EXECUTION COPY

# LOAN CONTRIBUTION AND SALE AGREEMENT

**BY AND BETWEEN**

**THE FEDERAL DEPOSIT INSURANCE CORPORATION as RECEIVER for FRANKLIN BANK, S.S.B**

**AND**

**FRANKLIN VENTURE, LLC**

Dated as of September 30, 2009

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Exhibits

# LOAN CONTRIBUTION AND SALE AGREEMENT

THIS LOAN CONTRIBUTION AND SALE AGREEMENT (as the same shall be amended or supplemented, this "**Agreement**") is made and entered into as of the 30th day of September, 2009, by and between the FEDERAL DEPOSIT INSURANCE CORPORATION (in any capacity, "**FDIC**") AS RECEIVER FOR FRANKLIN BANK, S.S.B (the "**Initial Member**"), and FRANKLIN VENTURE, LLC, a Delaware limited liability company (the "**Company**").

## RECITALS

WHEREAS, on November 7, 2008, the FDIC was appointed receiver for Franklin Bank, S.S.B. (the "**Failed Bank**"); and

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

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

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

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

WHEREAS, the Initial Member and the Company desire that, in consideration of the transfer of the Loans to the Company to the extent such transfer constitutes a sale, the Company will execute and deliver to the Initial Member the Company's Purchase Money Note dated as of the date hereof in the principal face amount of $727,770,000 (the "**Purchase Money Note**"), guaranteed by the FDIC pursuant to that certain Guaranty Agreement dated as of the date hereof between the FDIC in its corporate capacity and the Receiver (the "**Purchase Money Note Guaranty**"); and

WHEREAS, the Company will be obligated to reimburse the FDIC for any guaranty payments made pursuant to the Purchase Money Note Guaranty, and such reimbursement obligation will be secured by the assets of the Company, all pursuant to the Reimbursement and Security Agreement dated as of the date hereof between the Company and the FDIC (the "**Reimbursement and Security Agreement**"); and

WHEREAS, pursuant to the Limited Liability Company Interest Sale and Assignment Agreement dated as of the date hereof (the "**LLC Interest Sale Agreement**") between the Initial Member and RCS Franklin Venture LLC, a Delaware limited liability company (the

"**LLC Interest Transferee**"), the Initial Member has agreed to sell and transfer 50% of the LLC Interest to the LLC Interest Transferee for a purchase price of $64,215,000 (the "**Bid Amount**,"); and

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

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

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

## ARTICLE I
## Definitions and Construction

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

"**Account Control Agreement(s)**" shall have the meaning given in the Custodial and Paying Agency Agreement.

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

"**Acquired Collateral**" shall have the meaning given in the LLC Operating Agreement.

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

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

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

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

"**Affidavit and Assignment of Claim**" shall mean an Affidavit and Assignment of Claim in the form of Exhibit C to this Agreement.

"**Affiliate**" shall mean, with respect to any specified Person, (i) any other Person directly or indirectly controlling or controlled by or under common control with such specified Person, (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities, voting equity interests, or beneficial interests of the Person specified, (iii) any officer, director, general partner, managing member, trustee, employee or promoter of the Person specified or any Immediate Family Member of such officer, director, partner, member, trustee, employee or promoter, (iv) any corporation, partnership, limited liability company or trust for which any Person referred to in clause (ii) or (iii) acts in that capacity, or (v) any Person who is an officer, director, general partner, managing member, trustee or holder of ten percent (10%) or more of the outstanding voting securities, voting equity interests or beneficial interests of any Person described in clauses (i) through (iv); provided, however, that for purposes of this Agreement, neither the Initial Member nor the Secured Party shall be deemed to be an Affiliate of the Company or of any Affiliate of the Company. For purposes of this definition, the term "**control**" (including the phrases "**controlled by**" and "**under common control with**") when used with respect to any specified Person shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise.

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

"**Ancillary Documents**" shall mean the LLC Operating Agreement, the Servicing Agreement (including the Electronic Tracking Agreement attached as an exhibit thereto), the Custodial and Paying Agency Agreement, one or more Account Control Agreements, the LLC Interest Sale Agreement (and the Guaranty required to be delivered thereby), the Purchase Money Note and the Reimbursement and Security Agreement, in each case once executed and delivered, and any and all other agreements and instruments executed and delivered in connection with the Closing.

"**Assignment and Lost Instrument Affidavit**" shall mean an Assignment and Lost Instrument Affidavit in the form of Exhibit D to this Agreement.

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

"**Bid**" shall have the meaning provided in the LLC Interest Sale Agreement.

"**Bid Amount**" shall have the meaning given in the recitals.

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

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

"**Closing**" shall mean the consummation of the transactions contemplated in the LLC Interest Sale Agreement.

"**Closing Date**" shall mean the date on which the Closing occurs.

"**Collateral**" shall mean any and all real or personal property, whether tangible or intangible, securing or pledged to secure a Loan, including any account, equipment, guarantee or contract right, or other interest that is the subject of any Collateral Document and, as the context requires, includes Acquired Collateral whether or not expressly so specified.

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

"**Collection Account**" shall have the meaning given in the Custodial and Paying Agency Agreement.

"**Company**" shall have the meaning given in the preamble.

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

"**Custodial and Paying Agency Agreement**" shall mean the Custodial and Paying Agency Agreement dated as of the date hereof between the Company, the Secured Party and the Custodian.

"**Custodial Documents**" shall have the meaning given in the Custodial and Paying Agency Agreement.

"**Custodian**" shall have the meaning given in the Custodial and Paying Agency Agreement.

"**Cut-Off Date**" shall mean July 31, 2009.

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

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

"**Electronic Tracking Agreement**" shall have the meaning given in the Custodial and Paying Agency Agreement.

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

"**Escrow Account**" shall mean an account maintained by the Initial Member or its agent for the deposit of Escrow Payments received in respect of one or more Loans.

"**Escrow Balance**" shall mean, with respect to any Loan, the positive escrow balance (if any) in the Escrow Account with respect to that Loan, as reflected on the Loan Schedule.

"**Escrow Payments**" shall mean the amounts constituting ground rents, taxes, assessments, water rates, common charges in condominiums and planned unit developments, mortgage insurance premiums, fire and hazard insurance premiums and other payments which have been escrowed by the Borrower with the Initial Member or its servicer or other agent pursuant to any Loan.

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

"**Excess Principal**" shall have the meaning given in Section 2.3(b).

"**Existing Servicer**" shall mean the Person (including the Receiver) acting as servicer for any Loan as of the Cut-Off Date; provided that, as to any Loan that is primarily being serviced by a subservicer for such Person as of the Cut-Off Date, such subservicer shall be deemed to be the Existing Servicer of such Loan solely for purposes of determining which Loans constitute a Group of Loans.

"**Failed Bank**" shall have the meaning given in the recitals.

"**FDIC**" shall mean the Federal Deposit Insurance Corporation, in any capacity.

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

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

"**GAAP**" shall mean United States generally accepted accounting principles as in effect from time to time.

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

"**Group of Loans**" shall mean all Loans that, as of the Cut-Off Date, are serviced by the same Existing Servicer.

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

"**Guaranty**" shall mean the Guaranty required to be delivered to the Initial Member pursuant to the LLC Interest Sale Agreement.

"**Guidelines**" shall have the meaning given in the LLC Operating Agreement.

"**HOEPA**" shall have the meaning given in Section 6.1(g).

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

"**Initial Member**" shall have the meaning given in the preamble.

"**Interim Servicing Period**" shall mean, with respect to a given Loan or Group of Loans, the period from but excluding the Cut-Off Date to and including the Servicing Transfer Date for such Loan or Group of Loans.

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

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

"**Limited Power of Attorney**" shall mean the Limited Power of Attorney in the form of Exhibit E to this Agreement.

"**LLC Interest**" shall have the meaning given in the recitals.

"**LLC Interest Sale Agreement**" shall have the meaning given in the recitals.

"**LLC Interest Transferee**" shall have the meaning given in the recitals.

"**LLC Operating Agreement**" shall have mean the Amended and Restated Limited Liability Operating Company Agreement dated as of the date hereof among the Initial Member, the LLC Interest Transferee and the Company.

"**Loan**" shall mean any loan or Participated Loan listed on the Loan Schedule, and any loan into which any listed loan or Participated Loan is refinanced or modified, and includes with respect to each such loan or Participated Loan: (i) any obligation evidenced by a Note; (ii) all rights, powers or Liens of the Initial Member or the Failed Bank in or under the Collateral Documents; (iii) any Contract for Deed and the real property which is subject to any such Contract for Deed; (iv) any lease and the related leased property; (v) all rights to causes of action, lawsuits, judgments, claims and demands of any nature available to or being pursued by or for the benefit of the Initial Member with respect to the Loans, the Collateral or the ownership, use, function, value of or other rights pertaining thereto, whether arising by way of counterclaim or otherwise, other than any claims retained by the Initial Member pursuant to Section 2.6; and (vi) all guaranties, warranties, indemnities and similar rights in favor of the Initial Member with respect to any of the Loans.

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

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

"**Loan Proceeds**" shall have the meaning given in the LLC Operating Agreement.

"**Loan Schedule**" shall have the meaning given in the recitals.

"**Loan Schedule Balance**" shall mean, with respect to any Loan, the unpaid principal balance of the Loan as stated on the Loan Schedule.

"**Loan Value**" shall have the meaning given in the recitals.

"**Loan Value Schedule**" shall have the meaning given in the recitals.

"**Management Fee**" shall have the meaning given in the LLC Operating Agreement.

"**Managing Member**" shall have the meaning given in the LLC Operating Agreement.

"**MERS®**" shall mean Mortgage Electronic Registration Systems, Incorporated, or any successor thereto.

"**MERS® System**" shall have the meaning given in the LLC Operating Agreement.

"**MERS® Registered Mortgages**" shall have the meaning given in Section 3.1(c).

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

"**Mortgage**" shall mean the mortgage, deed of trust or other instrument, including any amendments or modifications thereto, creating a first or junior lien on or ownership interest in a Mortgaged Property.

"**Mortgage Assignment**" shall mean, with respect to any Mortgage, an assignment of the Mortgage, notice of transfer or equivalent instrument in recordable form, sufficient under the applicable Law of the jurisdiction wherein the related Mortgaged Property is located to reflect the assignment and pledge of the Mortgage.

"**Mortgaged Property**" shall mean any underlying real property constituting part of the Collateral for any Loan, whether held in fee simple estate or subject to a ground lease or otherwise, and whether or not improved by buildings or facilities, and any personal property, fixtures, leases and other property or rights pertaining thereto.

"**Note**" shall mean each note or promissory note, lost instrument affidavit, loan agreement, shared credit or Participated Loan agreement, intercreditor agreement, reimbursement agreement, any other evidence of indebtedness of any kind, or any other agreement, document or instrument evidencing a Loan, and all Modifications to the foregoing.

"**Obligations**" shall mean all obligations and commitments of the Initial Member relating to a Loan and arising or due or payable after the Cut-Off Date under and in accordance with any of the related Notes, Collateral Documents, Loan Documents or Related Agreements.

"**Order**" shall have the meaning given in Section 6.1.

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

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

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

"**Principal Deficiency**" shall have the meaning given in Section 2.3(b).

"**Purchase Money Note**" shall have the meaning given in the recitals.

"**Purchase Money Note Guaranty**" shall have the meaning given in the recitals.

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

"**Reimbursement and Security Agreement**" shall have the meaning given in the recitals.

"**Related Agreement**" shall mean (i) any agreement, document or instrument (other than the Note and Collateral Documents) relating to or evidencing any obligation to pay or securing any Loan (including any equipment lease, letter of credit, bankers' acceptance, draft, system confirmation of transaction, loan history, affidavit, general collection information, and correspondence and comments relating to any obligation), (ii) any real property or rights in or to any real property (including leases, tenancies, concessions, licenses or other rights of occupancy or use and security deposits related thereto) related to any Loan and (iii) any collection, contingency fee, and tax and other service agreements that are specific to the Loans (or any of them) and that are assignable. The term "**Related Agreement**" does not include any loan servicing agreement that exists between the Initial Member or the Failed Bank and any other Person, any agreement terminating such servicing agreement or any agreement by the Receiver to make the payments described in Section 2.2(b).

"**Released Parties**" shall have the meaning given in Section 4.14(b).

"**Repurchase Loan Value**" means, with respect to any Loan, the sum of (i) the product of the Loan Value of such Loan *multiplied by* 2 and (ii) the product of (x) the original principal face amount of the Purchase Money Note and (y) the quotient (expressed as a decimal) of the Loan Value of such Loan *divided by* the Bid Amount.

"**Repurchase Percentage**" shall mean, with respect to any Loan, (i) the quotient (expressed as a decimal) of the Repurchase Loan Value for such Loan divided by the Loan Schedule Balance of such Loan.

"**Repurchase Price**" shall mean, with respect to any Loan, an amount equal to (i) the Repurchase Percentage multiplied by the unpaid principal balance of the Loan as of the date of the repurchase *plus* (ii) unreimbursed Servicing Expenses that have been advanced by the Company with respect to such Loan (excluding any expenses described in Section 12.9 of the LLC Operating Agreement), as of the date of the repurchase, *minus* (iii) the amount of any positive Escrow Balance with respect to the Loan as of the date of the repurchase that is not transferred to the Initial Member at the time of the repurchase.

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

"**Secured Party**" shall mean the FDIC as secured party under the Reimbursement and Security Agreement.

"**Servicer**" shall have the meaning given in the LLC Operating Agreement.

"**Servicing Agreement**" shall have the meaning given in the LLC Operating Agreement.

"**Servicing Expenses**" shall have the meaning given in the LLC Operating Agreement.

"**Servicing Transfer Date**" shall mean, with respect to a given Loan, the date on which the transfer of the Loan servicing records for such Loan to the Servicer's system of record is completed and the Servicer begins to service such Loan, determined in accordance with Section 3.3.

"**TILA**" shall mean the Truth in Lending Act, as amended, and all rules and regulations promulgated thereunder.

"**Transfer Documents**" shall mean the endorsements and allonges to Notes, Assignment and Lost Instrument Affidavits (if applicable), Mortgage Assignments, deeds and other documents of assignment, conveyance or transfer required under any applicable Law to evidence the transfer to the Company of the Loans, the Collateral and the Collateral Documents and the Secured Party's rights with respect to the Loans and the Collateral.

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

"**Uniform Commercial Code**" shall mean the Uniform Commercial Code as in effect in any applicable jurisdiction, as amended from time to time.

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

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

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

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

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

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

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

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

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

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

## ARTICLE II
## Contribution and Sale of Loans

Section 2.1 Terms and Conditions. The Initial Member hereby conveys to the Company, and the Company hereby acquires and accepts from the Initial Member, without recourse, by way of a sale to the extent of the initial principal amount of the Purchase Money Note and otherwise as a capital contribution, all right, title and interest of the Initial Member in and to:

(a) the Loans (including all Notes, the other Loan Documents and Related Agreements), including all future advances made with respect thereto, effective as of the

Cut-Off Date, on a servicing-released basis (subject to the provisions of Section 3.3), and all rights in the Collateral pursuant to the Collateral Documents;

(b) all amounts payable to the Initial Member under the Loan Documents and all obligations owed to the Initial Member in connection with the Loans and the Loan Documents after the Cut-Off Date;

(c) all claims, suits, causes of action and any other right of the Initial Member, whether known or unknown, against a Borrower, any Guarantor or other obligor or any of their respective Affiliates, agents, representatives, contractors, advisors or any other Person arising under or in connection with the Loans or the Loan Documents or that is in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity arising under or in connection with the Loan Documents or the transactions related thereto or contemplated thereby, excluding, however, any and all claims, suits, causes or action and other rights retained by the Initial Member under Section 2.6;

(d) all cash, securities and other property received or applied by or for the account of the Initial Member under the Loans after the Cut-Off Date, including all distributions received through redemption, consummation of a plan of reorganization, restructuring, liquidation or otherwise of a Borrower, Guarantor or other obligor under or with respect to the Loans, and any securities, interest, dividends or other property that may be distributed or collected with respect to any of the foregoing; and

(e) any and all distributions on, or proceeds or products of or with respect to, any of the foregoing, and the rights to receive such proceeds thereof.

The Company hereby assumes and agrees to perform and pay all of the Obligations of the Initial Member under and with respect to the Loans. The Initial Member and the Company agree that the conveyance contemplated by this Section 2.1 and the other provisions of this Agreement is intended to be an absolute conveyance and transfer of ownership of the Loans in part by capital contribution and in part by sale.

Section 2.2 Allocation of Payments.

(a) Any and all Loan Proceeds received at any time on or before the Cut-Off Date (disregarding for this purpose the reference in the definition of such term to "after the Cut-Off Date") shall belong to the Initial Member. Any and all Loan Proceeds received at any time after the Cut-Off Date shall belong to the Company.

(b) The Receiver shall be responsible for reimbursing each third party Existing Servicer for any advances made by such Existing Servicer to fund Servicing Expenses with respect to a Loan, as well as for any advances of principal or interest with respect to a Loan made by such Existing Servicer. The Receiver shall also be responsible for paying any fee owing to an Existing Servicer in connection with the termination of any servicing agreement with such Existing Servicer. The Company shall not be liable for reimbursement of any such advances by,

or for any termination fee payable to, an Existing Servicer (including the Receiver in its capacity as an Existing Servicer).

Section 2.3 Adjustments.

(a) The Managing Member shall, and shall cause the Servicer to, cooperate with the Initial Member in reconciling the amounts of advances made with respect to each Loan prior to the Servicing Transfer Date for such Loan, whether for principal and interest during any period in which such Loans were serviced on a Scheduled/Scheduled basis, to fund Servicing Expenses, or otherwise.

(b) On or prior to October 28, 2009 (or on such other date as the Initial Member and the Company shall agree), the Initial Member shall provide the Company with a statement setting forth, for each Loan, the Adjusted Unpaid Principal Balance. The statement shall be accompanied by an explanation of the reasons for any adjustment to any Loan Schedule Balance.

(c) If the Adjusted Unpaid Principal Balance of any Loan exceeds the Loan Schedule Balance of such Loan (such excess, the "**Excess Principal**"), the LLC Interest Transferee shall be liable to the Initial Member for an amount equal to the Adjustment Percentage multiplied by the Excess Principal. If the Loan Schedule Balance of any Loan exceeds the Adjusted Unpaid Principal Balance of any Loan (such deficiency, the "**Principal Deficiency**"), the Initial Member shall be liable to the LLC Interest Transferee for an amount equal to the Adjustment Percentage multiplied by the Principal Deficiency. No adjustment will be made for any miscalculation of interest on any Loan.

(d) The aggregate amount owed by the LLC Interest Transferee to the Initial Member pursuant to Section 2.3(b) shall be subtracted from the aggregate amount owed to the LLC Interest Transferee by the Initial Member pursuant to Section 2.3(b). If the resulting amount is a positive number, the Initial Member shall pay such amount to the LLC Interest Transferee, and if the resulting amount is a negative number, the LLC Interest Transferee shall pay the absolute value of such amount to the Initial Member. In addition, an amount equal to the positive balance of any Borrower Escrow Accounts with respect to a Group of Loans as of the Servicing Transfer Date for such Group of Loans shall be remitted to the Servicer (and shall not be considered to constitute Loan Proceeds under the LLC Operating Agreement). Any monies due to the LLC Interest Transferee or the Initial Member pursuant to this Section 2.3 with respect to a given Loan shall be paid on the Servicing Transfer Date for such Loan. The Company shall adjust its records to reflect the Adjusted Unpaid Principal Balances with respect to the Loans.

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

Section 2.5 Interest Conveyed. In the event a foreclosure occurs after the Cut-Off Date or occurred on or before the Cut-Off Date, but the Redemption Period had not expired on or before the Cut-Off Date, the Initial Member shall convey to the Company the Deficiency Balance, if any, together with the net proceeds, if any, of such foreclosure sale. If the Initial

Member was the purchaser at such foreclosure sale, the Initial Member shall convey to the Company the Deficiency Balance, if any, together with a special warranty deed to the property purchased at such foreclosure sale. The Company acknowledges and agrees that the Company shall not acquire any interest in or to any such property which was foreclosed by the Initial Member or any of its predecessors-in-interest on or before the Cut-Off Date and for which the Redemption Period, if any, had expired on or before the Cut-Off Date.

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

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

## ARTICLE III
## Transfer of Loans, Collateral Documents and Servicing

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

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

(b) The Initial Member shall deliver to the Custodian the Notes and other Custodial Documents and Collateral Documents for a given Loan in accordance with the Custodial and Paying Agency Agreement, and shall, on or within a reasonable period of time after the Servicing Transfer Date for such Loan, deliver the Loan Files for such Loan to either the Company or the Servicer (as directed by the Company).

(c) For any of the mortgages securing the Loans that are registered on the MERS System (the "**MERS Registered Mortgages**"), the Company shall cause the MERS Registered Mortgages to be transferred on the MERS System on or within a reasonable time after the Servicing Transfer Date for the applicable Loan. To the extent the cost of transferring the MERS Registered Mortgages is a cost imposed by MERS on the transferor of a loan, that cost shall be borne by the Initial Member. Otherwise, the costs imposed by MERS with respect to the transfer of the MERS Registered Mortgages shall be borne by the Company and all such costs shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement, provided that any such expenses with respect to MERS Registered Mortgage as to which the Company has not initiated the transfer on the MERS System (in cooperation with the applicable Existing Servicer during the period prior to the applicable Servicing Transfer Date) within six months of the Closing Date shall not constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement. The Company shall provide a report to the Secured Party and the Initial Member on the progress and status of the transfers on the MERS System of the MERS Registered Mortgages on the first day of the seventh month following the Closing Date and again on the first anniversary of the Closing Date to the Secured Party and the Initial Member

(d) (i) The Company, at the Company's expense, will prepare for execution by or on behalf of the Initial Member, within the period specified in Section 3.1(d)(v), all Transfer Documents not delivered by the Initial Member to the Company on the Closing Date. Reasonable and customary expenses paid to third parties actually incurred by the Company in complying with the obligations set forth in the preceding sentence shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement, provided that any such expenses with respect to a Transfer Document that is not properly prepared and submitted for recordation or filing within six months of the Closing Date shall not constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement. Such six-month period for the preparation and submission of a Transfer Document for recordation shall be extended if the delay is due to a matter noted as an "Exception" on the "Collateral Certificate" (as such terms are defined in the Custodial and Paying Agency Agreement), provided that the Managing Member is working diligently to locate the missing information or otherwise take such steps as may be necessary or appropriate to complete and submit the Transfer Document(s). All Transfer Documents prepared by the Company shall be in appropriate form suitable for filing or recording (if applicable) in the relevant jurisdiction and otherwise subject to the limitations set forth herein, and the Company shall be solely responsible for the preparation, contents and form of such documents. The Company hereby releases the Initial Member from any loss or damage incurred by the Company due to the contents or form of any documents prepared by the Company pursuant to this Section 3.1(d) (the form of which was not provided by the Initial Member) and the LLC Interest Transferee shall indemnify and hold harmless the Initial Member from and against any claim, action or cause of action asserted by any Person, including the Company,

arising out of the contents or form of any Transfer Document (the form of which was not provided by the Initial Member), including any claim relating to the adequacy or inadequacy of any such document or instrument for the purposes thereof, and the use (or purported use) by the Company of the Limited Power of Attorney in any way not expressly permitted by its terms.

(ii) On or within a reasonable time following the Closing Date, the Initial Member may, in the Initial Member's sole discretion, elect to grant a Limited Power of Attorney to selected employees of the Company for the purposes of executing the Transfer Documents on behalf of the Initial Member.

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

Pay to the order of
Franklin Venture, LLC
Without Recourse

Federal Deposit Insurance Corporation as Receiver
for Franklin Bank, S.S.B.

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

All documents of assignment, conveyance or transfer shall contain the following sentence: "This assignment is made without recourse and without representation or warranty, express, implied or by operation of law of any kind or nature whatsoever, by the Federal Deposit Insurance Corporation in its corporate capacity or as Receiver for Franklin Bank, S.S.B."

(iv) The Company will, within the period specified in Section 3.1(d)(v), set up and record into the MERS System, with MERS as nominee for the Company, those mortgages securing Loans that are not MERS Registered Mortgages but are eligible to be so recorded. Reasonable and customary expenses paid to third parties actually incurred by the Company in complying with the obligations set forth in the preceding sentence shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement, provided that any such expenses with respect to a mortgage that is not properly prepared and submitted for recording into the MERS System within six months of the Closing Date shall not constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement. Such six-month period for the preparation and submission of a mortgage for such recordation shall be extended if the delay is due to a matter noted as an "Exception" on the "Collateral Certificate" (as such terms are defined in the Custodial and Paying Agency Agreement), provided that the Managing Member is working diligently to locate the missing information or otherwise take such steps as may be necessary or appropriate to complete and submit the relevant documentation.

(v) The Company will complete all Transfer Documents, and record or file them if and as appropriate in accordance with Section 3.2, within six months after the Closing

Date to the extent reasonably possible. The Company shall provide a report to the Secured Party and the Initial Member on the progress and status of the preparation, execution, recording and/or filing and delivery of the original documents to the Custodian as required by this Agreement promptly following a request therefor from the Secured Party or the Initial Member and in any event upon the first day of the seventh month following the Closing Date and again on the first anniversary of the Closing Date.

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

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

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

Section 3.2 Recordation of Documents.

(a) With respect to all recordable Transfer Documents prepared by the Company pursuant to Section 3.1(d), the Company shall promptly submit all such Transfer Documents for recordation or filing in the appropriate land, chattel, Uniform Commercial Code, and other records of the appropriate county, state or other jurisdictions (including any Foreign Jurisdiction) to effect the transfer of the Loans to the Company (or into the MERS System, as applicable). All Transfer Documents shall provide that all recorded documents be returned to the Custodian at its notice address set forth in the Custodial and Paying Agency Agreement. The Company diligently and promptly shall follow up with respect to any non-conforming Transfer Documents,

gaps in the chain of title and the like to ensure that each and all of the Transfer Documents are properly filed or recorded as appropriate.

(b) Reasonable and customary expenses paid to third parties actually incurred by the Company in complying with the obligations set forth in this Section 3.2 shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement, provided that any such expenses with respect to a Transfer Document that is not properly prepared and submitted for recordation or filing within six months of the Closing Date shall not constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement. Such six-month period for the preparation and submission of a Transfer Document for recordation shall be extended if the delay is due to a matter noted as an "Exception" on the "Collateral Certificate" (as such terms are defined in the Custodial and Paying Agency Agreement), provided that the Managing Member is working diligently to locate the missing information or otherwise take such steps as may be necessary or appropriate to complete and submit the Transfer Document(s). The Initial Member shall, if such is affirmatively required under the applicable Law of a relevant Foreign Jurisdiction, take such actions as are necessary in such Foreign Jurisdiction to effect the purposes of this Article III.

Section 3.3 Transfer of Servicing.

(a) Loan servicing will be transferred to the Managing Member promptly following the Closing Date upon one or more Servicing Transfer Dates that are established by the applicable Existing Servicer, the Initial Member and the Managing Member under mutually agreeable time frames and procedures, taking into account the size and servicing platforms associated with the various Groups of Loans. The Initial Member and the Managing Member shall cooperate in their efforts to cause all Servicing Transfer Dates to occur prior to the 120th$^{th}$ calendar day after the Closing Date to the extent reasonably feasible, unless a later date is consented to by the Initial Member.

(b) To provide for the orderly transfer of the servicing to the Managing Member, the Initial Member will maintain the agreements with the Existing Servicers to provide servicing of each Loan on the Company's behalf from the Cut-Off Date through the Servicing Transfer Date for such Loan, including provisions requiring that the Existing Servicers continue to: (i) receive payments and post them to the system of record, (ii) maintain records reflecting payments received and (iii) make advances to fund Servicing Expenses. The foregoing shall not limit the actions that the Initial Member may take with respect to any Loan prior the Servicing Transfer Date for such Loan. Subject to the provisions of Section 4.5(a) and Section 4.6, the Initial Member's performance of any interim servicing functions with respect to a Group of Loans shall cease on the Servicing Transfer Date for such Group of Loans. Notwithstanding the foregoing,

(i) for all periods ending prior to November 1, 2009, the Initial Member (x) shall aggregate all servicing reports from the Existing Servicers as to which the Servicing Transfer Date has not occurred, including the amount of payments and other collections received and the amount of advances to fund Servicing Expenses made but not reimbursed by the applicable Borrower or Guarantor, and provide an aggregate report to the Company

and (y) receive remittances of Loan Proceeds from such Existing Servicers and remit them to the Collection Account in accordance with Section 3.3(d); and

(ii) for all periods commencing on or after November 1, 2009, the Initial Member shall direct Existing Servicers as to which the Servicing Transfer Date has not occurred (x) to provide servicing reports to the Managing Member, which shall aggregate the information therein in the reports it is required to deliver pursuant to the LLC Operating Agreement and (y) remit Loan Proceeds directly to the Collection Account, in each case until the applicable Servicing Transfer Date.

For purposes of the preceding sentence, if an Existing Servicer fails to report to the Initial Member or the Managing Member, as applicable, on a timely basis to permit the inclusion of the data from such Existing Servicer in the aggregate report by the Initial Member to the Company or any aggregate report by the Company pursuant to the LLC Operating Agreement, such fact shall be disclosed in such aggregate report and the omitted data shall be included in the applicable aggregate report for the following reporting period.

(c) In consideration of the services provided by the Initial Member pursuant to this Section 3.3, the Company shall pay the Management Fee to the Initial Member for all periods ending prior to November 1, 2009. For all periods commencing on or after November 1, 2009, the Management Fee shall be payable to the Managing Member, all in accordance with Section 12.5 of the LLC Operating Agreement. For the avoidance of doubt, any such fee payable prior to the last Servicing Transfer Date shall be net of any servicing fees payable to Existing Servicers and offset by them against Loan Proceeds.

(d) For all periods prior to November 1, 2009, the Receiver shall cause Loan Proceeds with respect to any Group of Loans for which the Servicing Transfer Date has not occurred (net of any offset by any Existing Servicer of servicing fees payable to them) to be remitted to the Collection Account on a monthly basis (commencing with October 2009) not later than two Business Days prior to the Distribution Date (as defined in the Custodial and Paying Agency Agreement) for such month. The Initial Member shall be (and hereby is) authorized by the Company to (i) use Loan Proceeds with respect to any Group of Loans for which the Servicing Transfer Date has not occurred, prior to the time Loan Proceeds are required to be remitted to the Collection Account, for purposes permitted or required under the terms of the agreements with the Existing Servicers or otherwise in accordance with the LLC Operating Agreement.

(e) The Company shall, within a reasonable time after the Closing Date, arrange for the transfer from the Existing Servicers of tax service and flood certification contracts relating to the Loans, or the procurement of replacements for such contracts. Reasonable and customary expenses paid to third parties actually incurred by the Company in complying with the obligations set forth in the preceding sentence (but not ongoing charges in connection with the performance of such contracts) shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement.

(f) The Company hereby ratifies any and all actions taken by the Initial Member in performance of servicing activities and functions prior to the Closing Date, including any oversight of the Existing Servicers and the performance by the Initial Member of its role as an Existing Servicer. The Company acknowledges and agrees that the Initial Member's agreement to perform interim servicing functions for the Company pursuant to this Section 3.3 is an accommodation to the Company, and that the Initial Member shall not have any liability for any acts or omissions taken in connection therewith (other than to correct calculation, allocation or distribution errors). Except for amounts for which the Company may be reimbursed as provided in the LLC Operating Agreement and the Custodial and Paying Agency Agreement, the Company hereby releases and forever discharges the Initial Member, the FDIC, the Failed Bank and its predecessors-in-interest and all of their respective officers, directors, employees, agents, attorneys, contractors and representatives and all of their respective successors, assigns and Affiliates, from any and all claims (including any counterclaim or defensive claim), demands, causes of action, judgments or legal proceedings and remedies of whatever kind or nature that the Company had, has or might have in the future, whether known or unknown, which are related in any manner whatsoever to the servicing of the Loans (other than gross negligence or willful misconduct) at any time prior to the last Servicing Transfer Date.

## ARTICLE IV
## Covenants, Duties and Obligations of the Company

Section 4.1 Servicing of Loans. From and after the Servicing Transfer Date with respect to a Group of Loans, the Company shall service such Loans in compliance with the LLC Operating Agreement.

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

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

Any out-of-pocket fees due to any insurer or guarantor incurred by the Company to fulfill its obligations set forth in the preceding sentence shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement.

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

Section 4.5 Loans in Litigation.

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

(b) If the Company is unable, as a matter of applicable Law or due to delays in court procedures and practices outside the control of the Company, to cause the Initial Member and the Failed Bank to be replaced by the Company as party-in-interest in any pending litigation as

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

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

(or investigate) the same or pursue counterclaims or cross-claims against other parties, (y) awards or judgments assessed against the Company with respect to any such claim or action, or (z) the costs of any settlement of such claim or action, shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement. If, as a result of any claim or action subject to the provisions of this Section 4.5(c):

(i) there is entered against the Company either (1) a final, non-appealable monetary judgment holding the Company liable for damages in excess of an amount equal to the Repurchase Loan Value of the Loan relating to or that is the subject of such claim (such Loan, the "**Affected Loan**"), and such excess amount, the "**Excess Damage Liability**"), or (2) a final monetary judgment that is appealable, which the Initial Member agrees in writing need not be appealed further by the Company, and that imposes an Excess Damage Liability on the Company, or

(ii) the Company enters into a final settlement agreement with the consent of the Initial Member (such consent not to be unreasonably withheld), pursuant to which the Company is obligated to pay an Excess Damage Liability,

then, in any such case, the Initial Member shall reimburse the Company for the Excess Damage Liability and the Initial Member shall be entitled, at its option, to repurchase the Affected Loan at its Repurchase Price in accordance with the repurchase provisions of Article VI; provided, however, that the Initial Member shall not be liable pursuant to this sentence for any liability imposed upon the Company that arises as a result of any act or omission of the Company.

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

Section 4.6 Loans in Bankruptcy. In accordance with Bankruptcy Rules 3001 and 3002, the Company agrees to take all actions necessary to file, prior to the applicable Servicing Transfer Date, (i) proofs of claims in pending bankruptcy cases involving any Loan for which the Initial Member or the Failed Bank has not already filed a proof of claim, and (ii) all documents required by Rule 3001 of the Federal Rules of Bankruptcy Procedure and to take all such similar actions as may be required in any relevant jurisdiction in any pending bankruptcy or insolvency case or proceeding in such jurisdiction involving any Loan in order to evidence and assert the Company's rights. The Company shall prepare and provide to the Initial Member, on or prior to the applicable Servicing Transfer Date, an Affidavit and Assignment of Claim or any similar forms as may be required in any relevant Foreign Jurisdiction and shall be acceptable to the Initial Member, for each Loan where a Borrower under such Loan is in bankruptcy as of the Closing Date. The Company hereby releases the Initial Member and the Failed Bank from any claim, demand, suit or cause of action the Company may have as a result of any action or

inaction on the part of the Initial Member or the Failed Bank with respect to such Loan. In the event the Company fails, prior to the applicable Servicing Transfer Date, to take the actions required by this Section 4.6, (1) the Initial Member may, but shall have no obligation to, file proofs of claim or other documents as the Initial Member determines may be necessary or appropriate to evidence and assert the Company's rights and, (2) in the event the Initial Member does take any such actions, the Company shall be liable for and hereby agrees to pay all costs and expenses incurred by the Initial Member in connection therewith (which costs and expenses shall be deemed to constitute (which costs incurred by the Initial Member shall constitute Servicing Expenses for purposes of the Custodial and Paying Agency Agreement). The provisions of this Section 4.6 are subject to the right of the Initial Member to retain claims pursuant to Section 2.6 of this Agreement, including any such claims as may have been asserted in litigation pending as of the Closing Date. At the Initial Member's discretion, litigation involving any such claims shall be bifurcated, with the Initial Member remaining the real party-in-interest and retaining control over (and being responsible for pursuing and bearing the related costs to pursue) claims retained by it pursuant to Section 2.6 and the Company substituting itself as the real party-in-interest and taking control of (and being responsible for pursuing and bearing the cost of pursuing) the remainder of the litigation.

Section 4.7 Loan Related Insurance. On the Closing Date, the Initial Member shall cause to be assigned to the Company, to the extent assignable, all existing insurance policies in respect of the Collateral for such Loan. On the Servicing Transfer Date with respect to a Loan (a) the Company shall be responsible for (i) having itself substituted as loss payee on all Loan-related insurance relating to such Loan in which the Failed Bank or the Initial Member is currently listed as a loss payee and (ii) having the Servicer substituted as loss payee on all Loan-related insurance relating to such Loan in which the applicable Existing Servicer is currently listed as a loss payee; and (b), the Company shall cause to be put in place such insurance for the Collateral with respect to such Loan with respect to which the Borrower has failed to maintain required insurance, fire, hurricane, flood and hazard insurance with extended coverage as is customary in the area in which the Collateral is located and in such amounts and with such deductibles as, in the reasonable judgment of the Company, are prudent. Upon the cancellation of any insurance policy maintained by the Initial Member or the Failed Bank with respect to any Loan and the receipt by the Company or the Initial Member of any refund of any premiums previously paid with respect thereto, such refunded amount shall inure to the benefit of the Borrowers with respect to the affected Loans, and such refunded amount shall be remitted to (or retained by) the Company and applied as appropriate to adjust the Escrow Accounts, if any, or other records with respect to such affected Loans.

Section 4.8 Loans with Escrow Accounts. Amounts or balances related to the Loans on deposit in Escrow Accounts held or controlled by the Initial Member or a servicer servicing the Loans for the Failed Bank or the Initial Member shall be transferred to the Company on the applicable Servicing Transfer Date. Any negative Escrow Balances shall be netted against the amount of any positive Escrow Balances held in the Escrow Accounts transferred to the Company. The Company agrees to assume, undertake and discharge any and all Obligations of the holder of the Loans with respect to any Escrow Account, and the maintenance of such Escrow Account and the Escrow Payments paid by or on account of the Borrower.

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

Section 4.10 Notice to Borrowers.

(a) No later than thirty (30) days prior to the applicable Servicing Transfer Date, the Company (or the Servicer, if directed by the Company) shall provide the Initial Member with all information necessary to allow the Initial Member to prepare and send to Borrowers a "goodbye" letter meeting the requirements of, and in accordance with, RESPA, if applicable. Based upon the information provided by the Company, the Initial Member shall send to Borrowers such "goodbye" letter. The Company (or the Servicer, if directed by the Company) shall provide a "hello" letter to Borrowers meeting the requirements of and in accordance with RESPA, if applicable no later than fifteen (15) days after the applicable Servicing Transfer Date. Alternatively, if the Initial Member and the Company (or the Servicer) so agree, they may send a joint "hello/goodbye" letter to Borrowers meeting the requirements of and in accordance with RESPA, if applicable.

(b) No later than thirty (30) days after the Closing Date, the Company shall provide a notice to Borrowers meeting the requirements of, and in accordance with, TILA, including for the avoidance of doubt the amendments thereto effected by the Helping Families Save Their Homes Act of 2009.

(c) The Initial Member and the Company (and the Servicer) shall each bear their own costs and expenses incurred to comply with their respective obligations contained in this Section 4.10 (or, in the case of a decision to send a joint "hello/goodbye" letter, their respective costs shall be allocated among them), and no such costs or expenses shall be considered Servicing Expenses for purposes of the Custodial and Paying Agency Agreement.

Section 4.11 Notice of Claims. The Company shall immediately notify the Initial Member, in accordance with the notice provisions of Section 7.4, of any claim, threatened claim or litigation against the Initial Member or the Failed Bank arising out of any Loan.

Section 4.12 Use of the FDIC's Name and Reservation of Statutory Powers. The Company shall not use or permit the use by its agents, successors or assigns of any name or combination of letters that is similar to "FDIC" or "Federal Deposit Insurance Corporation." The Company will not represent or imply that it is affiliated with, authorized by or in any way related to the FDIC. The Company shall be entitled to assert (and claim the benefit of) the statute of limitations established under 12 U.S.C. § 1821(d)(14). However, the Company acknowledges and agrees that the assignment of any Loan or Collateral Document pursuant to the terms of this Agreement shall not constitute the assignment of any other rights, powers or privileges granted to the Initial Member pursuant to the provisions the Federal Deposit Insurance Act, including those granted pursuant to 12 U.S.C. § 1821(d), 12 U.S.C. § 1823(e) and 12 U.S.C. § 1825, all such rights and powers being expressly reserved by the Initial Member; nor shall the

Company assert or attempt to assert any such right, power or privilege in any pending or future litigation involving any Loan transferred or purchased hereunder.

Section 4.13 Prior Servicer Information. The Company acknowledges and agrees that the Initial Member might not have access to information from servicers of a Loan prior to the appointment of the FDIC as receiver of the Failed Bank and that the Initial Member has not requested any information not in the possession of the Initial Member or its servicing contractor from any prior servicer of a Loan. The Company acknowledges and agrees that the Initial Member will not be required under the terms of this Agreement to request any information from any prior servicer.

Section 4.14 Release of Initial Member.

(a) Except as otherwise specifically provided in Article VI of this Agreement or in the LLC Operating Agreement or any other Ancillary Document, the Company hereby releases and forever discharges the Initial Member, the FDIC, and the Failed Bank and all of their respective officers, directors, employees, agents, attorneys, contractors and representatives, and all of their respective successors, assigns (other than the Company) and Affiliates, from any and all claims (including any counterclaim or defensive claim), demands, causes of action, judgments or legal proceedings and remedies of whatever kind or nature that the Company had, has or might have in the future, whether known or unknown, which are related in any manner whatsoever to the Loans, the servicing of the Loans (before or after the Cut-Off Date) by the Initial Member, the Failed Bank or its predecessors-in-interest, the FDIC or any Person acting on behalf of the Initial Member, the FDIC or the Failed Bank or its predecessors-in-interest, or the acquisition of the Loans (other than for acts or omissions constituting gross negligence or willful misconduct); provided, however, that nothing contained in this Section 4.14(a) shall constitute or be interpreted as a waiver of any express right that the Company has under this Agreement or any of the Ancillary Documents.

(b) The Company agrees that it will not renew, extend, renegotiate, compromise, settle or release any Note or Loan or any right of the Company founded upon or growing out of this Agreement, except upon payment in full thereof, unless all Borrowers on said Note or Loan shall first release and discharge the FDIC, the Initial Member and the Failed Bank with respect to such Loan, and their respective agents and assigns, other than the Company (the "**Released Parties**") from all claims, demands and causes of action which any such Borrower may have against any such Released Party arising from or growing out of any act or omission occurring prior to the date of such release. The provisions of this Section 4.14(b) shall not be applicable with respect to actions taken in order to comply with the Guidelines.

Section 4.15 Contracts for Deed. The Company agrees to comply with all Obligations set forth in any Contract for Deed contained in any Loan subject to this Agreement. Pursuant to the provisions of Section 3.1 hereof, the Initial Member may require the Company to prepare and furnish special warranty deeds for the Initial Member's approval and execution, conveying the real property subject to any such contract to the Company. Title curative work, if required, shall be at the LLC Interest Transferee's sole cost and expense.

Section 4.16 Leases. The Company agrees to comply with all Obligations set forth in any lease related to any Loan unless, in the opinion of the Company, complying with the Obligations under such lease would not be in the best interests (in terms of maximizing the value of the Loan) of the Company and the Initial Member. Pursuant to the provisions of Section 3.1 hereof, the Initial Member may require the Company to prepare and furnish applicable Transfer Documents for the Initial Member's approval and execution.

## ARTICLE V
## Loans Sold "As Is" and Without Recourse

Section 5.1 Loans Conveyed "As Is". THE LOANS ARE CONVEYED TO THE COMPANY "AS IS" AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION, WARRANTY OR GUARANTY WHATSOEVER, INCLUDING AS TO COLLECTIBILITY, ENFORCEABILITY, VALUE OF COLLATERAL, ABILITY OF ANY OBLIGOR TO REPAY, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR FITNESS FOR A SPECIFIC PURPOSE, WHETHER EXPRESS OR IMPLIED OR BY OPERATION OF LAW, BY ANY PERSON, INCLUDING THE INITIAL MEMBER, THE FAILED BANK OR THE FDIC, OR ANY PREDECESSORS-IN-INTEREST OR AFFILIATES OF THE INITIAL MEMBER, THE FAILED BANK OR THE FDIC, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS. THE INITIAL MEMBER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE LOANS, THE COLLATERAL OR THE COLLATERAL DOCUMENTS.

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

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

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

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

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

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

## ARTICLE VI
## Repurchase by the Initial Member at the Company's Option

Section 6.1 Repurchases at Company's Option. The Company may, at its option, and upon satisfaction of the procedures and other requirements set forth below, require the Initial Member to repurchase a Loan, if, and only if, (x) prior to the Closing Date, one of the events described in Section 6.1(a) through (i) has occurred or (y) after the Cut-Off Date, there is issued by a court of competent jurisdiction with respect to such Loan a court order (the "**Order**") that is based upon or as a result of the acts or omissions of the Initial Member or the Failed Bank on or prior to the applicable Cut-Off Date, and either requires the assignment and transfer of such Loan back to the Initial Member or is a final non-appealable order that holds the Company liable to a Borrower for damages (exclusive of damages arising from the Company's acts or omissions after the applicable Servicing Transfer Date) in an amount that exceeds the unpaid principal balance of such Borrower's Loan at the time of such Order and, with respect to which, in either case, the Action in which such Order is issued meets the other conditions set forth in Section 6.1(j) below. IN NO EVENT SHALL THE OCCURRENCE OF ANY SUCH EVENT OR THE

OBLIGATION TO REPURCHASE A LOAN HEREUNDER BE EVIDENCE OF ANY BAD FAITH, MISCONDUCT OR FRAUD ON THE PART OF THE INITIAL MEMBER, THE FAILED BANK OR THE FDIC EVEN IF IT IS SHOWN THAT THE INITIAL MEMBER, THE FAILED BANK OR THE FDIC, OR ANY AFFILIATE THEREOF, OR ANY OF THEIR RESPECTIVE DIRECTORS, EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS (A) KNEW OR SHOULD HAVE KNOWN OF THE EXISTENCE OF ANY FACTS RELATING TO THE OCCURRENCE OF SUCH EVENT, (B) CAUSED SUCH EVENT OR (C) FAILED TO MITIGATE SUCH EVENT OR ANY OF THE LOSSES RESULTING THEREFROM.

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

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

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

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

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

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

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

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

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

(g) The Loan was (i) subject to the requirements of the Home Ownership and Equity Protection Act of 1994, as amended ("**HOEPA**"), or (ii) a "high cost," "threshold," "covered," "abusive" or "predatory" loan or a similar loan under any state, federal or local law applicable to the originator of such Loan as of the date of origination (or similarly classified loan using different terminology under a law enacted to combat predatory lending) unless (i) all requirements of HOEPA or such other applicable law with respect to such Loan were met or (ii) any violation of such law is susceptible to cure in a manner that does not materially impact the outstanding principal balance of the Loan as established on the Cut-Off Date.

(h) The Loan is void, voidable, subject to a right of rescission or unenforceable due to a material violation of those requirements of Laws applicable to the originator of the Loan.

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

(j) There is instituted after the Cut-Off Date any Action (i) that is asserted by more than one Borrower and any Affiliates (with multiple Borrowers with respect to Loans secured by the same Collateral being considered a single Borrower for purposes of this Section 6.1(j)) with respect to more than one Loan (with multiple Loans secured by the same Collateral being considered a single Loan for purposes of this Section 6.1(j)), (ii) that includes allegations of fraud on the part of the Initial Member or the Failed Bank in connection with the Initial Member's or the Failed Bank's origination of such Loans, and (iii) that names the Initial Member or the Failed Bank as a defendant and that asserts liability on the part of the Initial Member or the Failed Bank for which the Company is not liable as assignee, as a matter of law, with respect to such Loans.

Section 6.2 Notice to Initial Member. The Company shall notify the Initial Member of each Loan with respect to which the Company seeks to exercise its rights under Section 6.1. Such notice shall be on the Company's letterhead and include the following information: (a) the Company's tax identification number, (b) the Company's wire transfer instructions, (c) the loan number and other identifying information related to the Loan, (d) the subsection of Section 6.1 under which the Company is seeking to require the Initial Member to repurchase the Loan, (e) a summary of the reasons the Company believes that the Loan should be repurchased by the Initial Member and (e) a certification by the Company that the request for repurchase is being submitted in good faith and is complete and accurate in all respects to the best of the Company's knowledge. The notice shall be accompanied by evidence supporting the basis for the Initial Member's repurchase of such Loan. Promptly upon request by the Initial Member, the Company

shall supply the Initial Member with any additional evidence that the Initial Member may reasonably request. The Initial Member shall have no obligation to repurchase any Loan pursuant to this Article VI for which notice and all supporting evidence reasonably required by the Initial Member have not been received by the Initial Member at the addresses specified in Article VII no later than the first Business Day after the expiration of (i) in the case of any purchase demand pursuant to Section 6.1(a) through (i), 180 calendar days after the Closing Date, or in the case of a Contract for Deed, the first Business Day after the expiration of 360 calendar days after the Closing Date, and (ii) in the case of any purchase demand pursuant to Section 6.1(j), thirty (30) days after the issuance of the Order.

Section 6.3 Re-delivery of Notes, Files and Documents. For any Loan that qualifies for purchase under this Article VI, the Company shall: (a) re-endorse and deliver the Note to the Initial Member (or its designee); (b) assign all Collateral Documents associated with such Loan and reconvey any real property subject to a Contract for Deed or transferred by special warranty deed pursuant to Section 2.5, together with such other documents or instruments as shall be necessary or appropriate to convey the Loan back to the Initial Member (or its designee); (c) deliver to the Initial Member (or its designee) the Loan File, along with any additional records compiled or accumulated by the Company pertaining to the Loan; (d) take such actions as are necessary to transfer from the Company to the Initial Member any litigation or bankruptcy action involving the subject Loan, including substituting the duties of the Company for the Initial Member and the Initial Member for the Company, and with respect to the Affidavit and Assignment of Claim, a form of which is attached as Exhibit C, substituting the duties of the Assignor (as defined therein) for the Assignee (as defined therein) and the Assignee for the Assignor and (e) deliver to the Initial Member (or its designee) a certification, notarized and executed under penalty of perjury by a duly authorized representative of the Company, certifying that as of the date of purchase by the Initial Member none of the conditions relieving the Initial Member of its obligation to purchase the Loan as specified in Section 6.4 has occurred. The documents evidencing the conveyance of the Loan to the Initial Member shall be substantially the same as those executed pursuant to Article III of this Agreement to convey the Loan to the Company. In all cases in which the Company recorded or filed among public records any document or instrument evidencing a transfer of the Loan to the Company, the Company shall cause to be recorded or filed among such records a similar document or instrument evidencing the conveyance of the Loan to the Initial Member. Upon compliance by the Company with the provisions hereof, the Initial Member shall pay to the Company the Repurchase Price, and such Repurchase Price shall constitute Loan Proceeds for purposes of the Custodial and Paying Agency Agreement.

Section 6.4 Waiver of Company's Repurchase Option. The Initial Member will be relieved of its obligation to purchase any Loan for any reason set forth in Section 6.1 if the Company: (a) except as permitted by the Guidelines, modifies any of the terms of the Loan (including the terms of any Collateral Document or Contract for Deed); (b) except as permitted by the Guidelines, exercises forbearance with respect to any scheduled payment on the Loan; (c) accepts or executes new or modified lease documents assigned by the Initial Member to the Company; (d) sells, assigns or transfers the Loan or any interest therein; (e) fails to comply with the LLC Operating Agreement in the maintenance, collection, servicing and preservation of the Loan, including delinquency prevention, collection procedures and protection of collateral as

warranted; (f) initiates any litigation in connection with the Loan or the Mortgaged Property securing the Loan other than litigation to force payment or to realize on the Collateral securing the Loan; (g) completes any action with respect to foreclosure on, or accepts a deed-in-lieu of foreclosure for any Collateral securing the Loan; (h) causes, by action or inaction, the priority of title to the Loan, Mortgaged Property and other security for the Loan to be less than that conveyed by the Initial Member; (i) causes, by action or inaction, the security for the Loan to be different than that conveyed by the Initial Member, except as may be required by the terms of the Collateral Documents; (j) causes, by action or inaction, a claim of third parties to arise against the Company that, as a result of purchase under this Agreement, might be asserted against the Initial Member; (k) causes, by action or inaction, a Lien of any nature to encumber the Loan to arise; (l) is the Borrower or any Affiliate thereof under such Loan; or (m) makes any disbursement of principal or otherwise incrementally funds any Loan.

## ARTICLE VII
## Notices

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

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

Initial Member:
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, VA 22226
Attention: David Gearin
Tel: (703) 562-2430

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

| | |
|---|---|
| Company after Closing Date: | Franklin Venture, LLC<br>4282 North Freeway<br>Fort Worth, Texas 76137<br>Attention: Dennis G. Stowe<br>Tel: (817) 321-6001 |

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

| | |
|---|---|
| Company before Closing Date: | Senior Capital Markets Specialist<br>c/o Federal Deposit Insurance Corporation<br>550 17th Street, NW (Room F-7026)<br>Washington, D.C. 20429-0002<br>Attention: Timothy A. Kruse<br>Tel: (202) 898-6832 |
| with a copy to: | Senior Counsel<br>FDIC Legal Division<br>Litigation and Resolutions Branch, Receivership Section<br>Special Issues Unit<br>3501 Fairfax Drive (Room E-7056)<br>Arlington, VA 22226<br>Attention: David Gearin<br>Tel: (703) 562-2430 |
| Company after Closing Date: | Franklin Venture, LLC<br>4282 North Freeway<br>Fort Worth, Texas 76137<br>Attention: Dennis G. Stowe<br>Tel: (817) 321-6001 |
| with a copy to: | K&L Gates LLP<br>1601 K Street, N.W.<br>Washington, D.C. 20006<br>Attention: Phillip J. Kardis, II<br>Tel: (202) 778-9401 |
| Initial Member: | Senior Capital Markets Specialist<br>c/o Federal Deposit Insurance Corporation<br>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

## ARTICLE VIII
## Miscellaneous Provisions

Section 8.1 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable in such jurisdiction only as to a particular Person or Persons and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons and/or under such particular circumstance or circumstances, as the case may be; (ii) without limitation of clause (i), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any of the remaining provisions of this Agreement. Without limitation of the preceding sentence, it is the intent of the parties to this Agreement that in the event that in any court proceeding, such court determines that any provision of this Agreement is prohibited or unenforceable in any jurisdiction (because of the duration or scope (geographic or otherwise) of such provision, or for any other reason) such court shall have the power to, and shall, (x) modify such provision (including without limitation, to the extent applicable, by limiting the duration or scope of such provision and/or the Persons against whom, and/or the circumstances under which, such provision shall be effective in such jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. Nothing in this Section 8.1 is intended to, or shall, limit (1) the ability of any party to this Agreement to appeal any court ruling or the effect of any favorable ruling on appeal or (2) the intended effect of Section 8.2.

Section 8.2 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH 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 Agreement shall require any unlawful action or inaction by any party hereto.

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

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

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

Section 8.6 Entire Agreement. This Agreement and the Ancillary Documents contain the entire agreement between the Initial Member and the Company and its Affiliates with respect to the subject matter hereof and supersede any and all other prior agreements, whether oral or written. In the event of a conflict between the terms of this Agreement and the terms of any Transfer Document or other document or instrument executed in connection herewith or in connection with the transactions contemplated hereby, including any translation into a foreign language of this Agreement for the purpose of any Transfer Document, or any other document or instrument executed in connection herewith which is prepared for notarization, filing or any other purpose, the terms of this Agreement shall control, and furthermore, the terms of this Agreement shall in no way be or be deemed to be amended, modified or otherwise affected in any manner by the terms of such Transfer Document or other document or instrument.

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

(a) (i) agrees that any suit, action or proceeding instituted against it by any other party with respect to this Agreement may be instituted, and that any suit, action or proceeding by it against any other party with respect to this Agreement shall be instituted, only in the Supreme Court of the State of New York, County of New York, or the U.S. District Court for the Southern District of New York or the United States District Court for the District of Columbia (and appellate courts from any of the foregoing) as the party instituting such suit, action or proceeding

may in his or its sole discretion elect, (ii) consents and submits, for itself and its property, to the jurisdiction of such courts for the purpose of any such suit, action or proceeding instituted against it by any other party and (iii) agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law;

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

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

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

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

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

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

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

Section 8.12 Right to Specific Performance. THE COMPANY HEREBY ACKNOWLEDGES AND AGREES THAT THE DAMAGES TO BE INCURRED BY INITIAL MEMBER AS A RESULT OF THE COMPANY'S BREACH OF THIS AGREEMENT WILL BE DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN, THAT DAMAGES WILL NOT BE AN ADEQUATE REMEDY AND THAT ANY BREACH OR THREATENED BREACH OF ANY OF THE PROVISIONS OF THIS AGREEMENT BY THE COMPANY MAY CAUSE IMMEDIATE IRREPARABLE HARM FOR WHICH THERE MAY BE NO ADEQUATE REMEDY AT LAW. ACCORDINGLY, THE PARTIES AGREE THAT, IN THE EVENT OF ANY SUCH BREACH OR THREATENED BREACH, THE INITIAL MEMBER SHALL BE ENTITLED TO (I) IMMEDIATE AND PERMANENT EQUITABLE RELIEF (INCLUDING INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE OF THE PROVISIONS OF THIS AGREEMENT) FROM A COURT OF COMPETENT JURISDICTION (IN ADDITION TO ANY OTHER REMEDY TO WHICH IT MAY BE ENTITLED AT LAW OR IN EQUITY), AND (II) SOLELY IN THE CASE OF A BREACH OF SECTION 4.12 HEREOF, LIQUIDATED DAMAGES IN THE AMOUNT OF $25,000 FOR EACH BREACH OF SUCH SECTION. THE PARTIES AGREE AND STIPULATE THAT THE INITIAL MEMBER SHALL BE ENTITLED TO EQUITABLE (INCLUDING INJUNCTIVE) RELIEF WITHOUT POSTING A BOND OR OTHER SECURITY AND THE COMPANY FURTHER WAIVES ANY DEFENSE IN ANY SUCH ACTION FOR SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF THAT A REMEDY AT LAW WOULD BE ADEQUATE AND ANY REQUIREMENT UNDER LAW TO POST SECURITY AS A PREREQUISITE TO OBTAINING EQUITABLE RELIEF. NOTHING CONTAINED IN THIS SECTION 8.12 SHALL LIMIT EITHER PARTY'S RIGHT TO ANY REMEDIES AT LAW, INCLUDING THE RECOVERY OF DAMAGES FOR BREACH OF THIS AGREEMENT.

[*Remainder of Page Intentionally Left Blank*]

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

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

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

**FRANKLIN VENTURE, LLC**

By: Federal Deposit Insurance Corporation as Receiver for Franklin Bank, S.S.B., its Manager

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

**EXHIBIT A**
**to**
**Loan Contribution and Sale Agreement**

## LOAN SCHEDULE

The Loan Schedule is separately being acknowledged and delivered on the Closing Date by the Initial Member, the Company and the LLC Interest Transferee.

**EXHIBIT B**
**to**
**Loan Contribution and Sale Agreement**

**LOAN VALUE SCHEDULE**

The Loan Value Schedule is combined with the Loan Schedule and is separately being acknowledged and delivered on the Closing Date by the Initial Member, the Company and the LLC Interest Transferee.

**EXHIBIT C**
**to**
**Loan Contribution and Sale Agreement**

**(For use with Loans in Bankruptcy)**

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

State of _____ §
§
County of _____ §

**AFFIDAVIT AND ASSIGNMENT OF CLAIM**

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

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

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

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

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

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

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR FRANKLIN BANK, S.S.B.

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

**ACKNOWLEDGMENT**

STATE OF _____ §
§
COUNTY OF _____ §

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

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

_____
Notary Public
[SEAL] My Commission expires: _____

**EXHIBIT D**
**to**
**Loan Contribution and Sale Agreement**

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

STATE OF _____ §
§
COUNTY OF _____ §

**ASSIGNMENT AND LOST INSTRUMENT AFFIDAVIT**

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

1. That s/he is the _____ for the Federal Deposit Insurance Corporation as Receiver for Franklin Bank, S.S.B., whose address is 550 17th Street, NW, Washington, DC 20429-0002 ("**Initial Member**").

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

Loan Number: _____

Name of Maker: _____

Original Principal Balance: _____

Date of Instrument: _____

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

4. That if the Initial Member subsequently locates the Instrument, the Initial Member shall use reasonable efforts to provide written notice to the Company and deliver and endorse the

Instrument to the Company in accordance with written instructions received from the Company (or such other party designated in writing by the Company).

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

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

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR FRANKLIN BANK, S.S.B.

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

*[Remainder of Page Intentionally Left Blank]*

## ACKNOWLEDGMENT

STATE OF _____ §
§
COUNTY OF _____ §

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

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

_____
Notary Public

[SEAL]

My Commission expires: _____

**EXHIBIT E**

**to**

**Loan Contribution and Sale Agreement**

**LIMITED POWER OF ATTORNEY**
**[Franklin Residential Loan Sale]**

KNOW ALL PERSONS BY THESE PRESENTS, that the FEDERAL DEPOSIT INSURANCE CORPORATION, a corporation organized and existing under an Act of Congress, hereafter called the "FDIC", pursuant to the applicable resolutions of the Board of Directors of the FDIC, and redelegations thereof, hereby designates the individual(s) set forth on Exhibit A, attached hereto and made a part hereof ("Attorney(s)-in-Fact") to act on behalf of the FDIC in any of its Receivership or Corporate capacities related to Franklin Bank, S.S.B., for the sole purpose of executing the documents outlined below.

WHEREAS, the undersigned has full authority to execute this Limited Power of Attorney on behalf of the FDIC; and

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

1. To execute, acknowledge, seal and deliver on behalf of the Federal Deposit Insurance Corporation, individually and not jointly by and through the FDIC, acting in any capacity, any and all instruments of transfer and conveyance, appropriately completed, with all ordinary or necessary endorsements, acknowledgments, affidavits and supporting documents as may be necessary or appropriate to evidence the sale and transfer of any asset contained in the Structured Transaction identified above.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

Pay to the order of
FRANKLIN VENTURES LLC
Without Recourse

**FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR FRANKLIN BANK, S.S.B.**

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

All documents of assignment, conveyance or transfer shall contain this sentence: "This assignment is made without recourse and without representation or warranty, express, implied or by operation of law of any kind and nature whatsoever, by the Federal Deposit Insurance Corporation in any capacity."

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

This Limited Power of Attorney shall be effective from September 30, 2009 and shall continue in full force and effect through September 29, 2010, unless otherwise terminated by an official of the FDIC or its successors and assigns authorized to do so ("Revocation"). At such time this Limited Power of Attorney will be automatically revoked. Any third party may rely upon this document as the named individual(s)' authority to continue to exercise the powers herein granted unless a Revocation has been recorded in the public records of the jurisdiction where this Limited Power of Attorney has been recorded, or unless a third party has received actual notice of a Revocation.

IN WITNESS WHEREOF, the FDIC by its duly authorized officer empowered to act on its behalf by appropriate resolution of its Board of Directors, or redelegations thereof, has caused these presents to be executed and subscribed in its name this _____ day of September, 2009.

**[[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

By: _____
Name: Herbert J. Held
Title: Assistant Director, Franchise and Asset Marketing Branch
Division of Resolutions and Receiverships

**(CORPORATE SEAL)**

**ATTEST:** _____
Name: Walter C. Siedentopf
Title: Attorney
Office of Executive Secretary

Signed, sealed and delivered
in the presence of

By: _____
Name: Barbara Williams
Witness

By: _____
Name: TAWANTAL BRINSON
Witness

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

## ACKNOWLEDGMENT

**UNITED STATES OF AMERICA )**
**)**
**DISTRICT OF COLUMBIA )**

First, Herbert J. Held, first affiant, for himself says that [s/he] is an Assistant Director of the Franchise and Asset Marketing Branch, Division of Resolutions and Receiverships, of the Federal Deposit Insurance Corporation, the Corporation in whose name the foregoing Limited Power of Attorney has been subscribed, that the said Limited Power of Attorney was subscribed on behalf of the said Corporation by due authority of the Corporation's Board of Directors, and that the said Herbert J. Held acknowledges the said Limited Power of Attorney to be the free act and deed of the said Corporation.

Second, Walter C. Siedentopf, second affiant, for himself, says that he is an Attorney in the Office of the Executive Secretary of the Federal Deposit Insurance Corporation, the Corporation in whose name the foregoing Limited Power of Attorney has been subscribed, that the seal affixed to the said Limited Power of Attorney is the corporate seal of the said Federal Deposit Insurance Corporation, that the said Limited Power of Attorney was subscribed on behalf of the said Corporation and its seal thereto affixed by due authority of the Corporation's Board of Directors, and that the said Walter C. Siedentopf acknowledges the said Limited Power of Attorney to be the free act and deed of the said Corporation.

**Notary Public, District of Columbia**
**United States of America**

**My Commission Expires:**
SEPTEMBER 14, 2010

**EXHIBIT A**
**To**

**LIMITED POWER OF ATTORNEY**
**[Franklin Loan Sale]**

**List of Designated Individuals**

**Kelly O'Bannon**
**Heath Carpenter**
**Alicia Wood**
**Jeff Gideon**