase price, is not for the period in which the Bank Closing Date occurs, then the purchase price for that security shall be subject to adjustment post-closing based on a "cancel and correct" procedure. Under this procedure, after such current factor becomes publicly available, the Receiver will recalculate the purchase price utilizing the current factor and related interest rate, and will notify the Assuming Institution of any difference and of the applicable amount due from one party to the other. Such amount will then be paid as part of the settlement process pursuant to Article VIII.

(iii) Calculation of Accrued Interest for Securities: Accrued interest shall be calculated for a non-equity security by multiplying the interest rate (expressed as a decimal point) paid on the security as then most recently publicly available, by the most recent par value (or notational amount, as applicable) of that security, multiplied by the number of days from and including the first interest day of the accrual period in which the Bank Closing Date occurs, through the Bank Closing Date.

(c) Purchase Price for Qualified Financial Contracts. Qualified Financial Contracts, if any, shall be purchased at market value determined in accordance with the terms of Exhibit 3.2(c). Any costs associated with such valuation shall be shared equally by the Receiver and the Assuming Institution.



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

**3.4. Puts of Assets to the Receiver.**

(a) Puts Within 30 Days or 40 Days After the Bank Closing Date.

(i) During the thirty (30)-day period following the Bank Closing Date (which thirty (30)-day period may be extended in writing in the sole and absolute discretion of the Receiver for any Loan), in accordance with this Section 3.4, the Assuming Institution may require the Receiver to purchase (x) any Deposit Secured Loan transferred to the Assuming Institution pursuant to Section 3.1 which is not fully secured by Assumed Deposits or deposits at other insured depository institutions due to either insufficient Assumed Deposit or deposit collateral or deficient documentation regarding such collateral or (y) any New Loan; provided that, the Assuming Institution may not require the purchase of a Deposit Secured Loan that is secured by an Assumed Deposit until any Deposit setoff determination, whether voluntary or involuntary, has been made.

(ii) During the forty (40)-day period following the Bank Closing Date, the Assuming Institution may require the Receiver to purchase, any Eligible Overdraft transferred to the Assuming Institution pursuant to Section 3.1 which existed on the thirtieth (30th) day following the Bank Closing Date.

(iii) Notwithstanding the foregoing, the Assuming Institution may not require the Receiver to purchase any Loan pursuant to Section 3.4(a) if (x) the Obligor with respect to such Loan is an Acquired Subsidiary or (y) the Assuming Institution has:

(A) made any advance in accordance with the terms of a Commitment or otherwise with respect to such Loan;

(B) taken any action that caused an increase in the amount of a Related Liability with respect to such Loan;

(C) created or permitted to be created any Lien on such Loan which secures indebtedness for money borrowed or which constitutes a conditional sales agreement, capital lease or other title retention agreement;

(D) entered into, agreed to make, grant or permit, or made, granted or permitted any modification or amendment to, any waiver or extension with respect to, or any renewal, refinancing or refunding of, such Loan or related Credit Documents or collateral, including, without limitation, any act or omission which diminished such collateral; or

(E) sold, assigned or transferred all or a portion of such Loan to a third party (whether with or without recourse).

(b) Puts Prior to the Settlement Date. During the period from the Bank Closing Date to and including the Business Day immediately preceding the Settlement Date, the Assuming Institution may require the Receiver to purchase any Acquired Asset which the Assuming Institution can establish is evidenced by forged or stolen instruments as of the Bank Closing Date; provided that the Assuming Institution may not require the Receiver to purchase any Acquired Asset with respect to which the Assuming Institution has taken any action referred to in Section 3.4(a)(iii) with respect to such Acquired Asset. The Assuming Institution shall transfer all such Acquired Assets to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Assuming Institution with respect to any such Acquired Asset, as provided in Section 12.4.

(c) Notices to the Receiver. If the Assuming Institution elects to require the Receiver to purchase one or more Acquired Assets pursuant to this Section 3.4, the Assuming Institution shall deliver to the Receiver a notice (“**Put Notice**”) which shall include:

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

(ii) a list of all Related Liabilities with respect to the Acquired Assets identified in the Put Notice; and

(iii) a statement of the estimated Repurchase Price of each Acquired Asset identified in the Put Notice as of the applicable Put Date (defined below).

The Put Notice shall be in the form prescribed by the Receiver or such other form to which the Receiver has consented. As provided in Section 9.6, the Assuming Institution shall deliver to the Receiver all documents, Credit Files and additional information relating to the subject matter of the Put Notice as the Receiver may request and shall provide the Receiver with full access to all other relevant books and records.

(d) Purchase by Receiver. The Receiver shall purchase Acquired Assets that are specified in the Put Notice and shall assume Related Liabilities with respect to such Acquired Assets. The transfer of such Acquired Assets and Related Liabilities shall be effective as of a date determined by the Receiver, which date shall not be later than thirty (30) days after receipt by the Receiver of the Put Notice (the “**Put Date**”).

(e) Purchase Price and Payment Date. Each Acquired Asset purchased by the Receiver pursuant to this Section 3.4 shall be purchased at a price equal to the Repurchase Price of such Acquired Asset minus the Related Liability Amount applicable to such Acquired Asset, in each case determined as of the applicable Put Date. If the difference between the Repurchase Price and the Related Liability Amount is positive, then the Receiver shall pay to the Assuming Institution the amount of the difference; if the difference between such amounts is negative, then the Assuming Institution shall pay to the Receiver the amount of the difference. The Assuming Institution or the Receiver, as the case may be, shall pay the amount determined pursuant to this Section 3.4 not later than the twentieth (20th) Business Day following the applicable Put Date, together with interest on such amount at the Settlement Interest Rate for the period from and including such Put Date to and including the day preceding the date on which payment is made.

(f) Servicing. The Assuming Institution shall administer and manage any Acquired Asset subject to purchase by the Receiver in accordance with usual and prudent banking standards and business practices until the Receiver purchases such Acquired Asset.

(g) Reversals. If the Receiver purchases an Acquired Asset (and assumes the Related Liability) that it is not required to purchase pursuant to this Section 3.4, the Assuming Institution shall repurchase such Acquired Asset (and assume such Related Liability) from the Receiver at a price computed so as to achieve the same economic result as would apply if the Receiver had never purchased such Acquired Asset pursuant to this Section 3.4.

(h) Transfer to Receiver without Recourse. The Assuming Institution shall transfer any Acquired Asset pursuant to this Section 3.4 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 Acquired Asset, as provided in Section 12.4.

**3.5. Assets Not Purchased by Assuming Institution**. The Assuming Institution does not purchase, acquire or assume, or (except as otherwise expressly provided in this Agreement) obtain an option to purchase, acquire or assume under this Agreement:

(a) any financial institution bonds, banker's blanket bonds, or public liability, fire, extended coverage insurance policy, bank owned life insurance or any other insurance policy of the Failed Bank, or premium refund, unearned premium derived from cancellation, or any proceeds payable with respect to any of the foregoing;

(b) any interest, right, action, claim, or judgment against (i) any officer, director, employee, accountant, attorney, or any other Person employed or retained by the Failed Bank or any Subsidiary of the Failed Bank on or prior to the Bank Closing Date arising out of any act or omission of such Person in such capacity, (ii) any underwriter of financial institution bonds, banker's blanket bonds or any other insurance policy of the Failed Bank, (iii) any shareholder or holding company of the Failed Bank, or (iv) any other Person whose action or inaction may be related to any loss (exclusive of any loss resulting from such Person's failure to pay on a Loan made by the Failed Bank) incurred by the Failed Bank; provided that for the purposes hereof, the acts, omissions or other events giving rise to any such claim shall have occurred on or before the Bank Closing Date, regardless of when any such claim is discovered and regardless of whether any such claim is made with respect to a financial institution bond, banker's blanket bond, or any other insurance policy of the Failed Bank in force as of the Bank Closing Date;

(c) prepaid regulatory assessments of the Failed Bank, if any;

(d) legal or equitable interests in tax receivables of the Failed Bank, if any, including any claims arising as a result of the Failed Bank having entered into any agreement or otherwise being joined with another Person with respect to the filing of tax returns or the payment of taxes;

(e) amounts reflected on the Failed Bank Records as of the Bank Closing Date as a general or specific loss reserve or contingency account, if any;

(f) leased or owned Bank Premises and leased or owned Fixtures, Furniture and Equipment located on leased or owned Bank Premises, and Specialty Assets located on

leased or owned Bank Premises, if any; provided that the Assuming Institution does obtain an option under Sections 4.6, 4.7 or 4.8, as the case may be, with respect thereto;

(g) owned Bank Premises which the Receiver, in its discretion, determines may contain environmentally hazardous substances;

(h) any “goodwill,” as such term is defined in the instructions to the report of condition prepared by banks examined by the Corporation in accordance with 12 C.F.R. § 304.3, and other intangibles (other than intellectual property);

(i) any criminal restitution or forfeiture orders issued in favor of the Failed Bank;

(j) any and all prepaid fees or any other income as shown on the Failed Bank Records, but not taken into income as of the Bank Closing Date, associated with a line of business of the Failed Bank which is not assumed pursuant to this Agreement;

(k) assets essential to the Receiver in accordance with Section 3.6;

(l) any Loans, banker’s bank stock, and securities listed on Schedule 3.5(l);

(m) reserved;

(n) prepaid accounts associated with any contract or agreement that the Assuming Institution either does not directly assume pursuant to the terms of this Agreement nor has an option to assume under Section 4.8;

(o) except with respect to any Federal Home Loan Bank loans, any contract pursuant to which the Failed Bank provides loan servicing for others;

(p) all assets that were fully charged-off by the Failed Bank prior to the Bid Valuation Date, including any subsequent judgments arising therefrom, other than any asset that was secured by collateral that was (i) foreclosed upon by the Failed Bank and (ii) is an Acquired Asset;

(q) any Loan that was secured by collateral that is an asset retained by the Receiver under this Agreement;

(r) all assets related to any plan of the Failed Bank described in Section 2.4 or any plan of the type described in Section 2.4 under which the Failed Bank has any liability, obligation or responsibility, unless the Assuming Institution assumes liability, obligations or responsibilities under such plan subsequent to the date of this Agreement; and

(s) any asset not shown on the Failed Bank Records as of the Bank Closing Date and discovered after the Settlement Date.

### **3.6. Retention or Repurchase of Assets Essential to Receiver.**

(a) The Receiver may refuse to sell to the Assuming Institution, or the Assuming Institution agrees, at the request of the Receiver set forth in a written notice to the Assuming Institution, to sell, assign, transfer, convey, and deliver to the Receiver, all of the Assuming Institution’s right, title and interest in and to, any Acquired Asset or asset essential to the Receiver as determined by the Receiver in its discretion (together with all Credit Documents

evidencing or pertaining thereto), which may include any Acquired Asset or asset that the Receiver determines to be:

- (i) made to an officer, director, or other Person engaging in the affairs of the Failed Bank, its Subsidiaries or Affiliates or any related entities of any of the foregoing;
- (ii) the subject of any investigation relating to any claim with respect to any item described in Section 3.5(a) or (b), or the subject of, or potentially the subject of, any legal proceedings;
- (iii) made to a Person who is an Obligor on a loan owned by the Receiver or the Corporation in its corporate capacity or its capacity as receiver of any institution;
- (iv) secured by collateral which also secures any asset owned by the Receiver; or
- (v) related to any asset of the Failed Bank not purchased by the Assuming Institution under this Article III or any liability of the Failed Bank not assumed by the Assuming Institution under Article II.

(b) Each such Acquired Asset or asset purchased by the Receiver shall be purchased at a price equal to the Repurchase Price thereof less the Related Liability Amount with respect to any Related Liabilities related to such Acquired Asset or asset, in each case determined as of the date of the notice provided by the Receiver pursuant to Section 3.6(a). The Receiver shall pay the Assuming Institution not later than the twentieth (20th) Business Day following receipt of related Credit Documents and Credit Files together with interest on such amount at the Settlement Interest Rate for the period from and including the date of receipt of such documents to and including the day preceding the day on which payment is made. The Assuming Institution agrees to administer and manage each such Acquired Asset or asset in accordance with usual and prudent banking standards and business practices until each such Acquired Asset or asset is purchased by the Receiver. All transfers with respect to Acquired Asset or assets under this Section 3.6 shall be made as provided in Section 9.6. The Assuming Institution shall transfer all such Acquired Assets 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 Acquired Asset or asset, as provided in Section 12.4.

**3.7. Receiver's Offer to Sell Withheld Loans.** For the period of thirty (30) days commencing the day after the Bank Closing Date, the Receiver may, in its sole and absolute discretion, sell any Loan withheld from sale pursuant to Section 3.5 or Section 3.6 of this Agreement that the Assuming Institution desires to purchase. Any Loan sold pursuant to this section will, at the sole and absolute discretion of the Receiver, either (x) be treated as if initially sold pursuant to Section 3.1 of this Agreement, or (y) sold pursuant to the standard loan sale agreement used by the Receiver for the sale of loan pools.

(a) If treated as if initially sold pursuant to Section 3.1 of this Agreement, the purchase price for such Loan shall be the Book Value as of the Bank Closing Date, adjusted (i) for any advances and interest on such Loan after the Bank Closing Date, (ii) by subtracting the total amount received by the Assuming Institution for such Loan after the Bank Closing Date,

and (iii) by adding total disbursements of principal made by the Receiver and not otherwise included in the Book Value. The sale will be subject to all applicable terms of this Agreement, except that any Loan purchased pursuant to this Section 3.7 shall not be included in the calculation of the pro rata Acquired Asset discount or pro rata Acquired Asset premium utilized for the repurchase of other Acquired Assets. Payment for any such Loan will be handled through the settlement process pursuant to Article VIII.

(b) Any Loan sold pursuant to the standard loan sale agreement shall be governed by and paid for in accordance with that document.

#### **ARTICLE IV. ASSUMPTION OF CERTAIN DUTIES AND OBLIGATIONS.**

##### **4.1. Continuation of Banking Business.**

(a) Full Service Banking. The Assuming Institution will (i) provide full service banking in the Failed Bank Assessment Area for at least 90 days commencing on the first Business Day after the Bank Closing Date and (ii) satisfy applicable regulatory or statutory requirements before it ceases to provide full service banking in the Failed Bank Assessment Area. At the option of the Assuming Institution, it may provide such full service banking at one or more Bank Premises or Assuming Institution branches located within the Failed Bank Assessment Area. The Assuming Institution may close or sell any Bank Premises during this period with the prior written consent of the Receiver (which consent may be withheld in Receiver's sole discretion) and after receipt of all necessary regulatory approvals and satisfaction of applicable regulatory or statutory requirements; provided that the Assuming Institution (or its successors) continues to provide full service banking in the Failed Bank Assessment Area for the period required to comply with this Section 4.1(a).

(b) Bank Premises Located in an Underserved Area. If a currently utilized Bank Premises is located in an Underserved Area, the Receiver will not consent to the Assuming Institution's closing or selling such Bank Premises, unless the Assuming Institution provides full service banking at one or more Bank Premises or Assuming Institution branches located within in the same Underserved Area.

(c) Failure to Exercise Option to Purchase Bank Premises. If a currently-utilized owned Bank Premises is located in an Underserved Area and the Assuming Institution does not exercise its option under Section 4.6(a) with respect to that Bank Premises, the Receiver will continue to rent *any* such owned Bank Premises to the Assuming Institution for the amount provided in Section 4.6(e) in order to comply with Section 4.1(a).

(d) Sale of Bank Premises. The Assuming Institution will pay to the Receiver, upon the sale of any Bank Premises within twelve months following the Bank Closing Date, fifty percent (50%) of the amount by which (a) the proceeds of such sale attributable to any franchise or deposit premium (without deducting any expenses related to such sale) exceed (b) the deposit premium paid by the Assuming Institution with respect to each Bank Premises sold.

**4.2. Credit Card Business.** The Assuming Institution will honor and perform, from and after the Bank Closing Date, 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 extensions of credit or balances outstanding as of the Bank Closing Date with respect to these lines of

business. The obligations undertaken pursuant to this Section do not include loyalty, reward, affinity, or other similar programs related to the credit and debit card businesses.

**4.3. Safe Deposit Business.** The Assuming Institution will honor and discharge, from and after the Bank Closing Date, in the usual course of conducting a banking business, the duties and obligations of the Failed Bank with respect to all Safe Deposit Boxes of the Failed Bank and will maintain all of the necessary facilities for the use of such Safe Deposit Boxes by the renters thereof during the period for which such Safe Deposit Boxes have been rented and the rent therefor paid to the Failed Bank, subject to the provisions of the rental agreements between the Failed Bank and the respective renters of such Safe Deposit 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 Failed Bank Assessment Area in which such Safe Deposit Boxes were located. The Assuming Institution will (a) locate and maintain the Safe Deposit Boxes in the Failed Bank Assessment Area for at least 90 days commencing on the first Business Day after the Bank Closing Date and (b) satisfy applicable regulatory or statutory requirements before it ceases to maintain the Safe Deposit Boxes in the Failed Bank Assessment Area.

**4.4. 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 the Bank Closing Date. The Assuming Institution will honor and discharge, from and after the Bank Closing Date, the duties and obligations of the Failed Bank with respect to such securities and items held in safekeeping. The Assuming Institution will provide to the Receiver written verification of all assets held by the Failed Bank for safekeeping within sixty (60) days after the Bank Closing Date. The Assuming Institution will (a) hold for safekeeping and maintain in the Failed Bank Assessment Area for at least 90 days commencing on the first Business Day after the Bank Closing Date the assets held and maintained by the Failed Bank for safekeeping and (b) satisfy applicable regulatory or statutory requirements before it ceases to hold for safekeeping and maintain such assets in the Failed Bank Assessment Area. 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 the Failed Bank Assessment Area. The Assuming Institution shall be entitled to all rights and benefits which accrue after the Bank Closing Date with respect to securities and other items held in safekeeping.

**4.5. Trust Business.**

(a) Assuming Institution as Successor. 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 the Bank Closing Date; 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) Wills and Appointments. 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) Transfer of Trust Business. 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) Verification of Assets. 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 the Bank Closing Date.

#### **4.6. Bank Premises.**

(a) Option to Purchase.

(i) 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 the Bank Closing Date to purchase any or all owned 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 owned Bank Premises will be consummated as soon as practicable thereafter (and no later than the Settlement Date).

(ii) The Receiver may, in its sole and absolute discretion, manage and maintain any owned Bank Premises with one or more tenants (other than the Assuming Institution) during the period from the Bank Closing Date until the date the Receiver receives the purchase price for such Bank Premises from the Assuming Institution.

(b) Option to Lease. The Receiver hereby grants to the Assuming Institution an exclusive option for the period of sixty (60) days commencing the day after the Bank Closing Date to cause the Receiver to assign to the Assuming Institution any or all leases for leased Bank Premises, if any, 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 such lease. To the extent the lease payments provided for in any assigned lease are minimal in relation to the current market rate and the value of that difference is not otherwise reflected in the purchase of the associated Fixtures, the Assuming Institution shall pay the Receiver the Market Value of the Receiver's interest in any such assigned lease. The Assuming Institution shall give written 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 new leases in lieu thereof). The Assuming Institution shall assume all leases assigned (or enter into new leases in lieu thereof) pursuant to this Section 4.6.

(c) Facilitation. The Receiver shall 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) Notice of Surrender of Bank Premises. The Assuming Institution shall give the Receiver at least fifteen (15) days' prior written notice of its intent to surrender to the Receiver any Bank Premises with respect to which the Assuming Institution has not exercised



the options provided in Sections 4.6(a) and 4.6(b). Any such notice shall designate the intended Bank Premises Surrender Date and shall terminate the Assuming Institution's option with respect to such Bank Premises.

(e) Occupancy Costs.

(i) The Assuming Institution shall pay the following amounts to the Receiver (or to appropriate third parties at the direction of the Receiver): (A) for owned Bank Premises, the rental rate, as determined by the Receiver, and all Bank Premises Operating Costs (each for the space not occupied by other tenants) for the period from the Bank Closing Date until (1) the date the Receiver receives written notice from the Assuming Institution of its election to purchase such Bank Premises under Section 4.6(a) or (2) the Bank Premises Surrender Date for owned Bank Premises the Assuming Institution elects not to purchase; and (B) for leased Bank Premises and for leased Fixtures, rent, as provided in the applicable lease, and all Bank Premises Operating Costs for the period from the Bank Closing Date until (1) the date the Receiver receives written notice from the Assuming Institution of its election to accept assignment of the lease for such Bank Premises under Section 4.6(b), or (2) the Bank Premises Surrender Date for leased Bank Premises for which the Assuming Institution does not elect to assume the lease. The Assuming Institution shall comply with the terms of applicable leases on leased Bank Premises, including without limitation, the timely payment of all rent.

(ii) The Assuming Institution shall pay the following amounts to the Receiver (or to appropriate third parties at the direction of the Receiver): rent for the period from the Bank Closing Date until the Bank Premises Surrender Date for all owned or leased Furniture and Equipment, all owned or leased Fixtures, and all Specialty Assets located in space not occupied by other tenants and on or at either (A) owned Bank Premises the Assuming Institution elects not to purchase or (B) leased Bank Premises for which the Assuming Institution does not elect to assume the lease. Rent for such property owned by the Failed Bank shall be its rental rate, as determined by the Receiver no later than 60 days after the Bank Closing Date. Rent for such property leased by the Failed Bank shall be an amount equal to all rent and other amounts which the Receiver incurs or accrues as an obligation or is obligated to pay for such period pursuant to all leases and contracts with respect to such property.

(iii) Subject to Section 4.1, 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, or not to purchase one or more of the owned Bank Premises, within two Business Days of the Bank Closing Date, and the Receiver is satisfied that all of the conditions for surrender of such Bank Premises set forth in this Agreement have been met within fifteen (15) days of the Bank Closing Date, the Assuming Institution shall not be liable for any of the costs imposed by Sections 4.6(e)(i) or 4.6(e)(ii).

(f) Certain Requirements as to Fixtures, Furniture and Equipment, and Certain Specialty Assets. If the Assuming Institution (i) purchases owned Bank Premises (including any Bank Premises purchased at the fixed price shown on the Bid Form) as provided in Section 4.6(a) or (ii) 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(b), or (iii) does not exercise either such option, but within twelve (12) months following the Bank Closing Date obtains the right to occupy all or any portion of any Bank Premises, whether by assignment,











































































## 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	\$ __, __, __ 0.00
	<i>Total deposits excluded from calculation of premium</i>	\$ __, __, __ 0.00

### **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 two 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 Failed Bank.

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 the Bank Closing Date.

If the Failed Bank had any DO Brokered Deposits (Cede & Co as Nominee for DTC), they are excluded from Assumed Deposits in the Purchase and Assumption Agreement.

#### **II. CDARS**

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

The Failed Bank 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 the Bank Closing Date, they will be identified post-closing and made part of Schedule 7 to the Purchase and Assumption Agreement.

#### **III. Market Place Deposits**

“Market Place Deposits” are deposits that may have been solicited via a money desk, internet subscription service (for example, QwickRate<sup>®</sup>), or similar programs.

The Failed Bank does not have QwickRate<sup>®</sup> deposits as identified above. The QwickRate<sup>®</sup> deposits are reported as time deposits in the Call Report. As of the date of the deposit download

The Failed Bank does not have QwickRate® deposits as identified above. The list will be updated post closing with balances as of the Bank Closing Date.

This schedule provides account categories and balances as of the date of the deposit download, August 7, 2019, or as indicated. The deposit franchise bid premium will be calculated using account categories and balances as of the Bank Closing Date that are reflected in the general ledger or subsystem as described above. The final numbers for Schedule 7 will be provided post closing.













## EXHIBIT 4.13

### INTERIM ASSET SERVICING ARRANGEMENT

This Interim Asset Servicing Arrangement is made pursuant to and as of the date of that certain Purchase and Assumption Agreement (the “**Purchase and Assumption Agreement**”) among the Receiver, the Assuming Institution and the Corporation, to which this Arrangement is attached. Capitalized terms used and not otherwise defined in this Exhibit 4.13 shall have the meanings assigned to such terms in the Agreement.

(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 Interim Asset Servicing Arrangement (the “**Arrangement**”), including any assets or liabilities sold or conveyed by the Receiver to any party other than the Assuming Institution (any such party, a “**Successor Owner**”) but with respect to which the Receiver has an obligation to service or provide servicing support (such assets and liabilities, the “**Pool Assets**”), for certain loans (the “**Loans**”) during the term of this Arrangement the Assuming Institution shall service or provide servicing support to the Pool Assets as described in this Exhibit 4.13.

If the Assuming Institution is an approved or qualified servicer for any government sponsored entity (each, a “**GSE**”) and if any of the Loans are owned by a GSE, the Assuming Institution shall service or provide servicing support for the Loans owned by a GSE in accordance with the guidelines promulgated by and its agreements with the applicable GSE. If the Assuming Institution is not an approved or qualified servicer for a GSE or the Loans are not owned by a GSE, then the Assuming Institution shall service or provide servicing support for the Loans in accordance with the following:

- (i) promptly post and apply payments received to the applicable system of record;
- (ii) reverse and return insufficient funds checks;
- (iii) pay (A) participation payments to participants in Loans, as and when received; (B) tax and insurance bills, as they come due, out of any escrow funds maintained for such purposes; and (C) unfunded commitments and protective advances out of any escrow funds created for such purposes;
- (iv) process funding draws under Loans and protective advances in connection with collateral and acquired property, in each case, as and to the extent authorized and funded by the Receiver;
- (v) maintain in use all data processing equipment and systems and other systems of record on which any activity with respect to any Pool Assets are, or prior to the Bank Closing Date, were, recorded, and maintain all historical data on any such systems as of the Bank Closing Date and not, without the express consent of the Receiver (which consent must be sought at least sixty (60) days prior to taking any action), deconvert, remove, transfer or otherwise discontinue use of any of the Failed Bank’s systems of record with respect to any Pool Asset;





