

EXECUTION COPY

GUARANTY AGREEMENT
BY AND BETWEEN
FEDERAL DEPOSIT INSURANCE CORPORATION
AND
FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR
FRANKLIN BANK, S.S.B.

Dated as of September 30, 2009

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GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT (this "**Guaranty Agreement**"), entered into as of the September 30, 2009, by and between the Federal Deposit Insurance Corporation (the "**Purchase Money Note Guarantor**") and the Federal Deposit Insurance Corporation as Receiver for Franklin Bank, S.S.B. (the "**Noteholder**").

RECITALS

WHEREAS, pursuant to that certain Loan Contribution and Sale Agreement, dated as of September 30, 2009 (the "**Contribution Agreement**"), between Franklin Venture, LLC ("**Debtor**") and the Noteholder, the Noteholder has transferred certain assets to Debtor, partly as a sale and partly as a capital contribution, and in return for said assets Debtor has issued to the Noteholder a Purchase Money Note, dated of even date herewith, in the principal face amount of \$727,770,000 (the "**Purchase Money Note**"); and

WHEREAS, to provide the Noteholder support for the payment and performance of Debtor's obligations under the Purchase Money Note, the Purchase Money Note Guarantor has agreed to enter into this Guaranty Agreement and to perform the obligations of the Purchase Money Note Guarantor described herein.

NOW, THEREFORE, in consideration of payment to Purchase Money Note Guarantor of the Purchase Money Note Guaranty Fee (as defined in the hereinafter described Custodial and Paying Agency Agreement), the sufficiency of which is hereby acknowledged, Purchase Money Note Guarantor and Noteholder hereby agree as follows:

Section 1. Guaranty. The Purchase Money Note Guarantor hereby absolutely, irrevocably, completely, unconditionally and immediately guarantees the due and punctual payment and performance when due, whether at stated maturity, by acceleration or otherwise, of all of the following (together with the Loan Parity Obligation (as defined in Section 2), collectively, the "**Guaranteed Obligations**"): (a) the due and punctual payment on each Distribution Date (as defined in the Custodial and Paying Agency Agreement dated as of September 30, 2009, by and between Franklin Venture, LLC, the Purchase Money Note Guarantor and Citibank, N.A., a national banking association (the "**Custodial and Paying Agency Agreement**"); capitalized terms used herein and not otherwise defined herein shall having the meanings assigned to them in the Custodial and Paying Agency Agreement) of all interest accrued on the Purchase Money Note through and including the preceding Determination Date; and (b) the payment of principal of the Purchase Money Note on the date such principal shall become due (whether at maturity, upon acceleration or otherwise).

Section 2. Loan Parity Obligation. The Purchase Money Note Guarantor hereby absolutely and irrevocably agrees that if as of any Determination Date the sum of (a) the Unpaid Principal Balance of the Loans, (b) the REO Principal Balance (as hereinafter defined) and (c) any and all proceeds received as principal payments on the Loans on deposit in the Collection Account and the Distribution Account (collectively, the "**Outstanding Loan Balance**") is less than the outstanding principal balance of the Purchase Money Note, the Purchase Money Note Guarantor shall unconditionally pay to the Noteholder, upon the Noteholder's demand, an

amount equal to the outstanding principal balance of the Purchase Money Note at such time less the Outstanding Loan Balance (such payment obligation being referred to herein as the “**Loan Parity Obligation**”).

“**REO Principal Balance**” means an amount equal to the aggregate principal balance of all Loans with respect to which some or all of the related Collateral has been converted to REO Property, measured by the unpaid principal balance of such Loans (adjusted pro rata for partial collateral sales, debt forgiveness or retained indebtedness) at the time at which such Loans were converted to REO Property plus any outstanding balance remaining on such Loans which is evidenced by a modification agreement or a replacement or successor promissory note executed by the Borrower.

Section 3. Guaranty Absolute. The Purchase Money Note Guarantor guarantees that the Guaranteed Obligations (other than the Loan Parity Obligation) will be paid strictly in accordance with the terms of the Purchase Money Note and that the Loan Parity Obligation will be paid strictly in accordance with the terms of this Guaranty Agreement, in each case regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Noteholder with respect thereto. The liability of the Purchase Money Note Guarantor under this Guaranty Agreement shall be absolute, irrevocable and unconditional in accordance with its terms and shall, to the fullest extent permissible under applicable law, remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated, modified or otherwise affected by, any circumstance or occurrence whatsoever, including without limitation, any of the following (whether or not the Purchase Money Note Guarantor consents thereto or has notice thereof):

- (a) any lack of validity, legality or enforceability of the Purchase Money Note or this Guaranty Agreement;
- (b) any furnishing to the Noteholder of any security for the Guaranteed Obligations;
- (c) any bankruptcy, insolvency, reorganization, composition, adjustment, merger, consolidation, dissolution, liquidation or other like proceeding relating to the Purchase Money Note Guarantor, Debtor or any other person, or any action taken with respect to this Guaranty Agreement by any trustee or receiver, or by any court, in any such proceeding; or
- (d) any defect, limitation or insufficiency in the rights of Debtor or any other person under the Purchase Money Note or in the exercise thereof.

Section 4. Action with Respect to Guaranteed Obligations. Unless otherwise consented to in writing by the Purchase Money Note Guarantor, the Noteholder may not take any of the following actions: (a) amend, modify, alter or supplement the terms of any of the Guaranteed Obligations, including, but not limited to, extending or shortening the time of payment of any of the Guaranteed Obligations or modifying the amount of any of the Guaranteed Obligations; (b) amend, modify, alter or supplement the Purchase Money Note; (c) release any other person liable in any manner for the payment or collection of the Guaranteed Obligations; and (d) exercise, or refrain from exercising, any rights against Debtor or any other person; provided, that any such action taken by the Noteholder with the written consent of the Purchase Money Note

Guarantor shall not discharge the Purchase Money Note Guarantor from its obligations hereunder.

Section 5. Representations and Warranties. The Purchase Money Note Guarantor hereby makes the following representations and warranties to the Noteholder:

(a) The Purchase Money Note Guarantor has the right and power, and has taken all necessary action to authorize the execution and delivery of this Guaranty Agreement and to perform its obligations hereunder in accordance with its terms. This Guaranty Agreement has been duly executed and delivered by a duly authorized officer of the Purchase Money Note Guarantor and this Guaranty Agreement is a legal, valid and binding obligation of the Purchase Money Note Guarantor enforceable against it in accordance with its terms;

(b) The execution, delivery and performance of this Guaranty Agreement does not and will not, by the passage of time, the giving of notice, or both: (i) require any governmental approval that has not been obtained or violate any law relating to the Purchase Money Note Guarantor; (ii) conflict with, result in a breach of or constitute a default under the organizational documents of the Purchase Money Note Guarantor, or any agreement or other instrument to which the Purchase Money Note Guarantor is a party or by which it or any of its respective properties may be bound; or (iii) result in or require the creation or imposition of any lien upon or with respect to any property now owned or hereafter acquired by the Purchase Money Note Guarantor; and

(c) No action, suit, proceeding, governmental investigation or arbitration, at law or in equity, or before or by any governmental authority, is pending, or to the knowledge of the Purchase Money Note Guarantor, threatened against the Purchase Money Note Guarantor or any of its property which will affect the ability of the Purchase Money Note Guarantor to perform its obligations under this Guaranty Agreement.

Section 6. Waiver. Except with respect to the Purchase Money Note Guarantor's consent rights under Section 4, which consent rights shall not be limited, waived or otherwise modified by operation of this Section 6, the Purchase Money Note Guarantor, to the fullest extent permitted by law, hereby waives notice of acceptance hereof or any presentment, demand, protest or notice of any kind, and any other act or thing, or omission or delay to do any other act or thing, which in any manner or to any extent might vary the risk of the Purchase Money Note Guarantor or which otherwise might operate to discharge the Purchase Money Note Guarantor from its obligations hereunder. The Purchase Money Note Guarantor acknowledges that it will receive direct and indirect benefits from the arrangements contemplated herein and that the waivers set forth in this Section 6 are knowingly made in contemplation of such benefits. The Purchase Money Note Guarantor hereby waives any right to revoke this Section 6, and acknowledges that this Section 6 is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

Section 7. Reinstatement of Guaranteed Obligations. This Guaranty Agreement shall in all respects be a continuing and irrevocable guaranty of payment and (a) shall remain in full force and effect until the indefeasible payment in full and in cash of the Guaranteed Obligations, (b) be binding upon the Purchase Money Note Guarantor, its successors and assigns and (c) inure

to the benefit of and be enforceable by the Noteholder and its successors, pledgees, transferees and assigns. If claim is ever made on the Noteholder for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations, and the Noteholder repays all or part of said amount by reason of (y) any judgment, decree or order of any court or administrative body of competent jurisdiction, or (z) any settlement or compromise of any such claim effected by the Noteholder with any such claimant (including, without limitation, Debtor or a trustee in bankruptcy for Debtor), then and in such event the Purchase Money Note Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding on it, notwithstanding any revocation hereof or the cancellation of this Guaranty Agreement, the Purchase Money Note, or any other instrument evidencing any liability of Debtor, and the Purchase Money Note Guarantor shall be and remain liable to the Noteholder for the amounts so repaid or recovered to the same extent as if such amount had never originally been paid to the Noteholder and the Purchase Money Note Guarantor's obligations and liabilities to the Noteholder under this Guaranty Agreement shall be reinstated to such extent and this Guaranty Agreement and any collateral for this Guaranty Agreement shall remain in full force and effect (or shall be reinstated) to such extent.

Section 8. Subrogation; Assignment of Claims. If and to the extent the Purchase Money Note Guarantor makes any payment to the Noteholder pursuant to or in connection with this Guaranty Agreement, the Purchase Money Note Guarantor shall be subrogated to all of the rights of the Noteholder with respect to any claim to which such payment relates to the extent of such payment, and the Noteholder, upon acceptance of any such payment, will be deemed to have assigned to the Purchase Money Note Guarantor any and all claims it may have against the Debtor or others and for which the Noteholder receives payment from the Purchase Money Note Guarantor under this Guaranty Agreement. Upon the request of the Purchase Money Note Guarantor, the Noteholder shall execute written assignments of such claims.

Section 9. Purchase Money Note Guarantor's Right to Control Remedies. If there shall occur an "Event of Default" under the Reimbursement and Security Agreement, the Purchase Money Note Guarantor shall have the right to control any and all remedies available to the Noteholder under the Purchase Money Note, and the Noteholder hereby agrees to take any and all actions available to the Noteholder under the Purchase Money Note as the Purchase Money Note Guarantor shall direct.

Section 10. Information. The Purchase Money Note Guarantor assumes all responsibility for being and keeping itself informed of the financial condition of Debtor, and of all other circumstances bearing upon the risk of nonpayment of any of the Guaranteed Obligations and the nature, scope and extent of the risks that the Purchase Money Note Guarantor assumes and incurs hereunder, and agrees that the Noteholder shall not have any duty whatsoever to advise the Purchase Money Note Guarantor of information regarding such circumstances or risks.

Section 11. Governing Law. THIS GUARANTY AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL LAW, BUT IF FEDERAL LAW DOES NOT PROVIDE A RULE OF DECISION, IT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT

TO THE LAW OF ANOTHER JURISDICTION. Nothing in this Guaranty Agreement shall require any unlawful action or inaction by any party hereto.

Section 12. Records and Accounts. The Noteholder may maintain books and accounts setting forth the amounts paid and payable with respect to the Guaranteed Obligations, and in the case of any dispute relating to any of the outstanding amount, payment or receipt of any of the Guaranteed Obligations or otherwise, the entries in such books and accounts shall constitute prima facie evidence of amounts and other matters set forth therein. The failure of the Noteholder to maintain such books and accounts shall not in any way relieve or discharge the Purchase Money Note Guarantor of any of its obligations hereunder.

Section 13. Waiver of Remedies. No failure on the part of the Noteholder to exercise, and no delay in exercising, any right hereunder or under the Purchase Money Note shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Noteholder provided herein and in the Purchase Money Note are cumulative and are in addition to, and not exclusive of, any other rights or remedies provided by law. The rights of the Noteholder under this Agreement and the Purchase Money Note against any other party thereto are not conditional or contingent on any attempt by the Noteholder to exercise any of its rights under any other document against such party or against any other Person.

Section 14. Termination. This Guaranty Agreement shall remain in full force and effect with respect to the Purchase Money Note Guarantor until the earliest of (a) indefeasible satisfaction and payment in full of the Guaranteed Obligations and the termination or cancellation of the Purchase Money Note in accordance with its terms and (b) two years following the Maturity Date (as defined in the Purchase Money Note) of the Purchase Money Note.

Section 15. Successors and Assigns. Each reference herein to the Noteholder and to the Purchase Money Note Guarantor shall be deemed to include its successors and assigns, in whose favor the provisions of this Guaranty Agreement also shall inure and upon whom this Guaranty Agreement also shall be binding; provided, that the Purchase Money Note Guarantor may not assign or transfer its obligations hereunder to any person without the prior written consent of the Noteholder and any such assignment or other transfer to which the Noteholder has not so consented shall be null and void ab initio.

Section 16. Amendments. No amendment of any provision of this Guaranty Agreement shall be effective unless it is in writing and signed by the Noteholder and the Purchase Money Note Guarantor, and no waiver of any provision of this Guaranty Agreement, and no consent to any departure by the Purchase Money Note Guarantor therefrom, shall be effective unless it is in writing and signed by the Noteholder, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 17. Payments. All payments to be made by the Purchase Money Note Guarantor pursuant to this Guaranty Agreement shall be made in legal currency of the United States of America, in immediately available funds, on the date one business day after demand therefor.

Section 18. Notices. All notices, requests, demands, and other communications required or permitted to be given or delivered under or by reason of the provisions of this Guaranty Agreement shall be in writing and shall be given by certified or registered mail, postage prepaid, or delivered by hand or by nationally recognized air courier service, directed to the address of such person set forth below:

Address for notices or communications to the Purchase Money Note Guarantor:

Director, Division of Finance
c/o Federal Deposit Insurance Corporation
3501 Fairfax Drive (Room VS-4088)
Arlington, Virginia 22206
Attention: Bret D. Edwards
Tel: (703) 562-6101

with a copy to:

Senior Counsel
FDIC Legal Division
Litigation and Resolutions Branch, Receivership Section
Special Issues Unit
3501 Fairfax Drive (Room E-7056)
Arlington, Virginia 22226
Attention: David Gearin
Tel: (703) 562-2430

Address for notices or communications to the Noteholder:

Senior Capital Markets Specialist
c/o Federal Deposit Insurance Corporation
550 17th Street, NW (Room F-7026)
Washington, D.C. 20429-0002
Attention: Timothy A. Kruse
Tel: (202) 898-6832

with a copy to:

Senior Counsel
FDIC Legal Division
Litigation and Resolutions Branch, Receivership Section
Special Issues Unit
3501 Fairfax Drive (Room E-7056)
Arlington, Virginia 22226
Attention: David Gearin
Tel: (703) 562-2430

Section 19. Severability. Any provision of this Guaranty Agreement which is prohibited

or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable in such jurisdiction only as to a particular person or entity or persons or entities and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular person or entity or persons or entities and/or under such particular circumstance or circumstances, as the case may be; (ii) without limitation of clause (i), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any of the remaining provisions of this Guaranty Agreement. Without limitation of the preceding sentence, it is the intent of the parties to this Guaranty Agreement that in the event that in any court proceeding, such court determines that any provision of this Guaranty Agreement is prohibited or unenforceable in any jurisdiction (because of the duration or scope (geographic or otherwise) of such provision, or for any other reason) such court shall have the power to, and shall, (x) modify such provision (including without limitation, to the extent applicable, by limiting the duration or scope of such provision and/or the persons or entities against whom, and/or the circumstances under which, such provision shall be effective in such jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. Nothing in this Section 19 is intended to, or shall, limit (1) the ability of any party to this Guaranty Agreement to appeal any court ruling or the effect of any favorable ruling on appeal or (2) the intended effect of Section 11.

Section 20. Headings. Section titles or captions contained in this Guaranty Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Guaranty Agreement or the intent of any provisions hereof. All Section and paragraph references contained herein shall refer to Sections and paragraphs in this Agreement unless otherwise specified.

Section 21. Limitation of Liability. Neither the Noteholder, nor any affiliate, officer, director, employee, attorney, or agent of the Noteholder, shall have any liability with respect to, and the Purchase Money Note Guarantor hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by the Purchase Money Note Guarantor in connection with, arising out of, or in any way related to, this Guaranty Agreement or any of the transactions contemplated hereby. The Purchase Money Note Guarantor hereby waives, releases, and agrees not to sue the Noteholder or any of its affiliates, officers, directors, employees, attorneys, or agents for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Guaranty Agreement or any of the transactions contemplated hereby.


Section 22. Waiver of Jury Trial. EACH OF THE PURCHASE MONEY NOTE GUARANTOR AND THE NOTEHOLDER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS GUARANTY AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

Section 23. Counterparts; Facsimile Signature. This Guaranty Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same agreement. This Guaranty Agreement and any amendments hereto, to the extent signed and delivered by facsimile or other electronic means, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No signatory to this Guaranty Agreement shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation or enforceability of a contract and each such person or entity forever waives any such defense.


[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to legally bound, have caused this Guaranty Agreement to be duly executed

**FEDERAL DEPOSIT INSURANCE CORPORATION,
in its corporate capacity**

By:  _____
Name:
Title:

**FEDERAL DEPOSIT INSURANCE CORPORATION,
as Receiver for Franklin Bank, S.S.B.**

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