

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Case No. 2009-CP-26-05915

Appellate Case No. 2019-001700

RECEIVED
OCT 22 2019
SC Court of Appeals

South State Bank.....Respondent,

v.

Chester A. Crockett.....Appellant,

and

C&C Development, LLC; Michael Chaffin; Bruce J. Ahmes;
S&D General Contractors, LLC; Col-Cor Industries, Inc.
d/b/a Active Glass and Mirror; First Electric, Inc.; Wallcraft
Construction, Inc. and Carolina Dirt Works, LLC..... Other Defendants.

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS

Respondent has moved to Dismiss the Appeal of the trial court's Order dated September 10, 2019 as not immediately appealable. In its Motion, Respondent cites Lowndes Products, Inc. v. Brower, 262 S.C. 431, 205 S.E.2d 184 (1974); Patterson v. Specter Broadcasting Corp., 287 S.C. 249, 335 S.E.2d 803 (1985) and Ex Parte Wilson, 367 S.C. 7, 625 S.E.2d 205 (2005) and states "Discovery orders are ordinarily not immediately appealable in the pretrial context." (Respondent's Motion to Dismiss, p.3) This matter is already in supplemental proceedings, and,

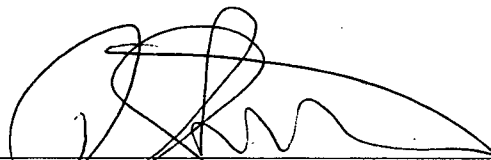
as such, the authority cited by Respondent is inapplicable. Moreover, as fully briefed in Appellant's Petition for Rehearing filed on September 26, 2019, South Carolina Code §14-43-330 makes clear that an Order affecting a substantial right is immediately appealable.¹ (Appellant's Petition for Rehearing attached hereto and incorporated herein by reference as Exhibit A.)

Appellant has, in the present matter, challenged Respondent's alleged ownership of the judgment it seeks to enforce. Moreover, in a separate foreclosure action brought by Respondent to prosecute the very same judgment, Appellant has challenged the judgment itself and filed a counterclaim for fraud upon the court.² (Summons and Complaint attached hereto and incorporated herein by reference as Exhibit B; Summons and Amended Answer and Counterclaims of Defendants Chester A. Crockett, Trustee and Beth Crockett, Trustee of the Crockett Family Trust attached hereto and incorporated herein by reference as Exhibit C) The Order below errs in stating, *inter alia*, "the validity of the underlying unappealed 9 year-old money judgment is *not* affected by the instant appeal." Order, Page 3. The validity, or lack thereof, of the 2010 underlying Order remains very much at issue. It is currently being litigated in the Circuit Court in an action brought by Respondent. To now, in a separate action, refuse to permit Appellant to conduct discovery while allowing Respondent to continue discovery against Appellant and third party entities directly affects Appellant's substantial rights. The trial court erred by refusing to grant Appellant's Motion to Quash Respondent's subpoena and further erred by not staying the execution of the 2010 judgment pending the determination of that judgment's validity and ownership. As such, the Order of the trial court compelling the testimony and document production of a non-party should be

¹ Appellate Case No.: 2019-001119

² *South State Bank v. Chester A. Crockett, Trustee and Beth Crockett, Trustee of the Crockett Family Trust, and CresCom Bank*; C/A No. 2019-CP-26-05015

reversed, or stayed pending final review of Appellant's Petition for Rehearing currently before this Honorable Court.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
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Benjamin H. Culbertson, Circuit Court Judge

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SC Court of Appeals

Case No. 2009-CP-26-05915

Appellate Case No. 2019-001119

Plantation Federal Bank Respondent,

v.

Chester A. Crockett Appellant.

**PETITION FOR REHEARING OF
ORDER FILED SEPTEMBER 11, 2019**

Pursuant to Rule 221, SCACR, Appellant, Chester A. Crockett (hereinafter “Appellant” or “Mr. Crockett”), hereby petitions this Court for rehearing of its decision in *Plantation Federal Bank v. Chester A. Crockett*, Order filed September 11, 2019. This Petition for Rehearing should be granted as this Court has overlooked or misapprehended material points of law and fact. Appellant respectfully requests that this Court reconsider its Order filed herein September 11, 2019. In so requesting, Appellant appreciates and acknowledges this Court’s attention to this important matter.

NATURE OF THE CASE

This matter comes before the Court with its origin in an underlying mortgage foreclosure. The present posture of the matter is one in supplemental proceedings. However, the present case is not a matter of the typical supplemental proceeding. Here, Appellant Chester A. Crockett has filed a counterclaim alleging the prosecution of the foreclosure judgment violates the South Carolina Unfair Trade Practices Act (“UTPA”), S.C. Code § 39-5-10, et seq. Moreover, Appellant has twice formally demanded a jury trial.

Appellant’s counterclaim arises from information not available to him, nor anyone other than Respondent Plantation Federal Bank and those associated with or investigating it, during the pendency of the underlying foreclosure action. That action was filed on June 15, 2009, and resulted in a judgment filed on January 28, 2010. Thereafter, on June 30, 2010, Respondent was served a Cease and Desist Order (hereinafter referred to as the “Cease and Desist Order”) from the Office of Thrift Supervision of the United States of America.¹ Pursuant to the Cease and Desist Order, Plantation Federal Bank was required to cease and desist:

from any action (alone or with others) for or toward causing, bringing about, participating in, counseling, or the aiding and abetting the unsafe or unsound banking practices that resulted in:

¹ A copy of the Cease and Desist Order (SE-10-032) is attached hereto and incorporated herein by reference as “Exhibit A” to this Memorandum. While the transcript of the Hearing below has been ordered, it has not, as of the date of this Memorandum been received by Appellant; however, the Cease and Desist Order was presented to the court below and to counsel appearing on behalf of Respondent at the Hearing below.

- (a) operating the Association (Plantation Federal Bank) with an inadequate level of capital protection for the volume, type and quality of assets held by the Association;
- (b) operating the Association with inadequate earnings to fund growth, support dividend payments and augment capital;
- (c) operating the Association with an excessive level of adversely classified loans or assets;
- (d) operating with and inadequate allowance for loan and lease losses for the volume, type and quality of loans and leases held and failing to make provisions for an adequate reserve for possible loan losses;
- (e) operating the Association with an excessive concentration of non-residential real estate loans, land loans, home equity lines of credit, and non-mortgage commercial loans as described in the January 4, 2010 Report of Examination of the Association ("2020 Examination");
- (f) operating the Association in contravention of written loan policies and procedures;
- (g) operating in contravention of supervisory policy statements and other guidance, including, but not limited to:
 - a. the Interagency Policy Statement on the Allowance for Loan and Lease Losses (ALLL) and Questions and Answers on Accounting for Loan and Lease Losses dated December 13, 2006, and contained in Chief Executive Officer (CEO) Memorandum #250 (December 13, 2006); and
 - b. the Interagency Guidelines Establishing Standards for Safety and Soundness set forth in Appendix A to 12 C.F.R. Part 570.

Additionally, Respondent was Ordered to Cease and Desist violations of: 12 C.F.R Part 570, 12 C.F.R. Sec. 560.160, 12 C.F.R. Sec. 564.8, and 12 C.F.R. Sec. 215.4.

The Cease and Desist Order went on to require Respondent to: meet specific requirements as to the maintenance of sufficient capital and develop an approved Capital Plan; restrict its own growth with supervision of a Regional Director; develop an approved comprehensive Business Plan annually; limit its lending (without non-objection

of the Regional Director) to owner occupied, non-investor Qualifying Mortgage Loans and Consumer Loans; substantially restrict the renewal, extension, modification, or restructuring of loans; prepare monthly reports with detailed information on all renewals, extensions, modifications, or restructurings, and prepare for review a “written schedule of all outstanding loans” to include the attendant amount of interest reserves established and submit the schedule for review on a quarterly basis; adhere to stringent requirements for oversight of the Bank’s concentration of credit on a quarterly basis; adhere to an expense reduction plan and file monthly status reports; develop a written plan to “strengthen and improve the effectiveness of the Board’s oversight of the management and operations” of the bank within twenty (20) days of the Cease and Desist Order; revise its written internal asset review and classification program “to ensure that it addresses all corrective actions set forth” in published guidance and comports with all laws, regulations, and regulatory guidance (to include annual, independent reviews of loans in excess of One Million Dollars (\$1,000,000.00)); provide a detailed, written plan with strategies and targets (with timelines) as to identification of and dealing with problem assets; ensure compliance with 12 C.F.R. Part 564 (Appraisals); ensure compliance with C.F.R. Part 215 (Insider Policy); ensure compliance with C.F.R. Sec 337.6(b) (Brokered Deposits); ensure compliance with 12 C.F.R. Part 563, Subpart H (Directorate Management); ensure compliance with 12 C.F.R. Sec 563.141 (Dividends and other Capital Distributions); cease renewal, extension, or revision of Senior Executive Officer contracts unless approved by the Regional Director; not make “golden parachute” or other prohibited

payments; not enter into any unapproved third party contracts; engage in transactions with affiliates unless in compliance with 12 C.F.R. Secs. 563.14(c)(3) and (4); and, designate an Oversight Committee to submit written compliance reports on a quarterly basis.

Following the issuance of the Cease and Desist Order, Plantation Federal Bank was seized by the Federal Deposit Insurance Corporation on April 27, 2012. Pursuant to a Purchase and Assumption Agreement of the same date, First Federal Bank acquired some of the assets of Plantation Federal Bank. This Agreement does not reference the underlying judgment as an asset that conveyed in that transaction, and, in fact, does not use the word “judgment” in the entire document, as an asset, save one reference in Sec. 3.5 entitled “Assets Not Purchased by Assuming Institution.” Following consummation of the Agreement, First Federal Bank sold the real property which was the subject of the underlying mortgage on September 19, 2012. Thereafter, First Federal Bank purportedly merged into SCBT on July 26, 2013; and, on June 30, 2014, SCBT purportedly changed its name to South State Bank.

South State Bank has never produced recorded documentation of its current alleged ownership of the underlying judgment, having only produced internal screenshots of computer imagery displaying undefined codes in order to assert a right to enforce the judgment.

Following all this activity, none of which was known to Appellant until much later, the United States Office of the Inspector General for the Department of the

Treasury published an Audit Report as to the safety and soundness of banks on August 15, 2016.² This report determined the “most common themes associated with the failed banks” and “identified certain matters in 29 failed banks relating to potential fraud that” were referred by the Office of the Inspector General to its Office of Investigation, leading to the prosecution of several individuals. Plantation Federal Bank was among the banks investigated in the Audit and was found to have a high loan concentration in commercial real estate and to have inadequate credit administration and risk management.

Respondent did not begin supplemental proceedings until it filed its Petition on August 20, 2018.

APPEALABILITY

THE ORDER OF REFERENCE

Given the extent of government investigation and oversight to which Plantation Federal was subjected, Appellant became suspicious of the bank’s lending practices and whether the appraisal process through which the underlying mortgage was funded was legitimately third-party and unbiased. During the foreclosure process, Appellant was not privy to the federal government investigation, and had no means of ascertaining the extent to which Respondent had disregarded federal banking regulations at the time the mortgage was funded in 2008. Once made aware of the extensive investigations made by the federal government into Respondent’s banking practices, Appellant resolved to

²A copy of the Audit Report (OIG-16-052) is attached hereto and incorporated herein by reference as “Exhibit B” to this Petition. While the transcript of the Hearing below has been ordered, it has not, as of the date of this Petition been received; however, the Audit Report was presented to the court below and to counsel appearing on behalf of Respondent at the Hearing below.

investigate further into the particulars of the formation of his mortgage and its subsequent foreclosure.

Based upon the information included in Exhibits A and B, Appellant, on September 6, 2018 filed a Return to Respondent's Petition for Supplemental Proceedings and, on the same date, Appellant filed a separate Jury Trial Demand. Appellant later filed an Amended Return and Counterclaim for Violation of the South Carolina Unfair Trade Practices Act on December 21, 2018 and again therein demanded a trial by jury. Appellant contends the independent act of pursuing the supplemental proceeding, with knowledge that Plantation Federal was found culpable by the federal government of wrongful acts in the lending process resulting in its failure as a bank is unfair and deceptive.³ The South Carolina Supreme Court has previously upheld actions against banks for unfair lending practices. *Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016). Accordingly, Appellant demanded a jury trial and sought, through discovery, to determine the extent to which Respondent disregarded federal law in the creation and foreclosure of his mortgage. Appellant avers he has suffered an ascertainable loss of money and/or property as a result of the use or employment by Plantation Federal Bank of unfair or deceptive methods, acts, or practices, and that Plantation Federal Bank has acted in willful or knowing violation of S.C. Code Ann. § 39-5-20.

Orders of a trial judge denying a request for a jury trial involve the mode of trial and affect substantial rights under S.C. Code § 14-43-330(2) (1976). Moreover, our

³ Pursuant to S.C. Code Ann. Sec. 39-5-20(a): "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

Supreme Court has not only permitted an immediate appeal from the denial of a jury trial, but “has required an immediate appeal from the denial of a jury trial.” *Bateman v. Rouse*, 358 S.C. 667, 674, 596 S.E.2d 386, 389-390, 2004 S.C. App. “Orders of a trial judge denying a request for a jury trial involve the mode of trial, affect substantial rights under section 14-3-330(2) of the South Carolina Code (1976 & Supp. 2003), and are immediately appealable. *Lester v. Dawson*, 327 S.C. at 266, 491 S.E.2d at 241. Per *Johnson v. South Carolina National Bank*, 292 S.C. 51, 53, 354 S.E.2d 895 (1987), “both plaintiffs and defendants have a right to a jury trial of issues raised in a compulsory legal counterclaim interposed in an equitable action.” Mr. Crockett is entitled to a jury trial as to his counterclaims under the Act.⁴ As such, the dismissal of his counterclaim and referral to the Master deprived Mr. Crockett of a mode of trial to which he is entitled. Moreover, the failure of Mr. Crockett to immediately appeal the order affecting the mode of trial constitutes a waiver of the right to appeal these issues.” *Id.* Likewise, SCRPC, Rule 13(a) requires a “pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.” Thus, Appellant’s counterclaim was compulsory in nature and must have been raised, if at all, in response to the Petition for Supplemental Proceedings.

⁴ Justice Bussey explained in the dissent in *Williford v. Downs*, 265 S.C 319, 322, 218 S.E.2d 242 (1975) that, even in partition actions, “parties are entitled to a jury trial of any issue as to which they are entitled to a jury trial by virtue of the Constitution and/or statutory law of this State.”

The court below referred this matter to the Horry County Master in Equity, effectively denying Appellant his right to a trial by jury. This error is immediately appealable, and, pursuant to S.C. Code § 14-3-330(2), the Court of Appeals has jurisdiction to correct this error prior to further proceedings being conducted.

Additionally, our Supreme Court has held that “where a complaint is equitable and the counterclaim is legal and compulsory, the trial judge has two options. He may either order separate trials pursuant to Rule 42(b) or may order the claims tried in a single proceeding. In making this determination, caution should be taken to assure that, under the circumstances of the case, a joint trial will not deprive a party of his right to a full jury trial of legal issues. *Cf. Commercial Iron & Metal Co. v. Bache Halsey Stuart, Inc.*, 581 F. (2d) 246 (10th Cir. 1978), *cert. denied*, 440 U.S. 914, 99 S. Ct. 1229, 59 L. Ed. (2d) 463 (1979).”⁵ The Court continued by explaining: “when issues common to both legal and equitable claims are to be tried in a single proceeding, legal issues are to be determined first, and the findings of the jury are binding on the sitting judge, as trier of the equitable claims.” *GTE Sylvania, Inc. v. Continental T.V., Inc.*, 537 F. (2d) 980 (9th Cir. 1976), *cert. granted*, 429 U.S. 893, 97 S. Ct. 252, 50 L. Ed. (2d) 176, *affirmed*, 433 U.S. 36, 97 S. Ct. 2549, 53 L. Ed. (2d) 568 (1977); *Roscello v. Southwest Airlines Co.*, 726 F. (2d) 217, *reh'g denied*, 732 F. (2d) 941 (5th Cir. 1984). *Id.*

The error below deprived Appellant of a mode of trial to which he is entitled, and the court below, in referring the matter to the Master, failed to adhere to the method of

⁵ Johnson v. South Carolina Nat'l Bank, 292 S.C. 51, 55, 354 S.E.2d 895 (1987).

trial in such matters required by our Supreme Court. Appellant's counterclaim is both legal and compulsory, as it is based on the UTPA and arises from the Petition for Supplemental Proceedings filed by Respondent as well as the underlying judgment. As such, the Order below is immediately appealable pursuant to S.C. Code § 14-33-330.

THE ORDER PROTECTING RESPONDENT FROM DISCOVERY

Additionally, the circuit court granted Respondent's Motion for Protection from Discovery. Citing SCRCP, Rule 69, Respondent argued below the judgment creditor or his successor in interest when that interest appears of record may examine any person, including the judgment debtor. Respondent continued by arguing the Rules of Civil Procedure "expressly limit the availability of discovery during the execution and enforcement of a judgment to the judgment creditor, and such discovery is not available to judgment debtors, upon whom enforcement of the judgment is sought." Respondent's Motion to Quash Subpoena and for Protective Order and Memorandum in Support, Page

5. This misstates Rule 69, which reads as follows:

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be as provided by law. In the aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for obtaining discovery.

While Rule 69 does provide discovery to judgment creditors, it does not "expressly" foreclose discovery to judgment debtors, as Respondent asserts. It is axiomatic this be especially true in situations such as the present matter in which

Appellant has alleged the prosecution of the judgment is, in and of itself, a violation of the South Carolina Unfair Trade Practices Act. The unfair and deceptive practice of attempting to enforce a judgment on behalf of a defunct entity (Plantation Federal Bank) which was forcibly closed by the federal government, without even producing recorded proof of ownership of the judgment, is an act that is adverse to public policy, bears the potential for repetition, and for which redress is codified by the legislature in the UTPA. Appellant should be permitted both a trial by jury and access to discovery for proper presentation of his claims.

Appellant is entitled to conduct discovery as to his counterclaim. "Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within § 14-3-330. *Baldwin Const. Co., Inc. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004). Intermediate orders involving the merits may be immediately appealed pursuant to § 14-3-330(1). An order which involves the merits is one that "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." *Mid-State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780. Interlocutory orders affecting a substantial right may be immediately appealed pursuant to § 14-3-330(2). Orders affecting a substantial right "discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." *Id.* at 335 n.4, 426 S.E.2d at 780 n.4." *Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208.

In the present matter, the court below held “Judgment debtor is not entitled to discovery in Supplementary Proceedings.” Without further explanation, Appellant was foreclosed from conducting any discovery in furtherance of his defenses or counterclaim against Respondent. In his Return to Respondent’s Petition, Appellant raised multiple defenses (in addition to his counterclaim) including, *inter alia*: Respondent’s wrongdoing bars recovery; laches; waiver; estoppel; and, unclean hands. To bar Appellant from conducting discovery effectively strikes his defenses, as it makes impossible the task of investigating Respondent’s wrongdoing in the creation, foreclosure, and supplemental proceedings associated with the mortgage below. The federal government itself, armed with a substantial staff of attorneys and investigators required several years to conclude Respondent had violated the many regulations set forth in the Cease and Desist Order and the federal Audit. Appellant, who has been individually wronged by Respondent, left with no ability to conduct discovery, would again be wronged by the enforcement of the judgment against him with no opportunity for discovery, if, in fact, discovery would produce evidence of wrongdoing. Accordingly, again, this matter is immediately appealable under S.C. Code Sec. 14-3-330.

THE ORDER SUBSTITUTING PARTIES

Lastly, the court below permitted Respondent to substitute South State Bank as the plaintiff in the present matter, replacing Plantation Federal Bank. This, too, was erroneous. At the hearing below, Respondent produced an affidavit of Jamie Clardy, who, per the affidavit, is the Assistant Vice President of Special Assets Management for South

State Bank (hereinafter “South State Bank” or “SSB”) and “worked for Plantation Federal Bank ... when it was placed in receivership by the Office of Thrift Supervision to Comptroller of the Currency.” Clardy Affidavit, Page 1.⁶ The affidavit does not set forth Clardy’s role in the operation of Plantation Federal or potential involvement in the actions investigated by the federal government. However, Clardy’s affidavit does claim South State Bank is the current owner of the Plantation Federal judgment against Appellant. In support of that claim, the affidavit, at Page 2, relies upon Exhibits C and E to the affidavit. Exhibit C to the affidavit is purportedly a portion of a “schedule” originally attached to the agreement under which the federal government took control of the assets of Plantation Federal. *See* Clardy Affidavit, Page 2. Of note, the line on Exhibit C to the affidavit which sets-forth the address of the property foreclosed in 2009 lists the “ASSET SUB TYPE DESC” as “Office.” Nothing on Exhibit C to the Clardy affidavit references the judgment itself as an asset or indicated ownership thereof; nor has Respondent provided any evidence beyond the self-serving affidavit of its employee that the judgment has not been charged-off or assigned at any time in the nine (9) years since its inception.

The affidavit continues by asserting “[a]fter First Federal acquired the C&C Judgment and Property from the FDIC, it assigned the C&C Judgment and Property REO loan number 9900001041 and it was recorded as a Shared-Loss Asset on First Federal’s books.” *See* Clardy Affidavit, Page 3. In support of this assertion, the affidavit references

⁶ A copy of the Affidavit of Jamie Clardy, with Exhibits, is attached hereto and incorporated herein by reference as “Exhibit C.”

Exhibit E to the affidavit, which is purportedly a “redacted portion of the list prepared by First Federal of its ‘Shared-Loss Assets’ that were received as part of the Plantation Federal transaction.” Id.

Neither Exhibit C nor Exhibit E to the Clardy affidavit is a recorded document, neither is a certified copy, neither is self-authenticating, and neither is under seal. In fact, each of these exhibits appears to be a computer screen-shot with added redaction. Yet, the court below erroneously determined “South State Bank is substituted in place of Plantation Federal Bank as the plaintiff in this case” without further explanation or analysis. This error provides SSB standing to pursue supplemental proceedings against Appellant without a reasoned judicial determination of ownership of the underlying judgment, and it does so based on the affidavit of a former employee of the seized bank. This error directly and substantially impacts Appellant’s mode of trial in the matter and, as such, the holding is immediately appealable and this Court has jurisdiction pursuant to S.C. Code Ann. Sec. 14-3-330.

CONCLUSION

For the foregoing reasons, the rulings cited in the Notice of Appeal are immediately appealable and Appellant respectfully requests this Honorable Court grant Appellant’s Petition for Rehearing and permit the immediate appeal of the rulings below.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'R. Shelton', written over a horizontal line.

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Plantation Federal Bank.....Respondent,

v.

Chester A. Crockett.....Appellant;

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on Respondent Plantation Federal Bank by depositing a copy of it in the United States mail, postage prepaid, on September 25, 2019, addressed to its attorneys of record, Jeffrey L. Payne, Esquire and J. Rene Josey, Esquire, Turner Padget, P.O. Box 5478, Florence, South Carolina, 29502.

September 25, 2019



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UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of	)	
	)	Order No.: SE-10-032
	)	
PLANTATION FEDERAL BANK	)	Effective Date: June 30, 2010
	)	
Pawleys Island, South Carolina	)	
OTS Docket No. 08349	)	
	)	

ORDER TO CEASE AND DESIST

WHEREAS, Plantation Federal Bank, Pawleys Island, South Carolina, OTS Docket No. 08349 (Association), by and through its Board of Directors (Board), has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist (Stipulation); and

WHEREAS, the Association, by executing the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist (Order) by the Office of Thrift Supervision (OTS) pursuant to 12 U.S.C. § 1818(b); and

WHEREAS, pursuant to delegated authority, the OTS Regional Director for the Southeast Region (Regional Director) is authorized to issue Orders to Cease and Desist where a savings association has consented to the issuance of an order.

NOW, THEREFORE, IT IS ORDERED that:

Cease and Desist.

1. The Association, its institution-affiliated parties,¹ and its successors and assigns, shall

¹ The term "institution-affiliated party" is defined at 12 C.F.R. § 1813(u).
Plantation Bank
Order to Cease and Desist
Page 1 of 21

cease and desist from any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or the aiding and abetting the unsafe or unsound banking practices that resulted in:

- (a) operating the Association with an inadequate level of capital protection for the volume, type and quality of assets held by the Association;
- (b) operating the Association with inadequate earnings to fund growth, support dividend payments and augment capital;
- (c) operating the Association with an excessive level of adversely classified loans or assets;
- (d) operating with an inadequate allowance for loan and lease losses for the volume, type, and quality of loans and leases held and failing to make provision for an adequate reserve for possible loan losses;
- (e) operating the Association with an excessive concentration of non-residential real estate loans, land loans, home equity lines of credit, and non-mortgage commercial loans as described in the January 4, 2010 Report of Examination of the Association ("2010 Examination");
- (f) operating the Association in contravention of written loan policies and procedures;
- (g) operating in contravention of supervisory policy statements and other guidance, including, but not limited to:
 - (i) the Interagency Policy Statement on the Allowance for Loan and Lease Losses (ALLL) and Questions and Answers on Accounting for Loan and Lease

Losses dated December 13, 2006, and contained in Chief Executive Officer (CEO) Memorandum # 250 (December 13, 2006); and

(ii) the Interagency Guidelines Establishing Standards for Safety and Soundness set forth in Appendix A to 12 C.F.R. Part 570.

2. The Association, its institution-affiliated parties, and its successors and assigns, shall also cease and desist from any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or the aiding and abetting violations of the following laws and regulations:

(a) 12 C.F.R. Part 570 - Appendix A (Interagency Guidelines Establishing Standards for Safety and Soundness);

(b) 12 C.F.R. § 560.160 (Asset Classification);

(c) 12 C.F.R. § 564.8 (Appraisal Policies and Practices of Savings Associations and Subsidiaries);

(d) 12 C.F.R. § 215.4 (General Prohibitions on Loans to Executive Officers, Directors and Principal Shareholders);

Capital.

3. By December 31, 2010, the Association shall have and maintain a Tier 1 (Core) Capital Ratio equal to or greater than eight percent (8%) and a Total Risk-Based Capital Ratio equal to or greater than twelve percent (12%).²

4. By September 30, 2010, the Association shall submit a written plan to achieve and maintain the Association's capital at the levels and within the timeframe prescribed in Paragraph

² The requirement in Paragraph 3 to have and maintain a specific capital level means that the Association may not be deemed to be "well-capitalized" for purposes of 12 U.S.C. §1831o and 12 C.F.R. Part 565, pursuant to 12 C.F.R. §565.4(b)(1)(iv).

3 (Capital Plan) that is acceptable to the Regional Director. At a minimum, the Capital Plan shall:

- (a) identify the specific sources of additional capital and the timeframes and methods by which additional capital will be raised, including specific target dates and corresponding capital levels;
- (b) detail the Association's capital preservation and enhancement strategies with specific narrative goals;
- (c) address the requirements and restrictions imposed by this Order relating to capital under different forward-looking scenarios involving progressively stressed economic environments;
- (d) address all corrective actions set forth in the 2010 Examination relating to capital;
- (e) include detailed quarterly financial projections, including Tier 1 (Core) and Total Risk-Based Capital Ratios;
- (f) address the Association's level of classified assets, ALLL, earnings, asset concentrations, liquidity needs, and trends in the foregoing areas; and
- (g) address current and projected trends in real estate market conditions.

5. Upon receipt of written notification from the Regional Director that the Capital Plan is acceptable, the Association shall implement and adhere to the Capital Plan. A copy of the Capital Plan and the Board meeting minutes reflecting the Board's adoption thereof shall be provided to the Regional Director within ten (10) days after the Board meeting.

6. On a monthly basis, beginning with the first month following receipt of written notification from the Regional Director that the Capital Plan is acceptable, the Board shall review the Association's compliance with the Capital Plan. At a minimum, the Board's review

shall include:

- (a) a comparison of actual operating results to projected results;
- (b) detailed explanations of any material deviations;³ and
- (c) a discussion of specific corrective actions or measures that have been or will be implemented to address each material deviation.

7. Within fifteen (15) days after: (a) the Association fails to meet the capital requirements prescribed in Paragraph 3; (b) the Association fails to comply with the Capital Plan prescribed in Paragraph 4; or (c) any written request from the Regional Director, the Association shall submit a written Contingency Plan that is acceptable to the Regional Director.

8. The Contingency Plan shall detail the actions to be taken, with specific time frames, to achieve one of the following results by the later of the date of receipt of all required regulatory approvals or sixty (60) days after the implementation of the Contingency Plan: (a) merger with, or acquisition by, another federally insured depository institution or holding company thereof; or (b) voluntary dissolution by filing an appropriate application with the OTS in conformity with applicable laws, regulations and regulatory guidance.

9. Upon receipt of written notification from the Regional Director, the Association shall implement and adhere to the Contingency Plan immediately. The Association shall provide the Regional Director with written status reports detailing the Association's progress in implementing the Contingency Plan by no later than the first (1st) and fifteenth (15th) of each month following implementation of the Contingency Plan.

³ A deviation shall be considered material under this Paragraph of the Order when the Association determines that it needs to adjust its identified sources of additional capital, timeframes, methods, or target dates by which it will raise capital.

Growth.

10. Effective immediately, the Association shall not increase its total assets during any quarter in excess of an amount equal to net interest credited on deposit liabilities during the prior quarter without the prior written notice of non-objection of the Regional Director. The growth restriction imposed by this Paragraph shall remain in effect until the Association receives the Regional Director's written notice of non-objection of its Business Plan pursuant to Paragraph 11 of this Order.

Business Plan.

11. By September 30, 2010, the Association shall submit a new comprehensive business plan for the fiscal year commencing on October 1, 2010 and ending September 30, 2011 (Business Plan) that is acceptable to the Regional Director and addresses all corrective actions in the 2010 Examination relating to the Association's business operations. Thereafter, the Association shall submit a new one (1) year Business Plan at least ninety (90) days prior to the end of each fiscal year, which is September 30. At a minimum, the Business Plan shall conform to applicable laws, regulations and regulatory guidance and include:

- (a) plans to improve the Association's core earnings, reduce expenses, maintain appropriate levels of liquidity, and achieve profitability on a consistent basis throughout the term of the Business Plan;
- (b) strategies for ensuring that the Association has the financial and personnel resources necessary to implement and adhere to the Business Plan, adequately support the Association's risk profile, maintain compliance with applicable regulatory capital requirements, and comply with this Order;

- (c) quarterly pro forma financial projections (balance sheet, regulatory capital ratios, and income statement) for each quarter covered by the Business Plan that are presented in a format consistent with the Thrift Financial Report (TFR); and
- (d) identification of all relevant assumptions made in formulating the Business Plan and a requirement that documentation supporting such assumptions be retained by the Association.

12. Upon receipt of written notification from the Regional Director that the Business Plan is acceptable, the Association shall implement and adhere to the Business Plan. A copy of the Business Plan and the Board meeting minutes reflecting the Board's adoption thereof shall be provided to the Regional Director within ten (10) days after the Board meeting.

13. Any material modifications⁴ to the Business Plan must receive the prior written non-objection of the Regional Director. The Association shall submit proposed material modifications to the Regional Director at least forty-five (45) days prior to implementation.

14. Within sixty (60) days after the end of each quarter, after implementation of the Business Plan, the Board shall review quarterly variance reports on the Association's compliance with the Business Plan (Variance Reports). The Variance Reports shall:

- (a) identify variances in the Association's actual performance during the preceding quarter as compared to the projections set forth in the Business Plan;
- (b) contain an analysis and explanation of identified variances; and
- (c) discuss the specific measures taken or to be taken to address identified variances.

⁴ A modification shall be considered material under this Section of the Order if the Association plans to: (a) engage in any activity that is inconsistent with the Business Plan; or (b) exceed the level of any activity contemplated in the Business Plan or fail to meet target amounts established in the Business Plan by more than ten percent (10%), unless the activity involves assets risk-weighted fifty percent (50%) or less, in which case a variance of more than twenty-five percent (25%) shall be deemed to be a material modification.

15. A copy of the Variance Reports and Board meeting minutes shall be provided to the Regional Director within sixty (60) days after the Board meeting.

Lending.

16. Effective immediately, without the prior written non-objection of the Regional Director, the Association may only originate or purchase, or commit to originate or purchase: (i) owner occupied, non-investor Qualifying Mortgage Loans as defined at 12 C.F.R. § 567.1 and (ii) Consumer Loans, as defined at 12 C.F.R. § 560.3, excluding HELOC loans, where the funded amount of all such loans to any one borrower does not exceed Forty Thousand Dollars (\$40,000). The Association may make non-investor second home loans that receive the prior written non-objection of the Regional Director.

17. Effective immediately, the Association may only renew, extend, modify, or restructure existing loans restricted by Paragraph 16 to facilitate a workout pursuant to a written loan modification program (Loan Modification Program) that: (a) requires documentation of the Association's efforts to obtain a principal reduction from the borrower; (b) prohibits the extension of additional funds without the prior written non-objection of the Regional Director; (c) requires compliance with the Association's loan underwriting and documentation policies and procedures, and (d) adherence to safe and sound banking practices.

18. Effective immediately, the Association shall prepare and submit a monthly report to the Board with detailed information on all renewals, extensions, modifications, or restructurings undertaken pursuant to the Loan Modification Program (Loan Modification Report). The Loan Modification Report shall include updated collateral value estimates and a discussion of the borrower's current creditworthiness and financial resources. The Board's review of the Loan Modification Report, including any corrective actions adopted by the Board, shall be fully

documented in the meeting minutes.

19. Effective immediately, the Association shall prepare and submit to the Board for review a written schedule of all outstanding loans with interest reserves, regardless of the funding source for such reserves (Interest Reserve Schedule). At a minimum, the Interest Reserve Schedule shall include the following for each loan with interest reserves:

- a. the total amount of interest reserves established, which shall include all prior interest reserve amounts;
- b. the total amount of interest reserves available and remaining;
- c. the loan maturity date and all renewal or extension dates;
- d. the projected date that the interest reserves will be depleted; and
- e. the funding source for the interest reserves.

The Association shall prepare and submit an updated Interest Reserve Schedule to the Board within thirty (30) days after the close of each calendar quarter, beginning with the calendar quarter ending June 30, 2010. The Board shall review the updated Interest Reserve Schedule and the Board's review, including any corrective actions adopted, shall be fully documented in the Board meeting minutes. A copy of each Interest Reserve Schedule and the Board meeting minutes detailing the Board's review of each Interest Reserve Schedule shall be provided to the Regional Director within thirty (30) days after the close of each calendar quarter, beginning with the calendar quarter ending June 30, 2010.

Concentrations of Credit.

20. Within sixty (60) days, the Association shall revise its written program for identifying, monitoring, and controlling risks associated with concentrations of credit (Credit Concentration Program) to ensure that it is acceptable to the Regional Director and addresses all corrective

actions set forth in the 2010 ROE relating to concentrations of credit. The Credit Concentration Program shall comply with all applicable laws, regulations and regulatory guidance and shall:

- (a) establish comprehensive concentration limits for all major loan categories expressed as a percentage of Tier 1 (Core) Capital plus allowance for loan and lease losses (ALLL), and document the appropriateness of such limits based on the Association's risk profile;
- (b) establish additional stratification categories for each of the Association's major loan categories, establish reasonable concentration of credit limits for each stratification category, and establish enhanced risk analysis, monitoring, and management for each stratification category;
- (c) contain specific review procedures and reporting requirements, including written reports to the Board, designed to identify, monitor, and control the risks associated with concentrations of credit and periodic market analysis for the various property types and geographic markets represented in its portfolio; and
- (d) contain a written action plan with specific time frames for reducing existing concentrations of credit to comply with Board established limits.

21. Upon receipt of written notification from the Regional Director that the Credit Concentration Program is acceptable, the Association shall implement and adhere to the Credit Concentration Program. The Board's review of the Credit Concentration Program shall be documented in the Board meeting minutes. A copy of the Credit Concentration Program shall be provided to the Regional Director within ten (10) days after adoption by the Board.

22. Within sixty (60) days after the end of each quarter, beginning with the quarter ending June 30, 2010, the Board shall review the appropriateness of the Association's concentration

limits given current conditions and the Association's compliance with its Credit Concentration Program, including the written action plan to revise the current level of concentrations. The Board's review of the Association's Credit Concentration Program shall be documented in the Board meeting minutes.

Expense Reduction Plan.

23. Within sixty (60) days, the Association shall implement and adhere to the expense reduction plan adopted by the Board. Monthly status reports on the Association's compliance with the Expense Reduction Plan shall be provided to the Board for review beginning with the August 2010 Board meeting. The Board's review shall be fully documented in the Board meeting minutes.

Board Oversight.

24. Within sixty (60) days, the Board shall prepare and submit to the Regional Director for review and comment, an updated written plan to strengthen and improve the effectiveness of the Board's oversight of the management and operations of the Association and address the management related deficiencies in the 2010 ROE (Oversight Plan). At a minimum, the Oversight Plan shall:

- a. separately identify each criticism or deficiency discussed in the 2010 ROE and detail and discuss the specific corrective actions that the Board will take, including target dates for completion of the corrective actions, to address each criticism or deficiency;
- b. identify specific reports and other information that Management shall prepare and submit to the Board to ensure the effective oversight by the Board of the Association's activities and operations, including compliance with applicable laws, regulations and regulatory guidelines and the Association's policies and procedures;

c. discuss and detail new or modified systems, procedures and controls to ensure effective oversight by the Board of the Association's operations and adherence to approved policies, procedures, and applicable laws and regulations including, but not limited to, organizational restructuring, changes in position duties and responsibilities, modified internal audit and review procedures and practices, and reporting to the Board monitoring

25. The Board shall make any changes to the Oversight Plan required by the Regional Director within twenty (20) days after being notified of such changes and provide a copy of the revised Oversight Plan to the Regional Director for review. Upon receipt of approval of or non-objection to the revised Oversight Plan from the Regional Director, the Board shall adopt the revised Oversight Plan and ensure that the Association adheres to and implements the revised Oversight Plan. A copy of the revised Oversight Plan and the Board meeting minutes reflecting the Board's adoption thereof shall be provided to the Regional Director within ten (10) days after the Board meeting.

Internal Asset Review and Classification.

26. Within sixty (60) days, the Association shall revise its written internal asset review and classification program (IAR Program) to ensure that it address all corrective actions set forth in the 2010 ROE relating to internal asset review and classification and complies with all applicable laws, regulations and regulatory guidance. At a minimum, the IAR Program shall:

- (a) ensure the accurate and timely identification, classification, and reporting of the Association's assets, including the designation of loans as special mention or placement of loans on a watch list where a borrower's credit standing has deteriorated;
- (b) detail the Association's loan grading system and specify parameters for the identification of problem loans for each type of loan offered by the Association;

- (c) establish specific review and classification standards for any loans where interest, loan fees, late fees, loan costs, or collection costs of problem loans have been capitalized into the loan balance;
- (d) require internal asset reviews and updates for loan relationships in excess of Five Hundred Thousand Dollars (\$500,000) to be conducted not less than every twelve (12) months;
- (e) require quarterly reports be submitted to the Board detailing the Association's adversely classified, special mention and delinquency ratios; and
- (f) provide for the appointment of a qualified, experienced, and independent third party to conduct, at a minimum, annual reviews of the Association's loan relationships in excess of One Million Dollars (\$1,000,000) and assessments of the Association's internal asset review process thereof.

Problem Assets.

27. Within sixty (60) days, the Association shall submit a detailed, written plan with specific strategies, targets and timeframes to reduce⁵ the Association's level of problem assets⁶ (Problem Asset Reduction Plan) that is acceptable to the Regional Director. The Problem Asset Reduction Plan, at a minimum, shall include:

- (a) quarterly targets for the level of classified assets as a percentage of Tier 1 (Core) capital plus ALLL;
- (b) a description of the methods for reducing the Association's level of classified assets to the established targets; and

⁵ For purposes of this Paragraph, "reduce" means to collect, sell, charge off, or improve the quality of an asset sufficient to warrant its removal from adverse criticism or classification.

⁶ The term "problem assets" shall include all [classified assets,] [and assets designated special mention,] [and all nonperforming assets,] [and all delinquent loans.]

- (c) all relevant assumptions and projections and documentation supporting such assumptions and projections.

28. Within sixty (60) days, the Association shall develop individual written specific workout plans for each problem asset or group of loans to any one borrower or loan relationship of Five Hundred Thousand Dollars (\$500,000) or greater (Asset Workout Plans).

29. Within sixty (60) days after the end of each quarter, beginning with the quarter ending June 30, 2010, the Association shall submit a quarterly written asset status report (Quarterly Asset Report) to the Board. The Board's review of the Quarterly Asset Report shall be documented in the Board meeting minutes. The Quarterly Asset Report shall include, at a minimum:

- (a) the current status of all Asset Workout Plans;
- (b) a comparison of classified assets to Tier 1 (Core) capital plus ALLL and Total Risk-Based capital;
- (c) a comparison of classified assets at the current quarter end with the preceding quarter;
- (d) a breakdown of classified assets by type and risk factor (for example, residential, acquisition and development, construction, land loans, location, and origination source);
- (e) an assessment of the Association's compliance with the Problem Asset Reduction Plan;
- (f) a discussion of the actions taken during the preceding quarter to reduce the Association's level of classified assets; and
- (g) any recommended revisions or updates to the Problem Asset Reduction Plan.

Appraisals.

30. Effective immediately, the Association shall ensure that all appraisals comply with 12 C.F.R. Part 564. The Association shall prepare and submit documentation or reports to the Board discussing and detailing the Association's compliance with 12 C.F.R. Part 564 and this Order. The Board's review of such reports and the Association's compliance with this provision shall be documented in the Board meeting minutes.

Regulation O.

31. Effective immediately, the Board shall review and revise the Association's policies, procedures, and systems governing transactions between the Association and Insiders⁷ to ensure that all Insider transactions comply with the requirements set forth in 12 C.F.R. Part 215 (Insider Policy). At a minimum, the Insider Policy shall:

- a. prohibit the payment of any overdraft that would violate the requirements of 12 C.F.R. Part 215;
- b. establish procedures to ensure that transactions with Insiders are reviewed and approved consistent with the Association's Insider Policy and the requirements of 12 C.F.R. Part 215 and fully documented, including, but not limited to: obtaining independent appraisals of property securing Insider loans and information demonstrating that an Insider loan is made on terms and conditions that are no more favorable than those for loans made by the Association to non-Insiders;
- c. require documentation in the Board minutes reflecting the Board's deliberations regarding Insider loans; and Board actions approving or denying Insider loans;

⁷ The term "Insider" is defined at 12 C.F.R. § 215.2(h).
Plantation Bank
Order to Cease and Desist
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d. require disclosure of actual and potential conflicts of interest to the Board, and periodic disclosure of related interests as defined by 12 C.F.R. Part 215; and

e. require disclosure of any Insider's material interest in the business of a borrower, an applicant, or other customer of the Association.

Brokered Deposits.

32. Effective immediately, the Association shall comply with the requirements of 12 C.F.R. § 337.6(b).

Directorate and Management Changes.

33. Effective immediately, the Association shall comply with the prior notification requirements for changes in directors and Senior Executive Officers⁸ set forth in 12 C.F.R. Part 563, Subpart H.

Dividends and Other Capital Distributions.

34. Effective immediately, the Association shall not declare or pay dividends or make any other capital distributions, as that term is defined in 12 C.F.R. § 563.141, without receiving the prior written approval of the Regional Director in accordance with applicable regulations and regulatory guidance. The Association's written request for approval shall be submitted to the Regional Director at least forty-five (45) days prior to the anticipated date of the proposed declaration, dividend payment or distribution of capital.

Employment Contracts and Compensation Arrangements.

35. Effective immediately, the Association shall not enter into, renew, extend or revise any contractual arrangement relating to compensation or benefits for any Senior Executive Officer⁹.

⁸ The term "Senior Executive Officer" is defined at 12 C.F.R. § 563.555.

⁹ The term "Senior Executive Officer" is defined at 12 C.F.R. § 563.555.

or director of the Association, unless it first provides the Regional Director with not less than thirty (30) days prior written notice of the proposed transaction. The notice to the Regional Director shall include a copy of the proposed employment contract or compensation arrangement or a detailed, written description of the compensation arrangement to be offered to such officer or director, including all benefits and perquisites. The Board shall ensure that any contract, agreement or arrangement submitted to the Regional Director fully complies with the requirements of 12 C.F.R. Part 359, 12 C.F.R. §§ 563.39 and 563.161(b), and 12 C.F.R. Part 570 – Appendix A.

Golden Parachute and Indemnification Payments.

36. Effective immediately, the Association shall not make any golden parachute payment¹⁰ or prohibited indemnification payment¹¹ unless, with respect to each such payment, the Association has complied with the requirements of 12 C.F.R. Part 359 and, as to indemnification payments, 12 C.F.R. § 545.121.

Third Party Contracts.

37. Effective immediately, the Association shall not enter into any arrangement or contract with a third party service provider that is significant to the overall operation or financial condition of the Association¹² or outside the Association's normal course of business unless, with respect to each such contract, the Association has: (a) provided the Regional Director with a minimum of thirty (30) days prior written notice of such arrangement or contract and a written determination that the arrangement or contract complies with the standards and guidelines set

¹⁰ The term "golden parachute payment" is defined at 12 C.F.R. § 359.1(f).

¹¹ The term "prohibited indemnification payment" is defined at 12 C.F.R. § 359.1(l).

¹² A contract will be considered significant to the overall operation or financial condition of the Association where the annual contract amount equals or exceeds two percent (2%) of the Association's total capital, where there is a foreign service provider, or where it involves information technology that is critical to the Association's daily operations without regard to the contract amount.

forth in Thrift Bulletin 82a (TB 82a); and (b) received written notice of non-objection from the Regional Director.

Transactions with Affiliates.

38. Effective immediately, the Association shall not engage in any new transaction with an affiliate unless, with respect to each such transaction, the Association has complied with the notice requirements set forth in 12 C.F.R. § 563.41(c)(4), which shall include the information set forth in 12 C.F.R. § 563.41(c)(3). The Board shall ensure that any transaction with an affiliate for which notice is submitted pursuant to this Paragraph, complies with the requirements of 12 C.F.R. § 563.41 and Regulation W, 12 C.F.R. Part 223.

Board Oversight of Compliance with Order.

39. Within thirty (30) days, the Board shall designate a committee to monitor and coordinate the Association's compliance with the provisions of this Order and the completion of all corrective actions required in the 2010 ROE (Oversight Committee). The Oversight Committee shall be comprised of four (4) or more directors, the majority of whom shall be independent¹³ directors.

¹³ For purposes of this Order, an individual who is "independent" with respect to the Association shall be any individual who:

- (a) is not employed in any capacity by the Association or Holding Company, its subsidiaries, or its affiliates, other than as a director;
- (b) does not own or control more than ten percent (10%) of the outstanding shares of the Association, Holding Company or any of its affiliates;
- (c) is not related by blood or marriage to any officer or director of the Association, Holding Company or any of its affiliates, or to any shareholder owning more than ten percent (10%) of the outstanding shares of the Association, Holding Company or any of its affiliates, and who does not otherwise share a common financial interest with any such officer, director or shareholder;
- (d) is not indebted, directly or indirectly, to the Association, Holding Company or any of its affiliates, including the indebtedness of any entity in which the individual has a substantial financial interest, in an amount exceeding ten percent (10%) of the Association's total Tier 1 (Core) capital; and
- (e) has not served as a consultant, advisor, underwriter, or legal counsel to the Association, Holding Company or any of its affiliates.

40. Within sixty (60) days after the end of each quarter, beginning with the quarter ending June 30, 2010, the Oversight Committee shall submit a written compliance progress report to the Board (Compliance Tracking Report). The Compliance Tracking Report shall, at a minimum:

- (a) separately list each corrective action required by this Order and the 2010 ROE;
- (b) identify the required or anticipated completion date for each corrective action; and
- (c) discuss the current status of each corrective action, including the action(s) taken or to be taken to comply with each corrective action.

41. Within sixty (60) days after the end of each quarter, beginning with the quarter ending June 30, 2010, the Board shall review the Compliance Tracking Report and all reports required to be prepared by this Order. Following its review, the Board shall adopt a resolution: (a) certifying that each director has reviewed the Compliance Tracking Report and all required reports; and (b) documenting any corrective actions adopted by the Board. A copy of the Compliance Tracking Report and the Board resolution shall be provided to the Regional Director within sixty (60) days after the end of each quarter, beginning with the quarter ending June 30, 2010.

42. Nothing contained herein shall diminish the responsibility of the entire Board to ensure the Association's compliance with the provisions of this Order. The Board shall review and adopt all policies and procedures required by this Order prior to submission to the OTS.

Effective Date, Incorporation of Stipulation.

43. This Order is effective on the Effective Date as shown on the first page. The Stipulation is made a part hereof and is incorporated herein by this reference.

Duration.

44. This Order shall remain in effect until terminated, modified, or suspended by written notice of such action by the OTS, acting by and through its authorized representatives.

Time Calculations.

45. Calculation of time limitations for compliance with the terms of this Order run from the Effective Date and shall be based on calendar days, unless otherwise noted.

46. The Regional Director, or an OTS authorized representative, may extend any of the deadlines set forth in the provisions of this Order upon written request by the Association that includes reasons in support for any such extension. Any OTS extension shall be made in writing.

Submissions and Notices.

47. All submissions, including any reports, to the OTS that are required by or contemplated by this Order shall be submitted within the specified timeframes.

48. Except as otherwise provided herein, all submissions, requests, communications, consents or other documents relating to this Order shall be in writing and sent by first class U.S. mail (or by reputable overnight carrier, electronic facsimile transmission or hand delivery by messenger) addressed as follows:

- a. To the OTS:
Regional Director
Office of Thrift Supervision
1475 Peachtree St., NE
Atlanta, Georgia 30309
404.897.1861 (Fax)
- b. To the Association:
Plantation Federal Bank
11039 Ocean Highway
Pawleys Island, South Carolina 29585
843.235.8458 (Fax)

No Violations Authorized.

49. Nothing in this Order or the Stipulation shall be construed as allowing the Association, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED.

OFFICE OF THRIFT SUPERVISION

By: _____/s/_____
James G. Price
Regional Director, Southeast Region

Date: See Effective Date on page 1

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of	)	
	)	Order No.: SE-10-032
	)	
PLANTATION FEDERAL BANK	)	Effective Date: June 30, 2010
	)	
Pawleys Island, South Carolina	)	
OTS Docket No. 08349	)	
	)	

STIPULATION AND CONSENT TO ISSUANCE OF ORDER TO CEASE AND DESIST

WHEREAS, the Office of Thrift Supervision (OTS), acting by and through its Regional Director for the Southeast Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed Plantation Federal Bank, Pawleys Island, South Carolina, OTS Docket No. 08349 (Association), that the OTS is of the opinion that grounds exist to initiate an administrative proceeding against the Association pursuant to 12 U.S.C. § 1818(b);

WHEREAS, the Regional Director, pursuant to delegated authority, is authorized to issue Orders to Cease and Desist where a savings association has consented to the issuance of an order; and

WHEREAS, the Association desires to cooperate with the OTS to avoid the time and expense of such administrative cease and desist proceeding by entering into this Stipulation and Consent to the Issuance of Order to Cease and Desist (Stipulation) and, without admitting or denying that such grounds exist, but only admitting the statements and conclusions in Paragraphs

1 and 2 below concerning Jurisdiction, hereby stipulates and agrees to the following terms:

Jurisdiction.

1. The Association is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, the Association is “an insured depository institution” as that term is defined in 12 U.S.C. § 1813(c).
2. Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the “appropriate Federal banking agency” with jurisdiction to maintain an administrative enforcement proceeding against a savings association. Therefore, the Association is subject to the authority of the OTS to initiate and maintain an administrative cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b).

OTS Findings of Fact.

3. Based on its January 4, 2010 examination of the Association, the OTS finds that the Association has engaged in unsafe or unsound banking practices and has violated various laws and regulations as follows:
 - (a) operating the Association with an inadequate level of capital protection for the volume, type and quality of assets held by the Association;
 - (b) operating the Association with inadequate earnings to fund growth, support dividend payments and augment capital;
 - (c) operating the Association with an excessive level of adversely classified loans or assets;
 - (d) operating with an inadequate allowance for loan and lease losses for the volume, type, and quality of loans and leases held and failing to make provision for an adequate reserve for possible loan losses;

(e) operating the Association with an excessive concentration of non-residential real estate loans, land loans, home equity lines of credit, and non-mortgage commercial loans as described in the January 4, 2010 Report of Examination of the Association ("2010 Examination");

(f) operating the Association in contravention of written loan policies and procedures;

(g) operating in contravention of supervisory policy statements and other guidance, including, but not limited to:

(i) the Interagency Policy Statement on the Allowance for Loan and Lease Losses (ALLL) and Questions and Answers on Accounting for Loan and Lease Losses dated December 13, 2006, and contained in Chief Executive Officer (CEO) Memorandum # 250 (December 13, 2006); and

(ii) the Interagency Guidelines Establishing Standards for Safety and Soundness set forth in Appendix A to 12 C.F.R. Part 570.

(h) 12 C.F.R. Part 570 - Appendix A (Interagency Guidelines Establishing Standards for Safety and Soundness);

(i) 12 C.F.R. § 560.160 (Asset Classification);

(j) 12 C.F.R. § 564.8 (Appraisal Policies and Practices of Savings Associations and Subsidiaries); and

(k) 12 C.F.R. § 215.4 (General Prohibitions on Loans to Executive Officers Directors and Principal Shareholders).

Consent.

4. The Association consents to the issuance by the OTS of the accompanying Order to

Cease and Desist (Order). The Association further agrees to comply with the terms of the Order upon the Effective Date of the Order and stipulates that the Order complies with all requirements of law.

Finality.

5. The Order is issued by the OTS under 12 U.S.C. § 1818(b). Upon the Effective Date, the Order shall be a final order, effective, and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

Waivers.

6. The Association waives the following:

- (a) the right to be served with a written notice of the OTS's charges against it as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- (b) the right to an administrative hearing of the OTS's charges as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- (c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and
- (d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs, or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, federal statutes, or otherwise.

OTS Authority Not Affected.

7. Nothing in this Stipulation or accompanying Order shall inhibit, estop, bar, or otherwise prevent the OTS from taking any other action affecting the Association if at any time the OTS

deems it appropriate to do so to fulfill the responsibilities placed upon the OTS by law.

Other Governmental Actions Not Affected.

8. The Association acknowledges and agrees that its consent to the issuance of the Order is solely for the purpose of resolving the matters addressed herein, consistent with Paragraph 7 above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of the Association that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental entity other than the OTS.

Miscellaneous.

9. The laws of the United States of America shall govern the construction and validity of this Stipulation and of the Order.

10. If any provision of this Stipulation and/or the Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.

11. All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns.

12. The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the interpretation of this Stipulation or the Order.

13. The terms of this Stipulation and of the Order represent the final agreement of the parties with respect to the subject matters thereof, and constitute the sole agreement of the parties with respect to such subject matters.

14. The Stipulation and Order shall remain in effect until terminated, modified, or suspended

in writing by the OTS, acting through its Regional Director or other authorized representative.

Signature of Directors/Board Resolution.

15. Each Director signing this Stipulation attests that he or she voted in favor of a Board Resolution authorizing the consent of the Association to the issuance of the Order and the execution of the Stipulation.

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PLANTATION FEDERAL BANK
Pawleys Island, South Carolina

OFFICE OF THRIFT SUPERVISION

By: /s/
James G. Price
Southeast Regional Director

/s/
Gary C. Cooper, Director

/s/
Janet W. Devereux, Director

/s/
James M. League, Jr., Director

/s/

Ross M. Lindsay, III, Director

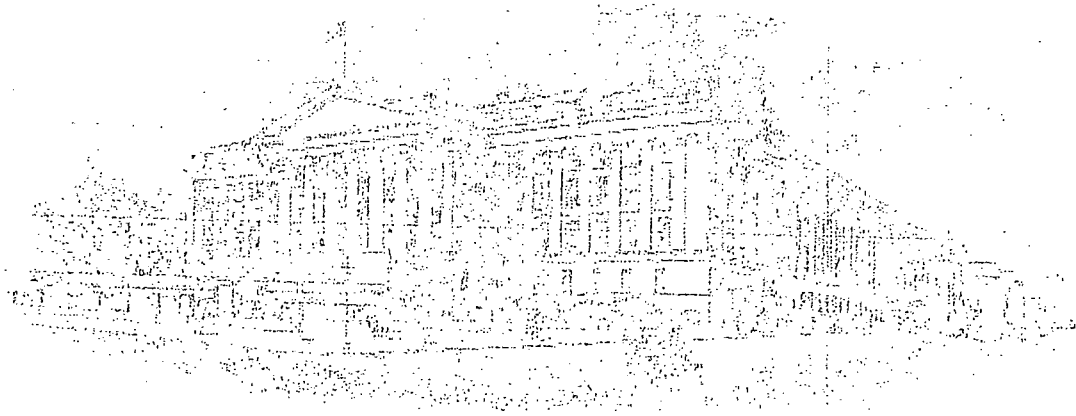
/s/

William D. Richmond, Director

/s/
Brad B. Smith, Director



Audit Report



OIG-16-052

SAFETY AND SOUNDNESS: Analysis of Bank Failures Reviewed
by the Department of the Treasury Office of Inspector General

August 15, 2016

Office of
Inspector General

Department of the Treasury

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Abbreviations

CDO	collateralized debt obligation
CMO	collateralized mortgage obligation
CRE	commercial real estate
DIF	Deposit Insurance Fund
Dodd-Frank	Dodd-Frank Wall Street Reform and Consumer Protection Act
EIC	Examiner-in-Charge
Fannie Mae	Federal National Mortgage Association
FBR	failed bank review
FDIA	Federal Deposit Insurance Act

Contents

FDICIA	Federal Deposit Insurance Corporation Improvement Act of 1991
FDIC	Federal Deposit Insurance Corporation
FFIEC	Federal Financial Institutions Examination Council
Freddie Mac	Federal Home Loan Mortgage Corporation
FSOC	Financial Stability Oversight Council
GSE	Government-Sponsored Enterprise
MLR	material loss review
MRA	matter requiring attention
OCC	Office of the Comptroller of the Currency
OIG	Office of Inspector General
OTS	Office of Thrift Supervision
PCA	prompt corrective action
Platinum	Platinum Community Bank
ROE	report of examination
SAR	Suspicious Activity Report
TeamBank	TeamBank, National Association
Treasury	Department of the Treasury

*The Department of the Treasury
Office of Inspector General*

August 15, 2016

Thomas J. Curry
Comptroller of the Currency

This report presents the results of our analysis of the material loss review (MLR), failed bank review (FBR), and in-depth review reports we issued during 2008–2012, as well as Office of the Comptroller of the Currency's (OCC) actions to strengthen its bank supervision process.

Our audit objectives were to (1) identify common themes related to the supervision of banks and thrifts¹ and the causes of their failures and (2) assess OCC's actions to strengthen its supervisory process in response to our audit recommendations and through other initiatives. To accomplish our objectives, we reviewed the 120 MLR, FBR, and in-depth review reports we issued to OCC and the legacy Office of Thrift Supervision (OTS) from January 1, 2008, through December 31, 2012, on banks that failed from September 2007 through July 2012.² We also reviewed relevant OCC documentation and guidance, interviewed OCC officials, and conducted other applicable fieldwork from December 2011 through March 2015. Appendix 1 contains a detailed description of our objectives, scope, and methodology.

Results in Brief

The bank failures stemmed mainly from the banks' ineffective management, inadequate board oversight, aggressive growth strategies, inability to adjust quickly or effectively to changing economic conditions and the declining real estate market, and failure to maintain sufficient capital.

¹ Both national banks and thrifts are collectively referred to as banks throughout this report.

² Legacy OTS regulated all thrifts until July 21, 2011, when OCC assumed regulatory responsibility for federal savings associations pursuant to P.L. 111-203. Therefore, we did not assess the corrective actions taken by legacy OTS.

We determined the most common themes associated with the failed banks were: (1) asset concentrations, (2) inadequate credit administration and risk management, and (3) reliance on wholesale funding. We also identified several other attributes that, though not as common, contributed to bank failures. In addition, we identified certain matters in 29 failed banks relating to potential fraud that we referred or provided information to the Department of the Treasury's (Treasury) Office of Inspector General's (OIG) Office of Investigation. Further review of these matters by Treasury OIG's Office of Investigation led to the prosecution of several individuals. Appendix 4 contains a listing of the common themes of the failures, by bank, as reported in our MLR, FBR, and in-depth review reports.

We also identified common supervisory themes of the banks prior to their failures. We determined that OCC's supervision was appropriate in some of the banks and OCC's and the legacy OTS's uses of authority under prompt corrective action (PCA) were generally in accordance with PCA requirements. However, for many banks, OCC and the legacy OTS: (1) did not take timely and/or strong enough supervisory actions and/or (2) did not timely identify or failed to identify key issues. In some instances, we noted that OCC and the legacy OTS lacked appropriate guidance or did not follow their guidance. Appendix 5 contains a listing of the common supervisory themes and other supervisory issues, by bank, reported in our MLR and in-depth reports.

OCC generally concurred with the recommendations we made in our MLR and in-depth review reports. And, OCC implemented policies and procedures, updated examination guidance, and took other corrective actions consistent with the intent of our recommendations. Appendix 6 contains further details of OCC's corrective actions, planned or taken, to address our recommendations.

Finally, OCC has undertaken independent initiatives to strengthen its supervisory process, including implementing processes to identify emerging risks to bank safety and soundness. Additionally, the Comptroller of the Currency requested that a small group of current and former senior supervisory personnel from other countries independently review OCC's supervision. In a December

2013 report to OCC, the group commended OCC's improved ability to focus on specific risk areas and its creation of an independent quality assurance process to review its own supervision.

OCC is addressing several key recommendations made by the group, covering six broad areas:

- mission, vision, and strategic goals;
- risk identification;
- ratings systems;
- staffing;
- scope and consistency of supervisory strategies; and
- enterprise governance.

Banking crises such as the one that occurred from 2008-2012 have happened before; most recent prior to the Great Recession was the savings and loans crisis of the late 1980s/early 1990s when thousands of institutions failed. A major challenge facing OCC going forward is to institutionalize and maintain the "lessons learned" and initiatives from this crisis to hopefully minimize the impact of future stresses to the economy on banking. Accordingly, we recommend that the Comptroller of the Currency ensure OCC identifies common trends and emerging issues to take corrective action in a timely manner by continuing to: (1) address recommendations from our MLRs and in-depth reviews, as well as the international review; (2) participate in various committees and groups to identify emerging risks and communicate them to examiners and banks; and (3) use its newly implemented lessons-learned review program and other analyses, as appropriate.

In a written response, OCC management showed concurrence with our audit results. To address previous MLR and in-depth review recommendations, management stated that OCC will continue its practice of identifying and taking appropriate actions in a timely manner in response to recommendations from MLRs and in-depth reviews as well as continue with its initiatives that addressed and implemented the December 2013 International Peer Review recommendations. With respect to participating on committees and the like, management responded that OCC is a member of the Financial Stability Oversight Council (FSOC) and the Federal Financial Institutions Examination Council (FFIEC), and OCC staff

participate on FSOC and FFEIC support committees. In addition, OCC participates on international committees, supervisory colleges, and crisis management groups; interagency and cross-governmental working groups; and ad hoc groups where risks are raised and discussed. As for OCC's new lessons-learned program, management stated that OCC will continue to use the program going forward. Overall, we found management's response to meet the intent of our recommendations. We have summarized and evaluated management's response in the recommendation section of this report and included the response in its entirety as appendix 7.

Background

Section 38(k) of the Federal Deposit Insurance Act (FDIA) requires that the inspectors general for federal banking agencies review bank failures resulting in Deposit Insurance Fund (DIF) losses. OCC is the Federal banking agency responsible for supervising national banks and federal savings associations. On July 21, 2011, OCC assumed regulatory responsibility for the federal savings associations from the legacy OTS pursuant to P.L. 111-203.

Prior to enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), on July 21, 2010, section 38(k) of the FDIA defined a DIF loss as material if it exceeded the greater of \$25 million or 2 percent of the failed institution's total assets. Among other things, Dodd-Frank amended how the FDIA defined the materiality of a DIF loss. A DIF loss is material if it exceeds \$200 million for a failure occurring in calendar years 2010 and 2011, \$150 million in 2012 and 2013, and \$50 million in 2014, with a provision that the threshold can be raised temporarily to \$75 million thereafter if certain conditions are met.

Such material losses trigger formal review by the cognizant OIG, and for each MLR, section 38(k) of FDIA requires that the OIG (1) determine the causes of the institution's failure; (2) assess the appropriate agency's supervision of the institution, including implementation of the PCA provision of section 38(k); and (3) make recommendations for preventing such a loss in the future.

Dodd-Frank³ also created new reporting requirements for failures that result in losses below the appropriate materiality threshold. We refer to these reports as FBRs. In these situations, we must determine the grounds identified by OCC for appointing the Federal Deposit Insurance Corporation (FDIC) as receiver and determine whether any unusual circumstances warrant a more in-depth review of the loss.³

In our 2004 compendium report, *Summary of Treasury OIG's Material Loss Reviews of Failed National Banks and Thrift Institutions Between 1993 and 2002*⁴, our office performed 7 MLRs between 1993 and 2002 pursuant to the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Of the 7 MLRs performed, 5 were required under FDICIA and two were considered pilots since the losses occurred before such reviews were required by law. Also of note, between 2003 and 2007, there were no failures that required an MLR.

From September 2007 through July 2012, 126 of the approximately 2,200 banks (or approximately 6 percent) supervised by OCC or the legacy OTS failed.⁵ We issued 120 reports on 119 of those failed banks during the period January 1, 2008 through December 31, 2012.⁶ The reports included results from:

- 54 MLRs (26 supervised by OCC and 28 by legacy OTS),
- 63 FBRs (45 supervised by OCC and 18 by legacy OTS), and
- 3 in-depth reviews (2 supervised by OCC and 1 by legacy OTS).

The banks we reviewed had approximately \$185.4 billion in aggregate total assets, and their failures resulted in an aggregate estimated DIF loss of \$35.3 billion, or 1.9 percent, of the aggregate total assets of the failed banks.

³ In the event that a loss warrants an in-depth review, we must report in our FBR the reasons for such review and state when it will be submitted to OCC and the Congress. Our objectives for in-depth reviews, similar to MLRs, are to (1) assess OCC's supervision of the institution, including implementation of the PCA provision of section 38(k), and (2) make recommendations for preventing such a loss in the future.

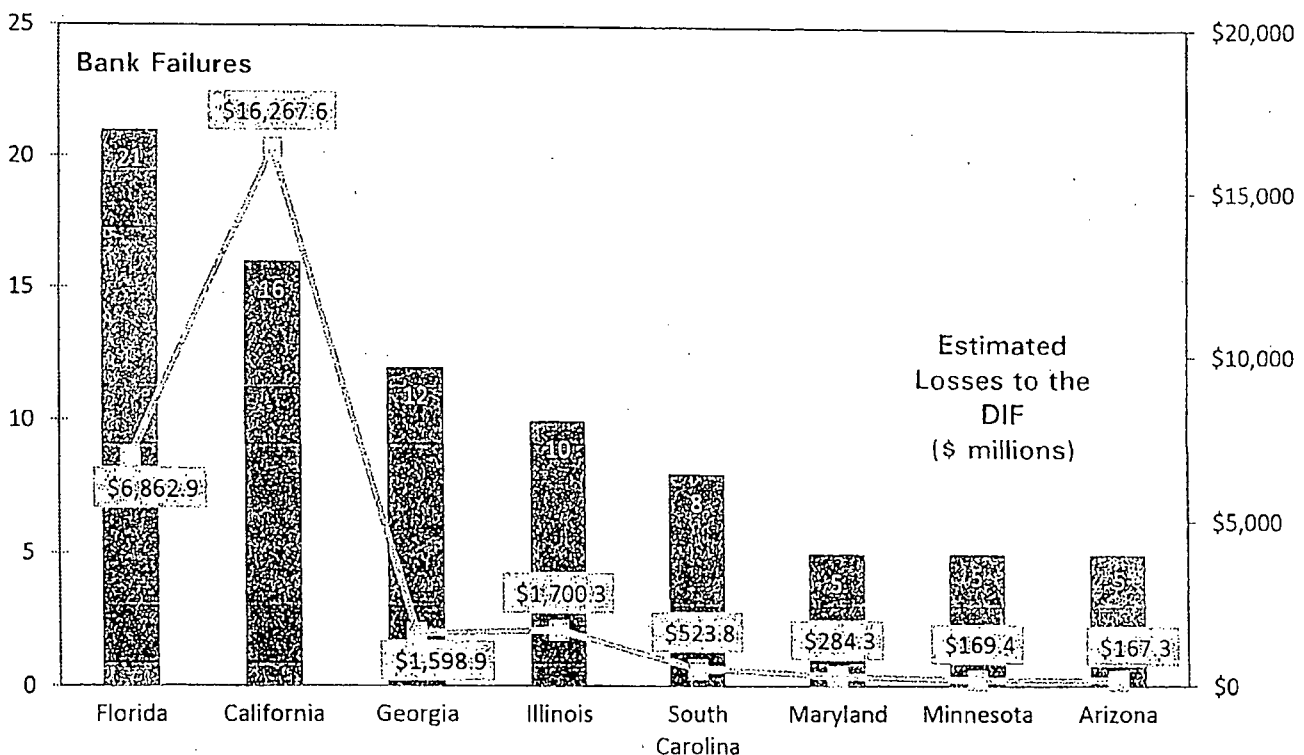
⁴ Treasury OIG, *Safety, Soundness, and Accessibility of Financial Services: Summary of Treasury OIG's Material Loss Reviews of Failed National Banks and Thrift Institutions Between 1993 and 2002*, OIG-CA-04-004 (May 28, 2004).

⁵ Among the 126 failed banks, 7 did not meet the \$25 million materiality threshold requiring an MLR, and they failed prior to the Dodd-Frank Act requirement for an FBR.

⁶ We issued an FBR report and an in-depth review report on First National Bank of Davis.

Of the failed banks we reviewed, 65 percent were located in the southern and the western regions of the United States. They constituted 83 percent, or \$29.4 billion, of the aggregate estimated losses in our review. As Figure 1 shows, banks in eight states accounted for 69 percent of bank failures and 78 percent of estimated DIF losses, or approximately \$27.6 billion. Florida and California were the top two states in both number of failures and DIF losses, accounting for 37 failures and \$23.1 billion in estimated losses among the banks in our review. Appendices 2 and 3 provide additional details of the failed banks we reviewed, including their assets and estimated losses.

Figure 1: Bank Failures and Estimated Losses to the DIF, by State, 9/2007–7/2012



Source: Analysis of Treasury OIG reports issued from January 1, 2008, through December 31, 2012.

Audit Results

Common Causes of Bank Failures

We found that many of the recent bank failures displayed some of the same risks we identified in our 2004 compendium report. These involved board of director and/or management weaknesses and aggressive growth strategies that resulted in excessive concentrations of high-risk assets and overreliance on continued growth in the economy.

Most bank failures were the result of ineffective management, inadequate board oversight, aggressive growth strategies, the inability to adjust quickly or effectively to changing economic conditions and the declining real estate market, and the failure to maintain sufficient capital:

Ineffective Management and Inadequate Board Oversight

The boards of directors and management for the banks did not appropriately address problem areas or adequately identify, measure, monitor, or control significant risks that threatened viability. For example, the banks' boards and management (1) engaged in business strategies that encouraged high growth without adequately monitoring higher-risk loans, (2) did not establish or enforce concentration limits on their portfolios, and (3) did not maintain adequate capital to compensate for their high-risk lending. In some instances, the boards and management were non-responsive to regulator efforts to correct unsafe and unsound practices. As a result, the banks' asset quality deteriorated, classified asset levels and losses increased, and capital and earnings declined, ultimately leading to their failures.

Aggressive Growth Strategy

Prior to 2007, the banking industry experienced success due to strong financial performances, particularly in real estate. This led many banks to pursue aggressive growth strategies, especially in real estate, which was profitable and in demand. These strategies led to lax credit administration and risk management, asset

concentrations, and overreliance on wholesale funding, all of which are discussed below.

Economic Downturn

By 2007, the U.S. economy as a whole had begun to decline. The economic downturn hit real estate markets in southern and western states hardest. Those regions led in both number of bank failures and DIF loss in our review. Appendix 3 provides further details of the failures by region.

As the economy declined, property prices fell, and collateral values dropped. The drop in collateral values left many borrowers unable to refinance, leading to defaults on many loans, substantial write-downs on others, and, eventually, foreclosures. This left the banks with many rapidly depreciating real estate assets that they could not sell. Furthermore, management relied on the previously robust real estate market to generate high-risk, high-yield loans without implementing adequate safeguards. The downturn in the economy magnified other deficiencies and helped to accelerate many bank failures.

Insufficient Capital

Federal banking law requires banking organizations to achieve and maintain adequate capital to serve as a buffer against unexpected losses. Sufficiency of capital is relative to the risk level of a bank's loan portfolio. Whether failed banks maintained capital just above the well-capitalized standard (affording little cushion for unanticipated, adverse events) or maintained higher capital levels, they could not sustain the large loan losses and economic downturn associated with the housing collapse. Over time, the losses eroded capital until the banks eventually became critically undercapitalized and then ultimately failed.

We determined the most common themes of bank failures to be: (1) asset concentrations, (2) inadequate credit administration and risk management, and (3) reliance on wholesale funding. We also identified several less common causes contributing to bank failure. Appendix 4 contains a listing of the common causes of the failures, by bank, as reported in our MLR, FBR, and in-depth review reports.

Asset Concentration

OCC broadly defines a concentration as a group of classes of credit exposures that share common risk characteristics or sensitivities to economic, financial, or business developments that, in aggregate, exceed 25 percent of the bank's capital structure.⁷ If a bank's assets are highly concentrated in a particular category, negative events affecting that category can be highly detrimental to the bank as a whole.

Of the 119 banks we reviewed:

- 89 (or 75 percent) had concentrations in commercial real estate (CRE) loans⁸
- 20 (or 17 percent) had concentrations of non-traditional mortgages⁹
- 18 (or 15 percent) had concentrations of other assets, such as auto loans with subprime characteristics, non-agency collateralized mortgage obligations (CMOs),¹⁰ collateralized

⁷ The legacy OTS defined concentrations as a group of similar types of assets or liabilities that, when aggregated, exceed 25 percent of a thrift's core capital plus allowance for loan and lease losses.

⁸ CRE loans are loans for real property for which the primary or significant source of repayment is from rental income associated with the property or the proceeds of the sale, refinancing, or permanent financing of the property. CRE loans include construction and real estate development loans, land development loans, and commercial property loans (such as for office buildings and shopping centers).

⁹ Non-traditional mortgages describe mortgages that do not take the traditional form. Traditional mortgage loans, both fixed and adjustable rate, typically require that the borrower's monthly payment cover both interest and a reduction in principal, allowing for a reasonably predictable amortization over the life of the mortgage. Nontraditional mortgages include, but are not limited to, interest-only mortgages, payment-option adjustable-rate mortgages, and subprime mortgages.

¹⁰ A non-agency CMO is a type of financial debt vehicle that is not issued by a Government Sponsored Enterprise (GSE). A CMO is a special-purpose entity that is wholly separate from the institution that creates it. The entity is the legal owner of a set of mortgages, called a pool. Investors in a CMO buy bonds issued by the CMO, and they receive payments according to a defined set of rules.

debt obligations (CDOs),¹¹ home equity lines of credit,¹² and nonhomogeneous loans.¹³

Inadequate Credit Administration and Risk Management

Credit administration and risk management include underwriting, loan review and appraisal processes, risk weighting, analyses of allowances for loan and lease losses, and multivariable stress testing of loan portfolios.¹⁴

Eighty-six (86), or 72 percent, of the 119 failed banks had inadequate credit administration and risk management practices.

We reported instances in which bank management provided flexibility in underwriting standards to compete with other lenders. Some of the banks failed to obtain appraisals or had improper appraisal practices, such as untimely, incomplete, or inadequate support for appraisal values. In some cases, this leniency resulted in approved loans for borrowers with financial weaknesses, including poor credit history, deficient collateral, low credit scores, numerous late payments, and previous foreclosures. In some instances, banks identified some of these weaknesses prior to approving the loans. Appraisal deficiencies often resulted in properties being overvalued, violating standard appraisal requirements.

Additionally, OCC or legacy OTS examiners documented various weaknesses in banks' credit risk management practices,

¹¹ A CDO is a structured investment security that consists of a securitized pool of debt instruments, such as trust-preferred securities. The cash flows of the underlying collateral are divided into separate portions, or tranches, each having its own yield, term, and other characteristics designed to appeal to different investors. Each CDO tranche represents a different type of credit risk. To compensate for their higher risk, tranches with higher-risk debt (junior or mezzanine tranches) offer higher interest rates to investors than more senior tranches. Typically, senior notes are rated at a higher investment grade than mezzanine notes.

¹² A home equity line of credit is a form of revolving credit backed by the home as collateral.

¹³ Nonhomogeneous assets have underwriting criteria that are less likely to be uniform, and classification decisions are based on broader considerations than just the loan's delinquency status. Nonhomogeneous loans may include, for example, construction, land, and land development loans, commercial mortgage loans, multifamily mortgage loans, and commercial loans.

¹⁴ Multivariable testing is designed to determine whether an insured depository institution has enough capital to weather the impact of adverse developments.

including inability to properly risk weight loans, incomplete analyses of allowance for loan and lease losses, inadequate multivariable stress testing of loan portfolios, and excessive loan exceptions. Furthermore, banks did not diversify lending into other geographic areas during the peak of the real estate market to alleviate the concentration and economic risks within local markets. All of these factors left banks with poor-quality, delinquent loans which led to diminished assets, eventual losses, and, ultimately, bank failures.

Reliance on Wholesale Funding

Twenty-four (24), or 20 percent, of the 119 banks failed, in part, because of an overreliance on wholesale funding, often used to finance growth. Brokered deposits, the most common type of wholesale funding that banks in our review used, are highly interest-rate-sensitive; and therefore, an unstable deposit source. FDICIA requires that acceptance of brokered deposits can only be made by well-capitalized institutions that exceed the minimum PCA requirements. As banks fell below the well-capitalized threshold, additional brokered deposits were no longer available as a funding source. Once cut off, banks were unable to identify alternative, sufficient funding solutions.

Other Causes

Several other causes, though not as common, contributed to bank failures. For example, one of the 119 banks failed because of significant losses from preferred stock holdings in Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac). Such losses were also a contributing factor to the failure of another five banks affiliated with one holding company. After the Federal Housing Finance Agency placed Fannie Mae and Freddie Mac into conservatorship on September 7, 2008, the market value of the GSE preferred stock owned by the banks declined significantly, and banks were required to write down their GSE investments.

Other causes included failed mergers, sales, or acquisitions; high management/staff turnover; improper accounting transactions; inadequate internal controls; and a lack of core

deposits or funding. In addition, we identified certain matters in 29 failed banks relating to potential fraud that we referred or provided information to Treasury's OIG Office of Investigation. Further review of these matters by Treasury OIG's Office of Investigation led to the prosecution of several individuals.

Common Supervisory Themes

We assessed supervision of OCC and/or the legacy OTS in 54 MLRs and 3 in-depth reviews,¹⁵ identifying common supervisory themes of the banks prior to their failures. We determined that OCC supervision were appropriate in some of the banks, and uses of OCC and legacy OTS authority under PCA were generally in accordance with PCA requirements. However, for many banks, OCC or legacy OTS: (1) did not take timely and/or strong enough supervisory actions, and/or (2) did not identify or timely identify key issues.

We also noted that several of the actions taken or not taken were the result of OCC and the legacy OTS not following their guidance and/or the lack of appropriate guidance. Furthermore, we noted several other supervisory issues that were not as common among the banks. Appendix 5 contains a listing of the common supervisory themes reported in our MLR and in-depth reports.

Appropriate Supervision

We considered OCC's overall supervision appropriate in 7 banks (6 of the 54 MLRs and 1 of the 3 in-depth reviews).¹⁶ For example, we concluded that OCC's supervision of the First National Bank of Anthony was appropriate even though it did not prevent a material loss to the DIF. OCC identified credit administration issues in a

¹⁵ The other 63 reports are FBRs. The objectives of FBRs do not require a supervision assessment of those failed banks whose assets fall below the MLR materiality threshold.

¹⁶ We considered the overall supervision of the seven OCC-regulated banks to be appropriate because reports on them did not include any supervisory concerns. We did not identify any banks in which the legacy OTS' overall supervision was considered fully adequate, either in terms of timely identifying problems at the banks, and/or taking appropriate supervisory action.

timely manner, issued enforcement actions, and used its authority under PCA.¹⁷

PCA Was Generally Used Appropriately

The purpose of PCA is to resolve the problems of insured depository institutions at the least possible long-term loss to the DIF. According to PCA requirements, Federal banking agencies are to take certain actions when an institution's capital drops below the adequately capitalized level. Under PCA, regulators have flexibility to take other supervisory actions against institutions based on criteria other than capital levels to help reduce deposit insurance losses caused by unsafe and unsound practices.

We found that OCC and the legacy OTS generally followed existing examination guidelines and implemented PCAs as required. OCC and legacy OTS routinely monitored capital levels, imposed increasingly restrictive mandatory provisions as capital levels decreased, and acted quickly to close critically undercapitalized banks.

Two instances out of the 54 MLRs and 3 in-depth reviews showed that PCAs were not used in accordance with PCA requirements: IndyMac Bank FSB and Platinum Community Bank (Platinum), both regulated by the legacy OTS:

- Legacy OTS took PCA against IndyMac Bank on July 1, 2008, following reclassification of IndyMac from well-capitalized to adequately capitalized on June 30, 2008. Although this conformed to PCA requirements, our office found that legacy OTS allowed IndyMac to record an \$18 million capital infusion received from the holding company in May 2008 as though it had been available on March 31, 2008. We determined that legacy OTS should have taken PCA in May 2008 based on information in IndyMac's 10-Q filing for the quarter ending March 31, 2008.
- Legacy OTS did not implement PCA during its supervision of Platinum given a rapid chain of events relating to the unsafe and

¹⁷ Treasury OIG, *Safety and Soundness: Material Loss Review of First National Bank of Anthony*, OIG-11-105 (September 20, 2011)

unsound use of escrow deposits to purchase certain mortgage loans, which led to the bank's failure. As a result of effects relating to the loan purchases, OTS notified Platinum in a letter dated August 3, 2009, that the bank was in troubled condition. The letter imposed restrictions on growth, severance pay, and dividends. On August 24, 2009, legacy OTS issued a cease and desist order to Platinum, requiring the bank to maintain capital ratios higher than PCA well-capitalized ratios. Because of this requirement, the cease and desist order stated that Platinum could not be deemed well-capitalized for PCA purposes and included other provisions normally associated with PCA requirements for undercapitalized banks.

Untimely Actions Taken and/or Stronger Actions Warranted

Federal banking agencies can take a number of corrective actions to address safety and soundness practices at banks. In 41 of the 54 MLRs and 1 of the 3 in-depth reviews (or 74 percent), we determined that OCC or the legacy OTS should have taken stronger actions and/or taken action earlier. Out of the 42 banks, 14 were regulated by OCC and 28 were regulated by the legacy OTS.

- We found instances where Federal banking agencies could have taken more forceful actions to compel banks to restrain and reduce higher-risk lending and secure higher capital levels.
- In some cases, Federal banking agencies took no supervisory action or should have taken stronger action to address unsafe and unsound concentrations in CRE, construction and land loans, and non-homogeneous loans identified in earlier exams.
- Federal banking agencies sometimes failed to require banks to increase capital levels to compensate for increasing risk in their loan portfolio in a timely manner.

Furthermore, we reported instances where Federal banking agencies did not take formal or informal enforcement actions in a timely manner, nor were they timely using matters requiring attention (MRAs)¹⁸ and corrective actions to compel boards of directors and management to mitigate risks. In many instances, examiners eventually concluded that regulatory action was

¹⁸ The legacy OTS referred to MRAs as "matters requiring board attention."

necessary, but that conclusion came too late to reverse the bank's worsening condition.

Guidance Not Followed or Lack of Appropriate Guidance

In 38 of the MLRs and in-depth reviews (or 67 percent), Federal banking agencies did not follow or lacked appropriate guidance. OCC regulated 16 of the banks, and the legacy OTS regulated 22. In certain cases, the Federal banking agencies took informal action rather than formal action, or assigned inaccurate CAMELS ratings.¹⁹ Federal banking agencies also failed to follow guidance on completion of working papers and examination documentation, had guidance that was too general, or lacked guidance requiring Examiner-in-Charge (EIC) rotation and a formal review of the supervision process.

In another example, OCC did not follow its guidance during the process of converting Silverton Bank to a national bank. OCC approved the conversion despite noting significant weaknesses in the pre-conversion examination, and it did not assign an EIC timely. Additionally, OCC did not have guidance for performing second-level reviews during the conversion approval process.²⁰ These issues were crucial to the bank's supervision during the deterioration of the housing market.

Key Issues Not Identified or Not Identified Timely

In 13 of the MLR or in-depth reviews (or 23 percent), OCC or the legacy OTS did not identify key issues, or did not identify the issues until subsequent examinations. OCC regulated 2 of the banks, and legacy OTS regulated 11. In our MLR report on TeamBank, National Association (TeamBank), for example, OCC did not timely identify that the bank was being controlled by a Chief Executive Officer/President with too many other responsibilities to

¹⁹ Federal banking agencies use the Uniform Financial Institutions Rating System, or "CAMELS," to assign composite and component ratings to banks. A bank's composite CAMELS rating integrates ratings from six components: capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk. The ratings range from 1 to 5, with 1 being the highest rating and least supervisory concern.

²⁰ Treasury OIG, *Safety and Soundness: Material Loss Review of Silverton Bank, N.A.*, OIG-10-033 (January 22, 2010)

properly manage the bank's risk profile and growth strategy. Furthermore, OCC did not review TeamBank's incentive compensation or bonus plans, or ensure that the bank conducted stress testing. We determined that the incentive compensation plan and bonus plan for TeamBank's loan officer encouraged uncontrolled growth of the bank's loan portfolio, which contributed to the bank's failure.²¹

Other Supervision Issues

Several other supervisory issues, though not as common among the banks, posed concerns. Specifically, both OCC and the legacy OTS assigned CAMELS ratings that were too high, legacy OTS allowed three banks to inappropriately backdate capital transactions, and OCC allowed a lapse in supervisory coverage after a bank's charter conversion.

OCC Strengthened Its Supervisory Process

We made a number of audit recommendations to OCC to address the causes of the bank failures and supervision weaknesses we noted in our MLRs and in-depth reviews. The recommendations addressed issues such as CRE concentrations, a lessons-learned process, charter conversions, management oversight, volatile funding sources, and investment securities. OCC generally concurred with the recommendations and instituted policies and procedures, updated examination guidance, and took other corrective actions that met the intent of our recommendations, including:

- To address funding and liquidity risk management, OCC modified its Community Bank Supervision Handbook.²² In addition, OCC, the legacy OTS, and FDIC issued an interagency policy statement in May 2010. The policy statement summarized the principles of sound liquidity risk management that the agencies have issued in the past and reiterates the

²¹ Treasury OIG, *Safety and Soundness: Material Loss Review of TeamBank, National Association*, OIG-10-001 (October 7, 2009).

²² Comptroller's Handbook: *Community Bank Supervision* (January 2010).

process that banks should follow to appropriately identify, measure, monitor, and control their funding and liquidity risk.²³

- To address the charter approval process and ensure an EIC is promptly assigned after a charter conversion of a bank, OCC formalized a process to perform second-level reviews of charter conversion proposals prior to recommending approval of the application. OCC also revised the Comptroller's Licensing Manual by expanding the Conversion Handoff Package prepared by the licensing staff upon transfer of supervisory responsibility. The package calls for specific attention to the timely appointments of an EIC when a charter conversion becomes effective.²⁴
- To emphasize to examiners that MRAs are to be issued in reports of examination in accordance with the criteria regarding deviations from sound management and noncompliance with laws or policies listed in the Comptroller's Handbook, OCC issued an MRA Reference Guide in June 2010. The guide set forth expectations of examiners for proactive supervision, clear, and assertive communication of concerns to boards of directors, and prompt follow-up on commitments for corrective action.²⁵
- OCC revised guidance in October 2011 to establish a formal rotation policy for EICs of banks.²⁶
- To address the possibility of establishing limits or other controls for concentrations that pose an unacceptable safety and soundness risk, OCC approached other Federal banking agencies for collaboration. To date, no interagency agreement has been made, so in its absence, OCC revised its Concentrations of Credit Handbook to help bankers and examiners identify, analyze, and establish sound risk management processes for concentrations of credit.²⁷

²³ *Interagency Policy Statement on Funding and Liquidity Risk Management* (March 22, 2010).

²⁴ OCC Comptroller's Licensing Manual: *Conversions* (April 2010).

²⁵ *Midsized and Community Bank Supervision MRA Reference Guide* (June 10, 2010).

²⁶ PPM 5000-38(REV): *Examiner-in-Charge Rotations*, (October 31, 2011).

²⁷ Comptroller's Handbook: *Concentrations of Credit* (December 2011).

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- To emphasize to examiners the importance of following OCC's guidance on (1) performing reconciliations of all reports submitted by management to ensure that the reports are accurate and agree with the bank's general books and (2) analyzing a bank's new products to determine their effects on credit risk, OCC sent an all-employee message on February 11, 2013. The message reminded employees to follow established OCC guidance for performing reconciliations of reports received from bank management during examinations and to evaluate the effect of new products on key risks, including credit risk.
 - To emphasize to examiners the importance of following OCC's guidance to verify that the bank's corrective actions have been successful and timely, OCC sent an all-employee message on February 11, 2013, to reinforce the expectation for examiners to comply with all aspects of the July 1, 2010, MRA Reference Guide.
 - To address the need to reassess guidance for examination of investment securities, including GSE securities, OCC issued a supervisory memo to all examining personnel on risk management practices on August 10, 2009. OCC also issued the "New Capital Rule Community Bank Guide" in July 2013²⁸, which raised the risk weight from 20 percent to 100 percent on GSE preferred stock for national banks.
 - To address the need for formal guidance to address OCC's response to investigations and requests for information from law enforcement agencies, OCC issued guidance on February 7, 2014, covering interaction with law enforcement agencies and communication protocols for notifications to OCC headquarters and OIG.²⁹ The guidance provides notification procedures for when OCC should notify OIG regarding (1) efforts to obstruct or hinder OCC's statutory authority, (2) suspicious activity report (SAR) filing, (3) initial contact with law enforcement personnel, and (4) certain investigations.

²⁸ *New Capital Rule Community Bank Guide* (July 2013).

²⁹ PPM 5000-40: *OCC Filings of SAR* (February 7, 2014); PPM 5000-41: *Notification Requirements to the Treasury OIG for Examination Obstruction, Administrative Actions, SARs, and Contacts with Law Enforcement* (February 7, 2014)

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- To address our recommendation that OCC establish, in policy, a process to assess the causes of bank failures and the supervision exercised over banks, and to take appropriate action to address any significant supervisory weaknesses or concerns identified, OCC established a lessons-learned review program in February 2012. OCC's lessons-learned review program provides an independent assessment of the adequacy of bank supervision for each OCC failed bank. It requires that a written summary report—detailing issues of concern, causes of failure, supervision best practices, and any recommended supervision process enhancements—be submitted to the OCC ombudsman³⁰ for approval within 4 weeks of completion of examination procedures. As of March 17, 2015, OCC completed all lessons-learned reviews for every failed bank from 2008 forward. In total, OCC completed 90 lessons-learned reviews, which included reviews of 72 bank failures within the scope of this review, as well as 18 failures that were not.

For a summary of OCC's corrective actions planned or taken to address our recommendations, by report, see appendix 6.

Other Initiatives

OCC has taken other initiatives to strengthen its supervisory process during this wave of bank failures. For example, OCC has processes in place to identify emerging risks to bank safety and soundness. As we discussed in an April 2013 audit report, OCC participates in various committees and groups that meet regularly to identify emerging risks and communicate them to examiners and banks.³¹ The groups address potential risks by estimating potential consequences, making recommendations for appropriate supervisory responses, and issuing supervisory strategy guidance to strengthen and improve the supervision process. In addition, the

³⁰ The Ombudsman serves as an independent arbiter for the OCC's regulated banks and their customers by operating apart from the OCC bank supervision function and by reporting directly to the Comptroller of the Currency. This separation enables the Ombudsman to respond independently and fairly to the questions and complaints that consumers have about their banks, and to provide bankers with a way to challenge agency decisions without fear of retribution or reprisal.

³¹ Treasury OIG, *Safety and Soundness: OCC Identification of Emerging Risks*, OIG-13-037 (April 9, 2013).

committees and groups collaborate with other regulatory agencies, such as the Board of Governors of the Federal Reserve System and FDIC to identify emerging risks to national banks.

OCC also released guidance on MRAs in October 2014 establishing procedures for examiners to identify and aggregate supervisory concerns into MRAs.³² The guidance focuses on the criteria, communication, and follow-up of concerns in MRAs. According to OCC, the guidance was a substantive change in MRA philosophy with the intention of improving early identification of concerns due to a bank's deficient practices. Concurrent with the issuance of the MRA guidance, OCC held required training sessions to ensure employees understood the new standards and set up a SharePoint site where examiners can refer to the guidance, submit questions, and review frequently asked questions.

Furthermore, the Comptroller of the Currency and his executive team requested that a small group of current and former senior supervisory personnel from Australia, Canada, and Singapore, along with a former staff member of the International Monetary Fund, participate in an independent review of OCC's supervision of large and midsize banks. In a report issued to OCC in December 2013,³³ the team noted that OCC has better defined the roles of its lead experts, improving its ability to focus on specific risk areas and to identify emerging risks in these areas early. According to the report, OCC excelled at taking information from examiners and experts, further researching these topics, and implementing applicable policy. Furthermore, OCC initiated a Lean Six Sigma project to enhance the efficiency of its internal processes and created an independent quality assurance process to review the processes and practices of its supervision divisions.

The report made key recommendations covering six broad areas:

- mission, vision, and strategic goals;
- risk identification;
- ratings systems;
- staffing;

³² PPM 5400-11: *Matters Requiring Attention*, (October 9, 2014).

³³ *An International Review of OCC's Supervision of Large and Midsize Institutions: Recommendations to Improve Supervisory Effectiveness* (December 4, 2013).

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- scope and consistency of supervisory strategies; and
 - enterprise governance.

In response to the recommendations, OCC is:

- developing a vision statement and strategic objectives that clearly align to OCC's mission statement and ensure bank safety and soundness is the primary objective;
- expanding the organization, functions, and responsibilities of its large-bank lead-expert program to improve horizontal perspective and analysis, systemic risk identification, quality control and assurance, and resource prioritization;
- establishing a formal rotation program for all examiners to provide them with broader, fresh perspectives on a regular basis;
- formalizing an enterprise risk management framework that will involve developing a risk appetite statement, creating a decision-tree process, and enhancing the OCC's existing National Risk Committee framework and processes;
- analyzing the effectiveness of the MRA process and developing controls to better manage the large bank supervision MRA follow-up to promote more timely and consistent resolution of identified deficiencies;
- improving policy development and decision-making response times through better structured processes and strengthening collaboration to allow more efficient and effective senior management input for strategic issues;
- developing standards for the varying supervisory responses to emerging issues;
- enhancing the application of CAMELS and integration with the Risk Assessment System; and
- enhancing identification of deteriorating banks and clarifying supervisory expectations.

Recommendations

We recommend that the Comptroller of the Currency continue to:

1. Address recommendations from our MLRs and in-depth reviews, as well as the international review.

Management Response

Management responded that OCC will continue its practice of identifying and taking appropriate actions in a timely manner in response to recommendations from MLRs and in-depth reviews. Further, OCC will continue with its initiatives that addressed and implemented the December 2013 International Peer Review recommendations.

OIG Comment

Management's response meets the intent of our recommendation.

2. Participate in various committees and groups to identify emerging risks and communicate them to examiners and banks.

Management Response

Management responded that the Comptroller of the Currency is a member of the FSOC and the FFIEC, and OCC staff participates on FSOC and FFEIC support committees. In addition, OCC participates on international committees, supervisory colleges, and crisis management groups; interagency and cross-governmental working groups; and ad hoc groups where risks are raised and discussed. OCC conveys these risks to examiners through the Comptroller's Handbook, numerous internal communications, and training, and to examiners and banks through publications (e.g., the Semiannual Risk Perspective), OCC Bulletins, other guidance documents, and outreach efforts.

OIG Comment

Management's response meets the intent of our recommendation.

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3. Use its newly implemented lessons-learned review program and other analyses, as appropriate.

Management Response

Management responded that OCC will continue to use the lessons-learned review program going forward.

OIG Comment

Management's response meets the intent of our recommendation.

* * * * *

We appreciate the courtesies and cooperation provided to our staff during the audit. If you wish to discuss the report, you may contact me at (202) 927-5776 or Alicia Weber, Audit Manager, at (202) 927-5811. Major contributors to this report are listed in appendix 8.

Susan Barron /s/
Audit Director

Our objectives were to (1) identify common themes related to the supervision of banks and thrifts and the causes of their failures and (2) assess the Office of the Comptroller of the Currency's (OCC) actions to strengthen its supervisory process in response to our audit recommendations and through other initiatives. We conducted our fieldwork in Washington, DC from December 2011 through March 2015. The scope of our audit included banks that failed from September 2007 through July 2012, and on which we issued reports from January 1, 2008, through December 31, 2012.

To accomplish our objectives, we

- reviewed a 2004 Department of the Treasury Office of Inspector General (OIG) compendium report, *Summary of Treasury OIG's Material Loss Reviews of Failed National Banks and Thrift Institutions Between 1993 and 2002*, to gain an understanding of the common causes, supervisory issues, and risks relating to the bank failures in the prior financial economic crisis;
- analyzed material loss review (MLR), failed bank review (FBR), and in-depth review reports we issued from January 2008 through December 2012;
- analyzed the number of failed banks by region and state.
- identified the most common causes of failure and supervisory issues associated with these failures;
- reviewed a 2013 OIG report, *OCC Identification of Emerging Risks*, to gain an understanding of the processes OCC has in place to identify emerging risks to bank safety and soundness;
- reviewed a December 2013 report on an international review of OCC's supervision of large and midsize banks
- interviewed the Senior Advisor to the Senior Deputy Comptroller for Midsize and Community Bank Supervision, the Deputy Comptroller for Credit and Market Risk, and Bank Supervision Specialist;
- reviewed relevant guidance and documentation relating to the OCC corrective actions taken to address the recommendations.

- compiled a list of our prior recommendations included in our MLR and in-depth reports, and the related corrective actions taken or planned by OCC;³⁴ and
- reviewed relevant documentation supporting other initiatives OCC is taking to improve its supervision of banks.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

³⁴ Under section 38(k) of the Federal Deposit Insurance Act, in performing FBRs, the Offices of Inspector Generals of Federal banking agencies are not required to review the supervision of the banks or make recommendations.

Appendix 2
Failed Banks' Background Information

Table 1 provides demographic and financial information, including the locations, closure dates, total assets, and the estimated losses to the Deposit Insurance Fund (DIF), as well as the percentages of estimated losses to assets, for the 119 banks that failed from September 2007 and July 2012, and on which we issued reports from January 1, 2008, through December 31, 2012. The banks had \$185.4 billion in aggregate total assets and an aggregate estimated \$35.3 billion in losses to the DIF.

Table 1: Summary of OCC-regulated and Legacy OTS-regulated Failed Banks, January 1, 2008–December 31, 2012

Bank	Location	Closure Date	Total Asset Size (in \$ Millions)	Estimated DIF Loss (in \$ Millions)	Estimated DIF Loss as Percentage of Total Assets
OCC-regulated					
1 ANB Financial, National Association	AR	May 9, 2008	2,100.0	214.0	10%
2 First Heritage Bank, National Association	CA	July 25, 2008	254.0	33.0	13%
3 First National Bank of Nevada	NV	July 25, 2008	3,400.0	706.0	21%
4 National Bank of Commerce	IL	January 16, 2009	430.9	92.5	21%
5 Ocala National Bank	FL	January 30, 2009	223.5	99.6	45%
6 TeamBank, National Association	KS	March 20, 2009	669.8	98.4	15%
7 Omni National Bank	GA	March 27, 2009	956.0	288.2	30%
8 Silverton Bank, N.A.	GA	May 1, 2009	4,100.0	608.3	15%
9 Citizens National Bank	IL	May 22, 2009	437.0	26.0	6%
10 First National Bank of Anthony	KS	June 19, 2009	156.9	38.3	24%
11 Vineyard Bank, National Association	CA	July 17, 2009	1,900.0	597.0	31%
12 Union Bank, National Association	AZ	August 14, 2009	124.0	54.5	44%
13 Corus Bank, N.A.	IL	September 11, 2009	7,000.0	797.9	11%
14 Southern Colorado National Bank	CO	October 2, 2009	39.5	6.6	17%
15 Flagship National Bank	FL	October 23, 2009	190.0	66.8	35%
16 Bank USA, National Association ¹	AZ	October 30, 2009	194.0	30.2	16%
17 California National Bank ¹	CA	October 30, 2009	6,989.0	900.1	13%
18 Citizens National Bank ¹	TX	October 30, 2009	120.7	16.7	14%
19 Park National Bank ¹	IL	October 30, 2009	4,701.0	417.7	9%
20 Pacific National Bank ¹	CA	October 30, 2009	2,086.0	310.9	15%
21 San Diego National Bank ¹	CA	October 30, 2009	3,560.0	366.7	10%
22 Riverside National Bank of Florida	FL	April 16, 2010	3,420.0	240.9	7%
23 Pacific Coast National Bank	CA	November 13, 2009	134.4	29.8	22%

Appendix 2
Failed Banks' Background Information

Bank	Location	Closure Date	Total Asset Size (in \$ Millions)	Estimated DIF Loss (in \$ Millions)	Estimated DIF Loss as Percentage of Total Assets	
24	First Security National Bank	GA	December 4, 2009	128.0	35.4	28%
25	Republic Federal Bank, N.A.	FL	December 11, 2009	4,428.0	120.6	3%
26	Valley Capital Bank, N.A.	AZ	December 11, 2009	40.3	7.4	18%
27	First National Bank of Georgia	GA	January 29, 2010	832.6	197.5	24%
28	Marshall Bank, National Association	MN	January 29, 2010	59.9	4.1	7%
29	The La Coste National Bank	TX	February 19, 2010	53.9	3.7	7%
30	American National Bank	OH	March 19, 2010	70.3	17.1	24%
31	Beach First National Bank	SC	April 9, 2010	585.1	130.3	22%
32	Amcore Bank, N.A.	IL	April 23, 2010	3,800.0	154.5	4%
33	BC National Banks	MO	April 30, 2010	67.2	11.4	17%
34	Granite Community Bank, N.A.	CA	May 28, 2010	102.9	17.3	17%
35	First National Bank, Rosedale, Mississippi	MS	June 4, 2010	60.4	12.6	21%
36	First National Bank, Savannah, Georgia	GA	June 25, 2010	252.5	68.9	27%
37	Bay National Bank	MD	July 9, 2010	282.2	17.4	6%
38	Home National Bank	OK	July 9, 2010	644.5	78.7	12%
39	First National Bank of the South	SC	July 16, 2010	682.0	74.9	11%
40	Williamsburg First National Bank	SC	July 23, 2010	139.3	8.8	6%
41	Community National Bank at Bartow	FL	August 20, 2010	67.9	10.3	15%
42	Independent National Bank	FL	August 20, 2010	156.2	23.2	15%
43	First Suburban National Bank	IL	October 22, 2010	148.7	30.9	21%
44	The First National Bank of Barnesville	GA	October 22, 2010	131.4	33.9	26%
45	Community National Bank	MN	December 17, 2010	31.6	3.7	12%
46	The Bank of Miami, N.A.	FL	December 17, 2010	448.2	64.0	14%
47	United Americas Bank, National Association	GA	December 17, 2010	242.3	75.8	31%
48	Canyon National Bank	CA	February 11, 2011	210.9	10.0	5%
49	First National Bank of Davis (In-Depth Review)	OK	March 11, 2011	90.2	26.5	29%
50	Western Springs National Bank and Trust	IL	April 8, 2011	186.8	34.0	18%
51	Rosemount National Bank	MN	April 15, 2011	37.6	3.6	10%
52	First National Bank of Central Florida	FL	April 29, 2011	352.0	42.9	12%
53	BankMeridan, National Association	SC	July 29, 2011	239.8	65.4	27%
54	Integra Bank, National Association	IN	July 29, 2011	2,200.0	205.9	9%
55	First National Bank of Olathe	KS	August 12, 2011	538.1	118.6	22%
56	First Southern National Bank	GA	August 19, 2011	164.6	39.6	24%

Appendix 2
Failed Banks' Background Information

Bank	Location	Closure Date	Total Asset Size (in \$ Millions)	Estimated DIF Loss (in \$ Millions)	Estimated DIF Loss as Percentage of Total Assets
57 The First National Bank of Florida	FL	September 9, 2011	296.8	48.4	16%
58 Western National Bank	AZ	December 16, 2011	162.9	42.9	26%
59 American Eagle Savings Bank	PA	January 20, 2012	19.6	6.2	32%
60 Charter National Bank and Trust	IL	February 10, 2012	93.9	20.4	22%
61 SCB Bank	IN	February 10, 2012	182.6	33.9	19%
62 Home Savings of America	MN	February 24, 2012	434.1	38.8	9%
63 Unity National Bank (In-Depth Review)	GA	March 26, 2012	292.2	71.0	24%
64 Fort Lee, Federal Savings Bank	NJ	April 20, 2012	51.9	14.0	27%
65 Inter Savings Bank, FSB	MN	April 27, 2012	481.6	119.2	25%
66 Palm Desert National Bank	CA	April 27, 2012	125.8	23.4	19%
67 Plantation Federal Bank	SC	April 27, 2012	486.4	75.9	16%
68 Security Bank, National Association	FL	May 4, 2012	101.0	13.7	14%
69 Alabama Trust Bank, National Association	AL	May 18, 2012	51.6	11.4	22%
70 Carolina Federal Savings Bank	SC	June 8, 2012	54.4	17.1	31%
71 Second Federal Savings and Loan Association of Chicago	IL	July 20, 2012	199.1	76.9	39%
OCC Total			\$63,696.0	\$8,402.2	13%
Legacy OTS-regulated					
72 NetBank, FSB	GA	September 28, 2007	2,500.0	108.0	4%
73 IndyMac Bank, FSB	CA	July 11, 2008	32,010.0	10,700.0	33%
74 Ameribank, Inc.	WV	September 19, 2008	115.0	33.4	29%
75 Downey Savings and Loan Association, F.A.	CA	November 21, 2008	12,800.0	1,400.0	11%
76 PFF Bank and Trust	CA	November 21, 2008	3,700.0	729.6	20%
77 Suburban Federal Savings Bank	MD	January 30, 2009	360.0	126.0	35%
78 Waterfield Bank (In-Depth Review)	MD	March 5, 2009	155.6	42.5	27%
79 American Sterling Bank	MO	April 17, 2009	181.0	41.9	23%
80 First Bank of Idaho	ID	April 24, 2009	488.9	174.6	36%
81 BankUnited, FSB	FL	May 21, 2009	12,800.0	4,900.0	38%
82 Peoples Community Bank	OH	July 31, 2009	705.8	136.0	19%
83 Ebank	GA	August 21, 2009	143.0	46.3	32%
84 Guaranty Bank	TX	August 21, 2009	13,000.0	1,300.0	10%
85 Bradford Bank	MD	August 28, 2009	452.0	96.3	21%

Appendix 2

Failed Banks' Background Information

Bank	Location	Closure Date	Total Asset Size (in \$ Millions)	Estimated DIF Loss (in \$ Millions)	Estimated DIF Loss as Percentage of Total Assets	
86	Platinum Community Bank	IL	September 4, 2009	345.6	49.5	14%
87	Vantus Bank	IA	September 4, 2009	458.0	182.2	40%
88	Irwin Union Bank, FSB	KY	September 18, 2009	493.0	138.7	28%
89	Partners Bank	FL	October 23, 2009	65.5	34.6	53%
90	Home Federal Savings Bank	MI	November 6, 2009	14.9	5.4	36%
91	Century Bank, FSB	FL	November 13, 2009	728.0	266.5	37%
92	AmTrust Bank	OH	December 4, 2009	12,000.0	2,500.0	21%
93	Greater Atlantic Bank	VA	December 4, 2009	203.0	38.0	19%
94	First Federal Bank of California, FSB	CA	December 18, 2009	6,100.0	10.0	0.2%
95	New South Federal Savings Bank	AL	December 18, 2009	1,500.0	227.0	15%
96	Peoples First Community Bank	FL	December 18, 2009	1,800.0	514.7	29%
97	Charter Bank	NM	January 22, 2010	1,200.0	246.1	21%
98	La Jolla Bank, FSB	CA	February 19, 2010	3,600.0	1,035.0	29%
99	Key West Bank	FL	March 26, 2010	88.0	23.1	26%
100	First Federal Bank of North Florida	FL	April 16, 2010	393.3	6.0	2%
101	TierOne Bank	NE	June 4, 2010	2,800.0	313.8	11%
102	Ideal Federal Savings Bank	MD	July 9, 2010	6.3	2.1	33%
103	MainStreet Savings Bank, FSB	MI	July 16, 2010	97.4	11.4	12%
104	Olde Cypress Community Bank	FL	July 16, 2010	168.7	31.5	19%
105	Turnberry Bank	FL	July 16, 2010	263.9	34.4	13%
106	Woodlands Bank	SC	July 16, 2010	376.2	115.0	31%
107	Bayside Savings Bank, FSB	FL	July 30, 2010	66.1	16.2	25%
108	Imperial Savings and Loan Association	VA	August 20, 2010	9.4	3.5	37%
109	Los Padres Bank	CA	August 20, 2010	870.4	8.7	1%
110	Maritime Savings Bank	WI	September 17, 2010	350.5	83.6	24%
111	Security Savings Bank, FSB	KS	October 15, 2010	508.4	82.2	16%
112	First Arizona Savings	AZ	October 22, 2010	272.2	32.3	12%
113	Appalachian Community Bank, F.S.B.	GA	December 17, 2010	68.2	26.0	38%
114	United Western Bank	CO	January 21, 2011	2,050.0	292.3	14%
115	San Luis Trust Bank, FSB	CA	February 18, 2011	332.6	96.1	29%
116	Superior Bank ²	AL	April 15, 2011	3,000.0	290.0	10%
117	Coastal Bank ²	FL	May 6, 2011	129.4	13.4	10%
118	Atlantic Bank and Trust ²	SC	June 3, 2011	208.2	36.4	17%

Appendix 2
Failed Banks' Background Information

Bank	Location	Closure Date	Total Asset Size (in \$ Millions)	Estimated DIF Loss (in \$ Millions)	Estimated DIF Loss as Percentage of Total Assets
119 Lydian Private Bank ¹	FL	August 19, 2011	1,700.0	292.1	17%
Legacy OTS Total			\$121,678.5	\$26,892.4	22%
Total OCC and Legacy OTS			\$185,374.5	\$35,294.6	19%

Source: Department of the Treasury Office of Inspector General reports issued from January 1, 2008, through December 31, 2012.

- 1 Nine failed banks were owned by First Bank of Oak Park Corporation. OCC regulated the 6 national banks, and FDIC regulated the 3 state-chartered banks.
- 2 We issued our reports to OCC for these banks after OCC assumed regulatory responsibility for federal savings associations under Public Law 111-203. However, we listed these banks as legacy OTS-regulated because they were closed by legacy OTS prior to the transfer of legacy OTS functions to OCC and other Federal banking agencies pursuant to that law.
- 3 Pursuant to Public Law 111-203, OCC assumed regulatory responsibility for Lydian Private Bank shortly before its closure. Although OCC closed Lydian, we assessed legacy OTS' supervision and, therefore, included it as a legacy OTS-regulated bank.

Figures 2 and 3 break out the number of failed banks and their aggregate estimated losses by region.

Figure 2: Failed Banks, by Region

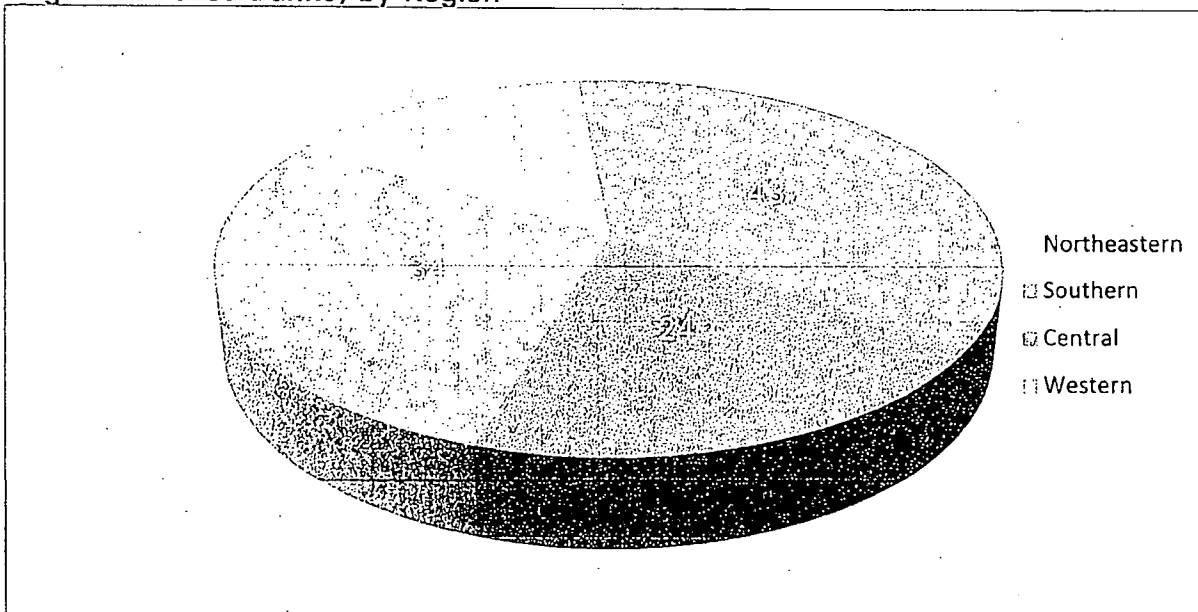
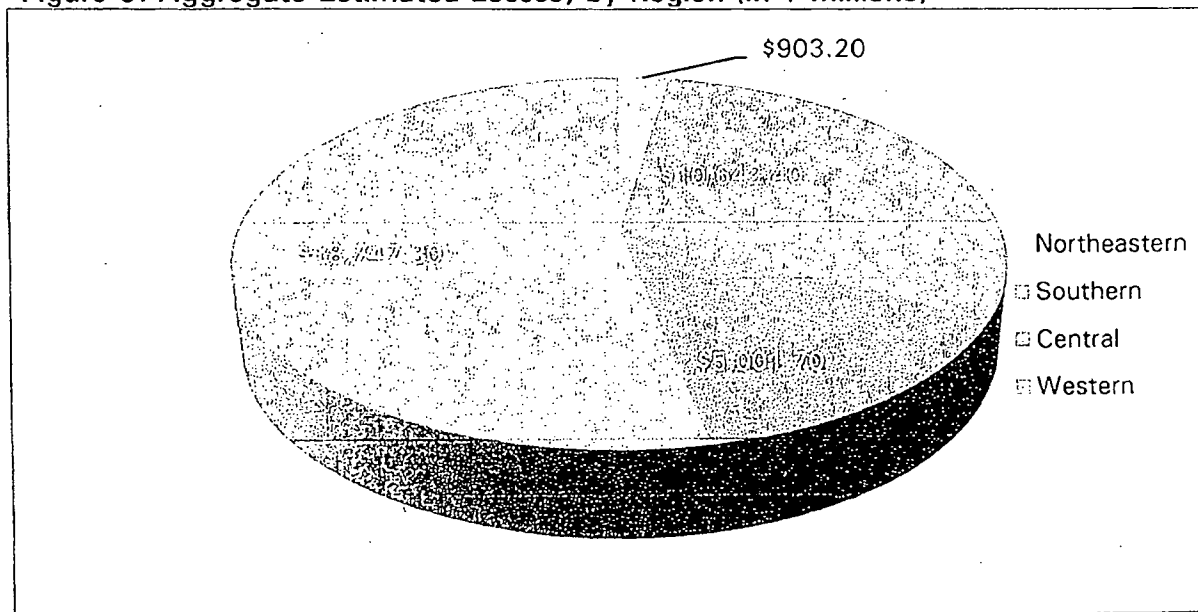


Figure 3: Aggregate Estimated Losses, by Region (in \$ millions)



Sources: Analysis of the Department of the Treasury Office of Inspector General reports issued from January 1, 2008, through December 31, 2012.

Appendix 4
Common Causes of Bank Failures

Table 2 summarizes the common causes of the 119 failed banks that we reviewed. The "Various" column includes additional causes that occurred less frequently.

Table 2: Common Causes of Bank Failures

Institution	High Loan Concentration in CRE	Inadequate Credit Administration and Risk Management	Reliance on Wholesale Funding	Concentration in Nontraditional Mortgage Loans	Other Concentration	GSE	Various
OCC-regulated							
ANB Financial, National Association	x	x	x				x
First Heritage Bank, National Association	x						x
First National Bank of Nevada	x	x					x
National Bank of Commerce						x	
Ocala National Bank	x	x	x				
TeamBank, National Association	x	x	x				x
Omni National Bank ¹	x	x					x
Silverton Bank, N.A. ¹	x	x	x				x
Citizens National Bank ⁴	x	x	x	x	x		
First National Bank of Anthonv	x	x					
Vineyard Bank, National Association	x	x	x				
Union Bank, National Association	x	x					x
Corus Bank, N.A. ⁴	x	x					x
Southern Colorado National Bank	x		x				
Flagship National Bank ⁴	x	x					
Bank USA, National Association ¹	x					x	x
California National Bank ¹	x					x	x
Citizens National Bank ¹⁴							x
Park National Bank ¹⁴	x					x	x
Pacific National Bank ¹	x					x	x
San Diego National Bank ¹	x					x	x
Riverside National Bank of Florida ⁴	x	x			x		x
Pacific Coast National Bank	x	x					x
First Security National Bank	x	x	x				
Republic Federal Bank, N.A.		x					x
Valley Capital Bank, N.A. ⁴	x	x					x
First National Bank of Georgia	x	x					x
Marshall Bank, National Association		x					

Appendix 4
Common Causes of Bank Failures

Institution	High Loan Concentration in CRE	Inadequate Credit Administration and Risk Management	Reliance on Wholesale Funding	Concentration in Nontraditional Mortgage Loans	Other Concentration	GSE	Various
The La Coste National Bank							x
American National Bank		x	x		x		
Beach First National Bank	x	x	x				
Amcore Bank, N.A.	x	x					
BC National Banks	x	x					x
Granite Community Bank, NA	x	x					
First National Bank, Rosedale, Mississippi		x					
First National Bank, Savannah, Georgia	x	x					
Bav National Bank	x	x					
Home National Bank ¹	x	x					
First National Bank of the South	x	x					
Williamsburg First National Bank	x	x					
Community National Bank at Bartow		x			x		
Independent National Bank		x					
First Suburban National Bank	x	x					
The First National Bank of Barnesville ¹	x	x					
Community National Bank	x	x					
The Bank of Miami, N.A.	x	x					
United Americas Bank, National Association	x	x	x		x		x
Canyon National Bank	x	x					
First National Bank of Davis (In-Depth Review)		x					
Western Springs National Bank and Trust ¹	x	x					
Rosemount National Bank	x	x					
First National Bank of Central Florida	x	x	x				
BankMeridian, National Association	x	x	x				
Integra Bank, National Association ¹	x		x				x
First National Bank of Olathe	x	x					
First Southern National Bank	x	x	x				
The First National Bank of Florida	x	x					
Western National Bank ¹	x	x					
American Eagle Savings Bank		x					x
Charter National Bank and Trust ¹	x	x					
SCB Bank	x	x			x		
Home Savings of America		x		x			

Appendix 4
Common Causes of Bank Failures

Institution	High Loan Concentration in CRE	Inadequate Credit Administration and Risk Management	Reliance on Wholesale Funding	Concentration in Nontraditional Mortgage Loans	Other Concentration	GSE	Various
Unity National Bank (In-Depth Review)	x	x	x				x
Fort Lee Federal Savings Bank		x		x			
Inter Savings Bank, FSB		x		x			
Palm Desert National Bank	x	x					
Plantation Federal Bank	x	x					
Security Bank, National Association	x				x		
Alabama Trust Bank, National Association ⁴	x	x					
Carolina Federal Savings Bank	x	x		x			
Second Federal Savings and Loan Association of Chicago	x	x			x		
OCC-regulated Total	57	59	16	5	8	6	*
Legacy OTS-regulated							
NetBank, FSB				x			x
IndyMac Bank, FSB	x	x	x	x			x
Ameribank, Inc.		x			x		
Downey Savings and Loan, F.A.		x		x			x
PFF Bank and Trust	x						
Suburban Federal Savings Bank	x			x			x
Waterfield Bank (In-Depth Review)			x	x	x		x
American Sterling Bank ²	x			x			x
First Bank of Idaho ⁴	x		x				
BankUnited, FSB ¹		x		x			x
Peoples Community Bank ⁴	x	x					
ebank	x	x			x		x
Guaranty Bank				x			
Bradford Bank	x						x
Platinum Community Bank ⁴							x
Vantus Bank	x	x			x		x
Irwin Union Bank, FSB	x						x
Partners Bank	x	x					x
Home Federal Savings Bank							x
Century Bank, FSB ¹	x	x		x	x		x
AmTrust Bank	x	x		x			
Greater Atlantic Bank	x		x				x

Appendix 4

Common Causes of Bank Failures

Institution	High Loan Concentration in CRE	Inadequate Credit Administration and Risk Management	Reliance on Wholesale Funding	Concentration in Nontraditional Mortgage Loans	Other Concentration	GSE	Various
First Federal Bank of California, FSB		x	x	x			x
New South Federal Savings Bank	x				x		
Peoples First Community Bank		x			x		
Charter Bank	x	x	x				x
La Jolla Bank, FSB ¹	x	x					x
Key West Bank			x	x			
First Federal Bank of North Florida	x	x					
TierOne Bank ¹	x	x					x
Ideal Federal Savings Bank ¹	x						x
MainStreet Savings Bank, FSB							x
Olde Cypress Community Bank							
Turnberry Bank	x	x					
Woodlands Bank	x	x					
Bayside Savings Bank, FSB	x	x					
Imperial Savings and Loan Association							x
Los Padres Bank	x	x			x		
Maritime Savings Bank	x	x					
Security Savings Bank, FSB	x	x					
First Arizona Savings	x			x	x		x
Appalachian Community Bank, FSB	x						
United Western Bank ¹			x		x		
San Luis Trust Bank, FSB	x	x					
Superior Bank ²⁴	x	x					x
Coastal Bank ²⁴	x	x					
Atlantic Bank & Trust ³	x	x		x			
Lydian Private Bank ²⁴		x		x			x
Legacy OTS-regulated Total	32	27	8	15	10	0	*
Total OCC and Legacy OTS	89	86	24	20	18	6	*

Source: Department of the Treasury Office of Inspector General reports issued from January 1, 2008, through December 31, 2012.

¹ Nine failed banks were owned by First Bank of Oak Park Corporation. OCC regulated the 6 national banks, and FDIC regulated the 3 state-chartered banks.

² We issued our reports to OCC for these banks after OCC assumed regulatory responsibility for federal savings associations pursuant to P.L. 111-203. However, we listed these banks as legacy OTS-regulated because they were closed by legacy OTS prior to legacy OTS's transfer to OCC.

³ Pursuant to P.L. 111-203, OCC assumed regulatory responsibility for Lydian Private Bank shortly before its closure. Although OCC closed Lydian, we

Appendix 4
Common Causes of Bank Failures

assessed legacy OTS's supervision and, therefore, included it as a legacy OTS-regulated bank.

- ⁴ We identified certain matters in 29 failed banks relating to potential fraud that we referred or provided information to the Department of the Treasury's Office of Inspector General's Office of Investigation.

Appendix 5
Common Supervisory Themes of Bank Failures

Table 3 summarizes the supervision trends identified in our material loss reviews (MLR) and in-depth reviews. Offices of Inspector Generals (OIG) of federal regulators are not required to assess supervision as part of failed bank reviews; therefore, we did report on supervision issues in those reports. The "Various" column includes additional supervision issues that occurred less frequently.

Table 3: Supervisory Trends Reported in the MLRs and In-depth Reviews

Institution	Stronger Actions Warranted and/or Actions Untimely	Guidance Not Followed and/or Lack of Appropriate Guidance	Key Issues Not Identified or Not Identified Timely	Appropriate Supervision	Various
OCC-regulated					
ANB Financial, National Association	X	X			
First Heritage Bank, National Association	X	X			
First National Bank of Nevada	X	X			
National Bank of Commerce				X	
Ocala National Bank	X	X			
TeamBank, National Association	X	X	X		
Omni National Bank	X	X			
Silverton Bank, N.A.	X	X			X
Citizens National Bank				X	
First National Bank of Anthony				X	
Vineyard Bank, National Association	X				X
Union Bank, National Association	X				
Corus Bank, N.A.		X			X
Flagship National Bank	X				
California National Bank ¹		X			
Park National Bank ¹		X			
Pacific National Bank ¹		X			
San Diego National Bank ¹		X			

Appendix 5
Common Supervisory Themes of Bank Failures

Institution	Stronger Actions Warranted and/or Actions Untimely	Guidance Not Followed and/or Lack of Appropriate Guidance	Key Issues Not Identified or Not Identified Timely	Appropriate Supervision	Various
Riverside National Bank of Florida	X	X			
Pacific Coast National Bank	X	X			X
First Security National Bank				X	
Republic Federal Bank, N.A.	X				
First National Bank of Georgia				X	
Amcore Bank, N.A.	X	X			X
First National Bank of Davis (In-depth)		X	X		X
Integra Bank, National Association				X	
Unity National Bank (In-depth)				X	
OCC-regulated Total	14	16	2	7	
Legacy OTS-regulated					
NetBank, FSB	X	X	X		
IndyMac Bank, FSB	X	X	X		X
Ameribank, Inc.	X	X	X		X
Downey Savings and Loan Association, F.A.	X	X			
PFF Bank and Trust	X				
Suburban Federal Savings Bank	X	X			
Waterfield Bank (In-depth)	X		X		
American Sterling Bank	X	X	X		X
First Bank of Idaho	X	X	X		X
BankUnited, FSB	X	X	X		X
Peoples Community Bank		X			
Ebank	X	X			
Guaranty Bank			X		

Appendix 5
Common Supervisory Themes of Bank Failures

Institution	Stronger Actions Warranted and/or Actions Untimely	Guidance Not Followed and/or Lack of Appropriate Guidance	Key Issues Not Identified or Not Identified Timely	Appropriate Supervision	Various
Bradford Bank	X	X			
Platinum Community Bank	X	X			
Vantus Bank	X		X		
Irwin Union Bank, FSB	X		X		
Partners Bank	X	X			X
Century Bank, FSB	X	X			X
AmTrust Bank	X				
Greater Atlantic Bank	X	X			
First Federal Bank of California, FSB	X	X			
New South Federal Savings Bank	X	X	X		
Peoples First Community Bank	X	X			X
Charter Bank	X	X			
La Jolla Bank, FSB	X				
TierOne Bank	X				
United Western Bank	X	X			X
Superior Bank ²	X	X			
Lydian Private Bank ³	X	X			
Legacy OTS-regulated Total	28	22	11	0	*
Total OCC and Legacy OTS	42	38	13	7	*

Sources: Department of the Treasury OIG reports issued from January 1, 2008, through December 31, 2012.

- 1 Nine failed banks were owned by First Bank of Oak Park Corporation. OCC regulated the 6 national banks, and FDIC regulated the 3 state-chartered banks. Of the 6 national banks OCC regulated, 4 required MLRs and are included in the above chart.
- 2 We issued our report to OCC for Superior Bank after OCC assumed regulatory responsibility for federal savings associations pursuant to P.L. 111-203. However, we listed Superior Bank as legacy OTS-regulated because they were closed by legacy OTS prior to legacy OTS's transfer to OCC.
- 3 Pursuant to P.L. 111-203, OCC assumed regulatory responsibility for Lydian Private Bank shortly before its closure. Although OCC closed Lydian, we assessed legacy OTS's supervision and, therefore, included it as a legacy OTS-regulated bank.

This appendix provides recommendations we made to the Office of the Comptroller of the Currency (OCC) as a result of our material loss reviews and in-depth reviews of OCC-regulated failed banks, as well as corrective actions taken or planned by OCC. With one exception related to Omni National Bank noted later in this appendix, OCC management concurred with the recommendations and has taken or planned corrective actions that are responsive to the recommendations. In certain instances, the recommendations address matters that require ongoing OCC management and examiner attention.

Report Title	Recommendations to the Comptroller	OCC Corrective Action Taken or Planned
<i>Safety and Soundness: Material Loss Review of ANB Financial, National Association</i> OIG-09-013 (November 25, 2008)	Re-emphasize to examiners that examiners must closely investigate a bank's circumstances and alter its supervisory plan if certain conditions exist as specified in OCC's Examiner's Guide to Problem Bank Identification, Rehabilitation, and Resolution.	OCC communicated the findings of our report and its lessons-learned review to field staff during a national conference call in March 2009 to reinforce its expectations of examiners in the execution of its supervisory process. In addition to numerous policies and processes currently in place to ensure timely recognition and response to increasing risks in banks, including formal enforcement action if warranted, OCC provided guidance to examiners on assessing commercial real estate (CRE) portfolios and discussed this guidance in April 2008 and October 2008 conference calls with examiners.
	Re-emphasize to examiners that formal action is presumed warranted when certain circumstances specified in OCC's Enforcement Action Policy (PPM 5310-3) exist. Examiners should also be directed to document in the examination files the reasons for not taking formal enforcement action if those circumstances do exist.	OCC refreshed examiner awareness of PPM 5310-3 and promoted consistency in the application of the policy in three ways: in a written document, through discussions at district management meetings, and during an all-examiner conference call in October 2008. The central message was that enforcement actions should be taken at an early stage, while problems are still manageable and the prospects for rehabilitation or, alternatively, sale or merger of the bank, are still good.

Appendix 6
Prior Office of Inspector General Recommendations to OCC

Report Title	Recommendations to the Comptroller	OCC Corrective Action Taken or Planned
	Reassess guidance and examination procedures in the Comptroller's Handbook related to bank use of wholesale funding with focus on heavy reliance on brokered deposits and other nonretail deposit funding sources for growth.	The liquidity section of the Comptroller's Handbook for community bank supervision was revised to address liquidity issues in light of the financial crisis. ¹ In addition, an interagency policy statement on funding and liquidity risk management was issued on March 22, 2010. ²
	Establish in policy a "lessons-learned" process to assess the causes of bank failures and the supervision exercised over the institution and to take appropriate action to address any significant weaknesses or concerns identified.	OCC established a lessons-learned review program requiring an independent assessment of the adequacy of bank supervision for each failed institution under OCC jurisdiction to be completed and submitted to the Ombudsman within four weeks of completion of examination procedures. ³
<i>Safety and Soundness: Material Loss Review of First National Bank of Nevada and First Heritage Bank, National Association</i> OIG-09-033 (February 27, 2009)	Re-emphasize to examiners the need to ensure that banks take swift corrective actions in response to examination findings.	OCC re-emphasized the requirements of its enforcement action policies to examiners and the need to ensure banks take swift corrective actions in response to examination findings during a national conference call. OCC tracks the follow-up on outstanding concerns in the supervisory strategies for individual banks. Subsequent to the failure of First National Bank of Nevada and First Heritage bank, OCC's Enterprise Governance unit conducted a special

¹ The liquidity section of the Comptroller's Handbook, *Community Bank Supervision* (January 2010) discusses, among other things, evaluating risk in wholesale and other non-deposit funding activities and determining stability by reviewing deposit structure and stability of specific types of accounts, including brokered deposits.

² Federal Register/Vol. 75, No. 54, *Interagency Policy Statement on Funding and Liquidity Risk Management* (March 22, 2010) issued by OCC, the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, the legacy Office of Thrift Supervision, and the National Credit Union Administration summarizes the principles of sound liquidity risk management that the agencies issued in the past and, when appropriate, supplements them with the "Principles for Sound Liquidity Risk Management and Supervision" issued by the Basel Committee on Banking Supervision issued in September 2008.

³ Comptroller of the Currency, Office of the Ombudsman, Failed Institutions Lessons Learned Review Program Statement (February 2012).

Report Title	Recommendations to the Comptroller	OCC Corrective Action Taken or Planned
<i>Safety and Soundness: Material Loss Review of the National Bank of Commerce</i> OIG-09-042 (August 6, 2009)	Re-emphasize to examiners OCC's policy on the preparation of supervision workpapers (i.e., workpapers are to be clear, concise, and readily understood by other examiners and reviewers).	review to confirm that all community bank quality assurance programs contain specific quality management elements pertaining to corrective action, follow-up, and enforcement. An OCC official stated that they ensure that observations about the quality of workpapers identified as part of its quality assurance processes involving regular views of samples of supervision work papers, and recommendations for improving documentation, are included in the communication of quality assurance results to examiners. OCC re-emphasized OCC's policy on the preparation of supervision workpapers and the importance of workpaper quality and completeness during a national conference call with examiners.
	Conduct a review of investments by national banks for any potential high-risk concentrations and take appropriate supervisory action.	During the months leading up to the government intervention at Federal National Mortgage Association and Federal Home Loan Mortgage Corporation, OCC proactively used call report financial data to identify banks with concentrations in government-sponsored enterprise (GSE) securities. Banks with high exposure relative to their capital were identified and supervisory offices were provided with the information to investigate further and take appropriate supervisory action. This process is embedded in ongoing supervisory activities and will be used on an ongoing basis to identify and address other concentrations in high-risk securities.
	Reassess examination guidance regarding investment securities, including GSE securities.	OCC issued a supervisory memo to all examining personnel on investment securities

Appendix 6
Prior Office of Inspector General Recommendations to OCC

Report Title	Recommendations to the Comptroller	OCC Corrective Action Taken or Planned
		risk management practices on August 10, 2009. ⁴
		OCC also issued the "New Capital Rule Community Bank Guide" in October 2013.
<i>Safety and Soundness: Material Loss Review of Ocala National Bank</i> OIG-09-043 (August 26, 2009)	Caution examiners and their supervisors that when a bank's condition has deteriorated, it is incumbent on examiners to properly support and document in examination workpapers the CAMELS component and composite ratings assigned, including those that may not have changed from prior examinations, as well as support a decision not to take an enforcement action.	OCC senior management used the "lessons learned" in earlier bank failures to illustrate the importance of being assertive in identifying and following through on identified weaknesses in a timely manner. OCC management also reiterated that compliance with OCC's policy on workpaper documentation is particularly important in problem bank situations. OCC also discussed this topic during an October 2009 national conference call.
	Remind examiners that it is prudent to expand examination procedures for troubled or high-risk banks to review the appropriateness of (a) dividends and (b) payments to related organizations, particularly when the dividends or payments may benefit bank management and board members. In this regard, OCC should reassess, and revise as appropriate, its examination guidance for when expanded reviews of dividends and related organizations should be performed.	OCC responded that heightened scrutiny of certain dividends and payments to related organization is appropriate. OCC believes its existing guidance is sufficient to compel examiners to perform expanded reviews of dividends and payments to related organizations when appropriate. During an October 2009 national conference call, OCC reinforced to examining staff the prudence of expanding examination procedures for dividends and related organizations when warranted, particularly when payments may benefit bank management or board members.
	Emphasize to examiners that matters requiring attention (MRAs) are to be issued in reports of	OCC reinforced the importance of adhering to its MRA policy during an October 2009

⁴ Comptroller of the Currency, Supervisory Memo (SM 2009-5), *Examiner Guidance on Investment Securities Risk Management Practices* (August 10, 2009) provides guidance to examiners in evaluating investment portfolio activities and the changing risk profile of bank investment portfolios. Specifically, it provides additional guidance on potential red flags and appropriate risk management of complex, structured investments, evaluating re-securitizations, and determining asset quality ratings and risk-based capital calculations.

Report Title	Recommendations to the Comptroller	OCC Corrective Action Taken or Planned
<i>Safety and Soundness: Material Loss Review of TeamBank, National Association</i> OIG-10-01 (October 7, 2009)	examination (ROEs) in accordance with the criteria regarding deviations from sound management and noncompliance with laws or policies listed in the Comptroller's Handbook.	national conference call and again in a September 2013 call. OCC plans to continue to reinforce this message in numerous ways, including quality assurance activities and management discussions.
	Emphasize to examiners the need to a. adequately assess the responsibilities of a controlling official (chief executive officer/president, for example) managing the bank to ensure that the official's duties are commensurate with the risk profile and growth strategy of the institution b. review incentive compensation and bonus plans for executives and loan officers; and c. ensure that banks conduct transactional and portfolio stress testing when appropriate	OCC stated that examiners are provided with guidance on (a) assessing the adequacy of management resources to ensure they are commensurate with a bank's risk profile and growth strategies and (b) incentive and compensation plans. Additionally, the Senior Deputy Comptroller for Midsize and Community Bank Supervision and the Director for Special Supervision emphasized these points during an October 2009 conference call with examiners. Having found that the use of portfolio stress testing and sensitivity analysis required by OCC policy continues to be challenging for many banks, particularly community banks, OCC developed a transactional-level CRE Loan Stress Workbook, which is available to all national banks on OCC's National Bank Net Web site. An additional model designed for CRE stress testing at the portfolio level was implemented on September 30, 2012. OCC continues to use outreach and other activities to encourage national banks to use these tools in measuring and managing the level of risk in their portfolios. The model was deployed to BankNet on September 27, 2012.
<i>Safety and Soundness: Material Loss Review of Omni National Bank</i>	Review OCC processes to ensure that more timely enforcement action is taken once the need for such action is identified.	OCC did not agree with this recommendation. In its response to our report, OCC asserted that current policies are sufficient to ensure that

Report Title	Recommendations to the Comptroller	OCC Corrective Action Taken or Planned
OIG-10-017 (December 9, 2009)		timely enforcement action is taken. We accepted its position with respect to its current processes and consider the recommendation closed.
	Impress upon examiner staff the importance of completing all activities in annual supervisory cycles, including quarterly monitoring. In this regard, supervisors should ensure that quarterly monitoring activities are scheduled and carried out.	Examiners were reminded that periodic monitoring is integral to effective supervision during a March 2010 national conference call.
	Implement a policy for examiner-in-charge (EIC) rotation for midsize and community banks.	Issued revised guidance establishing a formal rotation policy for EIC of banks supervised in the large bank supervision and midsize and community bank supervision lines of business. ⁵
<i>Safety and Soundness: Material Loss Review of Silverton Bank, N.A.</i> OIG-10-033 (January 22, 2010)	Ensure that after a charter conversion an EIC is promptly assigned and supervisory coverage of the bank is continuous, to include the timely initiation (within no more than 12 months of the full-scope examination by the prior regulator) of the first full-scope examination after conversion.	Revised the Conversions booklet of the Comptroller's Licensing Manual by expanding the Conversion Handoff Package prepared by licensing staff upon transfer of supervisory responsibility to include specific language calling attention to the requirements to appoint an EIC, who will follow-up with the bank within 120 days of the effective date of the conversion, and to schedule a target date for initiating the first full-scope examination based on the last full-scope examination conducted by the previous regulator.
	Ensure that appropriate actions are taken to amend or reinforce OCC guidance in response to the lessons-learned review of the Silverton failure.	OCC established a lessons-learned review program requiring an independent assessment of the adequacy of bank supervision for each failed institution under OCC jurisdiction to be completed and submitted to the Ombudsman

⁵ Comptroller of the Currency, Policies & Procedures Manual (PPM 5000-38(REV)), *Bank Supervision Operations, Examiner-in-Charge Rotations* (October 31, 2011)

Appendix 6
Prior Office of Inspector General Recommendations to OCC

Report Title	Recommendations to the Comptroller	OCC Corrective Action Taken or Planned
		within four weeks of completion of examination procedures.
		OCC also transferred the responsibility for performing lessons-learned reviews of bank failures to its Ombudsman.
	Ensure that banks seeking conversion to a national charter address all significant deficiencies identified by OCC or prior regulators before approval.	OCC updated the Conversion booklet of the Comptroller's Licensing Manual to include a more thorough description of the procedures that should be followed to determine that banks seeking conversion satisfactorily address significant deficiencies before approval. ⁶
	Formalize the process for second-level reviews of charter conversions.	The Supervisory Review Committee charter for each district and midsize was amended to formalize the process and require second level reviews of charter conversions.
<i>Safety and Soundness: Material Loss Review of Citizens National Bank</i> OIG-10-038 (March 22, 2010)	Due to the complexity of the risk-based capital treatment of structured investment securities, assess the adequacy of OCC Bulletin 2009-15, Investment Securities after it has been in use for a reasonable time.	OCC determined that no changes are necessary to OCC Bulletin 2009-15.
	Work with OCC's regulatory partners to determine whether to propose legislation and/or change regulatory guidance to establish limits or other controls for bank investments.	OCC works with other regulators to develop guidance on a variety of subjects where common issues exist. The Federal Financial Institutions Examination Council and other interagency forums are evaluating a number of factors that contributed to the current problems in the banking industry and will consider what regulatory changes are needed. As of June 10, 2010, OCC determined additional guidance is not needed and planned to continue to evaluate this issue.

⁶ Comptroller's Licensing Manual, *Conversions* (April 2010)

Report Title	Recommendations to the Comptroller	OCC Corrective Action Taken or Planned
<i>Safety and Soundness: Material Loss Review of Union Bank, National Association</i> OIG-CA-10-009 (May 11, 2010) (Review performed by Mayer Hoffman McCann P.C., an independent certified public accounting firm, under the supervision of the Department of the Treasury (Treasury) Office of Inspector General (OIG))	Work with OCC's regulatory partners to determine whether to propose legislation and/or change regulatory guidance to establish limits or other controls for concentrations that pose an unacceptable safety and soundness risk and determine an appropriate range of examiner response to high-risk concentrations.	In a Task Force on Supervision Meeting on August 7, 2012, our recommendation was discussed and there was general agreement that the agencies have sufficient supervisory authority to address compliance with applicable standards and that a legislative change would not be necessary. OCC responded that it works with other regulators to develop guidance on a variety of subjects where common issues or concerns exist. Federal banking agencies are in the process of evaluating a number of factors that contributed to current problems in the banking industry and will consider what regulatory changes are needed. OCC responded that, although it was too early to determine whether the final outcome of the agencies' deliberations will include changes in concentration limits or risk management expectations, it would continue to study the situation and interface with other regulatory partners.
<i>Safety and Soundness: Material Loss Review of Vineyard Bank, National Association</i> OIG-10-044 (July 13, 2010)	No new recommendations. Reiterated prior recommendations made in our Silverton report.	No additional actions necessary.
<i>Safety and Soundness: Material Loss Review of Flagship National Bank</i> OIG-10-044 (May 3, 2011)	Same recommendation as stated above for Union Bank, National Association.	OCC stated in its response that it proposed a group to study the issue of CRE concentrations in interagency forums. The proposal was not acted on, so OCC convened an internal group to study it and develop solutions. OCC revised its Concentrations of Credit Handbook to

Appendix 6
Prior Office of Inspector General Recommendations to OCC

Report Title	Recommendations to the Comptroller	OCC Corrective Action Taken or Planned
		address concerns raised in the audit. OCC will continue to seek an interagency agreement. ⁷
	Emphasize to examiners that MRAs are to be issued in ROEs in accordance with the criteria regarding deviations from sound management and noncompliance with laws or policies listed in the Comptroller's Handbook.	OCC stated that its policy for utilizing MRAs is clearly stated within the Comptroller's Handbook. In addition, it distributed a MRA Reference Guide in July 2010 to further emphasize expectations for proactive supervision, clear and assertive communication of concerns to the Board of Directors, and prompt follow-up on commitments for corrective action. Training was also conducted on the guide in all field offices in 2010. ⁸
<i>Safety and Soundness: Material Loss Review of First Security National Bank</i> OIG-11-075 (June 10, 2011) (Review performed by Crowe Horwath LLP, an independent certified public accounting firm, under the supervision of the Treasury OIG)	No new recommendations	No additional actions necessary.
<i>Safety and Soundness: Material Loss Review of First National Bank of Anthony</i> OIG-11-105 (September 20, 2011)	No new recommendations.	No additional actions necessary.
<i>Safety and Soundness: Material Loss Review of Amcore Bank, N.A.</i> OIG-12-035 (December 28, 2011)	Ensure:	According to OCC, lead experts now report to the Midsize Bank Supervision Risk Officer and do not have direct supervisory responsibility for specific banks. Midsize Bank Supervision has incorporated mandatory lead expert reviews in

⁷ Comptroller of the Currency, Concentrations of Credit Handbook (December 2011).

⁸ Midsize and Community Bank Supervision MRA Reference Guide (July 2010).

Appendix 6
Prior Office of Inspector General Recommendations to OCC

Report Title	Recommendations to the Comptroller	OCC Corrective Action Taken or Planned
	a) lead expert's input is considered in supervisory decisions, b) Midsize Bank supervisory office personnel follow established OCC guidance to resolve issues raised by the lead expert, and c) resolution of recommendations is documented. OCC should determine whether there are other concerns by lead experts that are currently unresolved and ensure appropriate agreement is reached on those matters.	its supervisory product workflow. EIC must address the lead expert's comments, and any differences must be resolved to the satisfaction of both parties prior to finalizing and issuing the product to the bank. Any supervisory matters that have not been resolved at the EIC/lead expert level are elevated to the Risk Officer for resolution. In addition, a system (WALTER) was developed in Midsize Bank Supervision to track the flow of a supervisory product, including reviews by lead experts. Their reports capture issues they raise, and documents are adjusted accordingly.
	Ensure relevant emails are maintained in the supervisory record (Examiner View) as appropriate.	In a September 30, 2013, national conference call, OCC emphasized maintaining support for emails in Examiner View.
	Implement policies and controls to monitor and ensure that ROEs are issued timely.	OCC implemented an automated system for tracking and monitoring all written supervisory communications, including ROEs, from submission by examiners through the time they are issued to the bank. This allows Midsize Bank Supervision to promptly identify any ROE or other communication that is not being reviewed and processed in a timely manner, and to address other issues. OCC will also reinforce to all staff the importance of issuing ROEs and other supervisory products in a timely manner.
Safety and Soundness: In-depth Review of Unity National Bank OIG-12-036 (January 11, 2012)	No new recommendations.	No additional actions necessary.
Safety and Soundness: Material Loss Review of Corus Bank, N.A. OIG-12-037 (January 24, 2012)	Work with OCC's regulatory partners to determine whether regulatory guidance be changed, or legislation should be proposed to	In a Task Force on Supervision meeting on August 7, 2012, this topic was discussed. Members generally agreed that the agencies

Report Title	Recommendations to the Comptroller	OCC Corrective Action Taken or Planned
	amend 12 U.S.C. 84, Lending Limits, to prohibit or limit the sale of loan participations by a bank to its holding company for purpose of complying with the legal lending limit.	have sufficient supervisory authority to address compliance with applicable standards and that a legislative change would not be necessary.
<i>Safety and Soundness: Material Loss Review of Riverside National Bank of Florida</i> OIG-12-039 (January 31, 2012)	Determine whether a limit, such as a specific percentage of capital, should be placed on the amount national banks can invest in complex mortgage-related securities before supervisory approval must be obtained.	In a Task Force on Supervision meeting on August 7, 2012, our recommendation was discussed. Members generally agreed that the agencies have sufficient supervisory authority to address compliance with applicable standards and that a legislative change would not be necessary.
	Work with regulatory partners to reevaluate the regulatory capital treatment of unrealized losses on available-for-sale debt securities in determining Tier 1 capital.	On October 11, 2013, OCC and the Federal Reserve System adopted a final rule that revises their risk-based and leverage capital requirements for banking organizations. ⁹ This rule also addresses the inclusion of accumulated other comprehensive income in Tier 1 capital.
<i>Safety and Soundness: Material Loss Review of Republic Federal Bank, N.A.</i> OIG-12-040 (February 7, 2012)	No new recommendations.	No additional actions necessary.
<i>Safety and Soundness: Material Loss Review of First National Bank of Georgia</i> OIG-12-041 (February 14, 2012)	No new recommendations.	No additional actions necessary.
<i>Safety and Soundness: Material Loss Review of Pacific Coast National Bank, San Clemente, California</i> OIG-12-042 (February 27, 2012)	No new recommendations.	No additional actions necessary.

⁹ 12 CFR Parts 208, 217, and 225 Regulatory Capital Rules.

Report Title	Recommendations to the Comptroller	OCC Corrective Action Taken or Planned
<i>Safety and Soundness Reviews of Failed National Banks Owned by First Bank of Oak Park Corporation</i> OIG-12-043 (March 1, 2012)	Re-evaluate whether OCC guidance for risk weighting of GSE equity securities should be consistent with the other federal banking agencies and changed from 20 percent to 100 percent.	On October 11, 2013, OCC and the Federal Reserve System adopted a final rule that revises their risk-based and leverage capital requirements for banking organizations.
<i>Safety and Soundness: Material Loss Review of Integra Bank, National Association</i> OIG-12-050 (April 12, 2012)	No new recommendations.	No additional actions necessary.
<i>Safety and Soundness: In-Depth Review of the First National Bank of Davis</i> OIG-12-055 (June 7, 2012)	Remind examiners of the importance of following OCC's guidance regarding (1) performing reconciliations of all reports submitted by management to ensure that the reports are accurate and agree to the bank's general books, and (2) analyzing a bank's new products to determine the effect on credit risk.	OCC sent an all employee message on February 11, 2013, reminding employees to follow established OCC guidance regarding performing reconciliations of reports received from bank management during examinations and to evaluate the effect of new products on key risks, including credit risk.
	Establish formal guidance to address OCC's response to investigations and requests for information from law enforcement agencies. The guidance should address, for example, when examination procedures should be expanded based on information provided by law enforcement agencies as well as notification to OCC Headquarters and OIG.	On February 7, 2014, OCC issued Policies and Procedures Manual documents 5000-40, "OCC Filings of Suspicious Activity Reports (SAR)" and 5000-41, "Notification Requirements to the Treasury OIG for Examination Obstruction, Administrative Actions, SARs, and Contacts with Law Enforcement" providing guidance on interaction with law enforcement agencies and communication protocols for notifications to OCC Headquarters and OIG.

Appendix 7
OCC Management Comments



Office of the Comptroller of the Currency

Washington, DC 20219

August 5, 2016

Susan Barron
Director, Banking Audits
Office of Inspector General
Department of the Treasury
Washington, DC 20220

Subject: Response to Draft Report

Dear Ms. Barron:

We have reviewed your draft report titled "Analysis of Bank Failures Reviewed by Treasury Office of the Inspector General (OIG)." Your audit objective was to: (1) identify common themes related to the supervision of banks and thrifts and the causes of their failures and (2) assess the Office of the Comptroller of the Currency's (OCC) actions to strengthen its supervisory process in response to OIG audit recommendations and through other initiatives. To accomplish your objectives, you reviewed the 120 material loss reviews (MLR), failed bank reviews, and in-depth review reports issued to the OCC and the legacy Office of Thrift Supervision (OTS) from January 1, 2008, through December 31, 2012, on banks that failed from September 2007 through July 2012. You also reviewed relevant OCC documentation and guidance, interviewed OCC officials, and conducted other applicable fieldwork from December 2011 through March 2015.

You determined that the most common themes associated with the failed banks were: (1) asset concentrations, (2) inadequate credit administration and risk management, and (3) reliance on wholesale funding. You also identified several other attributes that, though not as common, contributed to bank failures. In addition, you identified certain matters with respect to 29 failed banks relating to potential fraud that you referred or about which you provided information to the OIG's Office of Investigation. You determined that OCC's supervision was appropriate in some of the banks and OCC's and the legacy OTS's uses of authority under prompt corrective action (PCA) were generally in accordance with PCA requirements. However, you concluded that for many banks, OCC and the legacy OTS: (1) did not take timely and/or strong enough supervisory actions and/or (2) did not timely identify or failed to identify key supervisory issues. In some instances, you noted that OCC and the legacy OTS lacked appropriate guidance or did not follow applicable guidance.

You concluded that the OCC generally concurred with your recommendations made in MLR and in-depth review reports. In addition, you reported that the OCC implemented policies and procedures, updated examination guidance, and took other corrective actions consistent with the intent of your recommendations. You indicated that OCC has undertaken independent initiatives

Appendix 7 OCC Management Comments

to strengthen its supervisory process, including implementing processes to identify emerging risks to bank safety and soundness. You also acknowledged that the Comptroller of the Currency initiated a small group of current and former senior supervisory personnel from other countries to provide an independent review of OCC's supervision. In December 2013, the group's report commended OCC's improved ability to focus on specific risk areas and its creation of an independent quality assurance process to review its own supervision. You indicated that OCC is addressing several key recommendations made by the group, covering six broad areas:

- mission, vision, and strategic goals;
- risk identification;
- ratings systems;
- staffing;
- scope and consistency of supervisory strategies; and
- enterprise governance.

The results of the International Peer Review, as operationalized by working groups within the agency, have strengthened the agency; led to significant improvements in systemic risk identification, quality control processes, and resource utilization; and transformed some of the ways the OCC supervises large institutions.

Your report makes three recommendations to ensure the OCC identifies common trends and emerging issues to enable it to take corrective action in a timely manner. First, you recommend that the OCC continue to address recommendations from our MLRs and in-depth reviews, as well as the International Peer Review. The OCC will continue its practice of identifying and taking appropriate actions in a timely manner in response to recommendations from MLRs and in-depth reviews. The OCC will also continue with its initiatives that addressed and implemented the December 2013 International Peer Review recommendations.

Second, you recommend that the OCC participate in various committees and groups to identify emerging risks and communicate them to examiners and banks. The Comptroller is a member of the Financial Stability Oversight Council (FSOC) and the Federal Financial Institutions Examination Council (FFIEC), and OCC staff participates on FSOC and FFIEC support committees. The OCC also participates on international committees, supervisory colleges, and crisis management groups; interagency and cross-governmental working groups; and ad hoc groups where risks are raised and discussed. The OCC conveys these risks to examiners through the *Comptroller's Handbook*, numerous internal communications, and training, and to examiners and banks through publications (e.g., the Semiannual Risk Perspective), OCC Bulletins, other guidance documents, and outreach efforts.

Finally, you recommend that the OCC use its newly implemented lessons-learned review program and other analyses, as appropriate. The OCC will continue to use the lessons-learned program going forward.

Appendix 7
OCC Management Comments

I appreciate the opportunity to review and respond to the report. If you need additional information, please contact Toney Bland, Senior Deputy Comptroller for Midsize and Community Bank Supervision, at 202-649-5420.

Sincerely,

/s/

Thomas J. Curry
Comptroller of the Currency

Appendix 8
Major Contributors to This Report

Alicia Weber, Audit Manager
John Tomasetti, Auditor-in-Charge
Kevin Guishard, Auditor
Khuyen Tran, Auditor
April Ellison, Referencer
Andrea Smith, Referencer

The Department of the Treasury

Deputy Secretary of the Treasury
Office of Strategic Planning and Performance Management
Office of the Deputy Chief Financial Officer, Risk and Control
Group

Office of the Comptroller of the Currency

Comptroller of the Currency
Liaison Officer

Office of Management and Budget

OIG Budget Examiner



Treasury OIG Website

Access Treasury OIG reports and other information online:

<http://www.treasury.gov/about/organizational-structure/ig/Pages/default.aspx>

Report Waste, Fraud, and Abuse

OIG Hotline for Treasury Programs and Operations – Call toll free: 1-800-359-3898

Gulf Coast Restoration Hotline – Call toll free: 1-855-584.GULF (4853)

Email: Hotline@oig.treas.gov

Submit a complaint using our online form:

<https://www.treasury.gov/about/organizational-structure/ig/Pages/OigOnlineHotlineForm.aspx>

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
Civil Action No. 2009-CP-26-05915

Plantation Federal Bank,

Plaintiff,

vs.

C&C Development, LLC; Michael Chaffin;
Chester A. Crockett; Bruce J. Ahmes, S&D
General Contractors, LLC; Col-Cor
Industries, Inc. d/b/a Active Glass and
Mirror; First Electric, Inc.; Wallcraft
Construction, Inc. and Carolina Dirt Works,
LLC,

Defendant.

**AFFIDAVIT OF
JAIME CLARDY**

PERSONALLY APPEARED BEFORE ME, Jaime Clardy who being duly sworn
deposes and says as follows:

1. I am an Assistant Vice President of Special Assets Management for South State Bank. I previously worked for Plantation Federal Bank ("Plantation Federal") until April 27, 2012 when it was placed into receivership by the Office of Thrift Supervision to Comptroller of the Currency. I thereafter worked for First Federal Bank and I now work for South State Bank. In my current position and in my prior positions with Plantation Federal and First Federal Bank, I am familiar with First Federal Bank's acquisition of the assets of Plantation Federal and South State Bank's subsequent merger with First Federal Bank.

2. On June 15, 2009, Plantation Federal filed a foreclosure lawsuit against C&C Development, Michael Chaffin, Chester A. Crockett and Bruce J. Ahmes, et. al. in the Horry

County Court of Common Pleas (2009-CP-26-05915) (the "Foreclosure Lawsuit") to recover real estate and the amounts due on a commercial loan ("C&C Loan").

3. The mortgaged property that was the subject of the Foreclosure Lawsuit was located at 4108 Carolina Commercial Drive, Myrtle Beach SC. ("Property").

4. The Master in Equity for Horry County sold the Property at a public sale conducted on February 1, 2010 and thereafter issued a Master's deed to Plantation Federal as the high bidder. The Master's deed was recorded in Deed Book 3452 at page 894 and it is attached as **Exhibit A**.

5. After Plantation Federal acquired the Property it assigned the C&C Loan a Real Estate Owned ("REO") number of 0-10438-350044.

6. On March 11, 2010, Plantation Federal Bank obtained a deficiency judgment ("C&C Judgment") against C&C Development, LLC, Michael Chaffin, Chester A. Crockett and Bruce J. Ahmes in the amount of \$773,471.01 in Foreclosure Lawsuit.

7. On April 27, 2012, Plantation Federal Bank was closed by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (FDIC) was named Receiver. The FDIC assigned the number 10438003386 to the C&C Judgment and the Property.

8. First Federal Bank purchased the assets of Plantation Federal Bank pursuant to the purchase and assumption agreement (Purchase and Assumption Agreement) dated April 27, 2012 and attached hereto as **Exhibit B**. First Federal Bank acquired the C&C Judgment and the Property pursuant to the Purchase and Assumption Agreement.

9. The C&C Judgment was one of the assets included in the Commercial Shared Loss Agreement with the FDIC and it was listed on Schedule 4.15 (B) of the Purchase and

Assumption Agreement. A portion of Schedule 4.15(B) with the names of other borrowers redacted is attached hereto as **Exhibit C**.

10. On September 19, 2012, the FDIC issued a receiver's deed ("Receiver's Deed") for the Property to First Federal Bank. The Receiver's Deed was recorded on September 20, 2012 in the Horry County Register of Deed's records in book 3608 at page 1559. See **Exhibit D**.

11. After First Federal acquired the C&C Judgment and Property from the FDIC, it assigned the C&C Judgment and Property REO loan number 9900001041 and it was recorded as a Shared-Loss Asset on First Federal's books. **Exhibit E**, is a redacted portion of the list prepared by First Federal of its "Shared-Loss Assets" that were received as part of the Plantation Federal transaction.

12. Thereafter, First Federal sold the Property to Carlos S. Scheer on September 20, 2012 by way of deed recorded in book 3608 at page 1566. See **Exhibit F**.

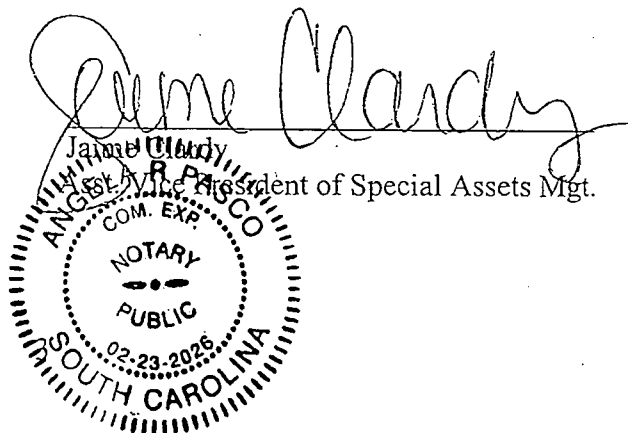
13. On July 26, 2013, First Federal Bank merged into SCBT and operated as SCBT, doing business as First Federal, a division of SCBT. See **Exhibit G** for Articles of Merger between First Federal Bank and SCBT.

14. On June 30, 2014, SCBT changed its name to South State Bank, effective as of June 30, 2014 (see **Exhibit H**— Articles of Amendment dated May 5, 2014).

15. South State Bank is still the owner of the C&C Judgment and it is still known as REO Number 9900001041 in its records. The Judgment was never sold by First Federal or South State Bank.

SWORN to before me this
2 day of April, 2019

Notary Public for South Carolina
My Commission Expires: 02-23-2026



Instrument#: 2010000031643, DEED BK: 8800023937-101
 3452 PG: 894 DOCTYPE: 125 03/29/2010 at
 09:19:03 AM, 1 OF 7, EXEMPT, BALLERY
 V. SKIPPER, HORRY COUNTY, SC
 REGISTRAR OF DEEDS

FILED
 HORRY COUNTY
 7 APR 25 9:51
 CLAME HUGGINS-WALKER
 CLERK OF COURT

ELECTRONICALLY FILED - 2019 May 03 4:43 PM - HORRY - COMMON PLEAS - CASE#2009CP2605915

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

MASTER'S DEED

WHEREAS, Plantation Federal Bank, on or about the 15th day of June, in the year of our Lord Two Thousand Nine, did file Complaint in the Court of Common Pleas for the County of Horry, State of South Carolina, against **C&C Development, LLC, Michael Chaffin, Chester A. Crockett, Bruce J. Ahmes, S&D General Contractors, LLC. Col-Cor Industries, Inc., dba Active Glass and Mirror, First Electric, Inc., Wallcraft Construction, Inc., and Carolina Dirt Works, LLC.**;

AND WHEREAS, the action being at issue, was heard by the **Honorable Cynthia Graham Howe** on the 7th day of January in the year of our Lord Two Thousand Ten, whereupon the Judge of said Court, after full hearing thereof and mature deliberation in the premises, did **ORDER, ADJUDGE, AND DECREE** that the premises particularly set forth and described hereinafter, should be sold by the **Honorable Cynthia Graham Howe, as Master**, hereinafter called party of the first part, on the terms and for the purposes mentioned in said **Order of Judgment for Foreclosure and Sale, No. 2009-CP-26-5915**; and the party of the first part after having duly advertised the said premises for sale at public outcry on the **1st day of February**, in the year of our Lord Two Thousand Ten, did openly and publicly, and after the manner of auction, offer the said premises for sale, and **Cynthia Graham Howe**, as provided by law, did then sell the same unto the **Plantation Federal Bank, 311-C Beaty Street, Conway, South Carolina 29526**, hereinafter called party of the second part, for the sum of **Nine Hundred Thousand (\$900,000.00) Dollars**, being at that price the highest bidder for the same;

NOW KNOW ALL MEN BY THESE PRESENTS that the said party of the first part, in consideration of the premises and the sum of **Nine Hundred Thousand (\$900,000.00) Dollars** paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and released; and by

- 1 -

these presents does grant, bargain, sell, and release, unto the said party of the second part, the following described property, to wit:

That certain piece, parcel or tract of land situate and lying in Horry County, South Carolina and containing 0.866 acres, more or less, as shown and identified as "Lot 2, 37,740 Sq. Ft., 0.866 Acs," on a map entitled "Lot 2 Carolina Forest Commercial Center, Phase III for International Paper Realty Corporation" by ETS Engineering and Technical Service, dated October 18, 2005 and recorded in Plat Book 213 at Page 14, Registered of Deeds for Horry County, South Carolina on April 7, 2006.

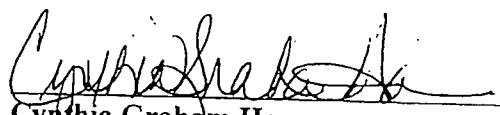
This property is subject to all easements and restrictive covenants of record.

This is the identical property conveyed to C & C Development Company, LLC by Deed of Independent Republic Investments, LLC, dated February 14, 2008 and recorded February 19, 2008 in the Office of the ROD for Horry County, South Carolina in Deed Book 3315 at Page 2506.

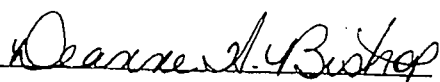
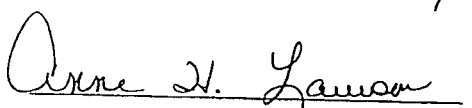
TOGETHER with all and singular the hereditaments, rights, members, and appurtenances whatsoever to the said premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also the estate, right, title, interest, dower, possession, property, benefit, claim and demand whatsoever of all the parties to the said suit, as well as of all other persons rightfully claiming or to claim the same or any part thereof by, from, or under them or through either of them.

TO HAVE AND TO HOLD the said premises, with its hereditaments, privileges, and appurtenances, unto the said party of the second part, their heirs and assigns, forever.

IN WITNESS WHEREOF, I, the said **Cynthia Graham Howe, as Master**, under and by virtue of the said Order of Judgment for Foreclosure and Sale, have hereunto set my Hand and Seal, this the 9 day of March in the year of our Lord Two Thousand Ten and in the Two Hundred Thirty-Fourth year of the Sovereignty and Independence of The United States of America.


Cynthia Graham Howe
Master-In Equity for Horry County
South Carolina

Signed, Sealed and Delivered
in the Presence of these witnesses:

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

)
)
)

PROBATE

PERSONALLY appeared before me the undersigned and made oath that he/she saw **Cynthia Graham Howe, Master-In-Equity for Horry County, South Carolina**, sign, seal, and as her act and deed, deliver the foregoing **Master's Deed**; and that she with the other subscribing witness witnessed the due execution thereof and signed their names as witnesses thereto.

Deanne H Bishop

Sworn to before me this

9 day of March, 2010.

Anne H. Lawson (L. S.)
Notary Public for South Carolina

My Commission Expires: 10-4-15

FILED
Horry County
MAR 26 AM 9:52
CLAUDE HIGGINS-WARD
CLERK OF COURT

PURCHASE AND ASSUMPTION AGREEMENT

WHOLE BANK

ALL DEPOSITS

AMONG

FEDERAL DEPOSIT INSURANCE CORPORATION,
RECEIVER OF PLANTATION FEDERAL BANK,
PAWLEYS ISLAND, SOUTH CAROLINA

FEDERAL DEPOSIT INSURANCE CORPORATION

and

FIRST FEDERAL BANK,
CHARLESTON, SOUTH CAROLINA

DATED AS OF

APRIL 27, 2012

PURCHASE AND ASSUMPTION AGREEMENT

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PURCHASE AND ASSUMPTION AGREEMENTWHOLE BANKALL DEPOSITS

THIS AGREEMENT, made and entered into as of the 27th day of April, 2012, by and among the **FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER** of **PLANTATION FEDERAL BANK, PAWLEYS ISLAND, SOUTH CAROLINA** (the "Receiver"), **FIRST FEDERAL BANK, CHARLESTON, SOUTH CAROLINA**, organized under the laws of the State of South Carolina, and having its principal place of business in Charleston, South Carolina (the "Assuming Institution"), and the **FEDERAL DEPOSIT INSURANCE CORPORATION**, organized under the laws of the United States of America and having its principal office in Washington, D.C., acting in its corporate capacity (the "Corporation").

R E C I T A L S

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

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

A G R E E M E N TARTICLE I. GENERAL.

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

1.2. Shared-Loss Agreements. If the Receiver and the Assuming Institution desire to share losses and recoveries on certain acquired assets, a Shared-Loss Agreement or Shared-Loss Agreements are attached hereto as Exhibit 4.15A and/or Exhibit 4.15B, as applicable, and will govern the terms of any such shared-loss arrangement. To the extent that any inconsistencies may arise between the terms of this Agreement and a Shared-Loss Agreement with respect to the subject matter of a Shared-Loss Agreement, the terms of the applicable Shared-Loss Agreement shall control.

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

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

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

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

"Assets" means all assets of the Failed Bank purchased pursuant to Section 3.1. Assets owned by Subsidiaries of the Failed Bank are not "Assets" within the meaning of this definition by virtue of being owned by such Subsidiaries.

"Assumed Deposits" means Deposits.

"Assuming Institution" has the meaning set forth in the introduction to this Agreement.

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

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

"Bid Amount" has the meaning set forth in Article VII.

"Bid Form" means Exhibit "A" to the bid instructions provided to the Assuming Institution.

"Bid Valuation Date" means February 2, 2012.

"Board" has the meaning set forth in Recital D.

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

"Business Day" means a day other than a Saturday, Sunday, Federal legal holiday or legal holiday under the laws of the State where the Failed Bank is located, or a day on which the principal office of the Corporation is closed.

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

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

"Corporation" has the meaning set forth in the introduction to this Agreement.

"Counterclaim" has the meaning set forth in Section 12.1(b).

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

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

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

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

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

"Eligible Individuals" has the meaning set forth in Section 4.12.

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

"ERISA" has the meaning set forth in Section 4.12.

"Failed Bank" has the meaning set forth in Recital A.

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

"Failed Bank Records" means Records of the Failed Bank, including but not limited to, its corporate minutes, general ledger and subsidiary ledgers and schedules which support the general ledger balances.

"Fair Market Value" means:

(a) "Market Value" as defined in the regulation prescribing the standards for real estate appraisals used in federally related transactions, 12 C.F.R. § 323.2(g), and accordingly shall mean the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this

definition is the assumed consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

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

as determined as of the Bank Closing Date by an appraiser chosen by the Receiver; any costs and fees associated with such determination shall be paid by the Receiver, and

with respect to Bank Premises (to the extent, if any, that Bank Premises are purchased utilizing this valuation method), shall be determined not later than sixty (60) days after the Bank Closing Date by an appraiser selected by the Receiver within seven (7) days after the Bank Closing Date, and with respect to Specialty Assets, shall be determined by an appraiser selected by the Receiver within seven (7) days after the Bank Closing Date; or

(b) with respect to property other than Bank Premises and Specialty Assets purchased utilizing this valuation method, the price therefor as established by the Receiver, as determined in accordance with clause (a) above.

"FDIC Office Space" has the meaning set forth in Section 4.11.

"Final Legal Notice" has the meaning set forth in Section 2.3(a).

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

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

"GSE" means a government sponsored enterprise.

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

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

"Initial Payment" means the payment made pursuant to Article VII (based on the best information available as of the Bank Closing Date), the amount of which shall be either (i) if the Bid Amount is positive, the aggregate Book Value of the Liabilities Assumed minus the sum of the aggregate purchase price of the Assets as determined pursuant to Section 3.2 and assets purchased (including any Bank Premises purchased via the Bid Form) and the positive Bid Amount, or (ii) if the Bid Amount is negative, the sum of the aggregate Book Value of the Liabilities Assumed and the negative Bid Amount minus the aggregate purchase price of the Assets and assets purchased (including any Bank Premises purchased via the Bid Form). The Initial Payment shall be payable by the Corporation to the Assuming Institution if (i) the Liabilities Assumed are greater than the sum of the positive Bid Amount and the Assets and any other assets purchased, or if (ii) the sum of the Liabilities Assumed and the negative Bid Amount are greater than the Assets and assets purchased. The Initial Payment shall be payable by the Assuming Institution to the Corporation if (i) the Liabilities Assumed are less than the sum of the positive Bid Amount and the Assets and assets purchased, or if (ii) the sum of the Liabilities Assumed and the negative Bid Amount is less than the Assets and assets purchased. Such Initial Payment shall be subject to adjustment as provided in Article VIII.

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

"Legal Balance" means the amount of indebtedness legally owed by an Obligor with respect to a Loan, including principal and accrued and unpaid interest, late fees, attorneys' fees and expenses, taxes, insurance premiums, and similar charges, if any.

"Liabilities Assumed" has the meaning provided in Section 2.1.

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

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

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

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

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

"New Loan" means a Loan made by the Failed Bank after the Bid Valuation Date that is not a continuation, amendment, modification, renewal, extension, refinancing, restructuring or refunding of or for any then-existing Loan.

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

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

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

"Payment Date" means the first Business Day after the Bank Closing Date.

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

"Personal Computer(s)" means computers based on a microprocessor generally designed to be used by one person at a time and which usually store informational data on that computer's internal hard drive or attached peripheral, and associated peripherals (such as

keyboard, mouse, etc.). A personal computer can be found in various configurations such as laptops, net books, and desktops.

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

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

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

"Put Date" has the meaning set forth in Section 3.4(d).

"Put Notice" has the meaning set forth in Section 3.4(c).

"Qualified Beneficiaries" has the meaning set forth in Section 4.12.

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

"Record" means any document, microfiche, microfilm or Electronically Stored Information (including but not limited to magnetic tape, disc storage, card forms and printed copy) of the Failed Bank generated or maintained by the Failed Bank that is owned by or in the possession of the Receiver at the Bank Closing Date.

"Receiver" has the meaning set forth in the introduction to this Agreement.

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

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

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

"Repurchase Price" means, with respect to any Asset, first taking the Book Value of the Asset at the Bank Closing Date and either subtracting the pro rata Asset discount or adding the pro rata Asset premium, and subsequently adjusting that amount (i) for any advances and interest on such Asset after the Bank Closing Date, (ii) by subtracting the total amount received by the Assuming Institution for such Asset after the Bank Closing Date, regardless of how applied and (iii) by adding total disbursements of principal made by the Receiver not otherwise included in the Book Value. For New Loans, the Repurchase Price shall not take into account the pro rata Asset discount or premium.

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

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

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

"Shared-Loss Agreements" means, if any, the Single Family Shared-Loss Agreement attached hereto as Exhibit 4.15A and, if any, the Commercial Shared-Loss Agreement, attached hereto as Exhibit 4.15B.

"Specialty Assets" means assets that have a greater value than more traditional furniture and equipment owned by the Failed Bank and reflected on the Failed Bank Records as of the Bank Closing Date and located on or at Bank Premises, including without limitation fine art and high end decorative art; classic and antique motor vehicles; rare books; rare coins; airplanes; boats; jewelry; collectible firearms; Indian or other cultural artifacts; sculptures; Proprietary Software; and any other items that typically cannot be appraised by a Furniture and Equipment appraiser. Specialty Assets does not include any repossessed collateral.

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

ARTICLE II. ASSUMPTION OF LIABILITIES.

2.1. Liabilities Assumed by Assuming Institution. The Assuming Institution expressly assumes at Book Value (subject to adjustment pursuant to Article VIII) and agrees to

pay, perform and discharge, all of the following liabilities of the Failed Bank as of the Bank Closing Date, except as otherwise provided in this Agreement (such liabilities referred to as "Liabilities Assumed"):

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

(b) liabilities for indebtedness secured by mortgages, deeds of trust, chattel mortgages, security interests or other liens on or affecting any Assets, if any; provided, that the amount of any liability assumed pursuant to this Section 2.1(b) shall be limited to the market value of the Assets securing such liability as determined by the Receiver;

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

(d) ad valorem taxes applicable to any Asset, if any; provided, that the assumption of any ad valorem taxes pursuant to this Section 2.1(d) shall be limited to an amount equal to the market value of the Asset to which such taxes apply as determined by the Receiver;

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

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

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

(h) liabilities for any "standby letters of credit" as defined in 12 C.F.R. § 337.2(a) issued on the behalf of any Obligor of a Loan acquired hereunder by the Assuming Institution, but excluding any other standby letters of credit;

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

(j) liabilities, if any, for Commitments;

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

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

(m) liabilities, if any, under any contract pursuant to which loan servicing is provided to the Failed Bank by others;

(n) all asset-related offensive litigation liabilities and all asset-related defensive litigation liabilities, but only to the extent such liabilities relate to assets subject to a Shared-Loss Agreement, and provided that all other defensive litigation and any class actions with respect to credit card business are retained by the Receiver; and

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

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

2.3. Unclaimed Deposits.

(a) **Final Legal Notice.** Fifteen (15) months following the Bank Closing Date, the Assuming Institution will provide the Receiver a listing of all deposit accounts, including the type of account, not claimed by the depositor. The Receiver will review the list and authorize the Assuming Institution to act on behalf of the Receiver to send a Final Legal Notice in a form substantially similar to Exhibit 2.3A (the "Final Legal Notice") to the owner(s) of the unclaimed deposits reminding them of the need to claim or arrange to continue their account(s) with the Assuming Institution. The Assuming Institution will send the Final Legal Notice to the depositors within thirty (30) days following notification of the Receiver's authorization. The Assuming Institution will prepare an Affidavit of Mailing in a form substantially similar to Exhibit 2.3B and will forward the Affidavit of Mailing to the Receiver after mailing out the Final Legal Notice to the owner(s) of unclaimed deposit accounts.

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

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

ARTICLE III. PURCHASE OF ASSETS.

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

3.2. Asset Purchase Price.

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

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

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

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

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

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

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

3.4. Puts of Assets to the Receiver.

(a) Puts Within 30 Days After the Bank Closing Date. During the thirty (30)-day period following the Bank Closing Date and only during such period (which thirty (30)-day period may be extended in writing in the sole and absolute discretion of the Receiver for any Loan), in accordance with this Section 3.4, the Assuming Institution shall be entitled to require the Receiver to purchase any New Loans and any Deposit Secured Loan transferred to the Assuming Institution pursuant to Section 3.1 which is not fully secured by Assumed Deposits or deposits at other insured depository institutions due to either insufficient Assumed Deposit or deposit collateral or deficient documentation regarding such collateral; provided that with regard to any Deposit Secured Loan secured by an Assumed Deposit:

(i) no such purchase may be required until any Deposit setoff determination, whether voluntary or involuntary, has been made; and

(ii) the Assuming Institution shall be entitled to require the Receiver to purchase, within forty (40) days from Bank Closing Date, any remaining overdraft transferred to the Assuming Institution pursuant to Section 3.1 which existed on the thirtieth (30th) day following the Bank Closing Date and which was made after the Bid Valuation Date and not made pursuant to an overdraft protection plan or similar extension of credit.

Notwithstanding the foregoing, the Assuming Institution shall not have the right to require the Receiver to purchase any Loan if (i) the Obligor with respect to such Loan is an Acquired Subsidiary, or (ii) the Assuming Institution has:

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

(B) taken any action that increased the amount of a Related Liability with respect to such Loan over the amount of such liability immediately prior to the time of such action;

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

(D) entered into, agreed to make, grant or permit, or made, granted or permitted any modification or amendment to, any waiver or extension

with respect to, or any renewal, refinancing or refunding of, such Loan or related Credit Documents or collateral, including, without limitation, any act or omission which diminished such collateral; or

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

(iii) The Assuming Institution shall transfer all such Assets to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Assuming Institution with respect to any such Asset, as provided in Section 12.4.

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

(c) Notices to the Receiver. In the event that the Assuming Institution elects to require the Receiver to purchase one or more Assets, the Assuming Institution shall deliver to the Receiver a notice (a "Put Notice") which shall include:

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

(ii) a list of all Related Liabilities with respect to the Assets identified pursuant to (i) above; and

(iii) a statement of the estimated Repurchase Price of each Asset identified pursuant to (i) above as of the applicable Put Date.

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

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

(e) Purchase Price and Payment Date. Each Asset purchased by the Receiver pursuant to this Section 3.4 shall be purchased at a price equal to the Repurchase Price of such Asset less the Related Liability Amount applicable to such Asset, in each case

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

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

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

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

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

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

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

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

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

(f) leased or owned Bank Premises and leased or owned Fixtures, Proprietary Software, Furniture and Equipment located on leased or owned Bank Premises, and Specialty Assets located on leased or owned Bank Premises, if any; provided that the Assuming Institution does obtain an option under Sections 4.6, 4.7 or 4.8, as the case may be, with respect thereto;

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

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

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

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

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

(l) any banker's bank stock, and the securities listed on the attached Schedule 3.5(l);

(m) reserved;

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

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

(p) all assets that were fully charged-off by the Failed Bank prior to the Bid Valuation Date, other than those assets that were secured by collateral that is an Asset purchased by the Assuming Institution under this Agreement; and

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

3.6. Retention or Repurchase of Assets Essential to Receiver.

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

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

(i) made to an officer, director, or other Person engaging in the affairs of the Failed Bank, its Subsidiaries or Affiliates or any related entities of any of the foregoing;

(ii) the subject of any investigation relating to any claim with respect to any item described in Section 3.5(a) or (b), or the subject of, or potentially the subject of, any legal proceedings;

(iii) made to a Person who is an Obligor on a loan owned by the Receiver or the Corporation in its corporate capacity or its capacity as receiver of any institution;

(iv) secured by collateral which also secures any asset owned by the Receiver; or

(v) related to any asset of the Failed Bank not purchased by the Assuming Institution under this Article III or any liability of the Failed Bank not assumed by the Assuming Institution under Article II.

(vi) Each such Asset or asset purchased by the Receiver shall be purchased at a price equal to the Repurchase Price thereof less the Related Liability Amount with respect to any Related Liabilities related to such Asset or asset, in each case determined as of the date of the notice provided by the Receiver pursuant to Section 3.6(a). The Receiver shall pay the Assuming Institution not later than the twentieth (20th) Business Day following receipt of related Credit Documents and Credit Files together with interest on such amount at the Settlement Interest Rate for the period from and including the date of receipt of such documents to and including the day preceding the day on which payment is made. The Assuming Institution agrees to administer and manage each such Asset or asset in accordance with usual and prudent banking standards and business practices until each such Asset or asset is purchased by the Receiver. All transfers with respect to Asset or assets under this Section 3.6 shall be made as provided in Section 9.6. The Assuming Institution shall transfer all such Assets or assets and Related Liabilities to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Assuming Institution with respect to any such Asset or asset, as provided in Section 12.4.

3.7. Receiver's Offer to Sell Withheld Loans. For the period of thirty (30) days commencing the day after the Bank Closing Date, the Receiver may sell, in its sole and absolute discretion, and the Assuming Institution, may purchase, in its sole and absolute discretion, any Loans initially withheld from sale to the Assuming Institution pursuant to Sections 3.5 or 3.6 of this Agreement. The purchase price for such Loan shall be the Book Value as of the Bank Closing Date, adjusted (i) for any advances and interest on such Loan after the Bank Closing Date, (ii) by subtracting the total amount received by the Assuming Institution for such Loan after the Bank Closing Date, and (iii) by adding total disbursements of principal made by the Receiver and not otherwise included in the Book Value. Except for the sales price, Loans sold under this section will be treated as if initially sold under Section 3.1 of this Agreement, and will be subject to all relevant terms of this Agreement except that the Loans purchased pursuant to

this Section 3.7 shall not be included in the calculation of the pro rata Asset discount or pro rata Asset premium utilized for the repurchase of other Assets. No Loan purchased pursuant to this Section 3.7 shall be a Shared-Loss Loan pursuant to the Shared-Loss Agreements unless (i) it is cross-collateralized with a Shared-Loss Loan purchased pursuant to this Agreement and (ii) it otherwise meets the definition of Shared-Loss Loan in the applicable Shared-Loss Agreement. Payment for Loans sold under this Section 3.7 will be handled through the settlement process pursuant to Article VIII.

ARTICLE IV. ASSUMPTION OF CERTAIN DUTIES AND OBLIGATIONS.

4.1. Continuation of Banking Business. For the period commencing on the first banking Business Day after the Bank Closing Date and ending on the first anniversary of the Bank Closing Date, the Assuming Institution will provide full service banking in the trade area of the Failed Bank. Thereafter, the Assuming Institution may cease providing such banking services in the trade area of the Failed Bank, provided the Assuming Institution has received all necessary regulatory approvals, including the approval of the Receiver and, if applicable, the Corporation. At the option of the Assuming Institution, such banking services may be provided at any or all of the Bank Premises, or at other premises within such trade area, as determined by the Receiver. The Assuming Institution may open, close or sell branches upon receipt of the necessary regulatory approvals, provided that the Assuming Institution or its successors continue to provide banking services in the trade area during the period specified in this Section 4.1. The Assuming Institution will pay to the Receiver, upon the sale of a branch or branches within the year following the date of this Agreement, fifty percent (50%) of any franchise premium in excess of the franchise premium paid by the Assuming Institution with respect to such branch or branches.

4.2. Credit Card Business. The Assuming Institution agrees to honor and perform, from and after the Bank Closing Date, all duties and obligations with respect to the Failed Bank's credit card business (including issuer or merchant acquirer) debit card business, stored value and gift card business, and/or processing related to credit cards, if any, and assumes all extensions of credit or balances outstanding as of the Bank Closing Date with respect to these lines of business. The obligations undertaken pursuant to this Section do not include loyalty, reward, affinity, or other similar programs related to the credit and debit card businesses.

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

4.4. Safekeeping Business. The Receiver transfers, conveys and delivers to the Assuming Institution and the Assuming Institution accepts all securities and other items, if any, held by the Failed Bank in safekeeping for its customers as of the Bank Closing Date. The Assuming Institution assumes and agrees to honor and discharge, from and after the Bank

Closing Date, the duties and obligations of the Failed Bank with respect to such securities and items held in safekeeping. The Assuming Institution shall provide to the Receiver written verification of all assets held by the Failed Bank for safekeeping within sixty (60) days after the Bank Closing Date. The assets held for safekeeping by the Failed Bank shall be held and maintained by the Assuming Institution in the trade area of the Failed Bank for a minimum of one year from the Bank Closing Date. At the option of the Assuming Institution, the safekeeping business may be provided at any or all of the Bank Premises, or at other premises within such trade area, as determined by the Receiver. The Assuming Institution shall be entitled to all rights and benefits which accrue after the Bank Closing Date with respect to securities and other items held in safekeeping.

4.5. Trust Business.

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

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

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

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

4.6. Bank Premises.

(a) Option to Purchase. Subject to Section 3.5, the Receiver hereby grants to the Assuming Institution an exclusive option for the period of thirty (30) days commencing the day after the Bank Closing Date with respect to Bank Premises for which the Assuming Institution declined its option to purchase at a fixed price as shown on the Bid Form, and for a period of ninety (90) days commencing the day after the Bank Closing Date with respect to all other owned Bank Premises to purchase any or all owned Bank Premises, including all Fixtures, Furniture and Equipment located on the Bank Premises. The Assuming Institution shall give written notice to the Receiver within the option period of its election to purchase or not to purchase any of the owned Bank Premises. Any purchase of such premises shall be effective as of the date of the Bank Closing Date and such purchase shall be consummated as soon as

practicable thereafter, and in no event later than the Settlement Date. If the Assuming Institution gives notice of its election not to purchase one or more of the owned Bank Premises for which there is not a fixed price within seven (7) days of the Bank Closing Date, then, notwithstanding any other provision of this Agreement to the contrary, the Assuming Institution shall not be liable for any of the costs or fees associated with Fair Market Value appraisals for such Bank Premises and associated Fixtures, Furniture and Equipment.

(b) Option to Lease. The Receiver hereby grants to the Assuming Institution an exclusive option for the period of ninety (90) days commencing the day after the Bank Closing Date to cause the Receiver to assign to the Assuming Institution any or all leases for leased Bank Premises, if any, which have been continuously occupied by the Assuming Institution from the Bank Closing Date to the date it elects to accept an assignment of the leases with respect thereto to the extent such leases can be assigned; provided that the exercise of this option with respect to any lease must be as to all premises or other property subject to the lease. To the extent the lease payments provided for in any assigned lease are minimal in relation to the current market rate, and the value of that difference is not otherwise reflected in the purchase of the associated Fixtures, the Assuming Institution agrees to pay the Receiver the Fair Market Value of the Receiver's interest in any such assigned lease. The Assuming Institution shall give notice to the Receiver within the option period of its election to accept or not to accept an assignment of any or all leases (or enter into new leases in lieu thereof). The Assuming Institution agrees to assume all leases assigned (or enter into new leases in lieu thereof) pursuant to this Section 4.6. If the Assuming Institution gives notice of its election not to accept an assignment of a lease for one or more of the leased Bank Premises within seven (7) days of the Bank Closing Date, then, notwithstanding any other provision of this Agreement to the contrary, the Assuming Institution shall not be liable for any of the costs or fees associated with Fair Market Value appraisals for the Fixtures, Furniture and Equipment located on such leased Bank Premises.

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

(d) Occupancy. The Assuming Institution shall give the Receiver fifteen (15) days prior written notice of its intention to vacate prior to vacating any leased Bank Premises with respect to which the Assuming Institution has not exercised the option provided in Section 4.6(b). Any such notice shall be deemed to terminate the Assuming Institution's option with respect to such leased Bank Premises.

(e) Occupancy Costs.

(i) The Assuming Institution agrees to pay to the Receiver, or to appropriate third parties at the direction of the Receiver, during and for the period of any occupancy by it of (x) owned Bank Premises the market rental value, as determined by the appraiser selected in accordance with the definition of Fair Market Value, and all operating costs, and (y) leased Bank Premises, all operating costs with respect thereto and to comply with all relevant terms of applicable leases entered into by the Failed Bank, including without limitation the timely payment of all rent. Operating costs include,

without limitation all taxes, fees, charges, maintenance, utilities, insurance and assessments, to the extent not included in the rental value or rent. If the Assuming Institution elects to purchase any owned Bank Premises in accordance with Section 4.6(a), the amount of any rent paid (and taxes paid to the Receiver which have not been paid to the taxing authority and for which the Assuming Institution assumes liability) by the Assuming Institution with respect thereto shall be applied as an offset against the purchase price thereof.

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

(f) Certain Requirements as to Fixtures, Furniture and Equipment and Certain Specialty Assets. If the Assuming Institution purchases owned Bank Premises (including any Bank Premise(s) purchased at the fixed price shown on the Bid Form) or accepts an assignment of the lease (or enters into a sublease or a new lease in lieu thereof) for leased Bank Premises as provided in Section 4.6(a) or 4.6(b), or if the Assuming Institution does not exercise such option but within twelve (12) months following the Bank Closing Date obtains the right to occupy all or any portion of such premises (whether by assignment, lease, sublease, purchase or otherwise), other than in accordance with Section 4.6(a) or 4.6(b), the Assuming Institution shall (i) effective as of the Bank Closing Date, purchase from the Receiver all Fixtures, Furniture and Equipment, and all Specialty Assets with an appraised value as determined in accordance with Section 4.6(j) of less than \$10,000, owned by the Failed Bank at Fair Market Value and located on such portion as of the Bank Closing Date, (ii) accept an assignment or a sublease of the leases or negotiate new leases for all Fixtures, Furniture and Equipment leased by the Failed Bank and located on such portion, and (iii) if applicable, accept an assignment or a sublease of any ground lease or negotiate a new ground lease with respect to any land on which such portion of Bank Premises are located; provided that the Receiver shall not have disposed of such Fixtures, Furniture and Equipment or repudiated the leases referred to in clause (ii) or (iii).

(g) Vacating Premises.

(i) If the Assuming Institution elects not to purchase any owned Bank Premises, the notice of such election in accordance with Section 4.6(a) shall specify the date upon which the Assuming Institution's occupancy of such premises shall terminate, which date shall not be later than one hundred eighty (180) days after Bank Closing Date. The Assuming Institution shall be responsible for promptly relinquishing and releasing to the Receiver such premises and the Fixtures, Furniture and Equipment located thereon which existed at the time of the Bank Closing Date, in the same condition as at the Bank

Closing Date and at the premises where they were inventoried at the Bank Closing Date, normal wear and tear excepted. Any of the aforementioned which is missing will be charged to the Assuming Institution at the item's Fair Market Value as determined in accordance with this Agreement. By occupying any such premises after the expiration of such one hundred eighty (180)-day period, the Assuming Institution shall, at the Receiver's option, (x) be deemed to have agreed to purchase such Bank Premises, and to assume all leases, obligations and liabilities with respect to leased Furniture and Equipment and leased Fixtures located thereon and any ground lease with respect to the land on which such premises are located, and (y) be required to purchase all Fixtures, Furniture and Equipment owned by the Failed Bank and located on such premises as of the Bank Closing Date.

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

(h) Furniture and Equipment and Certain Other Equipment. The Receiver hereby grants to the Assuming Institution an option to purchase all Furniture and Equipment owned by the Failed Bank at Fair Market Value and located at any leased or owned Bank Premises that the Assuming Institution elects to vacate or which it could have, but did not occupy, pursuant to this Section 4.6; provided that, the Assuming Institution shall give the Receiver notice of its election to purchase such property at the time it gives notice of its intention to vacate such Bank Premises or within ten (10) days after the Bank Closing Date for Bank Premises it could have, but did not, occupy.

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

(i) For a period of ninety (90) days following the Bank Closing Date, the Assuming Institution shall be entitled to require the Receiver to purchase any Bank

Premises that is owned, directly or indirectly, by an Acquired Subsidiary and the purchase price paid by the Receiver shall be the Fair Market Value of the Bank Premises.

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

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

(iv) Regardless of whether the Assuming Institution exercises any of its options under this Section 4.6(i), the purchase price for the Acquired Subsidiary shall be adjusted by the difference between the Fair Market Value of the Bank Premises and Fixtures, Furniture and Equipment utilized by the Failed Bank for banking purposes and their respective Book Value as reflected of the books and records of the Acquired Subsidiary. Such adjustment shall be made in accordance with Article VIII of this Agreement.

(j) Option to Purchase Specialty Assets.

(i) The Receiver hereby grants to the Assuming Institution an exclusive option for the period of thirty (30) days commencing the day after the Receiver provides the Assuming Institution the appropriate appraisal to purchase at Fair Market Value all, some or none of the Specialty Assets.

(ii) The cost of the Specialty Asset appraisals shall be shared equally by the Receiver and the Assuming Institution. If the Assuming Institution gives notice of its election not to purchase one or more of the Specialty Assets within seven (7) days of the Bank Closing Date, the Assuming Institution shall not be liable for any of the costs or fees associated with Fair Market Value appraisals for such Specialty Asset.

(k) Data Removal. The Assuming Institution shall, prior to returning any automated teller machine to Receiver and unless otherwise requested by the Receiver, (i) remove all data from that automated teller machine and (ii) provide a written statement to the Receiver that all data has been removed in a manner that renders it unrecoverable.

4.7. Agreement with Respect to Leased Data Management Equipment.

(a) Option. The Receiver hereby grants to the Assuming Institution an exclusive option for the period of ninety (90) days commencing the day after Bank Closing to accept an assignment from the Receiver of all Leased Data Management Equipment.

(b) Notices Regarding Leased Data Management Equipment. The Assuming Institution shall (i) give written notice to the Receiver within the option period specified in

Section 4.7(a) of its intent to accept or decline an assignment or sublease of all Leased Data Management Equipment and promptly accept an assignment or sublease of such Leased Data Management Equipment, and (ii) give written notice to the appropriate lessor(s) that it has accepted an assignment or sublease of any such Leased Data Management Equipment that is subject to a lease.

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

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

(e) Assuming Institution's Obligation. The Assuming Institution shall, not later than fifty (50) days after giving the notice provided in Section 4.7(b), (i) relinquish and release to the Receiver or, at the direction of the Receiver, to a third party, all Leased Data Management Equipment, in the same condition as at Bank Closing, normal wear and tear excepted, or (ii) accept an assignment or a sublease of any existing Leased Data Management lease or negotiate a new lease or license agreement under this Section 4.7 with respect to Leased Data Management Equipment.

(f) Data Removal. The Assuming Institution shall, prior to returning any Leased Data Management Equipment, and unless otherwise requested by the Receiver, (i) remove all data from the Leased Data Management Equipment and (ii) provide a written statement to the Receiver that all data has been removed in a manner that renders it unrecoverable.

4.8. Certain Existing Agreements

(a) Assumption of Agreements. Subject to the provisions of Section 4.8(b), with respect to agreements existing as of the Bank Closing Date which provide for the rendering of services by or to the Failed Bank, within ninety (90) days after the Bank Closing Date, the Assuming Institution shall give the Receiver written notice specifying whether it elects to assume or not to assume each such agreement. Except as may be otherwise provided in this Article IV, the Assuming Institution agrees to comply with the terms of each such agreement for a period commencing on the day after the Bank Closing Date and ending on: (i) in the case of an agreement that provides for the rendering of services by the Failed Bank, the date which is ninety (90) days after the Bank Closing Date, and (ii) in the case of an agreement that provides for the rendering of services to the Failed Bank, the date which is thirty (30) days after the Assuming Institution has given notice to the Receiver of its election not to assume such agreement; provided that the Receiver can reasonably make such service agreements available to the Assuming Institution. The Assuming Institution shall be deemed by the Receiver to have assumed agreements for which no notification is timely given. The Receiver

agrees to assign, transfer, convey and deliver to the Assuming Institution all right, title and interest of the Receiver, if any, in and to agreements the Assuming Institution assumes hereunder. In the event the Assuming Institution elects not to accept an assignment of any lease (or sublease) or negotiate a new lease for leased Bank Premises under Section 4.6 and does not otherwise occupy such premises, the provisions of this Section 4.8(a) shall not apply to service agreements related to such premises. The Assuming Institution agrees, during the period it has the use or benefit of any such agreement, promptly to pay to the Receiver or to appropriate third parties at the direction of the Receiver all operating costs with respect thereto and to comply with all relevant terms of such agreement.

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

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

4.10. Insurance.

(a) Assuming Institution to Insure. The Assuming Institution will obtain and maintain insurance coverage acceptable to the Receiver (including public liability, fire, and extended coverage insurance) naming the Assuming Institution as the insured and the Receiver as additional insured, effective from and after the Bank Closing Date, with respect to all (i) Bank Premises that the Assuming Institution occupies, and (ii) Fixtures, Furniture and Equipment and Leased Data Management Equipment located on those Bank Premises.

(b) Rights of Receiver. If the Assuming Institution at any time from or after Bank Closing Date fails to (i) obtain or maintain any of the insurance policies required by Section 4.10(a), (ii) pay any premium in whole or in part related to those insurance policies, or (iii) provide evidence of those insurance policies acceptable to the Receiver, then the Receiver may in its sole and absolute discretion, without notice, and without waiving or releasing any obligation or liability of the Assuming Institution, obtain and maintain insurance policies, pay insurance premiums and take any other actions with respect to the insurance coverage as the Receiver deem advisable. The Assuming Institution will reimburse the Receiver for all sums disbursed in connection with this Section 4.10(b).

4.11. Office Space for Receiver and Corporation: Certain Payments.

(a) FDIC Office Space. For the period commencing on the day following the Bank Closing Date and ending on the one hundred eightieth (180th) day following the Bank Closing Date, the Assuming Institution will provide to the Receiver and the Corporation, without charge, adequate and suitable office space (including parking facilities and vault space), furniture, equipment (including photocopying and telecopying machines), email accounts, network access and technology resources (such as shared drive), and utilities (including local telephone service and fax machines) (collectively, "**FDIC Office Space**") at the Bank Premises occupied by the Assuming Institution for the Receiver and the Corporation to use in the discharge of their respective functions with respect to the Failed Bank.

(b) Receiver's Right to Extend. Upon written notice by the Receiver or the Corporation, for the period commencing on the one hundred eighty first (181st) day following the Bank Closing Date and ending no later than the three hundred and sixty-fifth (365th) day following the Bank Closing Date, the Assuming Institution will continue to provide to the Receiver and the Corporation FDIC Office Space at the Bank Premises. During the period from the 181st day following the Bank Closing Date until the day the FDIC and the Corporation vacate FDIC Office Space, the Receiver and the Corporation will pay to the Assuming Institution their respective pro rata share (based on square footage occupied) of (A) the market rental value for the applicable owned Bank Premises or (B) actual rent paid for applicable leased Bank Premises.

(c) Receiver's Relocation Right. If the Receiver or the Corporation determine that the space provided by the Assuming Institution is inadequate or unsuitable, the Receiver and the Corporation may relocate to other quarters having adequate and suitable FDIC Office Space and the costs of relocation shall be borne by the Assuming Institution and any rental and utility costs for the balance of the period of occupancy by the Receiver and the Corporation shall be paid in accordance with 4.11(b).

(d) Expenditures. The Assuming Institution will pay such bills and invoices on behalf of the Receiver and the Corporation as the Receiver or the Corporation may direct for the period beginning on the date of the Bank Closing Date and ending on Settlement Date. The Assuming Institution shall submit its requests for reimbursement of such expenditures pursuant to Article VIII of this Agreement.

4.12. Continuation of Group Health Plan Coverage for Former Employees of the Failed Bank.

(a) Continuation Coverage. The Assuming Institution agrees to assist the Receiver, as provided in this Section 4.12, in offering individuals who were employees or former employees of the Failed Bank, or any of its Subsidiaries, and who, immediately prior to the Bank Closing Date, were receiving, or were eligible to receive, health insurance coverage or health insurance continuation coverage from the Failed Bank ("**Eligible Individuals**"), the opportunity to obtain health insurance coverage in the Corporation's Federal Insurance Administration Continuation Coverage Plan which provides for health insurance continuation coverage to such Eligible Individuals and other persons who are qualified beneficiaries of the Failed Bank ("**Qualified Beneficiaries**") as defined in the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") § 607, 29 U.S.C. § 1167. The Assuming Institution shall consult with the Receiver and not later than five (5) Business Days after the

Bank Closing Date shall provide written notice to the Receiver of the number (if available), identity (if available) and addresses (if available) of the Eligible Individuals who are Qualified Beneficiaries of the Failed Bank and for whom a "qualifying event" (as defined in ERISA § 603, 29 U.S.C. § 1163) has occurred and with respect to whom the Failed Bank's obligations under Part 6 of Subtitle B of Title I of ERISA, 29 U.S.C. §§ 1161-1169 have not been satisfied in full, and such other information as the Receiver may reasonably require. The Receiver shall cooperate with the Assuming Institution in order to permit it to prepare such notice and shall provide to the Assuming Institution such data in its possession as may be reasonably required for purposes of preparing such notice.

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

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

(d) No Third Party Beneficiaries. This Section 4.12 is for the sole and exclusive benefit of the parties to this Agreement, and for the benefit of no other Person (including any former employee of the Failed Bank or any Subsidiary thereof, Eligible Individual or Qualified Beneficiary of such former employee). Nothing in this Section 4.12 is intended by the parties, or shall be construed, to give any Person (including any former employee of the Failed Bank or any Subsidiary thereof, Eligible Individual or Qualified Beneficiary of such former employee) other than the Corporation, the Receiver and the Assuming Institution, any legal or equitable right, remedy or claim under or with respect to the provisions of this Section 4.12.

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

4.14. [RESERVED]

4.15. Loss Sharing

This Agreement includes a Commercial Shared-Loss Agreement attached hereto as Exhibit 4.15B. The Assuming Institution shall be entitled to require reimbursement from the Receiver for shared losses, and share recoveries, on certain loans and assets in accordance with the Commercial Shared-Loss Agreement. No Asset will be added to Schedule 4.15B after the schedule is provided by the Receiver but an Asset may be removed from the schedule if the Assuming Institution provides documentation the Asset does not meet the definition of a Shared-Loss Asset. Additionally, the Receiver may remove government-guaranteed Loans or Other Real Estate related to government-guaranteed Loans from the schedule.

ARTICLE V. DUTIES WITH RESPECT TO DEPOSITORS OF THE FAILED BANK.

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

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

5.3. Notice to Depositors

(a) Assumption of Deposits. Within seven (7) days after the Bank Closing Date, the Assuming Institution shall give notice by mail to each depositor of the Failed Bank of (i) the assumption of the Deposit liabilities of the Failed Bank, and (ii) the procedures to claim Deposits (the Receiver shall provide item (ii) to Assuming Institution). The Assuming Institution shall also publish notice of its assumption of the Deposit liabilities of the Failed Bank in a newspaper of general circulation in the county or counties in which the Failed Bank was located.

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

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

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

(e) Validation. To validate the notice requirements outlined in Section 5.3, the Assuming Institution shall provide the Receiver (i) an Affidavit of Publication to meet the publication requirements outlined in Section 5.3(a) and (ii) the Assuming Institution will prepare an Affidavit of Mailing in a form substantially similar to Exhibit 2.3B after mailing the seven (7) day Notice to Depositors as required under Section 5.3(b).

ARTICLE VI. RECORDS.

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

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

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

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

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

6.3. Preservation of Records.

(a) Assuming Institution Records Retention. The Assuming Institution agrees that it will preserve and maintain for the joint benefit of the Receiver, the Corporation and the Assuming Institution, all Records of which it has custody. The Assuming Institution shall have the primary responsibility to respond to subpoenas, discovery requests, and other similar official inquiries and customer requests for lien releases with respect to the Records of which it has custody. With respect to its obligations under this Section 6.3 regarding Electronically Stored Information, the Assuming Institution will complete the Data Retention Catalog attached hereto as Schedule 6.3 and submit it to the Receiver within thirty (30) days following the Bank Closing Date.

(b) Destruction of Certain Records. With regard to all Records of which it has custody which are at least ten (10) years old as of the date of the appointment of the Receiver, the Assuming Institution agrees to request written permission to destroy such records by submitting a written request to destroy, specifying precisely which records are included in the request, to DRR- Records Manager, CServiceFDICDAL@FDIC.gov.

(c) Destruction of Records After Six Years. With regard to all Records of which it has custody which have been maintained in the custody of the Assuming Institution after six (6) years from the date of the appointment of the Receiver, the Assuming Institution agrees to request written permission to destroy such records by submitting a written request to destroy, specifying precisely which records are included in the request, to DRR- Records Manager, CServiceFDICDAL@FDIC.gov.

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

6.5. Right of Receiver or Corporation to Audit. The Receiver or the Corporation, their respective agents, contractors and employees, may (but are not required to) perform an audit to determine the Assuming Institution's compliance with this Agreement at any time, by providing not less than ten (10) Business Days prior notice. The scope and duration of any such audit shall be at the discretion of the Receiver or the Corporation, as the case may be. The Receiver or the Corporation, as the case may be, shall bear the expense of any such audit. In the event that any corrections are necessary as a result of such an audit, the Assuming Institution and the Receiver shall make such accounting adjustments, payments and withholdings as may be necessary to give retroactive effect to such corrections.

ARTICLE VII. BID; INITIAL PAYMENT.

The Assuming Institution has submitted to the Receiver a Deposit premium bid of 0.00% and an Asset premium (discount) bid of (\$47,000,000) (the "**Bid Amount**"). The Deposit premium bid will be applied to the total of all Assumed Deposits except for brokered, CDARS®, and any market place or similar subscription services Deposits as reflected on Schedule 7. On the Payment Date, the Assuming Institution will pay to the Corporation, or the Corporation will pay to the Assuming Institution, as the case may be, the Initial Payment, together with interest on such amount (if the Payment Date is not the day following the Bank Closing Date) from and including the day following the Bank Closing Date to and including the day preceding the Payment Date at the Settlement Interest Rate.

ARTICLE VIII. ADJUSTMENTS.

Pro Forma Statement. The Receiver, as soon as practicable after the Bank Closing Date, in accordance with the best information then available, shall provide to the Assuming Institution a Pro Forma statement reflecting any adjustments of such liabilities and assets as may be necessary. Such Pro Forma statement shall take into account, to the extent possible, (a) liabilities

and assets of a nature similar to those contemplated by Section 2.1 or Section 3.1, respectively, which on the Bank Closing Date were carried in the Failed Bank's suspense accounts, (b) accruals as of the Bank Closing Date for all income related to the assets and business of the Failed Bank acquired by the Assuming Institution hereunder, whether or not such accruals were reflected on the Failed Bank Records in the normal course of its operations, and (c) adjustments to determine the Book Value of any investment in an Acquired Subsidiary and related accounts on the "bank only" (unconsolidated) balance sheet of the Failed Bank based on the Equity Method of Accounting, whether or not the Failed Bank used the Equity Method of Accounting for investments in subsidiaries, except that the resulting amount cannot be less than the Acquired Subsidiary's recorded equity as of the Bank Closing Date as reflected on the Failed Bank Records of the Acquired Subsidiary. Acquired Subsidiaries with negative equity will be restated to \$1 pursuant to the Equity Method of Accounting. Any Asset purchased by the Assuming Institution or any asset of an Acquired Subsidiary purchased by the Assuming Institution pursuant to Section 3.1 which was partially or wholly charged off during the period beginning the day after the Bid Valuation Date to the date of the Bank Closing Date shall be deemed not to be charged off for the purposes of the Pro Forma statement, and the purchase price shall be determined pursuant to Section 3.2.

8.1. Correction of Errors and Omissions; Other Liabilities.

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

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

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

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

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

ARTICLE IX. CONTINUING COOPERATION.

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

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

9.3. Claims and Suits.

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

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

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

made. Upon payment by the Assuming Institution to the Receiver of such amount, the Assuming Institution shall be discharged from any further obligation under this Agreement to pay to any such depositor the amount of such Deposit liability paid to the Receiver.

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

9.6. Proceedings with Respect to Certain Assets and Liabilities.

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

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

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

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

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

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

ARTICLE X. CONDITION PRECEDENT.

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

ARTICLE XI. REPRESENTATIONS AND WARRANTIES OF THE ASSUMING INSTITUTION.

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

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

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

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

11.4. Compliance with Law.

(a) No Violations. Neither the Assuming Institution nor any of its Subsidiaries is in violation of any statute, regulation, order, decision, judgment or decree of, or any restriction imposed by, the United States of America, any State, municipality or other political subdivision or any agency of any of the foregoing, or any court or other tribunal having jurisdiction over the Assuming Institution or any of its Subsidiaries or any assets of any such Person, or any foreign government or agency thereof having such jurisdiction, with respect to the conduct of the business of the Assuming Institution or of any of its Subsidiaries, or the ownership of the properties of the Assuming Institution or any of its Subsidiaries, which, either individually or in the aggregate with all other such violations, would materially and adversely affect the business, operations or condition (financial or otherwise) of the Assuming Institution or the ability of the Assuming Institution to perform, satisfy or observe any obligation or condition under this Agreement.

(b) No Conflict. Neither the execution and delivery nor the performance by the Assuming Institution of this Agreement will result in any violation by the Assuming Institution of, or be in conflict with, any provision of any applicable law or regulation, or any order, writ or decree of any court or governmental authority.

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

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

11.7. No Reliance; Independent Advice. The Assuming Institution is not relying on the Receiver or the Corporation for any business, legal, tax, accounting, investment or other advice in connection with this Agreement and the Exhibits hereto and documents delivered in connection with the foregoing, and has had adequate opportunity to consult with advisors of its choice in connection therewith.

ARTICLE XII. INDEMNIFICATION.

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

(a) hereunder in this Section 12.1, subject to certain exclusions as provided in Section 12.1(b):

(i) claims based on the rights of any shareholder or former shareholder as such of (A) the Failed Bank, or (B) any Subsidiary or Affiliate of the Failed Bank;

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

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

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

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

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

(vii) claims arising from any action or inaction of any Indemnitee, including for purposes of this Section 12.1(a)(vii) the former officers or employees of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank that is taken upon the specific written direction of the Corporation or the Receiver, other than any action or

inaction taken in a manner constituting bad faith, gross negligence or willful misconduct; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) give written notice to the Regional Counsel (Litigation Branch) of the Corporation in the manner and at the address provided in Section 13.6 of such claim as soon as practicable after such claim is made or threatened; provided that notice must be given on or before the date which is six (6) years from the date of this Agreement;

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

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

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

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

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

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

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

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

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

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

(c) claims based on any failure to preserve, maintain or provide reasonable access to Records transferred to the Assuming Institution pursuant to Article VI.

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

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

12.7. Limited Guaranty of the Corporation. The Corporation hereby guarantees performance of the Receiver's obligation to indemnify the Assuming Institution as set forth in this Article XII. It is a condition to the Corporation's obligation hereunder that the Assuming Institution shall comply in all respects with the applicable provisions of this Article XII. The Corporation shall be liable hereunder only for such amounts, if any, as the Receiver is obligated to pay under the terms of this Article XII but shall fail to pay. Except as otherwise provided above in this Section 12.7, nothing in this Article XII is intended or shall be construed to create any liability or obligation on the part of the Corporation, the United States of America or any department or agency thereof under or with respect to this Article XII, or any provision hereof, it being the intention of the parties hereto that the obligations undertaken by the Receiver under this Article XII are the sole and exclusive responsibility of the Receiver and no other Person or entity.

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

ARTICLE XIII. **MISCELLANEOUS**

13.1. **Costs, Fees, and Expenses**. All fees, costs and expenses incurred by a party in connection with this Agreement (including the performance of any obligations or the exercise of any rights hereunder) shall be borne by such party unless expressly otherwise provided; provided that the Assuming Institution shall pay all fees, costs and expenses (other than attorneys' fees incurred by the Receiver) incurred in connection with the transfer to it of any Assets or Liabilities Assumed hereunder or in accordance herewith. Further, the Assuming Institution shall be responsible for the payment of MERS routine transaction charges.

13.2. **WAIVER OF JURY TRIAL**. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL RIGHT TO TRIAL BY JURY IN OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

13.3. **Consent; Determination or Discretion**. When the consent or approval of a party is required under this Agreement, such consent or approval shall be obtained in writing and unless expressly otherwise provided, shall not be unreasonably withheld or delayed. When a determination or decision is to be made by a party under this Agreement, that party shall make such determination or decision in its reasonable discretion unless expressly otherwise provided.

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

13.5. **References**. References in this Agreement to Recitals, Articles, Sections, Schedules and Exhibits are to Recitals, Articles, Sections, Schedules and Exhibits of this Agreement, respectively, unless the context indicates that a Shared-Loss Agreement is intended. References to parties are to the parties to this Agreement. Unless expressly otherwise provided, references to days and months are to calendar days and months respectively. Article and Section headings are for convenient reference and shall not affect the meaning of this Agreement. References to the singular shall include the plural, as the context may require, and *vice versa*.

13.6. **Notice**

(a) **Form of Notices**. All notices shall be given in writing and provided in accordance with the provisions of this Section 13.6, unless expressly otherwise provided.

(b) **Notice to the Receiver or the Corporation**. With respect to a notice under this Agreement:

Federal Deposit Insurance Corporation
7777 Baymeadows Way W.
Jacksonville, Florida 32256
Attention: Settlement Agent

In addition, with respect to notices under Section 4.6, with a copy to:

BankPremiseNotice@fdic.gov

In addition, with respect to notice under Article XII:

Regional Counsel (Litigation Branch)
Federal Deposit Insurance Corporation
1601 Bryan Street, Dallas Texas 75201

In addition, with respect to communications under Exhibit 4.13, a copy to:

Federal Deposit Insurance Corporation

Attention: Interim Servicing Manager

1601 Bryan Street, Dallas, Texas 75201

(c) Notice to Assuming Institution. With respect to a notice under this Agreement:

First Federal Bank
2430 Mall Drive
Charleston, SC 29466
Attention: Blaise B. Bettendorf, EVP & Chief Financial Officer
with a copy to: Robert L. Davis, Corporate Secretary

13.7. Entire Agreement. This Agreement and the Shared-Loss Agreements, if any, including the Schedules and Exhibits hereto and thereto, embody the entire agreement of the parties hereto in relation to the subject matter herein and supersede all prior understandings or agreements, oral or written, between the parties.

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

13.9. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES OF AMERICA, AND IN THE ABSENCE OF CONTROLLING FEDERAL LAW, IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE MAIN OFFICE OF THE FAILED BANK IS LOCATED.

13.10. Successors. All terms and conditions of this Agreement shall be binding on the successors and assigns of the Receiver, the Corporation and the Assuming Institution. Nothing

expressed or referred to in this Agreement is intended or shall be construed to give any Person other than the Receiver, the Corporation and the Assuming Institution any legal or equitable right, remedy or claim under or with respect to this Agreement or any provisions contained herein, it being the intention of the parties hereto that this Agreement, the obligations and statements of responsibilities hereunder, and all other conditions and provisions hereof are for the sole and exclusive benefit of the Receiver, the Corporation and the Assuming Institution and for the benefit of no other Person.

13.11. Modification. No amendment or other modification, rescission or release of any part of this Agreement or a Shared-Loss Agreement, if any, shall be effective except pursuant to a written agreement subscribed by the duly authorized representatives of the parties.

13.12. Manner of Payment. All payments due under this Agreement shall be in lawful money of the United States of America in immediately available funds as each party hereto may specify to the other parties; provided that in the event the Receiver or the Corporation is obligated to make any payment hereunder in the amount of \$25,000.00 or less, such payment may be made by check.

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

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

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

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

[Signature Page Follows]

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

FEDERAL DEPOSIT INSURANCE CORPORATION,
RECEIVER OF PLANTATION FEDERAL BANK
PAWLEYS ISLAND, SOUTH CAROLINA

BY:

[Redacted Signature]

NAME: Barry Gilman

TITLE: Receiver-in-Charge

Attest:

[Redacted Attestation]

FEDERAL DEPOSIT INSURANCE CORPORATION

BY:

[Redacted Signature]

NAME: Barry Gilman

TITLE: Attorney-in-Fact

Attest:

[Redacted Attestation]

FIRST FEDERAL BANK,
CHARLESTON, SOUTH CAROLINA

BY:

[Redacted Signature]

NAME: R. Wayne Hall

TITLE: President and CEO

Attest:

[Redacted Attestation]

SCHEDULE 2.1(a)

Accounts Excluded from P&A Transaction

**PLANTATION FEDERAL BANK
PAWLEYS ISLAND, SOUTH CAROLINA**

Plantation Federal Bank has NO deposits associated with the Depository Organization (DO) Cede & Co as Nominee for DTC. The DO accounts do not pass to the Assuming Bank and are excluded from the transaction as described in section 2.1 of the P&A Agreement. This schedule will be updated post closing with data as of Bank Closing date.

As of the Bid Valuation Date of February 2, 2012, Plantation Federal Bank had no Cede & Co. deposits.

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

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

(n)	rights, if any, with respect to Qualified Financial Contracts:	As provided in Section 3.2(c)
(o)	rights of the Failed Bank to have loan servicing provided to the Failed Bank by others and related contracts:	Book Value
(q)	Personal Computers and Owned Data Management Equipment:	Fair Market Value
(r)	Safe Deposit Boxes	Fair Market Value

Assets subject to an option to purchase:

(a)	Bank Premises with a fixed price:	As set forth in the Bid Form
	All other Bank Premises	Fair Market Value
(b)	Furniture and Equipment:	Fair Market Value
(c)	Fixtures:	Fair Market Value
(d)	Other Equipment:	Fair Market Value
(e)	Specialty Assets	Fair Market Value

SCHEDULE 3.5(1)

EXCLUDED SECURITIES

As of the Bid Valuation Date of February 2, 2012, there were no excluded securities from this transactions

SCHEDULE 6.3 DATA RETENTION CATALOG

FDIC_Acquirer_Data_Retention_Catalog_v2.0

FDIC Data Management Services (DMS)

Acquirer Data Retention Catalog
Version 2.0

Filed Institution
Name _____
Data Center Address _____

Assessing Institution
Name _____
Address _____

DRC Preparation Date _____

DRC Preparer's Contact
Name _____
Designation _____
Phone _____
Email _____

Alternate Contact for Subsequent Data Requests (if different from above)
Name _____
Phone _____
Email _____

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

If you need additional clarification while recording the information, please call Kevin Sheehan (FDIC) at 703-562-2012 or Leslie Bowie (FDIC) at 703-562-6267. Send the final copy of this document to: Leslie Daley LDaley@FDIC.gov.

FDIC Confidential

5/25/2010

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SCHEDULE 7**Accounts Excluded from Calculation of Deposit Franchise Bid Premium****PLANTATION FEDERAL BANK
PAWLEYS ISLAND, SOUTH CAROLINA**

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

Category	Description	Amount
I	Non-DO Brokered Deposits	
II	CDARS	\$ 719,028
III	Market Place Deposits (QuickRate® Deposits)	\$ 649,935
	<i>Total deposits excluded from calculation of premium.</i>	<i>\$ 18,215,000</i>
		<i>\$ 19,583,963</i>

Category Description**I. Brokered Deposits**

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

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

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

II. CDARS

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

Plantation Federal Bank did participate in the CDARS program as of the date of the deposit download. If additional CDARS deposits are taken between the date of the deposit download and the Bank Closing Date, they will be identified post closing and made part of Schedule 7 to the Purchase and Assumption Agreement.

III. Market Place Deposits

"Market Place Deposits" is a description given to deposits that may have been solicited via a money desk, internet subscription service (for example, QuickRate®), or similar programs.

Plantation Federal Bank does have QwickRate^x deposits as identified above. The QwickRate^x deposits are reported as time deposits in the Call Report. Please see the attached "Schedule 7 - QwickRate^x Deposit Detail Report" for a listing of these accounts as of February 2, 2012. This list will be updated post closing with balances as of the Bank Closing Date.

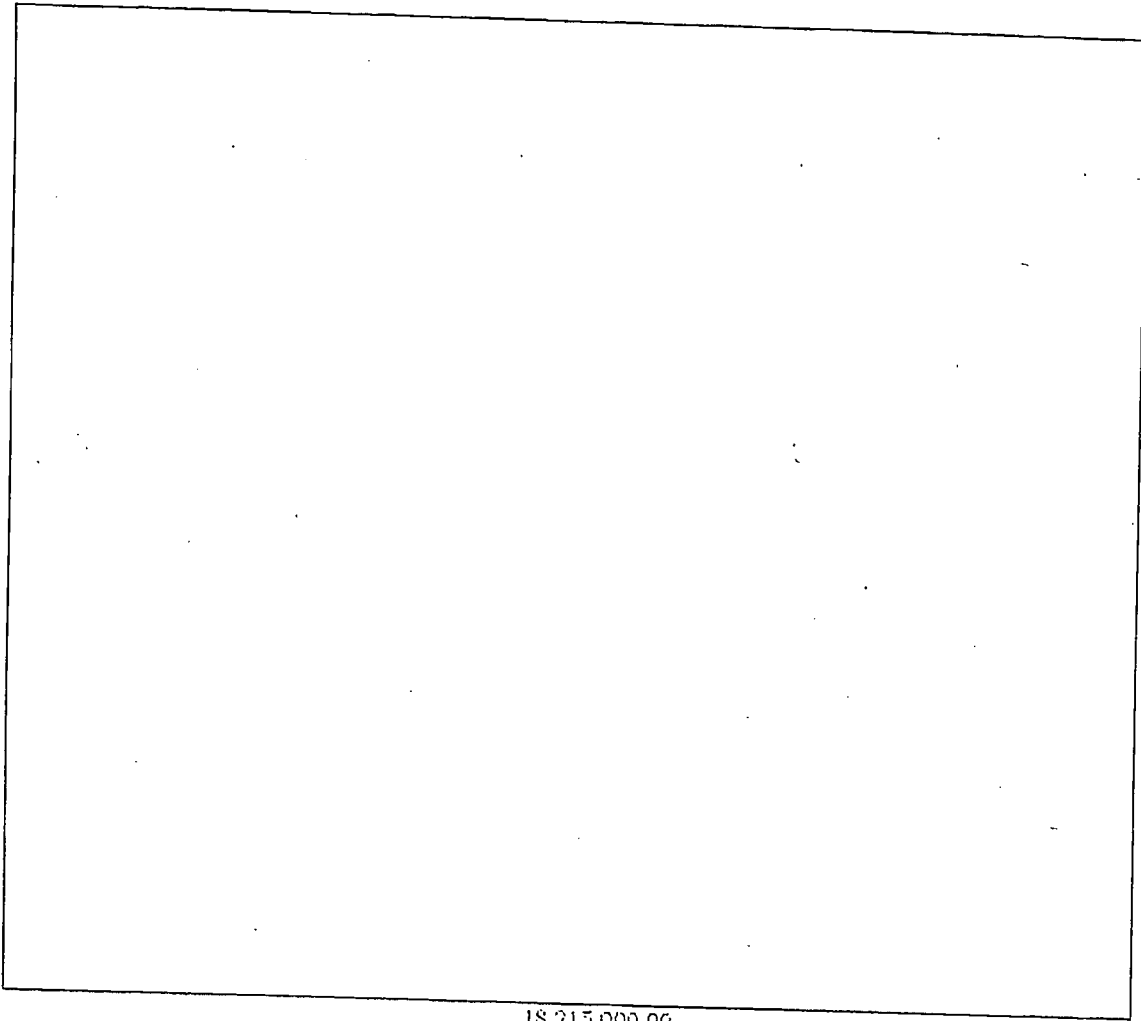
This schedule provides account categories and balances as of the date of the deposit download, or as indicated. The deposit franchise bid premium will be calculated using account categories and balances as of the Bank Closing Date that are reflected in the general ledger or subsystem as described above.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

CDARS REPORT		
PLANTATION FEDERAL BANK		
GL ACCT	ACCOUNT TITLE	AMOUNT
	TOTAL PRINCIPAL AND INTEREST	\$649,934.62

NON DO BROKER		
PLANTATION FEDERAL BANK		
Account Number	Account Title	Total P & I
Totals		\$719,027.52

PLANTATION FEDERAL BANK
QWIKRATE DEPOSITS

Company	Deposit Amount	Rate	Maturity Date	Certificate Number



18,215,000.00

all quickrate accounts have a hold code 85 on them

EXHIBIT 2.3A

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

[Date]

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

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

Dear [Sir/Madam]:

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

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

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

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

[123 Main Street
 Anytown, USA]

2. Execute a new signature card on your account(s), enter into a new deposit agreement with [Name of Acquiring Institution], change the ownership on your account(s), or renegotiate the terms of your certificate of deposit account(s) (if any).
3. Provide [Name of Acquiring Institution] with a change of address form.
4. Make a deposit to or withdrawal from your account(s). This includes writing a check on any account or having an automatic direct deposit credited to or an automatic withdrawal debited from an account.

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

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

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

Sincerely,

[Name of Claims Specialist]
[Title]

EXHIBIT 2.3B

AFFIDAVIT OF MAILING

AFFIDAVIT OF MAILING

State of

COUNTY OF

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

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

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

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

My commission expires:

[Name], Notary Public

EXHIBIT 3.2(c)

VALUATION OF CERTAIN
QUALIFIED FINANCIAL CONTRACTS

A. Scope

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

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

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

B. Exclusions

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

C. Adjustment

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

D. Methodology

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

- (iv) For regularly traded contracts, valuations shall be at the midpoint of the bid and ask prices quoted by customary sources (e.g., The Wall Street Journal, Telerate, Reuters or other similar source) or regularly traded exchanges.
- (v) For all other Qualified Financial Contracts where published market quotes are unavailable, the adjusted price shall be the average of the bid and ask price quotes from three (3) securities dealers acceptable to the Receiver and Assuming Institution as of the Bank Closing Date. If quotes from securities dealers cannot be obtained, an appraiser acceptable to the Receiver and the Assuming Institution will perform a valuation based on modeling, correlation analysis, interpolation or other techniques, as appropriate.

EXHIBIT 4.13**INTERIM ASSET SERVICING ARRANGEMENT**

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

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

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

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

otherwise discontinue use of any of the Failed Bank's systems of record with respect to any Pool Asset;

(vi) maintain accurate records reflecting (A) payments received by the Assuming Institution, (B) information received by the Assuming Institution concerning changes in the address or identity of any Obligor and (C) other servicing actions taken by the Assuming Institution, including checks returned for insufficient funds;

(vii) send (A) billing statements to Obligors on Pool Assets (to the extent that such statements were sent by the Failed Bank or as are requested by the Receiver) and (B) notices to Obligors who are in default on Loans (in the same manner as the Failed Bank or as are requested by the Receiver);

(viii) employ a sufficient number of qualified employees to provide the services required to be provided by the Assuming Institution pursuant to this Arrangement (with the number and qualifications of such employees to be not less than the number and qualifications of employees employed by the Failed Bank to perform such functions as of the Bank Closing Date);

(ix) hold in trust any Credit Files and any servicing files in the possession or on the premises of the Assuming Institution for the Receiver or the Successor Owner (as applicable) and segregate from the other books and records of the Assuming Institution and appropriately mark such Credit Files and servicing files to clearly reflect the ownership interest of the Receiver or the successor owner (as applicable);

(x) send to the Receiver (indicating closed bank name and number), Attn: Interim Servicing Manager, at the email address provided in Section 13.6 of the Purchase and Assumption Agreement, or to such other person at such address as the Receiver may designate, via overnight delivery: (A) on a weekly basis, weekly reports, including, without limitation, reports reflecting collections and trial balances, and (B) any other reports, copies or information as may be requested from time to time by the Receiver, including, if requested, copies of (1) checks or other remittances received, (2) insufficient funds checks returned, (3) checks or other remittances for payment to participants or for taxes, insurance, funding advances and protective advances, (4) pay-off requests, and (5) notices to defaulted Obligors;

(xi) remit on a weekly basis to the Receiver (indicating closed bank name and number), Attn: DRR Cashier Unit, Business Operations Support Branch, in the same manner as provided in paragraph (a)(x), via wire transfer to the account designated by the Receiver, or to such other person at such other address and/or account as the Receiver may designate, all payments received;

(xii) prepare and timely file all information reports with appropriate tax authorities, and, if requested by the Receiver, prepare and file tax returns and remit taxes due on or before the due date;

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

(xiv) establish a custodial account for the Receiver and for each successor owner at the Assuming Institution, each of which shall be interest bearing, titled in the name of Assuming Institution, in trust for the Receiver or the successor owner (as applicable), in each case as the owner, and segregate and hold all funds collected and received with respect to the Pool Assets separate and apart from any of the Assuming Institution's own funds and general assets; and

(xv) no later than the end of the second Business Day following receipt thereof, deposit into the applicable custodial account and retain therein all funds collected and received with respect to the Pool Assets.

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

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

(c) The Assuming Institution shall provide the services described herein for a term of up to three hundred sixty-five (365) days after the Bank Closing Date. The Receiver may terminate the Arrangement at any time upon not less than sixty (60) days notice to the Assuming Institution without any liability or cost to the Receiver other than the fees and expenses due to the Assuming Institution as of the termination date pursuant to paragraph (b) above.

(d) At any time during the term of this Arrangement, the Receiver may, upon not less than thirty (30) days prior written notice to the Assuming Institution, remove one or more Pool Assets, and at the time of such removal the Assuming Institution's responsibility with respect thereto shall terminate.

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

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

(ii) cooperate with the Receiver to facilitate the orderly transition of managing the Pool Assets to the Receiver or its designees (including, without limitation, its contractors and persons to which any Pool Assets are conveyed).

(f) At the request of the Receiver, the Assuming Institution shall perform such transitional services with regard to the Pool Assets as the Receiver may request. Transitional

services may include, without limitation, assisting in any due diligence process deemed necessary by the Receiver and providing to the Receiver and its designees (including, without limitation, its contractors and any actual or potential successor owners) (i) information and data regarding the Pool Assets, including, without limitation, system reports and data downloads sufficient to transfer the Pool Assets to another system or systems and to facilitate due diligence by actual and potential successor owners, and (ii) access to employees of the Assuming Institution involved in the management of, or otherwise familiar with, the Pool Assets.

(g) Until such time as the Arrangement expires or is terminated, without limitation of its obligations set forth above or in the Purchase and Assumption Agreement and without any additional consideration (other than that set forth in paragraph (b) above), the Assuming Institution shall provide the Receiver and its designees (including, without limitation, its contractors and actual and potential successor owners) with the following, as the same may be requested:

(i) access to and the ability to obtain assistance and information from personnel of the Assuming Institution, including former personnel of the Failed Bank and personnel of third party consultants;

(ii) access to and the ability to use and download information from data processing systems and other systems of record on which information regarding Pool Assets or any assets transferred to or liabilities assumed by the Assuming Institution is stored or maintained (regardless of whether information with respect to other assets or liabilities is also stored or maintained thereon); and

(iii) access to and the ability to use and occupy office space (including parking facilities and vault space), facilities, utilities (including local telephone service and facsimile machines), furniture, equipment (including photocopying and facsimile machines), and technology and connectivity (including email accounts, network access and technology resources such as shared drives) in the Bank Premises occupied by the Assuming Institution.

EXHIBIT 4.15A

SINGLE FAMILY SHARED-LOSS AGREEMENT

INTENTIONALLY OMITTED

EXHIBIT 4.15B

COMMERCIAL SHARED-LOSS AGREEMENT

EXHIBIT 4.15B
COMMERCIAL SHARED-LOSS AGREEMENT

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EXHIBIT 4.15BCOMMERCIAL SHARED-LOSS AGREEMENT

A. This Commercial Shared-Loss Agreement and the Exhibits attached hereto and incorporated herein by this reference (collectively, the "Agreement") is made pursuant to and as of the date of that certain Purchase and Assumption Agreement (the "Purchase and Assumption Agreement") among the Receiver, the Assuming Institution and the Corporation, to which this Agreement is attached.

B. This Agreement shall apply only if the Assuming Institution has purchased Shared-Loss Assets (as defined herein) pursuant to the Purchase and Assumption Agreement. Subject to the provisions of this Agreement, it is the intention of the parties that the Receiver and the Assuming Institution shall share certain losses, expenses and Recoveries (as defined herein).

A G R E E M E N TARTICLE 1. GENERAL.

1.1. Purpose. The purpose of this Agreement is to set forth requirements regarding, among other things, management of Shared-Loss Assets by the Assuming Institution and procedures for notices, consents, reporting and payments. In administering the Shared-Loss Assets, the Assuming Institution shall at all times comply with the Management Standards set forth in Article 3.

1.2. Relationship with Purchase and Assumption Agreement. To the extent that any inconsistencies may arise between the terms of the Purchase and Assumption Agreement and this Agreement with respect to the subject matter of this Agreement, the terms of this Agreement shall control.

1.3. Defined Terms. The capitalized terms used in this Agreement have the meanings defined or referenced in Article 8.

ARTICLE 2. SHARED-LOSS ARRANGEMENT.2.1. Accounting for and Management of Shared-Loss Assets.

(a) Initial Values. The Assuming Institution shall record the Shared-Loss Assets on its Accounting Records at their respective Book Values as of the Commencement Date.

(b) Adjustments. After the Commencement Date, the Assuming Institution shall adjust the Book Values of the Shared-Loss Assets in accordance with this Agreement, the Examination Criteria and Article VIII of the Purchase and Assumption Agreement.

(c) Management. The Assuming Institution shall manage and account for the Shared-Loss Assets in accordance with this Agreement.

(d) Loss Mitigation. Within 90 days of bank closing, the Assuming Institution shall submit to the FDIC for approval a written loss mitigation plan. The loss mitigation plan

shall be updated annually and submitted to FDIC. The Assuming Institution shall, in implementing its loss mitigation plan with respect to each Shared Loss Asset in default or for which a default is reasonably foreseeable, (A) undertake and document loss mitigation efforts that must include loan restructuring, short-sale and any other appropriate methods of loss mitigation and (B) select the method that the Assuming Institution determines will result in the least Loss, based on its estimated and documented calculations. On a quarterly basis the Assuming Institution shall deliver to the FDIC the internal management reports utilized to monitor the status of loan restructurings in process for assets on Schedule 4.15B as well as assets that have successfully undergone documented loan restructurings.

2.2. Payments with Respect to Shared-Loss Assets.

(a) Calculation and Method of Payments. Subject to the conditions of this Agreement, the parties shall make the payments set forth in this Article 2. All payments made by a party under this Agreement shall be made by wire transfer.

(b) Timing of Payments.

(i) Payments by the Receiver under this Article 2 shall be made within thirty (30) days following the date on which the Receiver receives the Quarterly Certificate with respect to each Shared-Loss Quarter or Recovery Quarter, provided that the Quarterly Certificate is complete, accurate, timely and in compliance with the requirements of this Agreement.

(ii) Payments by the Assuming Institution under this Article 2 shall be made on or before the due date for the Quarterly Certificate for each Shared-Loss Quarter or Recovery Quarter, as applicable.

(c) Source of Receiver's Funds. Payment obligations of the Receiver with respect to this Agreement shall be treated as administrative expenses of the Receiver pursuant to 12 U.S.C § 1821(d)(11). To the extent that the Receiver requires funds to make payments relating to Shared-Loss Assets pursuant to this Agreement, the Receiver shall request funds under the Master Loan and Security Agreement between the FDIC in its corporate capacity and the FDIC in its receivership capacity, with respect to any receivership, dated as of May 21, 2009, as amended.

(d) Shared-Loss Subsidiaries. Covered Losses with respect to Subsidiary Shared-Loss Loans and Subsidiary ORE shall not exceed the Applicable Percentage of the Investment in Subsidiary of each Shared-Loss Subsidiary, if any, identified on Schedule 4.15D as the owner of each such Subsidiary Shared-Loss Loans or Subsidiary ORE.

2.3. Payments Applicable to Shared-Loss Quarters. For each Shared-Loss Quarter, pursuant to the applicable Quarterly Certificate, one of the payments described at (a) or (b) below shall be made, as appropriate, with respect to Shared-Loss Assets:

(a) Covered Loss Payments by the Receiver. The Receiver shall pay to the Assuming Institution the Applicable Percentage of the "Covered Loss" which is an amount equal to:

(i) the sum of:

(A) Charge-Offs; plus

(B) Reimbursable Expenses attributable to Shared-Loss Assets;

minus

(C) Recoveries; and

(ii) fifty per cent (50%) of collections on Fully Charged-Off Assets less fifty per cent (50%) of any expenses attributable to such Fully Charged-Off Assets, provided and only to the extent that such expenses would be Reimbursable Expenses if such Fully Charged-Off Assets were Shared-Loss Assets.

(b) Covered Gain Payments by the Assuming Institution. If the result of the calculation described in Section 2.3(a)(i) is a negative amount (the "Covered Gain"), the Assuming Institution shall pay the Applicable Percentage of such amount to the Receiver.

2.4. Payments Applicable to Recovery Quarters. For each Recovery Quarter, pursuant to the applicable Quarterly Certificate, the payments described at (a) and (b) below shall be made, as appropriate, with respect to Shared-Loss Assets:

(a) Payments by the Receiver. The Receiver shall pay to the Assuming Institution an amount equal to the Applicable Percentage of any Reimbursable Expenses, for the period through and including the last Shared-Loss Quarter, which are specified on the Quarterly Certificate for the first Recovery Quarter.

(b) Payments by the Assuming Institution. The Assuming Institution shall pay to the Receiver:

(i) an amount equal to the Applicable Percentage of Net Recoveries for each Recovery Quarter; plus

(ii) an amount equal to fifty per cent (50%) of any collections on Fully Charged-Off Assets minus fifty per cent (50%) of any Reimbursable Expenses attributable to such Fully Charged-Off Assets.

(c) Net Recoveries. "Net Recoveries" means gross Recoveries during any Calendar Quarter minus Reimbursable Expenses during such Calendar Quarter.

(d) Negative Net Recoveries. If Net Recoveries received in a Recovery Quarter is a negative amount, then the amount of such Net Recoveries shall be offset against the amount of gross Recoveries received in the following Recovery Quarter to determine the amount of Net Recoveries for that following Recovery Quarter. If, after applying the preceding provisions, Net Recoveries received in any subsequent Recovery Quarter is also a negative amount, the provisions of this Section 2.4(d) shall continue to apply to determine the amount of Net Recoveries in each such subsequent Recovery Quarter.

2.5. True-Up Payment and Calculation.

(a) Payment Obligation of the Assuming Institution. If the Assuming Institution's Bid Amount, as set forth in Article VII of the Purchase and Assumption Agreement, includes an "Asset discount bid" which represents five percent (5%) or more of the purchase price of the Assets determined in accordance with Article III of the Purchase and Assumption Agreement, the Assuming Institution shall pay to the Receiver on the True-Up Date any positive amount resulting from the calculation set forth in Exhibit 2.5.

(b) Reporting of Calculation. On or before the True-Up Date the Assuming Institution shall deliver to the Receiver a schedule, signed by the chief executive officer or the chief financial officer of the Assuming Institution, setting forth in reasonable detail the calculation described in Exhibit 2.5, including the calculation of the Net Loss Amount.

2.6. Limitation on Payments.

(a) Failure to Administer. If the Assuming Institution fails to administer any Shared-Loss Asset in accordance with the provisions of Article 3, the Receiver may determine that such asset will not be treated as a Shared-Loss Asset pursuant to this Agreement.

(b) Receiver's Right to Withhold Payment. Notwithstanding any other provision of this Article 2, the Receiver may withhold all or any portion of a payment to the Assuming Institution of the amount requested in a Quarterly Certificate if the Receiver determines that:

- (i) the Quarterly Certificate is incomplete, inaccurate or untimely;
- (ii) based upon the Examination Criteria, a Charge-Off of a Shared-Loss Asset should not have been effected by the Assuming Institution;
- (iii) there is a reasonable basis under the terms of this Agreement for denying the eligibility of amounts included in a Quarterly Certificate for which reimbursement or payment is sought;
- (iv) with respect to a particular Shared-Loss Asset, the Assuming Institution has not complied or is not complying with the Management Standards;
- (v) the Assuming Institution has failed to comply with the requirements set forth in Section 5.5 including, but not limited to permitting the Receiver, its agents, contractors and/or employees to determine compliance with this Agreement pursuant to Section 5.5(c); or
- (vi) a retroactive accounting adjustment is to be made by the Receiver pursuant to Section 5.5(c).

(c) Opportunity to Cure; Payment.

(i) In the event that a determination is made to withhold an amount pursuant to Section 2.6(b), the Receiver shall provide the Assuming Institution with

notice detailing the grounds for withholding such amount and the Assuming Institution shall cure any deficiency within a reasonable period of time.

(ii) If the Assuming Institution demonstrates to the satisfaction of the Receiver that the grounds for withholding a payment, or any part thereof, no longer exist or have been cured, the Receiver shall pay the Assuming Institution the amount which the Receiver determines is eligible for payment within thirty (30) days following the date of such determination.

(iii) If the Assuming Institution does not cure any such deficiency within a reasonable period of time, the Receiver may withhold payment as described in Section 2.6 (b) with respect to the affected Shared-Loss Asset(s), but such withholding will not affect the Receiver's obligation to make any other payment properly due pursuant to this Agreement.

(d) Adjustments. In the event that the Receiver withholds payment with respect to a Charge-Off of a Shared-Loss Asset or determines pursuant to Section 2.6(b) that a payment was improperly made, the Assuming Institution and the Receiver shall, upon final resolution of such issue, make such accounting adjustments and payments as may be necessary to give retroactive effect to such actions.

(e) Interest on Payments. Any payment by the Receiver pursuant to Section 2.6(d) shall be made together with interest on the amount thereof that accrues with effect from five (5) Business Days after the date on which payment was agreed or determined to be due until such amount is paid. The annual interest rate shall be determined by the Receiver based on the coupon equivalent of the three (3)-month U.S. Treasury Bill Rate in effect as of the first Business Day of each Calendar Quarter during which such interest accrues as reported in the Federal Reserve Board Statistical Release for Selected Interest Rates H.15 opposite the caption "Treasury bills (secondary market), 3-Month" or, if not so reported for such day, for the next preceding Business Day for which such rate was so reported.

(f) Determination of Disputes. Any dispute arising under this Section 2.6 shall be resolved pursuant to the dispute resolution procedures of Article 7.

2.7. Expenses.

(a) Reimbursable Expenses. Reimbursable Expenses incurred by the Assuming Institution for a product, service or activity may be reimbursable or recoverable by the Assuming Institution and may be included for the purpose of calculating payments relating to Shared-Loss Assets. "Reimbursable Expenses" means actual, reasonable and necessary out-of-pocket expenses incurred in the usual, prudent and lawful management of a Shared-Loss Asset which are paid to third parties by or on behalf of the Assuming Institution or its Affiliates for a Shared-Loss Quarter or a Recovery Quarter, as applicable, in respect of the following expenditure:

(i) expenses to recover amounts owed with respect to:

(A) Shared-Loss Assets as to which a Charge-Off was effected prior to the end of the final Shared-Loss Quarter as reflected on the Accounting Records of the Assuming Institution; and

(B) Failed Bank Charge-Offs;

(ii) expenses to recover amounts described in paragraph (i) which relate to an Environmental Assessment and any environmental conditions relating to the Shared-Loss Assets, including remediation expenses for any pollutant or contaminant and fees for consultants retained to assess the presence, storage or release of any hazardous or toxic substance or any pollutant or contaminant relating to the collateral securing a Shared-Loss Asset that has been fully or partially charged-off, in each case up to a maximum of \$200,000 per Shared-Loss Asset, except as provided in the last paragraph of this Section 2.7(a);

(iii) ORE Expenses to the extent that such amount exceeds any ORE Income;

(iv) reasonable and necessary litigation expenses with respect to maximizing Recoveries of Shared-Loss Assets but excluding amounts, if any, incurred with respect to any alleged improper conduct of the Assuming Institution;

(v) fees incurred for attorneys, appraisers and other independent professional consultants engaged as necessary to assist in collections of Shared-Loss Assets, up to a maximum of \$100,000 per Shared-Loss Asset, except as provided in the last paragraph of this Section 2.7(a);

(vi) a proportion of expenses for collections by or on behalf of the Assuming Institution on an Asset other than a Shared-Loss Asset with a Book Value greater than zero which are applied to both that Book Value and to a Failed Bank Charge-Off, equal to the collections on such Asset which are applied to the Failed Bank Charge-Off divided by the total collections on such Asset; and

(vii) with respect to the final Recovery Quarter, Reimbursable Expenses may include (A) a Net ORE Loss Carryforward if applicable and to the extent set forth in Section 2.9(g)(iii) and (B) any ORE Expenses to the extent that such amount exceeds ORE Income.

If the Assuming Institution estimates in good faith that required expenditures for the purposes described (A) in paragraph (ii) may exceed \$200,000 or (B) in paragraph (v) may exceed \$100,000 with respect to a particular Shared-Loss Asset, and provides the Receiver with advance notice and details thereof prior to incurring any such expenditure, the Receiver may, in its sole and absolute discretion, consent to such greater amount being deemed a Reimbursable Expense for purposes of this Agreement.

(b) Exclusions. Reimbursable Expenses do not include the following:

(i) Capitalized Expenditures;

- (ii) amounts paid to Affiliates of the Assuming Institution;
 - (iii) with respect to Shared-Loss Assets with prior Failed Bank Charge-Offs or Charge-Offs or write-downs for which the Assuming Institution is recognizing interest income as described in Section 2.9(d), the portion of the expense attributable to that Shared-Loss Loan which is derived by applying the calculation set forth in Exhibit 2.7;
 - (iv) Federal, State or local income taxes and expenses related thereto;
 - (v) salaries, other compensation and related benefits of employees of the Assuming Institution and its Affiliates including, without limitation, bonus, commission or severance arrangements, training, payroll taxes, dues and travel- or relocation-related expenses;
 - (vi) the cost of space occupied by the Assuming Institution or its Affiliates and their respective staff and the rental and maintenance of furniture and equipment;
 - (vii) expenses for data processing, including the purchase or enhancement of data processing systems;
 - (viii) except as expressly permitted in Sections 2.7(a)(ii) and 2.7(a)(v), fees for accounting and other independent professional consultants;
 - (ix) allocated portions of any other overhead or general and administrative expense for services of a type which the Assuming Institution does not normally perform internally;
 - (x) expenses not incurred in good faith and/or with the same degree of care that the Assuming Institution normally would exercise in the collection of troubled assets in which it alone had an interest;
 - (xi) servicing fees payable to a third party (including a Third Party Servicer which is an Affiliate of the Assuming Institution), if the Assuming Institution would have provided those services had the relevant Shared-Loss Assets not been subject to this Agreement;
 - (xii) in a Recovery Quarter, ORE Expenses to the extent that such amount exceeds ORE Income; and
 - (xiii) expenses which exceed the amount of Recoveries made in any Recovery Quarter.
- (c) Reimbursable Expenses Incurred in Shared-Loss Quarters. Reimbursable Expenses for Shared-Loss Quarters shall be submitted to the Receiver in each Quarterly Certificate, and in any event on or before the end of the first Recovery Quarter.

(d) Reimbursable Expenses Incurred in Recovery Quarters. Reimbursable Expenses for Recovery Quarters shall be submitted to the Receiver in the Quarterly Certificate for each Recovery Quarter, and in any event on or before the Termination Date.

(e) Notification of Certain Expenditures.

(i) Under certain circumstances the Assuming Institution may determine that, in order to maximize collection of a Shared-Loss Asset or an Asset on which a Failed Bank Charge-Off has been effected, there is a substantial likelihood that funds will need to be expended after the Bank Closing Date by or on behalf of the Assuming Institution to a third party for a specified purpose, which do not otherwise constitute Reimbursable Expenses. If such expenditure is estimated to exceed ten percent (10%) of the Book Value of such Shared-Loss Asset or Asset, respectively, and that Shared-Loss Asset or Asset has a Legal Balance on the Accounting Records of the Assuming Institution of \$1,000,000 or more, then the Assuming Institution shall promptly report such proposed expenditure to the Receiver, and may request that such expenditure be treated as a Permitted Expense.

(ii) Within thirty (30) days following receipt of a notice pursuant to Section 2.7(e)(i), the Receiver will advise the Assuming Institution whether the Receiver grants or withholds its consent to the qualification of the proposed expenditures as a Reimbursable Expense. If consent is withheld, the Assuming Institution shall not be required to make such expenditures and otherwise shall continue to administer such Shared-Loss Asset in accordance with the Management Standards.

2.8. Permitted Advances and Amendments. Pursuant to this Agreement, certain advances in respect of a Shared-Loss Loan and certain amendments in respect of a Shared-Loss Loan or a Shared-Loss Loan Commitment made by the Assuming Institution may be permissible additions to the Book Value of the Shared-Loss Assets, and entitle such Shared-Loss Assets to retain their status as such, if they satisfy certain criteria, as set forth below:

(a) Permitted Advance. A "Permitted Advance" is an advance on a Shared-Loss Loan which is made by the Assuming Institution in good faith, justified by contemporaneous supporting documentation in the Credit File, in accordance with the applicable requirements set forth in Article 3 and with the then effective written internal credit policy guidelines of the Assuming Institution and which meets the following criteria:

(i) it is an advance made by the Assuming Institution, or a legally binding commitment by the Assuming Institution to advance funds and, in either case, funds are advanced fully within one (1) year from the Commencement Date; and

(A) the sum of the following is less than 110% of the Book Value of such Shared-Loss Loan after such advance has been made:

(1) the Book Value of such Shared-Loss Loan; plus

(2) the unfunded amount of the legally binding commitment referred to at Section 2.8(a)(i) with respect to that Shared-Loss Loan;

(B) the Assuming Institution has not taken a Charge-Off with respect to that Shared-Loss Loan; and

(C) no Shared-Loss Loan Commitment exists for such Shared-Loss Loan; or

(ii) it is an advance made by the Assuming Institution which the Assuming Institution determines is necessary to preserve or secure the value of the collateral for a Shared-Loss Loan. In making such determination, the Assuming Institution shall apply the same criteria as it would if the Shared-Loss Assets were owned by the Assuming Institution or any of its Affiliates, and subject to the limitation on expenses related to the remediation, presence, storage or release of any hazardous or toxic substance, pollutant or contaminant as set forth in Section 2.7(a)(ii).

(b) Permitted Amendment. A "Permitted Amendment" is, with respect to any Shared-Loss Loan Commitment or Shared-Loss Loan, any amendment, modification, renewal or extension thereof, or any waiver of any term, right or remedy thereunder which is made by the Assuming Institution in good faith, justified by contemporaneous supporting documentation in the Credit File, in accordance with the applicable requirements set forth in Article 3 and with the then effective written internal credit policy guidelines of the Assuming Institution. A Permitted Amendment may extend the term of a Shared-Loss Loan Commitment or Shared-Loss Loan beyond the end of the final Shared-Loss Quarter or, if later, beyond the term which existed as of the Bank Closing Date, provided, any such extension does not extend shared-loss coverage beyond the final Shared-Loss Quarter. A Permitted Amendment must also satisfy the following criteria:

(i) the sum of the following is less than 110% of the Book Value of such Shared-Loss Loan after such amendment or modification has been made:

(A) the Book Value of such Shared-Loss Loan; plus

(B) the unfunded amount of any applicable Shared-Loss Loan Commitment, inclusive of amounts advanced pursuant to such amendment, modification, renewal or extension; and

(ii) with respect to a Shared-Loss Loan Commitment or Shared-Loss Loan which is not a revolving line of credit, it does not increase the amount of principal (A) then remaining available to be advanced by the Assuming Institution under the Shared-Loss Loan Commitment or (B) then outstanding under the Shared-Loss Loan beyond the limit provided in Section 2.8(b)(i); or

(iii) with respect to a Shared-Loss Loan Commitment or Shared-Loss Loan which is a revolving line of credit, it does not increase the maximum amount of principal authorized as of the Bank Closing Date to be outstanding at any one time under

the underlying revolving line of credit relationship with the debtor beyond the limit provided in Section 2.8(b)(i) (regardless of the extent to which such revolving line of credit may have been funded as of the Bank Closing Date or may subsequently have been funded and/or repaid).

2.9. Recovery.

(a) Calculation of a Recovery. A "Recovery" is the sum of the following amounts (without duplication) for any period, subject to the limitations and exceptions set forth in Section 2.9(b):

(i) collections by or on behalf of the Assuming Institution on Charge-Offs of a Shared-Loss Asset effected by the Assuming Institution prior to the end of the final Shared-Loss Quarter;

(ii) collections by or on behalf of the Assuming Institution on Failed Bank Charge-Offs;

(iii) collections by or on behalf of the Assuming Institution on any Asset on which a Failed Bank Charge-Off has been effected, to the extent that such collections exceed the Book Value of such Asset;

(iv) ORE Income;

(v) collections by or on behalf of the Assuming Institution of any Reimbursable Expenses;

(vi) any gain received on a sale or other disposition of a Shared-Loss Loan or Shared-Loss Subsidiary by or on behalf of the Assuming Institution;

(vii) the amount of any fee or other consideration received by or on behalf of the Assuming Institution for any amendment, modification, renewal, extension, refinance, restructure, commitment, sale or other similar action with respect to a Shared-Loss Loan as to which there exists a Failed Bank Charge-Off or as to which a Charge-Off has been effected by the Assuming Institution during or prior to such period, not exceeding the total of any related Failed Bank Charge-Offs, Charge-Offs and Reimbursable Expenses made with respect to the particular Shared-Loss Loan; and

(viii) interest income, if any, pursuant to Section 2.9(d).

(b) Limitations and Exceptions. In calculating a Recovery, the following shall not be included:

(i) amounts paid to the Assuming Institution by the Receiver pursuant to Article 2;

(ii) amounts received by or on behalf of the Assuming Institution with respect to Charge-Offs effected by the Assuming Institution after the final Shared-Loss Quarter;

(iii) the amount of any gain with respect to Shared-Loss Loans, ORE, Additional ORE or Subsidiary ORE included in a Recovery which exceeds the total amount of any Failed Bank Charge-Offs, Charge-Offs and Reimbursable Expenses made with respect to the particular Shared-Loss Asset; and

(iv) after the final Shared-Loss Quarter, ORE Income except to the extent that aggregate ORE Income exceeds ORE Expenses.

(c) Order of Application. For the purpose of calculating Recoveries, the Assuming Institution shall apply any collections received on an Asset not otherwise applied to reduce the Book Value of such Asset, if applicable, in the following order:

- (i) to Charge-Offs and Failed Bank Charge-Offs;
- (ii) to Reimbursable Expenses;
- (iii) to interest income; and
- (iv) to other expenses incurred by the Assuming Institution which are not Reimbursable Expenses.

(d) Interest Income as a Recovery. In the event that (i) there is any amendment, modification, renewal, extension, refinance, restructure, commitment, sale or other similar action with respect to a Shared-Loss Loan as to which there exists a Failed Bank Charge-Off or as to which a Charge-Off has been effected by the Assuming Institution during or prior to a Recovery Period and (ii) as a result, the Assuming Institution recognizes interest income for financial accounting purposes on that Shared-Loss Loan, then a Recovery shall also include the portion of such interest income recognized by the Assuming Institution which is derived by applying the calculation set forth in Exhibit 2.9, subject to the limitations set forth in Section 2.9(e).

(e) Maximum Amount of Interest Income. The amount of any interest income included as a Recovery with respect to a Shared-Loss Loan subject to Section 2.9(d) shall not exceed the total of the following:

- (i) Failed Bank Charge-Offs;
- (ii) Charge-Offs effected by the Assuming Institution during or prior to the period in which the amount of a Recovery is being determined; and
- (iii) Reimbursable Expenses paid to the Assuming Institution pursuant to this Agreement during or prior to the period in which the amount of a Recovery is being determined, all with respect to that particular Shared-Loss Loan.

(f) Application of Collections. Any collections on a Shared-Loss Loan that are not applied to reduce Book Value of principal or recognized as interest income shall be applied pursuant to Section 2.9(c).

(g) Treatment of Net ORE Loss Carryforward. To determine whether the Assuming Institution is entitled to apply a Net ORE Loss Carryforward at the end of the final Recovery Quarter, the Assuming Institution shall calculate and report the following information with respect to Recovery Quarters:

(i) For any Recovery Quarter other than the final Recovery Quarter, Net ORE Income is calculated as the amount of ORE Income received during such Recovery Quarter less (A) ORE Expenses paid to third parties during such Recovery Quarter and (B) if applicable, Net ORE Loss Carryforward. Any positive Net ORE Income shall be reported as a Recovery on the Quarterly Certificate for such Recovery Quarter.

(ii) For the final Recovery Quarter, Net ORE Income is calculated as the amount of ORE Income received during the final Recovery Quarter less ORE Expenses from the beginning of the final Recovery Quarter up to the date the Assuming Institution is required to deliver the Final Recovery Certificate pursuant to this Agreement.

(iii) If there is a Net ORE Loss Carryforward at the end of the final Recovery Quarter, an amount equal to the Net ORE Loss Carryforward up to but not exceeding the total Net ORE Income reported as a Recovery on Quarterly Certificates for all Recovery Quarters may be included as a Recovery Expense on the Final Recovery Certificate.

2.10. Treatment as a Shared-Loss Asset.

(a) Loss of Right to Receive Shared-Loss Asset Payments. The Assuming Institution shall not be entitled to payments relating to a Shared-Loss Asset pursuant to Section 2.2 if the Assuming Institution or any Affiliate of the Assuming Institution:

(i) sells or otherwise transfers that Shared-Loss Asset or any interest therein (whether with or without recourse) to any Person, other than in compliance with this Agreement;

(ii) makes any additional advance, commitment or increase in the amount of a commitment with respect to that Shared-Loss Loan that does not constitute a Permitted Advance or a Shared-Loss Loan Commitment Advance, in which case the entire Shared-Loss Loan will not be entitled to such payments;

(iii) makes any amendment, modification, renewal or extension of that Shared-Loss Loan that does not constitute a Permitted Amendment;

(iv) manages, administers or collects any Related Loan in a manner which would increase the amount of any collections with respect to that Related Loan to the detriment of the Shared-Loss Asset to which such loan is related; or

(v) fails to administer that Shared-Loss Asset pursuant to the Management Standards, including, without limitation, consistent failure to provide complete, accurate and timely certificates and reports pursuant to Article 5.

(b) Effective Date of Loss of Shared-Loss Asset Treatment. If any of the actions described in Section 2.10(a) occur with respect to a Shared-Loss Asset, the Receiver shall not be obligated to make any payments to the Assuming Institution with respect to any affected Shared-Loss Loan after the date of occurrence of such action. In the event that the Receiver withholds payment pursuant to the foregoing provisions, the Assuming Institution and the Receiver shall make such accounting adjustments and payments as may be necessary to give retroactive effect to such actions.

(c) Treatment of Recoveries. Notwithstanding Sections 2.10(a) and (b), a Shared-Loss Loan which has been the subject of Charge-Offs prior to the occurrence of any action described in Section 2.10(a) shall be treated as a Shared-Loss Asset for the purpose of calculating Recoveries on such Charge-Offs, provided that the amount of Recoveries shall be limited to the amount of such Charge-Offs.

2.11. Receiver's Option to Purchase.

(a) Exercise of Option to Purchase. At any time on or prior to the Termination Date, the Receiver shall have the option, exercisable by notice to the Assuming Institution, to purchase a Shared-Loss Asset or an Asset on which a Failed Bank Charge-Off has been effected which meets any of the following criteria:

(i) if the Shared-Loss Asset has been fully or partially charged-off or written down and the Receiver determines that the Assuming Institution is not diligently pursuing collection efforts with respect to such Shared-Loss Asset;

(ii) if the Shared-Loss Asset is the subject of a request pursuant to Section 2.7(e), notwithstanding any prior consent by the Receiver with respect to any requested expenditures;

(iii) if it is an Asset on which a Failed Bank Charge-Off has been effected; and

(iv) if the Shared-Loss Asset is a Related Loan required to be included in a schedule pursuant to Section 5.4.

(b) Transfer by the Assuming Institution. Within ten (10) Business Days following the date upon which the Assuming Institution receives notice pursuant to Section 2.11(a), the Assuming Institution shall transfer to the Receiver such Shared-Loss Asset or Asset and all Credit Files and Accounting Records relating thereto and shall take all such other actions as may be necessary and appropriate to assign, transfer and convey such Shared-Loss Asset or Asset to the Receiver.

(c) Payment by the Receiver. Within fifteen (15) Business Days after the date upon which the Assuming Institution transfers the Shared-Loss Asset or Asset pursuant to Section 2.11(b), the Receiver shall pay to the Assuming Institution a purchase price equal to:

(i) the principal amount of such Shared-Loss Asset, any fees or penalties due from an Obligor and any Accrued Interest (subject to the limitations set forth at Section 2.11(d)), as stated on the Accounting Records of the Assuming

Institution, as of the date such price is determined (in the case of a Shared-Loss Loan, regardless of the Legal Balance thereof) plus all Reimbursable Expenses incurred up to and through the transfer date of such Shared-Loss Asset pursuant to Section 2.11(b) which have not previously been paid to the Assuming Institution; minus

(ii) the Related Liability Amount applicable to any Related Liabilities related to such Shared-Loss Asset or Asset.

(d) Limitations on Payment by the Receiver. In the case of the purchase of a Shared-Loss Loan:

(i) the price paid pursuant to Section 2.11(c) shall not include any Accrued Interest accruing during the ninety (90) day period prior to the purchase date pursuant to Section 2.11(b), except to the extent that such Accrued Interest is included in the Book Value of such Shared-Loss Loan;

(ii) the Receiver shall be entitled to any collections received by the Assuming Institution after the purchase date, which shall be paid by the Assuming Institution forthwith upon receipt and in any event no later than simultaneously with delivery of the next Quarterly Certificate; and

(iii) for the purposes of determining the amount of unpaid interest which accrued during a given period with respect to a variable-rate Shared-Loss Loan, all collections of interest shall be deemed to be applied to unpaid interest in the chronological order (oldest first) in which such interest accrued.

(e) Receiver's Assumption of Related Liabilities. The Receiver shall assume all Related Liabilities with respect to any Shared-Loss Asset or Asset repurchased pursuant to this Section 2.11 with effect from the date of transfer of such Shared-Loss Asset or Asset.

ARTICLE 3. ADMINISTRATION OF SHARED-LOSS ASSETS.

3.1. Management Standards Regarding Administration. During the term of this Agreement the Assuming Institution shall manage, administer and collect all Shared-Loss Assets while owned by it or any of its Affiliates in accordance with the rules, requirements and standards regarding management, administration and collection of Shared-Loss Assets set forth in this Article 3 (the "Management Standards"). Failure to comply with the Management Standards shall constitute a material breach of this Agreement. If the Receiver determines in its sole and absolute discretion that the Assuming Institution is not in compliance with the Management Standards, it may notify the Assuming Institution of the breach and may take action pursuant to this Agreement including, without limitation, as provided in Sections 2.6(a) and (b).

3.2. Assuming Institution's Responsibilities and Duties.

(a) Covenants of the Assuming Institution. The Assuming Institution shall:

(i) be responsible to the Receiver and the Corporation in the performance of this Agreement, whether performed by the Assuming Institution, an Affiliate or a Third Party Servicer;

(ii) provide to the Receiver and the Corporation such certificates, notifications and reports as the Receiver or the Corporation reasonably deems advisable, including but not limited to the certificates, notifications and reports required by Article 5; and

(iii) permit the Receiver and the Corporation to monitor the Assuming Institution's performance of its duties hereunder at all times.

(b) Duties of the Assuming Institution with Respect to Shared-Loss Assets. In the performance of duties in accordance with the Management Standards, the Assuming Institution shall at all times exercise its best business judgment and shall:

(i) manage, administer, collect and effect Charge-Offs and Recoveries with respect to each Shared-Loss Asset in a manner consistent with the following:

(A) usual and prudent business and banking practices; and

(B) the Assuming Institution's (or, if applicable, a Third Party Servicer's) practices and procedures including, without limitation, all applicable law, the written internal credit policy guidelines of the Assuming Institution (or, if applicable, of a Third Party Servicer) in effect from time to time, with respect to the management, administration and collection of and taking of Charge-Offs and write-downs with respect to loans, ORE and repossessed collateral that do not constitute Shared-Loss Assets;

(ii) use its best efforts to maximize collections with respect to, and manage and administer, Shared-Loss Assets without favored treatment for any assets owned by the Assuming Institution or any of its Affiliates that are not Shared-Loss Assets;

(iii) implement its loss mitigation plans with respect to each Shared Loss Asset in default or for which a default is reasonably foreseeable so as to result in the least Loss resolution, based on its estimated calculations and document its evaluation of loan restructuring, short-sale and any other appropriate methods of loss mitigation prior to taking any foreclosure actions.

(iv) adopt and implement accounting, reporting, record-keeping and similar systems with respect to the Shared-Loss Assets, as provided in Sections 5.6 and 5.7;

(v) retain sufficient staff to perform its duties hereunder;

(vi) not manage, administer or collect a Related Loan in a manner which would have the effect of increasing the amount of any collections with respect to the Related Loan to the detriment of the Shared-Loss Asset to which such loan is related; and

(vii) cause any of its Affiliates to which it transfers any Shared-Loss Assets and any Third Party Servicer to act in accordance with the Management Standards.

3.3. Third Party Servicers and Affiliates.

(a) Appointment of Third Party Servicers.

(i) With the prior consent of the Receiver, the Assuming Institution may perform any of its obligations and/or exercise any of its rights under this Agreement through one or more Third Party Servicers. The Assuming Institution shall notify the Receiver at least forty (40) days prior to the proposed appointment of a Third Party Servicer. Such notice will include information regarding the Third Party Servicer's relevant experience, qualifications, financial strength and any pending litigation in relation to servicing activities. In the case of a Third Party Servicer that is an Affiliate of the Assuming Institution, the notice shall include an express statement that the Third Party Servicer is an Affiliate. The Receiver may object to the proposed appointment of a Third Party Servicer by giving the Assuming Institution notice that it so objects within thirty (30) days following the Receiver's receipt of the notice of the proposed appointment. The appointment of a Third Party Servicer by the Assuming Institution shall not release the Assuming Institution from any obligation or liability hereunder.

(ii) The Assuming Institution shall provide to the Receiver written notification immediately following the execution of any contract pursuant to which a Third Party Servicer or any third party (other than an Affiliate of the Assuming Institution) will manage, administer or collect any of the Shared-Loss Assets.

(b) Actions of and Expenses Incurred by Third Party Servicers. The Assuming Institution shall ensure that the practices, procedures and guidelines of any Third Party Servicer comply with the obligations of the Assuming Institution under this Agreement. The Assuming Institution shall provide to the Receiver a copy of the Assuming Institution's written agreement with each Third Party Servicer and shall ensure compliance by each Third Party Servicer with the Assuming Institution's obligations under this Agreement, including, without limitation, amending such agreement with each Third Party Servicer to the extent necessary. Subject to the foregoing and to the other provisions of this Agreement, a Third Party Servicer may take actions and incur expenditures in the same manner as the Assuming Institution, and out-of-pocket expenses incurred by a Third Party Servicer on behalf of the Assuming Institution shall be Reimbursable Expenses if such out-of-pocket expenses would qualify as Reimbursable Expenses if incurred by the Assuming Institution.

(c) Duties with Respect to Affiliates. The Assuming Institution shall provide to the Receiver prior written notification of any transaction with or by any Affiliate of the Assuming Institution with respect to any Shared-Loss Asset including, without limitation, the execution of any contract pursuant to which an Affiliate of the Assuming Institution will own, manage, administer or collect amounts owing with respect to a Shared-Loss Asset. The Assuming Institution shall notify the Receiver at least forty (40) days prior to a proposed transaction with an Affiliate which is not on an arm's length basis or commercially reasonable

terms. Such notice will include information regarding the Affiliate's relevant experience, qualifications and financial strength. The Receiver may object to the proposed transaction with an Affiliate in such circumstances by giving the Assuming Institution notice that it so objects within thirty (30) days following the Receiver's receipt of the notice of the proposed transaction.

3.4. Utilization by the Assuming Institution of Special Receivership Powers.

(a) Notice and Request to Receiver. Upon timely notice to and with the prior consent of the Receiver, which may be granted or withheld in its sole discretion, to the extent permitted by applicable law, the Assuming Institution may utilize in a legal action any special legal power or right which the Assuming Institution derives as a result of having acquired a Shared-Loss Asset from the Receiver.

(b) Use of Special Legal Powers. The Receiver may direct usage by the Assuming Institution of any special legal powers of the Receiver or the Corporation. The Assuming Institution shall:

(i) comply in all respects with any direction from the Receiver or the Corporation and with any protocols, directives or interpretive memoranda issued from time to time by the Receiver or the Corporation;

(ii) upon request of the Receiver, notify the Receiver of the status of any legal action in which any special legal power or right is utilized; and

(iii) immediately notify the Receiver of any judgment or significant order in any legal action involving any of such special powers or rights.

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

ARTICLE 4. SALE OF CERTAIN SHARED-LOSS ASSETS.

4.1. Sales of Shared-Loss Assets. All sales of Shared-Loss Assets are subject to the prior written approval of the Receiver, except as provided in Section 4.3:

(a) Sales with the Receiver's Consent. After the fourth anniversary of the Commencement Date and with the prior consent of the Receiver, the Assuming Institution may conduct sales to liquidate for cash consideration, in one or more transactions, all or a portion of the Shared-Loss Assets (individually or in portfolio transactions) then held by the Assuming Institution. The Assuming Institution shall provide the Receiver with at least sixty (60) days notice prior to any such proposed sale and the notice shall set forth the sale details and the proposed sale schedule.

(b) Sales Required by the Receiver. During the twelve (12) month period immediately prior to the Termination Date the Receiver may, in its sole and absolute discretion, require the Assuming Institution to liquidate for cash consideration, in one or more transactions, all Shared-Loss Assets then held by the Assuming Institution. If the Receiver exercises such

right, it shall give notice to the Assuming Institution setting forth the time period within which the Assuming Institution shall be required to offer to sell the Shared-Loss Assets. The Assuming Institution shall make a good faith effort to sell the Shared-Loss Assets and to otherwise comply with the provisions of the Receiver's notice.

(c) Conduct of Sales. Any sale pursuant to this Section 4.1 shall be conducted by means of sealed bid, to third parties, which may not include any Affiliates of the Assuming Institution, any contractors of the Assuming Institution or any Affiliates of contractors of the Assuming Institution. The Assuming Institution shall notify the Receiver prior to the proposed appointment of any financial advisor or other third party broker or sales agent for the liquidation of the remaining Shared-Loss Assets pursuant to Section 4.1(b). The Receiver may object to such proposed appointment by giving the Assuming Institution notice that it so objects within thirty (30) days following the Receiver's receipt of the notice of the proposed appointment.

4.2. Calculation of Gain or Loss on Sale. The gain or loss on sales conducted in accordance with the provisions of Section 4.1 will be calculated based on the gross sale price received by the Assuming Institution less the Book Value of the Shared-Loss Assets which are sold.

4.3. Sale of ORE, Additional ORE or Subsidiary ORE. Notwithstanding the provisions of Section 4.1, the Assuming Institution may sell or otherwise dispose of ORE, Additional ORE or Subsidiary ORE at any time to a Person other than an Affiliate, a contractor of the Assuming Institution or any Affiliate of a contractor of the Assuming Institution, provided that such sale is conducted in an arm's length, commercially reasonable and prudent manner.

ARTICLE 5. CERTIFICATES, REPORTS AND RECORDS.

5.1. Reporting Obligations of the Assuming Institution.

(a) Records, Notifications and Reports. The Assuming Institution shall maintain such records, provide such notifications and deliver such reports as are required pursuant to this Agreement, including, without limitation, the records, notifications and reports as provided in the following provisions of this Article 5. Nothing contained in this Agreement shall be deemed to modify any laws, regulations or orders that are otherwise applicable to the Assuming Institution.

(b) Certification of Accuracy and Completeness. Every submission by the Assuming Institution to the Receiver of a Quarterly Certificate, the Final Recovery Certificate and any other document or information shall constitute a certification from the Assuming Institution that the information provided in such submission is correct, complete and in compliance with this Agreement.

5.2. Quarterly Certificates.

(a) Shared-Loss Quarters. Within thirty (30) days after the end of each Shared-Loss Quarter, the Assuming Institution shall deliver to the Receiver a Quarterly Certificate setting forth the following information with respect to each such Shared-Loss Quarter, in such form and detail as the Receiver may specify from time to time:

- (i) Charge-Offs with respect to Shared-Loss Assets;
- (ii) Recoveries;
- (iii) collections on Assets on which a Failed Bank Charge-Off has been effected;
- (iv) aggregate Charge-Offs less Recoveries;
- (v) Reimbursable Expenses; and
- (vi) ORE Income.

(b) Recovery Quarters. Not later than thirty (30) days after the end of each Recovery Quarter, the Assuming Institution shall deliver to the Receiver a Quarterly Certificate setting forth the information specified in Section 5.2(a) and the following information with respect to each Recovery Quarter, in such form and detail as the Receiver may specify from time to time:

- (i) Recoveries and Reimbursable Expenses;
- (ii) on the Quarterly Certificate for the first Recovery Quarter only, the Assuming Institution may report as a separate item any Reimbursable Expenses which were: (A) paid prior to or during the final Shared-Loss Quarter, (B) not included in a Quarterly Certificate for any Shared-Loss Quarter because they were not paid by or on behalf of the Assuming Institution during a Shared-Loss Quarter and (C) paid by or on behalf of the Assuming Institution during the first Recovery Quarter; and
- (iii) ORE Income, ORE Expenses and Net ORE Income.

(c) Final Recovery Certificate. In addition to the information specified in Sections 5.2(a) and 5.2(b), in the Final Recovery Certificate the Assuming Institution shall include any Recoveries which were not included in a Quarterly Certificate for a Recovery Quarter and may include any Reimbursable Expenses which were: (A) incurred prior to or during the final Recovery Quarter, (B) not included in a Quarterly Certificate for any Recovery Quarter because they were not paid by or on behalf of the Assuming Institution during a Recovery Quarter and (C) paid by or on behalf of the Assuming Institution prior to the date the Assuming Institution is required to deliver the Final Recovery Certificate to the Receiver pursuant to Section 5.2(b).

(d) Completeness of Information. The Assuming Institution shall provide to the Receiver complete and accurate information, except to the extent that it is unable to do so as a result of the failure of the Failed Bank or the Receiver to provide requested information.

(e) Limitations. The Assuming Institution may claim each Charge-Off and each item of expenditure, income, gain or loss only on the Quarterly Certificate for the period in which such Charge-Off, expenditure, income, gain or loss was incurred. The inclusion of information regarding Reimbursable Expenses in a Quarterly Certificate or other documentation

does not create any reimbursement obligation of the Receiver if the Assuming Institution is not otherwise in compliance with this Agreement.

(f) True-Up Date. The Assuming Institution shall deliver the schedule required pursuant to Section 2.5(b) on or before the True-Up Date.

5.3. Notification of Certain Transactions. Prior to the Termination Date the Assuming Institution shall notify the Receiver within fifteen (15) days following any of the following becoming fully or partially charged-off:

(a) a Shared-Loss Loan having a Legal Balance (or, in the case of more than one (1) Shared-Loss Loan made to the same Obligor, a combined Legal Balance) of \$5,000,000 or more in circumstances in which a legal claim against the relevant Obligor survives; and

(b) a Shared-Loss Loan made to a director, an "executive officer" as defined in 12 C.F.R. § 215.2(d), a "principal shareholder" as defined in 12 C.F.R. § 215.2(l), or an Affiliate of the Assuming Institution.

5.4. Notification of Related Loans. In addition to maintaining records of all Related Loans, the Assuming Institution shall prepare and deliver to the Receiver, on a semi-annual basis, together with the Quarterly Certificates for all Shared-Loss Quarters and Recovery Quarters ending on June 30 and December 31, schedules of all Related Loans which are commercial loans or commercial real estate loans which have Legal Balances of \$5,000,000 or more on the Accounting Records of the Assuming Institution as of June 30 and December 31, to the extent that more than one of such loans are to the same Obligor on Related Loans of \$5,000,000 or more.

5.5. Auditor's Report; Right to Audit.

(a) Independent Auditor's Report.

(i) Within the time period permitted for the examination audit pursuant to 12 C.F.R. § 363 following the end of each fiscal year, from and including the fiscal year during which the Bank Closing Date occurs, up to and including the calendar year during which the Termination Date occurs, the Assuming Institution shall deliver to the Receiver and the Corporation a report signed by its independent public accountants stating that such accountants have reviewed this Agreement and that, in the course of their annual audit of the Assuming Institution's books and records, nothing has come to their attention suggesting that any computations required to be made by the Assuming Institution during each such year were not made in accordance with this Agreement.

(ii) In the event that the Assuming Institution cannot comply with the provisions of Section 5.5(a)(i), within seven (7) days following the end of the time period permitted for the examination audit pursuant to 12 C.F.R. § 363, the Assuming Institution shall submit to the Receiver corrected computations together with a report signed by its independent public accountants stating that, after giving effect to such corrected computations, nothing has come to the attention of such accountants suggesting that any computations required to be made by the Assuming Institution during such year were not

made by the Assuming Institution in accordance with this Agreement. In such event, the Assuming Institution and the Receiver shall make all such accounting adjustments and payments as may be necessary to give effect to each correction reflected in such corrected computations, retroactive to the date on which the corresponding incorrect computation was made. It is the intention of this provision to align the timing of the audit required under this Agreement with the examination audit required pursuant to 12 C.F.R. § 363.

(b) Assuming Institution's Internal Audit. The Assuming Institution shall perform on an annual basis an internal audit of its compliance with this Agreement and shall provide the Receiver and the Corporation with:

(i) copies of all internal audit reports and access to all related internal audit work papers; and

(ii) a certificate signed by the chief executive officer or chief financial officer of the Assuming Institution certifying that the Assuming Institution is in compliance with this Agreement or identifying any areas of non-compliance.

(c) Right of Receiver or Corporation to Audit. The Receiver or the Corporation, their respective agents, contractors and employees, may (but are not required to) perform an audit to determine the Assuming Institution's compliance with this Agreement at any time, by providing not less than ten (10) Business Days prior notice. The scope and duration of any such audit shall be at the discretion of the Receiver or the Corporation, as the case may be. The Receiver or the Corporation, as the case may be, shall bear the expense of any such audit. In the event that any corrections are necessary as a result of such an audit, the Assuming Institution and the Receiver shall make such accounting adjustments, payments and withholdings as may be necessary to give retroactive effect to such corrections.

(d) Authority to Advisors and Representatives. The Assuming Institution shall, and shall cause its Affiliates, contractors and Third Party Servicers to, allow its advisors and representatives to discuss its (and any Affiliates', contractors' or Third Party Servicers') affairs, finances and accounts as they relate to Shared-Loss Assets, or any other matters relating to this Agreement or the rights and obligations hereunder, with the Receiver and authorizes such advisors and representatives to so discuss such affairs, finances and accounts with the Receiver.

5.6. Accounting Principles

(a) Maintenance of Books and Records. The Assuming Institution shall at all times during the term of this Agreement keep books and records which fairly present all dealings and transactions carried out in connection with its business and affairs.

(b) Accounting Principles. Except as otherwise provided for in the Purchase and Assumption Agreement or this Agreement, the Assuming Institution shall keep all financial books and records in accordance with generally accepted accounting principles, which shall be consistently applied for the periods involved.

(c) Change in Accounting Principles. The Assuming Institution shall not make any change in its accounting principles which adversely affects the value of the Shared-

Loss Assets, unless it obtains the prior written approval of the Corporation or if required by a change in generally accepted accounting principles. The Assuming Institution shall notify the Corporation of any change in its accounting principles that is required by a change in generally accepted accounting principles which would affect any Shared-Loss Asset, the accounting for any Shared-Loss Asset or the amount of any loss, gain, expense, cost or other item of reimbursement that may be due to or from the Assuming Institution.

5.7. Records and Reports.

(a) Content of Records. The Assuming Institution shall establish and maintain records on a separate general ledger, and on such subsidiary ledgers as may be appropriate, in such form and detail as the Receiver or the Corporation may specify, to account for the Shared-Loss Assets and to enable the Assuming Institution to prepare and deliver such reports as the Receiver or the Corporation may from time to time request pursuant to this Article 5. Without limitation, such books and records shall be kept in such a manner that information will be readily available to determine and document compliance with this Agreement and the Purchase and Assumption Agreement.

(b) Additional Information. The Assuming Institution shall promptly provide to the Receiver or the Corporation such information as the requesting party may request from time to time, including financial statements, computations and information as the Receiver or the Corporation deems necessary or appropriate in connection with monitoring compliance with this Agreement, certified as correct by the chief executive officer or chief financial officer of the Assuming Institution if so requested. The Assuming Institution shall provide to the Receiver all such loan-level data and cumulative information regarding the Shared-Loss Assets as the Receiver may request from time to time.

ARTICLE 6. MISCELLANEOUS.

6.1. Expenses. All costs and expenses incurred by a party in connection with this Agreement (including the performance of any obligations or the exercise of any rights hereunder) shall be borne by such party unless expressly otherwise provided, whether or not the transactions contemplated herein are consummated.

6.2. Successors and Assigns.

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

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

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

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

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

Any transaction under this Section 6.2 that requires the Receiver's consent that is made without such consent will relieve the Receiver of its obligations under this Agreement.

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

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

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

6.5. Consent; Determination or Discretion. When the consent or approval of a party is required under this Agreement, such consent or approval shall be obtained in writing and unless expressly otherwise provided, shall not be unreasonably withheld or delayed. When a determination or decision is to be made by a party under this Agreement, that party shall make such determination or decision in its reasonable discretion unless expressly otherwise provided.

6.6. Rights Cumulative. Except as expressly otherwise provided herein, the rights of each of the parties under this Agreement are cumulative, may be exercised as often as any party

considers appropriate and are in addition to each such party's rights under the Purchase and Assumption Agreement, any of the agreements related thereto or under applicable law. Any failure to exercise or any delay in exercising any of such rights, or any partial or defective exercise of such rights, shall not operate as a waiver or variation of that or any other such right, unless expressly otherwise provided.

6.7. **References.** References in this Agreement to Recitals, Articles, Sections and Exhibits are to Recitals, Articles, Sections and Exhibits of this Agreement, respectively, unless the context indicates that the Purchase and Assumption Agreement is intended. References to parties are to the parties to this Agreement. Unless expressly otherwise provided, references to days and months are to calendar days and months respectively. Article and Section headings are for convenient reference and shall not affect the meaning of this Agreement. References to the singular shall include the plural, as the context may require, and *vice versa*.

6.8. **Notice.**

(a) **Form of Notices.** All notices shall be given in writing to the parties at the addresses set forth in Sections 6.8(b) and 6.8(c) and sent in accordance with the provisions of Section 13.6 of the Purchase and Assumption Agreement, unless expressly otherwise provided.

(b) **Notice to FDIC (Division of Resolutions and Receiverships).** With respect to a notice under this Agreement, other than pursuant to Section 3.4(a):

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

(c) **Notice to FDIC (Legal Division).** With respect to a notice under Section 3.4(a):

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

with a copy to:

Federal Deposit Insurance Corporation Legal Division
Virginia Square, L. William Seidman Center
3501 Fairfax Drive, VS-E-7056
Arlington, Virginia 22226
Attention: Senior Counsel (Special Issues Group)

ARTICLE 7. DISPUTE RESOLUTION.

7.1. Methods of Resolution. The methods of resolving a dispute arising pursuant to this Agreement shall be as follows:

(a) Charge-Offs. Any dispute as to whether a Charge-Off of a Shared-Loss Asset was made in accordance with the Examination Criteria shall be finally resolved by the Assuming Institution's Chartering Authority.

(b) Other Disputes. Any other dispute (a "Dispute Item") shall be resolved in accordance with the following provisions of this Article 7.

7.2. Informal Resolution. The Receiver or the Corporation, as appropriate, (the "FDIC Party") and the Assuming Institution shall negotiate in good faith to resolve any Dispute Item within thirty (30) Business Days following receipt of information concerning the Dispute Item.

7.3. Resolution by Non-Binding Dispute Resolution Proceeding. If informal resolution of the Dispute Item pursuant to Section 7.2 is unsuccessful, the FDIC Party, on the one hand, and the Assuming Institution, on the other hand, may submit to the other party written notification of a Dispute Item (a "Notice of Dispute"). The Notice of Dispute shall contain a description of the dispute, an estimate of the amount in issue and any other information required pursuant to this Article 7. The parties shall make good faith efforts to resolve the dispute by mutual agreement within thirty-five (35) Business Days following receipt of the Notice of Dispute. In furtherance of these efforts, the parties should consider the mutually agreed upon use of less formal dispute resolution techniques, which may include, but are not limited to, mediation, settlement conference, early neutral evaluation and any other dispute resolution proceedings (as defined in § 571(6) of the Administrative Dispute Resolution Act ("ADRA"), 5 U.S.C. § 571 *et seq.*), as amended).

7.4. Confidentiality of Compromise Negotiations. All good faith attempts to resolve or compromise a dispute pursuant to Sections 7.2 or 7.3 will be confidential. All such compromise negotiations, including any statements made or documents prepared by any party, attorney or other participant, are inadmissible as evidence in other proceedings and may not be construed for any purpose as admissions against interest.

7.5. Payment Resulting from Compromise Negotiations. If the FDIC Party and the Assuming Institution resolve a Dispute Item to their mutual satisfaction pursuant to Sections 7.2 or 7.3, including any dispute pursuant to Section 2.6, then within thirty (30) days following such resolution, the appropriate party shall make payment or take action as agreed by the parties.

7.6. Formal Resolution.

(a) Arbitration Matters. Any Dispute Item which has an estimated amount in issue not exceeding \$1,000,000 per Asset may be proposed by the party seeking relief (the "Claimant Party") for arbitration pursuant to the provisions of this Section 7.6. No more than three Dispute Items may be submitted for any single arbitration, provided that, by mutual

agreement pursuant to Section 7.6(c), the parties may agree to submit any Dispute Item(s) to arbitration.

(b) Proposal to Arbitrate. If the FDIC Party and the Assuming Institution do not resolve a Dispute Item pursuant to Sections 7.2 and 7.3, then within ten (10) Business Days following the expiration of the period provided in Section 7.3, the Claimant Party may propose to submit the unresolved Dispute Item to arbitration by notifying the other party (the "Respondent Party") in writing.

(c) Submission to Arbitration. The Respondent Party may agree to the Claimant Party's proposal of arbitration by responding in writing within ten (10) Business Days following receipt of such proposal. Within five (5) Business Days following receipt of the Respondent Party's agreement to arbitrate, the Claimant Party may submit the Dispute Item to the American Arbitration Association ("AAA") for arbitration. No Dispute Item may be submitted for arbitration without the consent of both parties.

(d) Waiver of Arbitration. If the Claimant Party does not (i) propose to submit the Dispute Item to arbitration within the period set forth in Section 7.6(b) or (ii) submit the Dispute Item to AAA within the period set forth in Section 7.6(c), then the Claimant Party shall be deemed to have waived submission of the Dispute Item to arbitration.

(e) Litigation Matters. If the FDIC Party and the Assuming Institution do not agree to submit the Dispute Item to arbitration, the Dispute Item may be resolved by litigation in accordance with Federal or state law, as provided in Section 13.9 of the Purchase and Assumption Agreement. Any litigation shall be filed in a United States District Court in the proper district.

(f) Arbitration Administrator. The FDIC Party may, in its discretion, appoint an organization other than AAA for administration of arbitration pursuant to this Section 7.6, in which case this Article 7 and the rules and procedures set forth herein, including the Commercial Arbitration Rules as referred to in Section 7.9, shall govern the arbitration. AAA or such other organization appointed pursuant to this Section 7.6(f) shall be referred to in this Agreement as the "Arbitration Administrator."

7.7. Limitation on FDIC Party. Nothing in this Article 7 shall be interpreted as obligating the FDIC Party to submit to a dispute resolution proceeding (as defined in ADRA at § 571(6)) any Dispute Item described in (i) ADRA, § 572(b) or (ii) the FDIC's Statement of Policy Regarding Binding Arbitration, 66 Fed. Reg. 18632 (April 10, 2001), as amended, as a dispute for which an agency shall consider not using a dispute resolution proceeding.

7.8. Effectiveness of Agreement Pending Dispute. Notwithstanding anything in this Agreement to the contrary, in the event that a Notice of Dispute is provided to a party under this Article 7 prior to the Termination Date, the terms of this Agreement shall remain in effect with respect to the items set forth in such notice until the dispute with respect to such items has been finally resolved, and such dispute shall be resolved in accordance with the provisions of this Agreement even if that resolution occurs after the Termination Date.

7.9. Governing Rules and Law for Arbitration. Any arbitration shall be substantively governed by the Federal law of the United States of America, and in the absence of controlling Federal law, in accordance with the laws of the state in which the main office of the Failed Bank is located. The arbitration shall be procedurally governed by the Commercial Arbitration Rules (the "**Commercial Arbitration Rules**") established by AAA to the extent that such rules are not inconsistent with this Article 7, the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* ("**Federal Arbitration Act**"), and ADRA., as each may be in effect at the time that the arbitration is initiated, except that the Commercial Arbitration Rules' Expedited Procedures shall not apply unless the FDIC Party and Claimant Party otherwise agree in writing. The Review Board (as defined below) may modify the procedures set forth in such rules from time to time with the prior written approval of the Claimant Party and the Respondent Party.

7.10. Review Board Proceedings. The arbitration of a dispute shall be conducted by a review board (a "**Review Board**") which shall consist of either one (1) or three (3) members (each, a "**Member**") with such expertise as the Claimant Party and Respondent Party agree is relevant. The Claimant Party shall specify, in its Notice of Dispute, the number of Members which it proposes for the Review Board.

(a) Selection of Members.

(i) Claimant Party Proposes One Member. If the Dispute Item(s) are less than \$500,000 in total, the Claimant Party may propose that the Review Board shall consist of one Member, and shall state, in its Notice of Dispute, the name and address of the Member that it proposes for the Review Board. If the Respondent Party agrees, in its response to the Notice of Dispute, the Member suggested by the Claimant Party shall comprise the Review Board. If the Respondent Party agrees, in its response to the Notice of Dispute, that the Review Board shall consist of one Member, but states the name and address of a different proposed Member for the Review Board, then that Member shall be deemed acceptable to the Claimant Party if it submits the Notice of Dispute to the Arbitration Administrator, provided that, before the Respondent Party responds to the Notice of Dispute with a different proposed Member, the parties may also mutually agree upon one Member. If the Respondent Party proposes that the Review Board shall consist of three Members, then the Members shall be selected in accordance with Section 7.10(a)(iv).

(ii) Claimant Party Proposes Three Members. If the Dispute Items exceed \$500,000 in total, or if the Respondent Party proposes that the Review Board shall consist of three Members, then the Claimant Party shall state the name and address of the first of three Members in its Notice of Dispute. If the Respondent Party agrees that the Review Board shall consist of three Members, the Respondent Party shall state the name and address of the second Member in its response to the Notice of Dispute. Each such Member shall be considered a "Party-Appointed Arbitrator" ("**Party-Appointed Arbitrator**"), consistent with Commercial Arbitration Rule R-12. If the Claimant Party subsequently submits the Notice of Dispute to the Arbitration Administrator as provided in Section 7.6(c), then within ten (10) Business Days of such submission, the Party-Appointed Arbitrators shall select a neutral third Member (the "**Neutral Member**") in accordance with Commercial Arbitration Rules R-11 and R-13, except that the Neutral

Member need not be from the National Roster of Commercial Arbitrators. If the Respondent Party proposes that the Review Board shall consist of one Member, then the Member shall be selected in accordance with Section 7.10(a)(iii).

(iii) Respondent Party Proposes One Member. If the Claimant Party proposes that the Review Board shall consist of three Members, but the Respondent Party proposes that the Review Board shall consist of one Member in its response to the Notice of Dispute, then the Member proposed by the Claimant Party in the Notice of Dispute shall comprise the Review Board unless the Respondent Party states the name and address of a different proposed Member in its response to the Notice of Dispute. If the Respondent Party proposes a different Member in its response to the Notice of Dispute, then that Member shall be deemed acceptable to the Claimant Party if it submits the Notice of Dispute to the Arbitration Administrator.

(iv) Respondent Party Proposes Three Members. If the Claimant Party proposes that the Review Board shall consist of one Member, but the Respondent Party proposes, in its response to the Notice of Dispute, that the Review Board shall consist of three Members, then the Member proposed by the Claimant Party in the Notice of Dispute shall comprise the first Member of the Review Board. The Respondent Party shall state the name and address of the second Member in its response to the Notice of Dispute. Each such Member shall be considered a Party-Appointed Arbitrator. If the Claimant Party subsequently submits the Notice of Dispute to the Arbitration Administrator, a Neutral Member shall be selected in accordance with the procedure set forth in Section 7.10(a)(ii).

(b) Removal of Members. A Party-Appointed Arbitrator may be removed at any time by the party who appointed that Member upon five (5) Business Days notice to the other party of the selection of a replacement Member. The Neutral Member may be removed by unanimous action of the Party-Appointed Arbitrators or unanimous action of the parties after five (5) Business Days notice to the Claimant Party and the Respondent Party and the Arbitration Administrator of the selection of a replacement Neutral Member.

(c) Vacancies. Any vacancy on the Review Board prior to or after the commencement of the hearing of evidence and argument (the "Arbitration Hearing") shall be handled in accordance with Commercial Arbitration Rule R-19, except that if a vacancy arises after the Arbitration Hearing has commenced, a substitute Member shall be selected in accordance with the rules under which the original Member was selected.

7.11. Impartiality. As a condition of serving on the Review Board, within five (5) Business Days after being selected, each Member shall provide a written oath, under penalty of perjury, containing a statement that the Member does not have any conflicts of interest (whether official, financial, personal or otherwise) with respect to the issues or parties in controversy, and that each Member agrees to be bound by the provisions of this Article 7 as applicable to the Members. If a Member has any potential conflict of interest, the Member shall fully disclose such interest in writing to the Claimant Party and the Respondent Party and the Member shall not serve on the Review Board, unless the Claimant Party and the Respondent Party agree otherwise. The Conflicts Committee of the Legal Division of the Corporation shall review any potential

conflicts of interest for potential waiver. None of the Members may serve as counsel, advisor, witness or representative to any party to the arbitration.

7.12. Schedule. The Review Board shall assume control of the arbitration process and shall schedule all events as expeditiously as possible. The Arbitration Hearing shall commence within ninety (90) Business Days after receipt of the Notice of Dispute by the Arbitration Administrator.

7.13. Written Award. Within twenty (20) Business Days following closing of the Arbitration Hearing, as determined by Commercial Arbitration Rule R-35, the Review Board shall determine the prevailing party and award the prevailing party its proposed award/award any remedy or relief that the arbitrator deems just and equitable and within the scope of this Article 7, but in no event may an award of the Review Board (inclusive of all claims and counterclaims) exceed the maximum amount set forth in Section 7.6(a) of this Agreement. If the Review Board consists of three (3) Members, the determination of any two (2) Members shall constitute the Review Board's determination. The Review Board shall present to the Claimant Party and the Respondent Party a written award regarding the dispute. The written award shall contain a brief, informal discussion of the factual and legal basis for the award and need not contain formal findings of facts and law.

7.14. Interest Rate on Award. Any award amounts ultimately determined to be payable pursuant to the Review Board's written award shall bear interest at the Settlement Interest Rate from a beginning date specified by the Review Board in its written award and until the date on which payment is made.

7.15. Payments. All payments required to be made under this Article 7 shall be made by wire transfer and within fifteen (15) Business Days following the date on which the award becomes final, as provided by ADRA at § 580(b). The Review Board will have no authority to award any punitive, consequential, special or exemplary damages.

7.16. Fees, Costs and Expenses. The Review Board will have no authority to award attorneys' fees or costs incurred by either party to the arbitration. Each party will bear the fees, costs, and expenses which it incurs in connection with the submission of any dispute to a Review Board, including the fees and expenses of the Member which it selected in accordance with the Arbitration Administrator's fee-schedule. The Claimant Party and the Respondent Party will share equally the fees and expenses of the Neutral Member and any administrative fees of the arbitration (which shall not include the fees and expenses of the Members). No fees, costs or expenses incurred by or on behalf of the Assuming Institution shall be subject to reimbursement by the Receiver under this Article 7 or otherwise.

7.17. Binding and Conclusive Nature. Arbitration of a dispute pursuant to this Article 7 shall be final, conclusive and binding on the parties and not subject to further dispute or review, and judgment upon the award made by the Review Board may be entered in accordance with applicable law in any court having jurisdiction thereof. Other than as provided by the Federal Arbitration Act and ADRA, no review, appeal or reconsideration of the Review Board's determination shall be permitted, including review, appeal or reconsideration by the Review Board or any other arbitrators. The parties agree to faithfully observe the provisions of this

Article 7 and the Commercial Arbitration Rules, and the parties agree to abide by and perform any award rendered by the Review Board.

7.18. No Precedent. No decision, interpretation, determination, analysis, statement, award or other pronouncement of a Review Board shall constitute precedent in regard to any subsequent proceeding (whether or not such proceeding involves dispute resolution under this Agreement), nor shall any Review Board be bound to follow any decision, interpretation, determination, analysis, statement, award or other pronouncement rendered by any previous Review Board or any other previous dispute resolution panel that may have convened in connection with a transaction involving other failed financial institutions or Federal assistance transactions.

7.19. Confidentiality: Proceedings, Information and Documents. No arbitration held pursuant to this Article 7 shall be public or accessible to any person other than the parties and their representatives, the Review Board and witnesses participating in the arbitration (and then, only to the extent of their participation). Each party and each Member shall strictly maintain the confidentiality of all issues, disputes, arguments, positions and interpretations of any such proceeding, as well as all testimony, pleadings, filings, discovery, information, attachments, enclosures, exhibits, summaries, compilations, studies, analyses, notes, documents, statements, schedules and other similar items associated therewith ("**Confidential Information**"), in accordance with the provisions of ADRA. In the event that disclosure of Confidential Information is required pursuant to law, rule or regulation, or in the event that disclosure is required pursuant to statute or court determination as provided by ADRA, then to the extent reasonably practicable, the person required to make the disclosure shall provide the other party or parties with written notice of such disclosure within one (1) Business Day following the request that it make such disclosure, and in any event prior to making such disclosure, so that the other party or parties may seek a protective order.

7.20. Confidentiality of Arbitration Award. Notwithstanding the provisions of Section 7.19, no party has any duty of confidentiality with respect to any arbitration award made pursuant to this Article 7.

7.21. Extension of Time Periods. The parties may extend any period of time provided in this Article 7 by mutual agreement.

7.22. Venue. The arbitration shall take place at such location as the parties thereto may mutually agree, but if they cannot agree, then it will take place at the offices of the Corporation in Washington, D.C., or Arlington, Virginia.

ARTICLE 8. DEFINITIONS. The capitalized terms used in this Agreement have the meanings defined or referenced in this Article 8.

"AAA" has the meaning set forth in Section 7.6(c).

"Accounting Records" means Records including, but not limited to, corporate minutes, general ledger and subsidiary ledgers and schedules which support general ledger balances.

"Accrued Interest" means, for any Shared-Loss Loan, Permitted Advance or Shared-

Loss Loan Commitment Advance at any time, the amount of accrued earned and unpaid interest, taxes, credit life and/or disability insurance premiums (if any) payable by the Obligor, all as reflected on the Accounting Records of the Failed Bank or the Assuming Institution (as applicable), but excluding any amount accrued after the applicable Asset has been placed on non-accrual or nonperforming status by either the Failed Bank or the Assuming Institution (as applicable), for no more than a maximum of ninety (90) days.

"Additional ORE" means Shared-Loss Loans that become ORE after the Bank Closing Date.

"ADRA" has the meaning set forth in Section 7.3.

"Affiliate" has the meaning set forth in the Purchase and Assumption Agreement; provided that, for purposes of this Agreement, no Third Party Servicer appointed by an Affiliate shall be deemed to be an Affiliate of the Assuming Institution solely by virtue of that appointment.

"Agreement" has the meaning set forth in Recital A.

"Applicable Percentage" is eighty percent 80% for the Tranche 1 Amount, zero percent 0 % for the Tranche 2 Amount and sixty percent 60% for the Tranche 3 Amount.

"Arbitration Administrator" has the meaning set forth in Section 7.6(f).

"Arbitration Hearing" has the meaning set forth in Section 7.10(a)(iii).

"Assets" has the meaning set forth in the Purchase and Assumption Agreement.

"Assuming Institution" has the meaning set forth in the Purchase and Assumption Agreement.

"Bank Closing Date" has the meaning set forth in the Purchase and Assumption Agreement.

"Bank Premises" has the meaning set forth in the Purchase and Assumption Agreement.

"Bid Valuation Date" has the meaning set forth in the Purchase and Assumption Agreement.

"Book Value" has the meaning set forth in the Purchase and Assumption Agreement.

"Business Day" has the meaning set forth in the Purchase and Assumption Agreement.

"Calendar Quarter" means a period of three months in any year, commencing on the first day of each January, April, July or October, and each successive three-month period thereafter, except that the first such period shall commence on the Commencement Date and end on the last day of March, June, September or December, whichever is the first to occur after the Commencement Date.

"Capitalized Expenditures" means those expenditures that (a) would be capitalized

under generally accepted accounting principles and (b) are incurred with respect to Shared-Loss Loans, ORE, Additional ORE or Subsidiary ORE, but excluding expenses related to environmental conditions including, but not limited to, remediation, storage or disposal of any hazardous or toxic substances or any pollutant or contaminant.

"Charge-Off" means, for any period with respect to a particular Shared-Loss Asset, the amount of a loan or portion of a loan classified as "Loss" under the Examination Criteria as effected by the Assuming Institution and reflected on its Accounting Records for such period, consisting solely of a charge-off of the following:

- (a) the principal amount of such Shared-Loss Asset net of unearned interest;
- (b) a write-down associated with Shared-Loss Assets, ORE or Additional ORE or loan modification(s);
- (c) Accrued Interest for no more than a maximum of ninety (90) days; plus
- (d) Capitalized Expenditures.

No Charge-Off shall be taken with respect to any anticipated expenditure by the Assuming Institution until such expenditure is actually incurred.

Losses incurred on the sale or other disposition of Shared-Loss Assets to any Person shall not constitute Charge-Offs except for: (i) sales duly conducted in accordance with the provisions of Sections 4.1(a) and 4.1(b), (ii) the sale or other disposition of ORE or Additional ORE to a Person other than an Affiliate of the Assuming Institution which was conducted in a commercially reasonable and prudent manner and (iii) other sales or dispositions, if any, with respect to which the Receiver granted prior consent.

"Chartering Authority" has the meaning set forth in the Purchase and Assumption Agreement.

"Claimant Party" has the meaning set forth in Section 7.6(a).

"Commencement Date" means the first day following the Bank Closing Date.

"Commercial Arbitration Rules" has the meaning set forth in Section 7.9.

"Commitment" has the meaning set forth in the Purchase and Assumption Agreement.

"Confidential Information" has the meaning set forth in Section 7.19.

"Consumer Loans" means loans to individuals for household, family and other personal expenditures, that are not secured by real estate, including but not limited to loans for (a) purchase of private automobiles, pickup trucks, household appliances, furniture, trailers and boats; (b) repairs or improvements to a borrower's residence; (c) educational expenses, including student loans, whether or not guaranteed by the United States or any state; (d) medical expenses; (e) taxes; (f) vacations; (g) personal (non-business) debt consolidation; and (h) purchase of a mobile home to be used as a residence which is not combined with real property. Consumer Loans may be installment loans, demand loans or single payment time loans, regardless of size

or maturity and regardless of whether the loans are made by the consumer loan department or by any other department of the Failed Bank. Consumer Loans also include retail installment sales paper purchased by the Failed Bank from merchants or dealers, finance companies and others and extensions of credit pursuant to a credit card plan or debit card plan.

"Corporation" has the meaning set forth in the Purchase and Assumption Agreement.

"Covered Gain" has the meaning set forth in Section 2.3(b).

"Covered Loss" has the meaning set forth in Section 2.3(a).

"Credit File" has the meaning set forth in the Purchase and Assumption Agreement.

"Dispute Item" has the meaning set forth in Section 7.1(b).

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

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

"Failed Bank" has the meaning set forth in the Purchase and Assumption Agreement.

"Failed Bank Charge-Offs" means, with respect to any Asset, an amount equal to the aggregate reversals or charge-offs of Accrued Interest and charge-offs and write-downs of principal effected by the Failed Bank with respect to that Asset as reflected on the Accounting Records of the Failed Bank, excluding any Fully-Charged-Off Assets.

"Federal Arbitration Act" has the meaning set forward in Section 7.9.

"Final Recovery Certificate" means the Quarterly Certificate for the final Recovery Quarter.

"Fixtures" has the meaning set forth in the Purchase and Assumption Agreement.

"FDIC" means the Federal Deposit Insurance Corporation, in any capacity, as appropriate.

"FDIC Party" has the meaning set forth in Section 7.2.

"Fully Charged-Off Assets" means Assets subject to Failed Bank Charge-Offs that were completely charged-off by the Failed Bank prior to the Bid Valuation Date.

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

"Investment in Subsidiary" means the amount of the Failed Bank's direct and indirect investment in a Shared-Loss Subsidiary, including any amounts due from that Shared-Loss

Subsidiary to the Failed Bank that were acquired by the Assuming Institution, calculated as of the Commencement Date.

"Intrinsic Loss Estimate" is seventy million, one-hundred seventy-seven thousand, seven hundred twenty-eight dollars (\$ 70,177,728).

"Legal Balance" has the meaning set forth in the Purchase and Assumption Agreement.

"Loan" has the meaning set forth in the Purchase and Assumption Agreement.

"Management Standards" has the meaning set forth in Section 3.1.

"Member" has the meaning set forth in Section 7.10.

"Net Loss Amount" means the sum of all Covered Losses less all Covered Gains and, if the Purchase and Assumption Agreement includes a Single Family Agreement, the Cumulative Loss Amount under and as defined in the Single Family Agreement.

"Net ORE Income" means the extent to which aggregate ORE Income exceeds ORE Expenses, as described in Section 2.9(g)(i) or (ii), as appropriate.

"Net ORE Loss Carryforward" means the amount of any ORE Income in any Recovery Quarter that is a negative number.

"Net Recoveries" has the meaning set forth in Section 2.4(c).

"Neutral Member" has the meaning set forth in Section 7.10(a)(ii).

"New Shared-Loss Loans" means loans that would otherwise be subject to loss sharing under this Agreement that were originated after the Bid Valuation Date and before the Bank Closing Date.

"Notice of Dispute" has the meaning set forth in Section 7.3.

"Obligor" has the meaning set forth in the Purchase and Assumption Agreement.

"ORE" means the following that (a) are owned by the Failed Bank as of the Bank Closing Date and purchased pursuant to the Purchase and Assumption Agreement or (b) have been acquired subsequent to the Bank Closing Date from the collection or settlement by the Assuming Institution of a Shared-Loss Loan, including, without limitation, any assets which have been fully or partially charged-off on the books and records of the Failed Bank or the Assuming Institution, excluding however any of the following that is ORE resulting from the foreclosure of a Loan insured or guaranteed by any department or agency of any federal, state or local governmental unit:

(a) interests in real estate (other than Bank Premises and Fixtures), including but not limited to mineral rights, leasehold rights, condominium and cooperative interests, air rights and development rights; and

(b) other assets (whether real property, furniture, fixtures or equipment and, at the option of the Receiver, other personal property) acquired by foreclosure of ORE or in full or partial satisfaction of judgments or indebtedness.

"ORE Expenses" means the aggregate expenses paid to third parties by or on behalf of the Assuming Institution after the final Shared-Loss Quarter to manage, operate and maintain ORE, Additional ORE and Subsidiary ORE, which may include property taxes, insurance and sales commissions, provided that such commissions are of an amount customary for the type and location of the asset.

"ORE Income" means income received by or on behalf of the Assuming Institution or its Affiliate(s) from the operation, and any gains recognized by the Assuming Institution on the disposition, of ORE, Additional ORE and Subsidiary ORE.

"Party-Appointed Arbitrator" has the meaning set forth in Section 7.10(a)(ii).

"Permitted Advance" has the meaning set forth in Section 2.8(a).

"Permitted Amendment" has the meaning set forth in Section 2.8(b).

"Person" has the meaning set forth in the Purchase and Assumption Agreement.

"Purchase and Assumption Agreement" has the meaning set forth in Recital A.

"Quarterly Certificate" means a certificate or certificates, signed by an officer of the Assuming Institution involved in, or responsible for, the administration and servicing of the Shared-Loss Assets, whose name appears on a list provided to the Receiver (as updated by the Assuming Institution as needed from time to time) of servicing officers and the related supporting documentation setting forth in such form and detail as the Receiver may specify from time to time the items listed at Section 5.2(a), in the form set forth in Exhibit 5.2 and delivered as set forth in Article 5 of this Agreement.

"Receiver" has the meaning set forth in the Purchase and Assumption Agreement.

"Record" has the meaning set forth in the Purchase and Assumption Agreement.

"Recovery" has the meaning set forth in Section 2.9.

"Recovery Quarter" means a Calendar Quarter commencing with and including the first Calendar Quarter following the final Shared-Loss Quarter and ending on the Termination Date.

"Reimbursable Expenses" has the meaning set forth in Section 2.7(a).

"Related Liability" has the meaning set forth in the Purchase and Assumption Agreement.

"Related Liability Amount" has the meaning set forth in the Purchase and Assumption Agreement.

"Related Loan" means a loan or extension of credit held by the Assuming Institution at

any time on or prior to the end of the final Recovery Quarter that is:

(a) made to the same Obligor with respect to a Loan that is a Shared-Loss Asset or with respect to a Loan from which ORE, Additional ORE or Subsidiary ORE derived; or

(b) attributable to the same primary Obligor with respect to any Loan described at paragraph (a) under the applicable rules of the Assuming Institution's Chartering Authority concerning the legal lending limits of financial institutions organized under its jurisdiction as in effect on the Commencement Date.

"Respondent Party" has the meaning set forth in Section 7.6(b).

"Review Board" has the meaning set forth in Section 7.10.

"Settlement Interest Rate" has the meaning set forth in the Purchase and Assumption Agreement.

"Shared-Loss Assets" means Shared-Loss Loans, Subsidiary Shared-Loss Loans, ORE, Additional ORE, Subsidiary ORE and Capitalized Expenditures.

"Shared-Loss Loan Commitment" means (a) a Commitment to make a further extension of credit or a further advance with respect to an existing Shared-Loss Loan or (b) a Shared-Loss Loan in respect of which the Assuming Institution has made a Permitted Amendment.

"Shared-Loss Loan Commitment Advance" means an advance pursuant to a Shared-Loss Loan Commitment with respect to which the Assuming Institution has not made a Permitted Advance.

"Shared-Loss Loans" means the following:

(a) Loans purchased by the Assuming Institution pursuant to the Purchase and Assumption Agreement set forth on Schedule 4.15B thereto;

(b) New Shared-Loss Loans purchased by the Assuming Institution pursuant to the Purchase and Assumption Agreement;

(c) Permitted Advances;

(d) Shared-Loss Loan Commitment Advances, if any; and

(e) Shared-Loss Loans (as described at paragraphs (b) through (d) above) with respect to which the Assuming Institution has made a Permitted Amendment;

but does not include:

(i) Consumer Loans;

(ii) Loans, New Shared-Loss Loans, Permitted Advances or Shared-Loss Loan Commitment Advances with respect to which a Shared-Loss

Subsidiary is an Obligor; or

(iii) any Loan that is insured or guaranteed by any department or agency of any federal, state or local governmental unit.

“Shared-Loss Quarter” means a Calendar Quarter commencing with the initial Calendar Quarter and ending with and including the Calendar Quarter in which the fifth (5th) anniversary of the Commencement Date occurs.

“Shared-Loss Subsidiary” and “Shared-Loss Subsidiaries” mean the Subsidiary or Subsidiaries, if any, listed on Schedule 4.15D, as applicable.

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

“Single Family Agreement” means, if any, the Single Family Shared-Loss Agreement and the Exhibits thereto attached as Exhibit 4.15A to the Purchase and Assumption Agreement and entered into of even date with this Agreement among the Receiver, the Corporation and the Assuming Institution.

“Subsidiary” has the meaning set forth in the Purchase and Assumption Agreement.

“Subsidiary ORE” means ORE listed on Schedule 4.15D and owned by the Shared-Loss Subsidiary identified on that Schedule 4.15D as the owner of such ORE.

“Subsidiary Shared-Loss Loans” means Shared-Loss Loans listed on Schedule 4.15D owned by the Shared-Loss Subsidiary identified on that Schedule 4.15D as the owner of such Shared-Loss Loans.

“Termination Date” means the last day of the Calendar Quarter in which the eighth (8th) anniversary of the Commencement Date occurs.

“Third Party Servicer” means any servicer appointed from time to time by the Assuming Institution, which may include an Affiliate of the Assuming Institution, to service the Shared-Loss Assets on behalf of the Assuming Institution.

“Tranche 1 Amount” means a Net Loss Amount up to and including fifty-four million, nine hundred ninety-nine thousand, nine hundred ninety-nine dollars (\$54,999,999).

“Tranche 2 Amount” means a Net Loss Amount in excess of the Tranche 1 Amount up to and including sixty-five million dollars (\$65,000,000).

“Tranche 3 Amount” means a Net Loss Amount in excess of the Tranche 2 Amount.

“True-Up Date” means the date which is forty-five (45) days after the latest to occur of the Termination Date of this Agreement, the Termination Date of the Single Family Agreement, if applicable, or disposition of all Assets pursuant to this Agreement or the Single Family Agreement, if applicable.

EXHIBIT 2.5TRUE-UP

Pursuant to Section 2.5 of this Agreement, the following calculation applies to determine any payment due by the Assuming Institution to the Receiver on the True-Up Date. All capitalized terms used in this Exhibit 2.5 have the meanings defined or referenced in Article 8 of this Agreement.

$$X = \frac{A-(B+C+D)}{2}$$

Where:

X = the amount payable to the Receiver pursuant to Section 2.5

A = 20% of the Intrinsic Loss Estimate

B = 20% of the Net Loss Amount

C = 25% of the Asset discount bid, expressed in dollars, of total Shared-Loss Assets on Schedules 4.15A and 4.15B as of the Bank Closing Date

D = 3.5% of total Shared-Loss Assets on Schedules 4.15A and 4.15B as of the Bank Closing Date

EXHIBIT 2.7EXCLUSION FROM REIMBURSABLE EXPENSES

Pursuant to Section 2.7(b)(iii) of this Agreement, the following calculation applies to determine the proportion of the expense attributable, for financial accounting purposes, to the reduction of the Book Value of a Shared-Loss Loan which may not be included as a Permitted Expense. All capitalized terms used in this Exhibit 2.7 have the meanings defined or referenced in Article 8 of this Agreement.

$$X = E \times \frac{[1 - (A+B+C)]}{(A+B+D)}$$

Where:

X = the proportion of expense not allowed as a Permitted Expense pursuant to Section 2.7(b)(iii)

A = the total amount of all Failed Bank Charge-Offs of principal on the Shared-Loss Loan (excluding reversals or charge-offs of Accrued Interest)

B = the total of all Charge-Offs effected by the Assuming Institution of principal on the Shared-Loss Loan amount (excluding reversals or charge-offs of Accrued Interest).

C = the amount of principal on the Shared-Loss Loan that has not yet been charged-off but has been placed on non-accrual status, all of which occurred during the period in which the expenses represented by E were recognized

D = the total amount of principal indebtedness due from the Obligor on the Shared-Loss Loan after any amendment, modification, renewal, extension, refinance, restructure, commitment, sale or other similar action

E = the portion of the expense attributable, for financial accounting purposes, to the reduction of the Book Value of the Shared-Loss Loan

However, in the event that the portion derived from the calculation represented by:

$$\frac{[1 - (A+B+C)]}{(A+B+D)}$$

is a negative number, the value of: $\frac{(A+B+C)}{(A+B+D)}$

shall be deemed to be 1 and accordingly the value of X shall be zero.

EXHIBIT 2.9INTEREST INCOME AS A RECOVERY

Pursuant to Section 2.9(d) of this Agreement, the following calculation applies to determine the proportion of interest income recognized by the Assuming Institution for financial accounting purposes with respect to a Shared-Loss Loan which may be included as a Recovery subject to the limit in Section 2.9(e). All capitalized terms used in this Exhibit 2.9 have the meanings defined or referenced in Article 8 of this Agreement.

$$X = ((A + B + C) / D) * E$$

Where:

X = the allowable proportion of interest income recognized by the Assuming Institution on the Shared-Loss Loan pursuant to Section 2.9(d) provided that such portion may not exceed one hundred percent (100%) of E.

A = the total amount of all Failed Bank Charge-Offs of principal on the Shared-Loss Loan (excluding reversals or charge-offs of Accrued Interest)

B = the total amount of all Charge-Offs effected by the Assuming Institution of principal on the Shared-Loss Loan (excluding reversals or charge-offs of Accrued Interest)

C = the amount of principal on the Shared-Loss Loan that has not yet been charged-off but has been placed on non-accrual status, all of which occurred at any time prior to or during the period in which the interest income represented by E was recognized

D = the total amount of principal indebtedness (including all Failed Bank Charge-Offs and Charge-Offs as described at A and B) due from the Obligor on the Shared-Loss Loan after any amendment, modification, renewal, extension, refinance, restructure, commitment, sale or other similar action

E = the total amount of interest income recognized by the Assuming Institution for financial accounting purposes with respect to the Shared-Loss Loan

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Section 1: Payment Summary
For Commercial and Other
Shared Loss Agreement

FDIC as Receiver of
Fund No:
Purchase and Assumption Agreement Dated:
Beginning of this Shared Loss Period:
End of this Shared Loss Period:

FDIC completes
4899
date
3/31/2010
6/30/2010

For Commercial and Other Shared Loss Agreement

1. This FDIC as Receiver of Fund No. 4899 is a commercial bank.
2. The purchase and assumption agreement dated 3/31/2010 between
FDIC and the FDIC as Receiver of Fund No. 4899 is a commercial bank.
3. The purchase and assumption agreement dated 3/31/2010 between
FDIC and the FDIC as Receiver of Fund No. 4899 is a commercial bank.

Yes
No

1. The purchase and assumption agreement dated 3/31/2010 between
FDIC and the FDIC as Receiver of Fund No. 4899 is a commercial bank.
2. The purchase and assumption agreement dated 3/31/2010 between
FDIC and the FDIC as Receiver of Fund No. 4899 is a commercial bank.

This section calculates covered losses during this period:

1. The purchase and assumption agreement dated 3/31/2010 between
FDIC and the FDIC as Receiver of Fund No. 4899 is a commercial bank.
2. The purchase and assumption agreement dated 3/31/2010 between
FDIC and the FDIC as Receiver of Fund No. 4899 is a commercial bank.

This section calculates the principal amount:

1. The purchase and assumption agreement dated 3/31/2010 between
FDIC and the FDIC as Receiver of Fund No. 4899 is a commercial bank.
2. The purchase and assumption agreement dated 3/31/2010 between
FDIC and the FDIC as Receiver of Fund No. 4899 is a commercial bank.

All Previous Certificates	This Certificate	Inception to Date
0	0	0
0	0	0
0	0	0

1st Tranche (First Loss Tranche)	2nd Tranche (Below Stated Threshold)	3rd Tranche (Above Stated Threshold)	Recoveries from Fully Charged Off Assets at Close (Not applicable)	Total Due from (to) FDIC
100	200	n/a	50%	
0	50%	95%		
	n/a	n/a		

This section contains wiring instructions of intergovernment payment and collection:

9-Digit ABA Number:
Account Number:
Account Name:
Further Credit Account:
Further Credit Name:
CEI

Preparer signature: X

Preparer name:

Officer signature: X

Officer name:

Officer title:

Bank Name:

Bank Address:

EXHIBIT 5.2



Section 2: Quarterly Summary
For Commercial and Other
Shared Loss Agreement

FDIC as Receiver of: FDIC completes
Fund No: 9999
Purchase and Assumption Agreement Dated: date
Beginning of this Shared-Loss Period: 3/31/2010
End of this Shared-Loss Period: 6/30/2010

PART A: Opening/Closing/Not Shared-Loss Asset Balances	Cumulative at beg of Quarter	This Quarter						
		Commercial Real Estate Loans		C & I Loans	ORE & other assets	Consumer Loans	Other Loans	Investment in Subs
		Contr & Dev	Other					
1. Opening Balance	0	0	0	0	0	0	0	0
2. Additions: a) Transfers	0	0	0	0	0	0	0	0
b) Receivable sales	0	0	0	0	0	0	0	0
c) Assets dropped from loss share	0	0	0	0	0	0	0	0
d) Other	0	0	0	0	0	0	0	0
3. Adjusted Opening Balance	0	0	0	0	0	0	0	0
4. Add: a) Assumed Commitment Advances	0	0	0	0	0	0	0	0
b) Permitted Advances	0	0	0	0	0	0	0	0
c) Capitalized Expenses	0	0	0	0	0	0	0	0
5. Less: a) Pay Collections (amort/prepayments)	0	0	0	0	0	0	0	0
b) Paid in full	0	0	0	0	0	0	0	0
c) Sales (including or non-qualifying)	0	0	0	0	0	0	0	0
d) Charge-Offs (excluding other net)	0	0	0	0	0	0	0	0
e) Qualifying loss on sales	0	0	0	0	0	0	0	0
6. Net (Reduction)/Increase Amount	0	0	0	0	0	0	0	0
7. Closing Balance	0	0	0	0	0	0	0	0
PART B: Charge-Offs, Recoveries & Reimbursable Expenses								
8. Charge-Offs: a) Principal (Item 5d and 5e)	0	0	0	0	0	0	0	0
b) Accrual (up to 90 days)	0	0	0	0	0	0	0	0
9. Total Charge-Offs	0	0	0	0	0	0	0	0
10. Less: a) Recoveries from Fully CO Assets*	0	0	0	0	0	0	0	0
b) Other Recoveries	0	0	0	0	0	0	0	0
11. Net Charge-Offs (Recoveries)	0	0	0	0	0	0	0	0
12. Add: a) Reimb. Exp from Fully CO Assets*	0	0	0	0	0	0	0	0
b) Other Reimbursable Expenses	0	0	0	0	0	0	0	0
13. Less: Closing Income	0	0	0	0	0	0	0	0
14. Total Covered Loss (Gain) Amount	0	0	0	0	0	0	0	0
Memoranda:								
15. Gross Recoveries to be paid								
16. Gross Recoveries from Fully Charged Off Assets this period*								
17. Total number of assets under loss share								

* as of the beginning of the last shared-loss period.

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Section 3: Quarterly Summary
For Commercial and Other
Shared Loss Agreement

FDIC as Receiver of:
Fund No:
Purchase and Assumption Agreement Dated:
Beginning of this Shared-Loss Period:
End of this Shared-Loss Period:

FDIC completes
###
date
3/31/2010
6/30/2010

Number of Loans / Properties

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

\$ Balance (000s)

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

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

Note: investments in subsidiaries are excluded.

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Certificate - Section 3
Quarterly Performance Status Summary
For Commercial and Other Shared Loss Loans

FDIC as Receiver of: FDIC completes
 Fund No: FDIC completes 10xxx
 Purchase and Assumption Agreement Dated: FDIC completes
 Beginning of Shared-Loss Period: date1
 End of Shared-Loss Period: date2

Number of Loans / Properties

	Performing	Delinquent			In Foreclosure	Repossessioned Assets *	Total Non- Accrual Loans	Total	Δ± Since Last Quarter
		30-59 days	60-89 days	90+ days					
Construction & Development	0	0	0	0	0	0	0	0	0
Other Comm Real Estate	0	0	0	0	0	0	0	0	0
Total Comm Real Estate	0	0	0	0	0	0	0	0	0
C&I	0	0	0	0	0	0	0	0	0
Consumer Loans	0	0	0	0	0	0	0	0	0
Other Loans	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	0

\$ Balance (000s)

	Performing	Delinquent			In foreclosure	Repossessioned Assets *	Total Non- Accrual Loans	Total	Δ± Since Last Quarter
		30-59 days	60-89 days	90+ days					
Construction & Development	0	0	0	0	0	0	0	0	0
Other Comm Real Estate	0	0	0	0	0	0	0	0	0
Total Comm Real Estate	0	0	0	0	0	0	0	0	0
C&I	0	0	0	0	0	0	0	0	0
Consumer Loans	0	0	0	0	0	0	0	0	0
Other Loans	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	0

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

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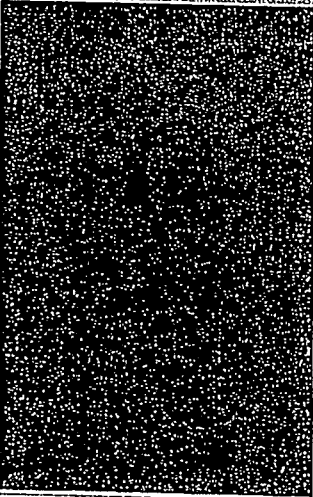
SCHEDULE 4.15B

LOANS SUBJECT TO LOSS SHARING UNDER THE
COMMERCIAL SHARED-LOSS AGREEMENT

SCHEDULE 4.15D

SHARED-LOSS SUBSIDIARIES

NONE

Schedule 4.15 B (Non-Single Family) Asset Detail: 10438 - PLANTATION FEDERAL BANK					
ASSET ID	BANK HISTORICAL NUMBER	ASSET NAME	ASSET TYPE	ASSET SUBTYPE CODE	ASSET SUBTYPE DESCRIPTION
10438002792	8800031724000301		015	04402	C and I - Other Secured
10438002451	8800020446000101		030	02406	CRE - Other
10438002750	8800031468000101		030	02406	CRE - Other
10438003384	0-10438-350042		035	10005	Land
10438002842	8800025635000301		015	04402	C and I - Other Secured
10438000214	171217652		031	10348	Raw Land
10438000146	171214071		031	10348	Raw Land
10438003414	0-10438-350072		035	10005	Land
10438003346	0-10438-350004		035	10005	Land
10438002345	8800014647000101		030	02406	CRE - Other
10438003366	0-10438-350024		035	10001	Office
10438002774	8800031575000301		015	04402	C and I - Other Secured
10438003078	8800010330000103		015	04402	C and I - Other Secured
10438002471	8800023481000301		031	10348	Raw Land
10438000205	171217256		031	10348	Raw Land
10438000851	703035433		030	02406	CRE - Other
10438002687	8800024950000301		031	10348	Raw Land
10438002047	8800015941000102		031	10348	Raw Land
10438001882	8800011387000101		015	04402	C and I - Other Secured
10438002424	8800026443000301		030	02406	CRE - Other
10438002708	8800031278000101		030	02406	CRE - Other
10438001455	715022736		010	05416	C and I - Unsecured
10438000169	171214220		031	10348	Raw Land
10438003386	0-10438-350044	4108 Carolina Commercial Dr	035	10001	Office

Prepared by Clawson & Staubes, LLC, 126 Seven Farms Drive, Suite 200, Charleston, SC 29492

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY**

RECEIVER'S DEED

(Without Covenant, Representation or Warranty)

THIS RECEIVER'S DEED, made this 19th day of September, 2012, by and between **FEDERAL DEPOSIT INSURANCE CORPORATION**, as Receiver for **PLANTATION FEDERAL BANK** (hereinafter called "Grantor"), the said Plantation Federal Bank having been placed in receivership by the Office of the Commissioner of Banks of the State of South Carolina; and **FIRST FEDERAL BANK**, a South Carolina chartered commercial bank organized under the laws of the United States of America (hereinafter called "Grantee");

(Whether one or more persons, firms or corporations, the designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.)

WITNESSETH:

NOW, KNOW ALL MEN BY THESE PRESENTS, THAT for Five and No/100 Dollars (\$5.00) nominal consideration in hand paid to Grantor by Grantee, the receipt and sufficiency of which is hereby acknowledged, Grantor by these presents does hereby **GRANT, SELL AND CONVEY** to Grantee, without covenant, representation, or warranty of any kind or nature, express or implied, and any and all warranties that might arise by common law and any covenants or warranties created statute, as the same may be hereafter amended or superseded, are excluded, all of Grantor's right, right, title and interest in that certain property located in Horry County, South Carolina, more particularly described as follows:

That certain piece, parcel or tract of land situate and lying in Horry County, South Carolina and containing 0.866 acres, more or less, as shown and identified as "Lot 2, 37,740 Sq. Ft., 0.866 Acs," on a map entitled "Lot 2 Carolina Forest Commercial Center, Phase III for International Paper Realty Corporation" by ETS Engineering and Technical Service, dated October 18, 2005 and recorded in Plat Book 213 at Page 14, Register of Deeds for Horry County, South Carolina on April 7, 2006.

Being the same property conveyed to Plantation Federal Bank by deed of the Honorable Cynthia Graham Howe, Master in Equity for Horry County, dated March 9, 2010 and recorded on March 29, 2010 in Book 3452, Page 894 in the ROD Office for Horry County.

TMS # 162-30-01-034

Grantee's Address: P.O. Box 118068
Charleston, SC 29423

Together with all of Grantor's right, title and interest in any and all improvements and fixtures thereon and thereto (hereinafter collectively referred to as the "Subject Property"), and all and singular the rights and appurtenances pertaining thereto, including, but not limited to, any right title and interest of Grantor in and to adjacent streets, alleys or rights-of-way, subject however to all liens, exceptions, easements, rights-of-way, covenants, conditions, restrictions, reservations, encroachments, protrusions, shortages in area, boundary disputes and discrepancies, matters which could be discovered or would be revealed by, respectively, an inspection or current survey of the Subject Property, encumbrances, impositions (monetary and otherwise), access limitations, licenses, leases, prescriptive rights, rights of parties in possession, rights of tenants, co-tenants, or other co-owners, and any and all other matters or conditions affecting the Subject Property, as well as standby fees, real estate taxes, and assessments on the Subject Property for the current year and prior and subsequent taxes and assessments for prior years due to change in land usage or ownership, and any and all zoning laws, regulations, and ordinances of municipal and other governmental authorities affecting the Subject Property (all of the foregoing being collectively referred to as the "Permitted Encumbrances"). Grantee, by its execution and acceptance of delivery of this Receiver's Deed, assumes and agrees to perform all of Grantor's obligations under the Permitted Encumbrances.

FURTHER, GRANTEE, BY ITS EXECUTION AND ACCEPTANCE OF DELIVERY OF THIS RECEIVER'S DEED ACKNOWLEDGES AND AGREES THAT (i) GRANTOR HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, CONCERNING, OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY, OR CONDITION OF THE SUBJECT PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE SUBJECT PROPERTY, (C) THE SUITABILITY OF THE SUBJECT PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE SUBJECT PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE OWNERSHIP, TITLE, POSSESSION, HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SUBJECT PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE SUBJECT PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR, OR LACK OF REPAIR OF THE SUBJECT PROPERTY OR ANY PORTION THEREOF OR ANY IMPROVEMENTS THERETO, (H) THE EXISTENCE, QUALITY, NATURE, ADEQUACY, OR PHYSICAL CONDITION OF ANY UTILITIES SERVING THE SUBJECT PROPERTY, OR (I) ANY OTHER MATTER WITH RESPECT TO THE SUBJECT PROPERTY, AND SPECIFICALLY, THAT GRANTOR HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS, INCLUDING, WITHOUT ANY LIMITATION, THE DISPOSAL OR EXISTENCE, IN OR ON THE SUBJECT PROPERTY, OF ANY HAZARDOUS MATERIALS; (ii) GRANTEE HAS FULLY INSPECTED THE SUBJECT PROPERTY AND THAT THE CONVEYANCE AND

DELIVERY HEREUNDER OF THE SUBJECT PROPERTY IS "AS IS" AND "WITH ALL FAULTS", AND GRANTOR HAS NO OBLIGATION TO ALTER, REPAIR, OR IMPROVE THE

SUBJECT PROPERTY OR ANY PORTION THEREOF OR ANY IMPROVEMENTS THERETO; AND (iii) NO WARRANTY HAS ARISEN THROUGH TRADE, CUSTOM, OR COURSE OF DEALING WITH GRANTOR, AND ALL STATUORY, COMMON LAW, AND CUSTOMARY COVENANTS AND WARRANTIES, IF ANY, OR WHATEVER KIND, CHARACTER, NATURE, PURPOSE, OR EFFECT, WHETHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, ARE HEREBY EXPRESSLY, UNCONDITIONALLY, AND IRREVOCABLY WAIVED, DISCLAIMED, AND EXCLUDED FROM THIS RECEIVER'S DEED, NOTWITHSTANDING ANY CUSTOM OR PRACTICE TO THE CONTRARY, OR ANY STATUORY, COMMON LAW, DECISIONAL, HISTORICAL, OR CUSTOMARY MEANING, IMPLICATION, SIGNIFICANCE, EFFECT, OR USE OF CONTRARY IMPORT OR ANY WORD, TERM, PHRASE OR PROVISION HEREIN.

Further, by its execution and acceptance of delivery of this Receiver's Deed, Grantee or anyone claiming by, through, or under Grantee, hereby fully releases Grantor, its employees, officers, directors, representatives, and agents from any and all claims, costs, losses, liabilities, damages, expenses, demands, actions, or causes of action that it may now have or hereafter acquire, whether direct or indirect, known or unknown, suspected or unsuspected, liquidated or contingent, arising from or related to the Subject Property in any manner whatsoever. This covenant releasing Grantor shall be a covenant running with the Subject Property and shall be binding upon Grantee, its successors and assigns.

TO HAVE AND TO HOLD the Subject Property together with all and singular the rights and appurtenances thereto in any wise belonging, unto Grantee, its successors and assigns forever, **without covenant, representation, or warranty** whatsoever, **subject**, however, to the Permitted Encumbrances.

The fact that certain encumbrances, limitations, or other matters or conditions may be mentioned, disclaimed, or excepted in any way herein, whether specifically or generally, and whether in the body hereof or any exhibit hereto, shall not be a covenant, representation, or warranty of Grantor as to any encumbrances, limitation, or any other matters or conditions not mentioned, disclaimed, or excepted. Notwithstanding anything herein to the contrary, however, nothing herein shall be construed or deemed as an admission by Grantor or Grantee to any third party of the existence, validity, enforceability, scope, or location of any encumbrances, limitations, or other matters or conditions mentioned, disclaimed or excepted in any way herein, and nothing shall be construed or deemed as a waiver by Grantor or Grantee of its respective rights, if any, but without obligation, to challenge or enforce the existence, validity, enforceability, scope, or location of same against third parties.

Grantee hereby assumes the payment of all ad valorem taxes, standby fees, and general and special assessments of whatever kind and character affecting the Subject Property which are due, or which may become due, for any tax year or assessment period prior or subsequent to the effective date of this Receiver's Deed, including, without limitation, taxes or assessments becoming due by reason of a change in usage or ownership, or both, of the Subject Property.

This Receiver's Deed is executed pursuant to that certain Purchase and Assumption Agreement between Grantor and Grantee dated as of April 27, 2012.

IN WITNESS WHEREOF, this Receiver's Deed is executed by Grantor and Grantee on the dates set forth below their respective signatures herein below, but to be effective for all purposes, however, as of the date first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

GRANTOR:

Federal Deposit Insurance Corporation,
as Receiver for Plantation Federal Bank

[Signature]
Witness One

By: [Signature]

Donna M. Mant
Witness Two

Print Name: Sandy L. Petrowski
Its Attorney-in-Fact
By Power of Attorney recorded in Book 3589
at Page 2366

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

THE foregoing instrument was acknowledged before me by Federal Deposit Insurance Corporation, as Receiver for Plantation Federal Bank, by Sandy L. Petrowski, its Attorney in Fact, this 19th day of September, 2012.

Donna M. Mant (L.S.)
Notary Public for South Carolina
My Commission Expires: 8-9-2020



SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTEE:

First Federal Bank

[Signature]
Witness One

By: Deane L Gutrie
Print Name:
Title:

[Signature]
Witness Two

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

THE foregoing instrument was acknowledged before me by First Federal Bank, by Deane L Gutrie its SVP Collections, this 10th day of September, 2012.

Donna M Mund (L.S.)
Notary Public for South Carolina
My Commission Expires: 8.9.2020



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

Date of Transfer of Title
September __, 2012

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by Federal Deposit Insurance Corporation, as Receiver for Plantation Federal Bank to First Federal Bank on September __, 2012.
3. Check one of the following: The DEED is
 - (a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) X EXEMPT from the deed recording fee because (exemption #3 confirmatory transfer from FDIC-federal agency 12 USC § 1823).
(Explanation, if required _____)
(If exempt, please skip items 4-6, and go to item 7 of this affidavit)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) x The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$0.00
 - (b) ___ The fee is computed on the fair market value of the realty which is \$ _____.
 - (c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES ___ or NO ___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If yes, the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The DEED Recording Fee is computed as follows:
 - (A) \$0.00 the amount listed in item 4 above
 - (b) \$ _____ the amount listed in item 5 above (no amount place zero)
 - (c) \$0.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____.
8. Check if Property other than Real Property is being transferred to this Deed.
 - (a) ___ Mobile Home
 - (b) ___ Other
9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. In the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.
10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

First Federal Bank

BY:

Diane L. Guthrie

Its:

Diane L. Guthrie
SVP Collections

Sworn to before me this 19

day of September, 2012

Lonna Mizant (L.S.)

Notary Public for South Carolina

My Commission Expires: 8-9-2020



FDICNum	ACQUIRED BANK	FORMER BANK NUMBE	JH NUMBER	ORENum	Pool	Asset Type	Asset Name
10438000048	PFB	171206184	7100300293		NSF C&D		
10438000053	PFB	171206275	7100300308		NSF C&D		
10438000057	PFB	171206291	7100300316		NSF C&D		
10438000062	PFB	171206960	7100300324		NSF C&D		
10438000068	PFB	171207299	7100300332		NSF C&D		
10438000074	PFB	171209212	7100300340		NSF C&D		
10438000080	PFB	171210442	7100300358		NSF C&D		
10438000092	PFB	171210848	7100300374		NSF C&D		
10438000098	PFB	171210889	7100300382		NSF C&D		
10438000104	PFB	171211499	7100300390	10438000104	NSF C&D		
10438000110	PFB	171212141	7100300405		NSF C&D		
10438000116	PFB	171212448	7100300413		NSF C&D		
10438000121	PFB	171212828	7100300421		NSF C&D		
10438000127	PFB	171212893	7100300439		NSF C&D		
10438000134	PFB	171213339	7100300447		NSF C&D		
10438000140	PFB	171213800	7100300455	7100300455	NSF C&D		
10438000146	PFB	171214071	7100300463		NSF C&D		
10438000152	PFB	171214097	7100300471	7100300471	NSF C&D		
10438000158	PFB	171214139	7100300489		NSF C&D		
10438000164	PFB	171214154	7100300497		NSF C&D		
10438000169	PFB	171214220	7100300502		NSF C&D		
10438000174	PFB	171214634	7100300510		NSF C&D		
10438000181	PFB	171214972	7100300528		NSF C&D		
10438000187	PFB	171215011	7100300536		NSF C&D		
10438000193	PFB	171216209	7100300544		NSF C&D		
10438000199	PFB	171216340	7100300552		NSF C&D		
10438000205	PFB	171217256	7100300560		NSF C&D		
10438003386	PFB	0-10438-350044	9900001041	10438003386	NSF C&I	C&C DEVELOPMENT LLC	

TMS Number correct 1623001034

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

SPECIAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that First Federal Bank ("Grantor"), for and in consideration of the sum of One Hundred Twenty Eight Thousand and 00/100 Dollars (\$128,000.00) to it in hand paid at and before the sealing of these presents by Carlos S. Scheer (Grantee), in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does, subject to all covenants, restrictions and easements of record ("Exceptions"), grant, bargain, sell and release unto the said Carlos S. Scheer, his heirs and assigns, the following described property, to-wit:

That certain piece, parcel or tract of land situate and lying in Horry County, South Carolina and containing 0.866 acres, more or less, as shown and identified as "Lot 2, 37,740 Sq. Ft., 0.866 Acs," on a map entitled "Lot 2 Carolina Forest Commercial Center, Phase III for International Paper Realty Corporation" by ETS Engineering and Technical Service, dated October 18, 2005 and recorded in Plat Book 213 at Page 14, Register of Deeds for Horry County, South Carolina on April 7, 2006.

BEING the same property conveyed to First Federal Bank by Receiver's Deed from Federal Deposit Insurance Corporation, as Receiver for Plantation Federal Bank dated September ___, 2012 and recorded on September ___, 2012 in Book ___, Page ___ in the ROD Office for Horry County, South Carolina.

SIMULTANEOUSLY
RECORDED

TMS# 162-30-01-034

Grantee's Address:

4108 CAROLINA COMMERCIAL DRIVE
MYRTLE BEACH SC 29579

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Exceptions, all and singular, the said premises before mentioned unto the said Carlos S. Scheer, his heirs and assigns forever.

AND, subject to the Exceptions, Grantor does hereby bind itself and its successors and assigns to warrant and forever defend, all and singular, the said premises unto the said Carlos S. Scheer, his heirs and assigns, against Grantor and Grantor's successors and assigns lawfully claiming through or under Grantor but against none other.

ELECTRONICALLY FILED - 2019 May 03 4:43 PM - HORRY - COMMON PLEAS - CASE#2009CP2605915

WITNESS its hand and seal this 19th day of September, 2012

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
(First Witness signs here)

Donna M Brant
(Second Witness or Notary signs here)

First Federal Bank

By: Diane L. Guthrie (S.)
Its: SVP Collections

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

THE foregoing instrument was acknowledged before me by First Federal Bank, by
Diane Guthrie its SVP Collections, this 19th day of September, 2012.

Donna M Brant (L.S.)
Notary Public for South Carolina
My Commission Expires: 8.9.2020



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

Date of Transfer of Title
September ____, 2012

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by First Federal Bank to Carlos S. Scheer on September ____, 2012.
3. Check one of the following: The DEED is
 - (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) ___ EXEMPT from the deed recording fee because (exemptions # _____)
(Explanation, if required _____)
(If exempt, please skip items 4-6, and go to item 7 of this affidavit)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$128,000.00.
 - (b) ___ The fee is computed on the fair market value of the realty which is \$_____.
 - (c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$_____.
5. Check YES ___ or NO ___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If yes, the amount of the outstanding balance of this lien or encumbrance is \$_____.
6. The DEED Recording Fee is computed as follows:
 - (A) \$128,000.00 the amount listed in item 4 above
 - (b) \$_____ the amount listed in item 5 above (no amount place zero)
 - (c) \$128,000.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____.
8. Check if Property other than Real Property is being transferred to this Deed.
 - (a) ___ Mobile Home
 - (b) ___ Other
9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. In the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.
10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

First Federal Bank

BY:

Diane L. Guthrie
Diane L. Guthrie
Its: SRP Collections

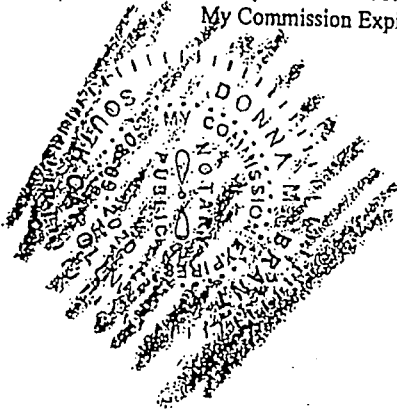
Sworn to before me this 19

day of September, 2012

Donna M. Brant
(L.S.)

Notary Public for South Carolina

My Commission Expires: 8.9.2020



CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

JUL 26 2013

ARTICLES OF MERGER

Corporation - Domestic
Filing Fee - \$110.00

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to S. C. Code of Laws § 33-11-105, the undersigned, as the surviving corporation in a merger, hereby submits the following information:

1. The name of the surviving corporation is SCBT.
2. Attached hereto and made a part hereof is a copy of the Plan of Merger (See S. C. Code of Laws, Title 33, Ch. 11)). Duplicate copies of the Plan of Merger must be attached in order for this form to be filed.

Attached hereto as Appendix A is a copy of the Agreement of Merger by and between SCBT and First Federal Bank, dated as of July 26, 2013.

3. Complete the following information to the extent it is relevant with respect to each corporation which is a party to the transaction:

- (a) Name of the corporation: First Federal Bank
Complete either (1) or (2), whichever is applicable:

- (1) ☐ Shareholder approval of the merger was not required (See S. C. Code of Laws § 33-11-103(h)).
- (2) ☒ The Plan of Merger was duly approved by shareholders of the corporation as follows:

Voting Group	Number of Outstanding Shares	Number of Votes Entitled to be Cast	Number of Votes Represented at the Meeting(1)	Total Number of Votes Cast For AND Against*
Common Stock	12,900	12,900	12,900	FOR: 12,900 AGAINST: 0

***NOTE:** Pursuant to S. C. Code of Laws § 33-11-105(a)(3)(ii), the corporation can alternatively state the total number of undisputed votes cast for the Agreement of Merger separately by each voting group with a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

- (1) The merger was approved by written consent.

130726-0077
SCBT

FILED: 07/26/2013

Filing Fee: \$110.00 ORIG



Mark Hammond

South Carolina Secretary of State

130726-0076

FIRST FEDERAL BANK

FILED: 07/26/2013

Filing Fee: \$0.00 ORIG



Mark Hammond

South Carolina Secretary of State

(b) Name of the corporation: SCBT

Complete either (1) or (2), whichever is applicable:

- (1) ☐ Shareholder approval of the merger was not required (See S. C. Code of Laws § 33-11-103(h)).
- (2) ☒ The Plan of Merger was duly approved by shareholders of the corporation as follows:

Voting Group	Number of Outstanding Shares	Number of Votes Entitled to be Cast	Number of Votes Represented at the Meeting(1)	Total Number of Votes Cast*		
				For	or	Against
Common Stock	566,290	566,290	566,290	FOR: 566,290		AGAINST: 0

***NOTE:** Pursuant to S. C. Code of Laws § 33-11-105(a)(3)(ii), the corporation can alternatively state the total number of undisputed votes cast for the Agreement of Merger separately by each voting group with a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

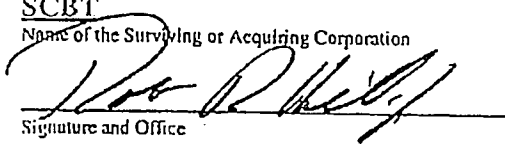
- (1) The merger was approved by written consent.

4. Unless a delayed date is specified, the effective date of this document shall be the date it is accepted for filing by the Secretary of State (See S. C. Code of Laws § 33-1-230(b)): The merger shall become effective upon filing with the Secretary of State of South Carolina of these Articles of Merger.

Date: July 26, 2013

SCBT

Name of the Surviving or Acquiring Corporation


Signature and Office

Name: Robert R. Hill, Jr.

Office: Chief Executive Officer

Type or Print Name and Office

Filing Checklist

- Articles of Merger (filed in duplicate)
- Attach a copy of the Plan of Merger
- \$110.00 made payable to the South Carolina Secretary of State
- Self-Addressed, Stamped Return Envelope
- Make sure the proper individual has signed the form (Please see S. C. Code of Laws §33-1-200(f))
 - Corporate form filed with the Secretary of State should be signed by:
 - (1) the Chairman of the Board of Directors, president or another of its officers
 - (2) if directors have not been selected or the corporation has not been formed, by incorporators, or
 - (3) if the corporation is in the hands of a receiver, trustee or other court appointed fiduciary, by that fiduciary.
- Return all documents to:
 - South Carolina Secretary of State's Office
 - Attn: Corporate Filings
 - 1205 Pendleton Street, Suite 525
 - Columbia, SC 29201

**AGREEMENT OF MERGER
OF
FIRST FEDERAL BANK
WITH AND INTO
SCBT**

THIS AGREEMENT OF MERGER, dated as of July 26, 2013 (this "Agreement"), is made and entered into between SCBT ("SCBT Bank") and First Federal Bank ("First Federal").

WITNESSETH:

WHEREAS, SCBT Bank, a banking corporation duly organized and existing under the laws of the State of South Carolina with its main office located at 520 Gervais Street, Columbia, South Carolina, has authorized capital stock consisting of 700,000 shares of common stock, par value \$5.00 per share, of which 566,290 shares of common stock are issued and outstanding as of the date hereof;

WHEREAS, First Federal, a banking corporation duly organized and existing under the laws of the State of South Carolina with its main office located at 2440 Mall Drive, Charleston, South Carolina, has authorized capital stock consisting of 7,000,000 shares of common stock, par value \$1.00 per share, of which 12,900 shares of common stock are issued and outstanding as of the date hereof;

WHEREAS, SCBT Financial Corporation (the holding company of SCBT Bank) ("Parent") and First Financial Holdings, Inc. (the holding company of First Federal) ("First Financial Parent") are parties to that certain Agreement and Plan of Merger, dated as of February 19, 2013 (the "Parent Merger Agreement"), pursuant to which, subject to the terms and conditions of the Parent Merger Agreement, First Financial Parent shall merge with and into Parent (the "Parent Merger"), whereby (i) the corporate existence of First Financial Parent shall cease and Parent shall continue its corporate existence under the laws of the State of South Carolina as the surviving corporation in the Parent Merger and (ii) First Federal shall become a wholly owned direct subsidiary of Parent;

WHEREAS, the respective boards of directors of SCBT Bank and First Federal, acting pursuant to resolutions duly adopted pursuant to the authority given by, and in accordance with, applicable law, have approved this Agreement and authorized the execution hereof.

NOW, THEREFORE, in consideration of the promises and of the mutual agreements herein contained, the parties hereto do hereby agree as follows:

1 - THE MERGER

1.1 Merger; Surviving Bank

Subject to the terms and conditions of this agreement, at the Effective Time (as hereinafter defined), First Federal shall be merged with and into SCBT Bank, pursuant to the

provisions of, and with the effect provided in, applicable law (said transaction, the "Merger") and the corporate existence of First Federal shall cease. SCBT Bank shall continue its corporate existence under the laws of the State of South Carolina and shall be the entity surviving the Merger (the "Surviving Bank"). The parties hereto intend that the Merger qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code") and this Agreement shall be, and is hereby adopted as, a "plan of reorganization" for purposes of Sections 354 and 361 of the Code.

1.2 Articles of Incorporation and Bylaws

From and after the Effective Time (as defined in Section 1.3 below), the Articles of Incorporation of SCBT Bank, attached hereto as Exhibit A, shall be the Articles of Incorporation of the Surviving Bank until thereafter amended in accordance with applicable law. From and after the Effective Time, the Bylaws of SCBT Bank, attached hereto as Exhibit B, shall be the Bylaws of the Surviving Bank until thereafter amended in accordance with applicable law.

1.3 Effective Time of Merger

The Merger shall become effective at such time and date as are agreed to by SCBT Bank and First Federal, subject to the approval of the Federal Deposit Insurance Corporation (the "FDIC"), or such other time and date as shall be provided by law. The date and time of such effectiveness is herein referred to as the "Effective Time."

1.4 Effect of Merger

All assets as they exist at the Effective Time shall pass to and vest in the Surviving Bank without any conveyance or other transfer. The Surviving Bank shall be responsible for all of the liabilities of every kind and description, including, but not limited to, liabilities arising from any operation of a trust department, of the merging institutions existing as of the Effective Time of the Merger.

1.5 Business of Surviving Bank

The business of the Surviving Bank after the Merger shall continue to be that of a South Carolina banking corporation and shall be conducted at its main office, which shall be located at 520 Gervais Street, Columbia, South Carolina, and at all legally established branches.

1.6 Directors

Upon consummation of the Merger, the directors of the Surviving Bank shall be the persons serving as directors of SCBT Bank immediately prior to the Effective Time and []. Directors of the Surviving Bank shall serve for such terms in accordance with the Articles of Incorporation and Bylaws of the Surviving Bank.

2 - TREATMENT OF SHARES

2.1 Treatment of Shares

At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof (a) each share of First Federal common stock issued and outstanding immediately prior to the Effective Time shall cease to be outstanding and shall be cancelled and (b) the shares of SCBT Bank common stock issued and outstanding immediately prior to the Effective Time shall remain outstanding, shall be unchanged after the Merger and shall immediately after the Effective Time constitute all of the issued and outstanding capital stock of the Surviving Bank.

3 - CONDITIONS PRECEDENT

3.1 Conditions

The respective obligations of the parties to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of the following conditions:

(a) Shareholder Approval. The Agreement shall have been ratified and confirmed by the written consent of the sole shareholder of each of SCBT Bank and First Federal in lieu of a meeting of shareholders, provided that such action by written consent is authorized under the applicable articles of association or bylaws or otherwise provided by law.

(b) Regulatory Approvals. The parties shall have received all consents, approvals and permissions and the satisfaction of all of the requirements prescribed by law, including, but not limited to, the consents, approvals and permissions of all regulatory authorities which are necessary to the carrying out of the Merger described in this Agreement.

(c) No Injunctions or Restraints. There shall not be in effect any temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger.

(d) Parent Merger. The Parent Merger shall have been consummated in accordance with the terms and conditions of the Parent Merger Agreement.

4 - TERMINATION AND AMENDMENT

4.1 Termination

Notwithstanding the approval of this Agreement by the shareholders of SCBT Bank or First Federal, this Agreement shall terminate forthwith prior to the Effective Time in the event the Parent Merger Agreement is terminated as therein provided. This Agreement may also be terminated by mutual written consent of the parties hereto.

4.2 Amendment

This Agreement may not be amended, except by an instrument in writing signed on behalf of each of the parties hereto.

5 - MISCELLANEOUS

5.1 Representations and Warranties

Each of the parties hereto represents and warrants that this Agreement has been duly authorized, executed and delivered by such party and constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with the terms hereof.

5.2 Further Assurances

If at any time the Surviving Bank shall consider or be advised that any further assignments, conveyances or assurances are necessary or desirable to vest, perfect or confirm in the Surviving Bank title to any property or rights of First Federal or otherwise carry out the provisions hereof, the proper officers and directors of First Federal, as of the Effective Date, and thereafter the officers of the surviving entity acting on behalf of First Federal, shall execute and deliver any and all proper assignments, conveyances and assurances, and do all things necessary or desirable to vest, perfect or confirm title to such property or rights in the Surviving Bank and otherwise carry out the provisions hereof.

5.3 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina without regard to any applicable conflicts of law, except to the extent federal law may be applicable.

5.4 Successors and Assigns

This Agreement is binding upon and is for the benefit of the parties hereto and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any rights or obligations hereunder may be assigned by any party hereto to any other person without the prior consent in writing of the other party hereto.

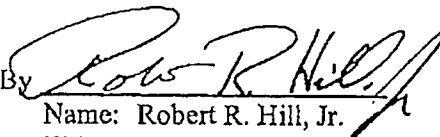
5.5 Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement of Merger to be executed by its duly authorized officers, all as of the date first set forth above.

SCBT

By 
Name: Robert R. Hill, Jr.
Title: Chief Executive Officer

FIRST FEDERAL BANK

By _____
Name:
Title:

[Signature Page to Agreement of Merger]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement of Merger to be executed by its duly authorized officers, all as of the date first set forth above.

SCBT

By _____
Name: Robert R. Hill, Jr.
Title: Chief Executive Officer

FIRST FEDERAL BANK

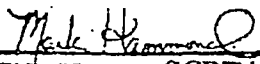
By R. Wayne Hall
Name: R. Wayne Hall
Title: Chief Executive Officer

[Signature Page to Agreement of Merger]

Exhibit A

**ARTICLES OF INCORPORATION
SCBT**

JUL 28 2012 ARTICLES OF CONVERSION AND INCORPORATION
OF
SCBT


SECRETARY OF STATE OF SOUTH CAROLINA

SCBT hereby adopts these ARTICLES OF CONVERSION AND INCORPORATION pursuant to that certain Certificate of Conversion of a National Bank to a State Bank adopted by the sole shareholder of SCBT, National Association on April 26, 2012. Effective at 12:00 a.m. on July 1, 2012, these ARTICLES OF CONVERSION AND INCORPORATION shall constitute the ARTICLES OF INCORPORATION of SCBT and may be certified as such.

First. The full corporate title of the Bank shall be "SCBT" (the "Bank").

Second. The street address of the registered office of the Bank, which shall also be designated as the Bank's main office, shall be 520 Gervais Street, Columbia, South Carolina 29201 (Richland County). The name of the Bank's registered agent at such address shall be Joe E. Burns. The general business of the Bank shall be conducted at its main office and its legally established branches.

Third. The Board of Directors of this Bank shall consist of not less than five (5) nor more than twenty-five (25) shareholders. At any meeting of the shareholders held for the purpose of electing Directors, or changing the number thereof, the number of Directors may be determined by a majority of the votes cast by the shareholders in person or by proxy. A majority of the Board of Directors shall be necessary to constitute a quorum for the transaction of business at any Director's meeting.

The Board of Directors in any year between annual meetings of the shareholders may, by the vote of a majority of the full Board, increase the number of directors by not more than four and appoint directors to fill the vacancies created thereby. Any nominee to the Board of Directors (other than one proposed on behalf of the existing bank management) must give prior notice to the Bank. Such notice shall be made in writing and shall be delivered or mailed to the President of the Bank not less than 14 days nor more than 50 days prior to any meeting of shareholders called for the election of directors.

Fourth. The regular annual meeting of the shareholders of this Bank shall be held at its main office, or other convenient place duly authorized by the Board of Directors, on such day of the year as is specified therefore in the Bylaws.

Fifth. The amount of capital stock of this Bank shall be Three Million Five Hundred Thousand Dollars (\$3,500,000), divided into 700,000 shares of common stock of the par value of Five Dollars (\$5.00) each; but said capital stock may be increased or decreased from time to time, in accordance with the provisions of the laws of the State of South Carolina.

If the capital stock is increased by the sale of additional shares thereof, each shareholder shall be entitled to subscribe for such additional shares in proportion to the number of shares of said capital stock owned by him or her at the time the increase is authorized by the shareholders, unless another time subsequent to the date of the shareholders' meeting is specified in a

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SCBT

FILED: 06/28/2012

Filing Fee: \$135.00 ORIG



Mark Hammond

South Carolina Secretary of State

resolution adopted by the shareholders at the time the increase is authorized. The Board of Directors shall have the power to prescribe a reasonable period of time within which the preemptive rights to subscribe to the new shares of capital stock must be exercised.

If the capital stock is increased by a stock dividend, each shareholder shall be entitled to his proportionate amount of such increase in accordance with the number of shares of capital stock owned by him at the time the increase is authorized by the shareholders, unless another time subsequent to the date of the shareholders' meeting is specified in a resolution adopted by the shareholders at the time the increase is authorized.

Sixth. The Board of Directors shall appoint one of its members Chief Executive Officer of this Bank, who shall be Chairman of the Board, unless the Board appoints another director to be Chairman. The Chief Executive Officer of this Bank shall be its principal executive officer and the Chief Executive Officer and Chairman (or both, as applicable) shall serve as an ex-officio member of all committees except the Audit committee. The Board of Directors shall have the power to appoint one or more Vice Presidents; to appoint a Treasurer and such officers as may be required to transact the business of the Bank; to fix the salaries to be paid such officers of the Bank; to assign such duties as they see fit and to dismiss any such officer and appoint others to have their place; to require bonds of the officers and employees and to fix the penalty thereof; to manage and administer the affairs of the Bank; to make all bylaws that it may be lawful for them to make; and generally to do and perform all acts that it may be legal for a Board of Directors to do and perform.

The Board of Directors shall have the power to change the location of the main office of this Bank to any other place within the limits of Columbia, South Carolina, without the approval of the shareholders of this Bank but subject to approval of the South Carolina State Board of Financial Institutions; and shall have the power to establish or change the location of any branch or branches of the Bank to any other location, without the approval of the shareholders but subject to the approval of the South Carolina State Board of Financial Institutions.

Seventh. The corporate existence of this Bank shall continue until terminated in accordance with the laws of the State of South Carolina.

Eighth. The Board of Directors of this Bank, or any three or more shareholders owning, in aggregate, not less than ten percent (10%) of the stock of this Bank, may call a special meeting of shareholders at any time.

Unless otherwise provided by the laws of the State of South Carolina, a notice of the time, place and purpose of every regular annual, and every special meeting of the shareholders shall be given by first class mail, postage prepaid, mailed at least ten days prior to the date of such meeting to each shareholder of record of his address as shown upon the books of this Bank.

Ninth. No director of the Bank shall be personally liable to the Bank or its shareholders for monetary damages for breach of his fiduciary duty as a director occurring after the effective date hereof; provided, however, the foregoing shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Bank or its shareholders; (ii) for

acts or omissions not in good faith or which involve gross negligence, intentional misconduct, or a knowing violation of law; (iii) imposed for unlawful distributions as set forth in Section 33-8-330 of the South Carolina Business Corporation Act of 1988, as amended from time to time (the "Act"), or (iv) for any transactions from which the director derived an improper personal benefit. This provision shall eliminate or limit the liability of a director only to the maximum extent permitted from time to time by the Act or any successor law or laws. Any repeal or modification of the foregoing protection by the shareholders of the Bank shall not adversely affect any right or protection of a director of the Bank existing at the time of such repeal or modification.

Any person, his/her heirs, executors, or administrators, may be indemnified or reimbursed by the Bank for reasonable expenses actually incurred in connection with any action, suit or proceeding, civil or criminal, to which he/she or they shall be made a party by reason of his/her having or having been a director, officer, or employee of the Bank or of any firm, corporation, or organization which he/she served in any such capacity at the request of the Bank: Provided, however, that no person shall be so indemnified or reimbursed in relation to any matter in such action, suit, or proceeding as to which he/she shall finally be adjudged to have been guilty or liable for gross negligence, willful misconduct or criminal acts in the performance of his/her duties to the Bank; And, provided, further, that no such person shall be so indemnified or reimbursed in relation to any matter in such action, suit, or proceeding which has been made the subject of a compromise settlement except with the approval of a court of competent jurisdiction, or the holders of record of a majority of the outstanding shares of the Bank, or the Board of Directors, acting by vote of directors not party to the same or substantially the same action, suit, or proceeding, constituting a majority of the whole number of directors. The foregoing right of indemnification or reimbursement shall not be exclusive of other rights to which such person, his/her heirs, executors, or administrators, may be entitled as a matter of law.

The Bank may, upon the affirmative vote of a majority of its Board of Directors, purchase insurance for the purpose of indemnifying its directors, officers, and other employees to the extent that such indemnifications are allowed in the preceding paragraph. Such insurance may, but need not, be for the benefit of all directors, officers, or employees.

Tenth. Subject to the provision of the laws of the State of South Carolina, these Articles of Incorporation may be amended at any meeting of the shareholders for which adequate notice has been given, by the affirmative vote of the owners of a majority of the stock of this Bank, voting in person or by proxy.

Eleventh. The name, address, and signature of the incorporator is as follows:

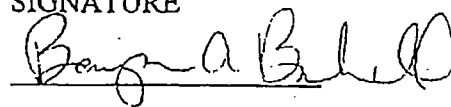
NAME

ADDRESS

SIGNATURE

Benjamin A. Barnhill

104 South Main Street, Ste. 900
Greenville, SC 29601



AMENDED AND RESTATED BYLAWS

OF

SCBT

As adopted to be effective as of July 1, 2012

Exhibit B

**BYLAWS OF
SCBT**

SCBT

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BYLAWS OF SCBT

ARTICLE 1: OFFICES

Section 1: Registered Office and Agent. The registered office of the Bank shall be 520 Gervais Street, Columbia, South Carolina 29201 (Richland County). The registered agent shall be Joe E. Burns.

Section 2: Other Offices. The Bank may also have offices at such other places within and without the State of South Carolina as the Board of Directors may from time to time determine or the business of the Bank may require.

ARTICLE 2: SHAREHOLDERS

Section 1: Place of Meetings. Meetings of shareholders shall be held at the time and place, within or without the State of South Carolina, stated in the notice of the meeting or in a waiver of notice.

Section 2: Annual Meetings. An annual meeting of the shareholders shall be held each year on a date and at a time to be set by the Board of Directors in accordance with all applicable notice requirements. At the meeting, the shareholders shall elect directors and transact such other business as may properly be brought before the meeting.

Section 3: Special Meetings.

(a) Special meetings of the shareholders, for any purpose or purposes, unless otherwise required by the Code of Laws of South Carolina (the "Code"), the Articles of Incorporation of the Bank (the "Articles"), or these Bylaws, may be called by the chief executive officer, the president, the chairman of the Board of Directors or a majority of the Board of Directors.

(b) In addition to a special meeting called in accordance with subsection 3(a) of this Article 2, the Bank shall, if and to the extent that it is required by applicable law, hold a special meeting of shareholders if the holders of at least 10 percent of all the votes entitled to be cast on any issue proposed to be considered at such special meeting sign, date and deliver to the secretary of the Bank one or more written demands for the meeting. Such written demands shall be delivered to the secretary by certified mail, return receipt requested. Such written demands sent to the secretary of the Bank shall set forth as to each matter the shareholder or shareholders propose to be presented at the special meeting (i) a description of the purpose or purposes for which the meeting is to be held (including the specific proposal(s) to be presented); (ii) the name and record address of the shareholder or shareholders proposing such business; (iii) the class and number of shares of the Bank that are owned of record by the shareholder or shareholders as of a date within 10 days of the delivery of the demand; (iv) the class and number of shares of the Bank that are held beneficially, but not held of record, by the shareholder or shareholders as of a date within 10 days of the delivery of the demand; and (v) any interest of the shareholder or shareholders in such business. Any such special shareholders' meeting shall be held at a location designated by the Board of Directors. The Board of Directors may set such rules for any such meeting as it may deem appropriate, including when the meeting will be held (subject to any requirements of the Code), the agenda for the meeting (which may include any proposals made by the

Board of Directors), who may attend the meeting in addition to shareholders of record and other such matters, and what the quorum shall be for the special meeting.

(c) Business transacted at any special meeting shall be confined to the specific purpose or purposes stated in the notice of the meeting.

Section 4: Notice.

(a) Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the specific purpose or purposes for which the meeting is called, shall be delivered by the Bank not less than 10 nor more than sixty days before the date of the meeting, either personally or by mail, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed effective when deposited with postage prepaid in the United States mail, addressed to the shareholder at the address appearing on the stock transfer books of the Bank. Except as may be expressly provided by law, no failure or irregularity of notice of any regular meeting shall invalidate the same or any proceeding thereat.

(b) The notice of each special shareholders meeting shall include a description of the specific purpose or purposes for which the meeting is called. Except as provided by law, the Articles or these Bylaws, the notice of an annual shareholders meeting need not include a description of the purpose or purposes for which the meeting is called.

Section 5: Quorum. The holders of a majority of the shares issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall be requisite and shall constitute a quorum at meetings of the shareholders for the transaction of business except as otherwise provided by statute, by the Articles or by these Bylaws. If a quorum is not present or represented at a meeting of the shareholders, the shareholders entitled to vote, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At an adjourned meeting at which a quorum is present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. Once a share is represented for any purpose at a meeting it is deemed present for quorum purposes.

Section 6: Majority Vote; Withdrawal of Quorum. Except in regards to the election of directors, when a quorum is present at a meeting, the vote of the holders of a majority of the shares having voting power, present in person or represented by proxy, shall decide any question brought before the meeting, unless the question is one on which, by express provision of the statutes, the Articles or these Bylaws, a higher vote is required in which case the express provision shall govern. Directors shall be elected by a plurality vote of the shareholders. The shareholders present at a duly constituted meeting may continue to transact business until adjournment, despite the withdrawal of enough shareholders to leave less than a quorum.

Section 7: Method of Voting. Each outstanding share of common stock shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders. Each outstanding share of other classes of stock, if any, shall have such voting rights as may be prescribed by the Board of Directors. Proxies delivered by facsimile to the Bank, if otherwise in order, shall be valid. Votes shall be taken by voice, by hand or in writing, as directed by the chairman of the meeting. Voting for directors shall be in accordance with Article 3, Section 3 of these Bylaws.

Section 8: Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, including any special meeting, or shareholders entitled to receive payment of dividends, or in order to make a determination of shareholders for any other purpose, the Board

of Directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not less than 7 nor more than seventy days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. Except as otherwise provided by law, if no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or of shareholders entitled to receive payment of dividends, the date on which notice of the meeting is mailed, or the date on which the resolution of the Board of Directors declaring such dividend is adopted, as the case may be, shall be the record date.

Section 9: Shareholder Proposals.

(a) To the extent required by applicable law, a shareholder may bring a proposal before an annual meeting of shareholders as set forth in this Section 9. To be properly brought before an annual meeting of shareholders, business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors; (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors; or (iii) otherwise properly brought before the meeting by a shareholder. In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a shareholder, the shareholder must have given timely notice thereof in writing to the secretary of the Bank. To be timely, a shareholder's notice must be given, either by personal delivery or by United States mail, postage prepaid, return receipt requested, to the secretary of the Bank not less than ninety days in advance of the annual meeting. A shareholder's notice to the secretary of the Bank shall set forth for each matter the shareholder proposes to bring before the annual meeting (i) a description of the business desired to be brought before the annual meeting (including the specific proposal(s) to be presented) and the reasons for conducting such business at the annual meeting; (ii) the name and record address of the shareholder proposing such business; (iii) the class and number of shares of the Bank that are owned of record, and the class and number of shares of the Bank that are held beneficially, but not held of record, by the shareholder as of the record date for the meeting, if such date has been made publicly available, or as of a date within 10 days of the effective date of the notice by the shareholder if the record date has not been made publicly available; and (iv) any interest of the shareholder in such business. In the event that a shareholder attempts to bring business before an annual meeting without complying with the provisions of this Section 9, the chairman of the meeting shall declare to the meeting that the business was not properly brought before the meeting in accordance with the foregoing procedures, and such business shall not be transacted. The chairman of any annual meeting, for good cause shown and with proper regard for the orderly conduct of business at the meeting, may waive in whole or in part the operation of this Section 9.

(b) If any shareholder of the Bank notifies the Bank that such shareholder intends to present a proposal for action at a forthcoming meeting of the Bank's shareholders and requests that the Bank include the proposal in its proxy statement and such shareholder complies with all the requirements of Rule 14a-8 promulgated under the Securities Exchange Act of 1934, the Bank shall consider inclusion of such proposal in the proxy statement unless it determines that the proposal is inappropriate for consideration by the shareholders at the meeting.

ARTICLE 3: DIRECTORS

Section 1: Management. The business and affairs of the Bank shall be managed by the Board of Directors who may exercise all such powers of the Bank and do all such lawful acts and things as are not by law, the Articles or these Bylaws directed or required to be done or exercised by the shareholders.

Section 2: Number and Terms of Office of Directors. Unless otherwise provided in the Articles, the number of directors of the Bank shall be that number as may be fixed from time to time by resolution of the Board of Directors, but in no event shall the number be less than five or greater than twenty-

five. The number of members of the Board of Directors can be increased or decreased within the foregoing range at any time by the Board of Directors. In addition, unless provided otherwise by resolution of the Board of Directors, if, in any case after proxy materials for an annual meeting of shareholders have been mailed to shareholders, any person named therein to be nominated at the direction of the Board of Directors becomes unable or unwilling to serve, the number of authorized directors shall be automatically reduced by a number equal to the number of such persons. Directors shall be elected at each annual meeting of shareholders, or at a special meeting of shareholders called for purposes that include the election of directors, by a plurality of the votes cast by the shares entitled to vote and present at the meeting and shall serve for terms of one year until their successors are elected and qualified. The members of the Board of Directors need not be residents of any particular state. Each director, except in the case of his earlier death, written resignation, retirement, disqualification or removal, shall serve for the duration of his term and thereafter until his successor shall have been elected and qualified.

Section 3: Qualifications of Directors. In accordance with SC Code Section 34-3-40, no person shall be eligible for election as a director who is not the owner of unencumbered and unpledged shares of stock in the Bank having an aggregate par value of at least \$500 or having an aggregate book value as of December 31st of the most recent year of at least \$500. For so long as the Bank is a wholly-owned subsidiary of SCBT Financial Corporation, the required qualifying shares must be shares in such corporation. In addition, no individual who is or becomes a Business Competitor (as defined below) or who is or becomes affiliated with, employed by or a representative of any individual, corporation, association, partnership, firm, business enterprise or other entity or organization which the Board of Directors, after having such matter formally brought to its attention, determines to be in competition with the Bank or any of its subsidiaries (any such individual, corporation, association, partnership, firm, business enterprise or other entity or organization being hereinafter referred to as a "Business Competitor") shall be eligible to serve as a director if the Board of Directors determines that it would not be in the Bank's best interests for such individual to serve as a director of the Bank. Such affiliation, employment or representation may include, without limitation, service or status as an owner, partner, shareholder, trustee, director, officer, consultant, employee, agent, or counsel, or the existence of any relationship which results in the affected person having an express or implied obligation to act on behalf of a Business Competitor; provided, however, that passive ownership of a debt or equity interest not exceeding 1% of the outstanding debt or equity, as the case may be, in any Business Competitor shall not constitute such affiliation, employment or representation. Any financial institution having branches or affiliates in the states of Georgia, North Carolina, or South Carolina shall be presumed to be a Business Competitor unless the Board of Directors determines otherwise.

Section 4: Election of Directors. Directors shall be elected by a plurality vote.

Section 5: Nomination of Directors.

(a) Nomination of persons to serve as directors of the Bank, other than those made by or on behalf of the Board of Directors of the Bank, shall be made in writing and shall be delivered either by personal delivery or by United States mail, postage prepaid, return receipt requested, to the secretary of the Bank no later than (i) with respect to an election to be held at an annual meeting of shareholders, ninety days in advance of such meeting; and (ii) with respect to an election to be held at a special meeting of shareholders for the election of directors, the close of business on the seventh day following the date on which notice of such meeting is first given to shareholders. Each notice shall set forth: (i) the name and address of the shareholder who intends to make the nomination and of the person or persons to be nominated; (ii) a representation that the shareholder is a holder of record of stock of the Bank entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (iii) a description of all arrangements or understandings between the shareholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the shareholder; (iv) such other information regarding each

nominee proposed by such shareholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission relating to the election of directors; and (v) the consent of each nominee to serve as a director of the Bank if so elected. The chairman of the meeting may refuse to acknowledge the nomination of any person not made in compliance with the foregoing procedure. The chairman of any such meeting, for good cause shown and with proper regard for the orderly conduct of business at the meeting, may waive in whole or in part the operation of this Section 5.

(b) Notwithstanding subsection (a) of this Section 5, if the Bank or any banking subsidiary of the Bank is subject to the requirements of Section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, then no person may be nominated by a shareholder for election as a director at any meeting of shareholders unless the shareholder furnishes the written notice required by subsection (a) of this Section 5 to the secretary of the Bank at least ninety days prior to the date of the meeting and the nominee has received regulatory approval to serve as a director prior to the date of the meeting.

Section 6: Emeritus Directors. The Board of Directors may, from time to time, appoint individuals (including individuals who have retired from the Board of Directors) to serve as members of the Emeritus Board of Directors of the Bank. Each member of the Emeritus Board of Directors of the Bank, except in the case of his earlier death, resignation, retirement, disqualification or removal, shall serve until the next succeeding annual meeting of the Board of Directors of the Bank. Members of the Emeritus Board of Directors may be removed without cause by a vote of the members of the Board of Directors. Any individual appointed as a member of the Emeritus Board of Directors of the Bank may, but shall not be required to, attend meetings of the Board of Directors of the Bank and may participate in any discussions at such meetings, but such individual may not vote or be counted in determining a quorum at any meeting of the Board of Directors of the Bank. It shall be the duty of the members of the Emeritus Board of Directors of the Bank to serve as goodwill ambassadors of the Bank, but such individuals shall not have any responsibility or be subject to any liability imposed upon a member of the Board of Directors of the Bank or in any manner otherwise be deemed to be a member of the Board of Directors of the Bank. Each member of the Emeritus Board of Directors of the Bank shall be paid such compensation as may be set from time to time by the Chairman of the Board of Directors of the Bank and shall remain eligible to participate in any stock option plan in which directors are eligible to participate which is maintained by, or participated in, from time to time by the Bank, according to the terms and conditions thereof.

Section 7: Vacancies. Except as otherwise provided by law, in the Articles, or in these Bylaws (a) the office of a director shall become vacant if he dies, resigns, or is removed from office, and (b) the Board of Directors may declare vacant the office of a director if (i) he is interdicted or adjudicated an incompetent, (ii) an action is filed by or against him, or any entity of which he is employed as his principal business activity, under the bankruptcy laws of the United States, (iii) in the sole opinion of the Board of Directors he becomes incapacitated by illness or other infirmity so that he is unable to perform his duties for a period of six months or longer, (iv) he participates in a willful or a grossly negligent act, or the willful or grossly negligent omission to act by him, including but not limited to any crime involving dishonesty, moral turpitude or fraud that is reasonably likely to cause material harm to the Bank (including harm to its business reputation), or (v) he ceases at any time to have the qualifications required by law, the Articles or these Bylaws. The remaining directors may, by a majority vote, fill any vacancy on the Board of Directors (including any vacancy resulting from an increase in the authorized number of directors, or from the failure of the shareholders to elect the full number of authorized directors) for an unexpired term; provided that the shareholders shall have the right at any special meeting called for such purpose prior to action by the Board of Directors to fill the vacancy.

Section 8: Removal of Directors. Unless provided otherwise by the Articles of Incorporation, the Board of Directors may remove a director with cause by unanimous vote of the Board of

Directors (with the abstention of the director who is the subject of such vote). The shareholders may remove one or more directors at a meeting called for that purpose if notice has been given that a purpose of the meeting is such removal. The removal may be with or without cause, provided that such removal without cause shall be subject to the voting requirement, if any, set forth in the articles of incorporation.

Section 9: Place of Meetings. Meetings of the Board of Directors, regular or special, may be held either within or without the State of South Carolina.

Section 10: Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board of Directors.

Section 11: Special Meetings. Special meetings of the Board of Directors may be called by the chairman, the chief executive officer, or the president of the Bank, on not less than twenty-four hours' notice. Notice of a special meeting may be given by personal notice, telephone, facsimile, electronic communication, overnight courier or United States mail to each director. Any such special meeting shall be held at such time and place as shall be stated in the notice of the meeting. The notice need not describe the purpose or purposes of the special meeting.

Section 12: Telephone and Similar Meetings. Directors may participate in and hold a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the holding of the meeting or the transacting of any business at the meeting on the ground that the meeting is not lawfully called or convened, and does not thereafter vote for or assent to action taken at the meeting.

Section 13: Quorum; Majority Vote. At meetings of the Board of Directors a majority of the number of directors then in office shall constitute a quorum for the transaction of business. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, except as otherwise specifically provided by law, the Articles or these Bylaws. If a quorum is not present at a meeting of the Board of Directors, the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 14: Compensation. Each director shall be entitled to receive such reasonable compensation as may be determined by resolution of the Board of Directors. By resolution of the Board of Directors, the directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors. No such payment shall preclude any director from serving the Bank in any other capacity and receiving compensation therefor. Members of committees may, by resolution of the Board of Directors, be allowed compensation for attending committee meetings.

Section 15: Procedure. The Board of Directors shall keep regular minutes of its proceedings. The minutes shall be placed in the minute book of the Bank.

Section 16: Action Without Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if the action is assented to by all the members of the Board. Such consent shall have the same force and effect as a meeting vote and may be described as such in any document.

ARTICLE 4: BOARD COMMITTEES

Section 1: Designation. The Board of Directors may, by resolution adopted by a majority of the full Board, designate one or more committees. Each committee must have two or more members who serve at the pleasure of the Board of Directors. To the extent specified by the Board of Directors, in the Articles or in these Bylaws, each committee may exercise the authority of the Board of Directors. So long as prohibited by law, however, a committee of the Board may not (a) authorize distributions; (b) approve or propose to shareholders action required by the Code to be approved by shareholders; (c) fill vacancies on the Board of Directors or on any of its committees; (d) amend the Articles; (e) adopt, amend or repeal these Bylaws; (f) approve a plan of merger not requiring shareholder approval; (g) authorize or approve reacquisition of shares, except according to a formula or method prescribed by the Board of Directors; or (h) authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences and limitations of a class or series of shares, except that the Board of Directors may authorize a committee (or a senior executive officer of the Bank) to do so within limits specifically prescribed by the Board of Directors. Any director may serve one or more committee. Any committee appointed under this Section 1 shall perform such duties and assume such responsibility as may from time to time be placed upon it by the Board of Directors.

Section 2: Meetings. Time, place and notice of all committee meetings shall be as called and specified by the chief executive officer, the committee chairman or any two members of each committee.

Section 3: Quorum; Majority Vote. At meetings of committees, a majority of the number of members designated by the Board of Directors shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee, except as otherwise specifically provided by the Code, the Articles or these Bylaws. If a quorum is not present at a meeting of the committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present.

Section 4: Procedure. Committees shall keep regular minutes of their proceedings and report the same to the Board of Directors at its next regular meeting. The minutes of the proceedings of the committee shall be placed in the minute book of the Bank.

Section 5: Action Without Meeting. Any action required or permitted to be taken at a meeting of any committee may be taken without a meeting if the action is assented to by all the members of the committee. Such consent shall have the same force and effect as a meeting vote and may be described as such in any document.

Section 6: Telephone and Similar Meetings. Committee members may participate in and hold a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the holding of the meeting or the transacting of any business at the meeting on the ground that the meeting is not lawfully called or convened, and does not thereafter vote for or assent to action taken at the meeting.

ARTICLE 5: OFFICERS

Section 1: Officers. The officers of the Bank shall consist of a chief executive officer, a chief financial officer, president and a secretary, each of whom shall be elected by the Board of Directors and shall have the duties which are established for them from time to time by the Board of Directors. The Board of Directors may also create and establish the duties of other offices as it deems appropriate. The Board of Directors shall also elect a chairman of the Board and may elect a vice chairman of the Board from among its members. The Board of Directors from time to time may appoint, or may authorize the chief executive officer or the president to appoint or authorize specific officers to appoint, the persons who shall hold such other offices as may be established by the Board of Directors, including one or more vice presidents (including executive vice presidents, senior vice presidents, assistant vice presidents), one or more assistant secretaries, and one or more assistant treasurers. Any two or more offices may be held by the same person.

Section 2: Term. Each officer shall serve at the pleasure of the Board of Directors (or, if appointed pursuant to this Article, at the pleasure of the Board of Directors, the chief executive officer, the president, or the officer authorized to have appointed the officer) until his or her death, resignation, or removal, or until his or her replacement is elected or appointed in accordance with this Article.

Section 3: Vacancies. Any vacancy occurring in any office of the Bank may be filled by the Board of Directors. Any vacancy in an office which was filled by the chief executive officer, the president, or another officer may also be filled by the chief executive officer, the president, or by any officer authorized to have filled the office vacant.

Section 4: Compensation. The compensation of all officers of the Bank shall be fixed by the Board of Directors or by a committee or officer appointed by the Board of Directors. Officers may serve without compensation.

Section 5: Removal. All officers (regardless of how elected or appointed) may be removed, with or without cause, by the Board of Directors. Any officer appointed by the chief executive officer, the president, or another officer may also be removed, with or without cause, by the chief executive officer, the president, or by any officer authorized to have appointed the officer to be removed. Removal will be without prejudice to the contract rights, if any, of the person removed, but shall be effective notwithstanding any damage claim that may result from infringement of such contract rights.

Section 6: Chairman of the Board. The office of the chairman of the board may be filled by the Board at its pleasure by the election of one of its members to the office. The chairman shall preside at all meetings of the Board and meetings of the shareholders and shall perform such other duties as may be assigned to him by the Board of Directors. The board may also appoint a vice chairman of the board, who shall preside at Board meetings in the absence of the chairman.

Section 7: Chief Executive Officer. If the Board chooses to have a chief executive officer other than the chairman of the board, the position of chief executive officer may be filled by the Board at its pleasure. The chief executive officer shall be responsible for the general and active management of the business and affairs of the Bank, and shall see that all orders and resolutions of the Board are carried into effect. He shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe. The chief executive officer shall preside as chairman of the Board of Directors during the absence of the Board chairman or vice chairman.

Section 8: Chief Financial Officer.

(a) The chief financial officer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements of the Bank and shall deposit all moneys and other valuables in the name and to the credit of the Bank in appropriate depositories.

(b) The chief financial officer shall disburse the funds of the Bank ordered by the Board of Directors and prepare financial statements as they direct.

(c) The chief financial officer shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe or as the chief executive officer may from time to time delegate.

(d) The chief financial officer's books and accounts shall be opened at any time during business hours to the inspection of any directors of the Bank.

Section 9: President. The president shall be responsible for the general and active management of the business and affairs of the Bank, and shall see that all orders and resolutions of the Board are carried into effect. He shall perform such other duties and have such other authority and powers as the Board of Directors may from time to time prescribe.

Section 10: Vice Presidents. The vice presidents (executive, senior, or assistant), as such offices are appointed by the Board of Directors shall be under the supervision of the chief executive officer and shall perform such duties and have such authority and powers as the Board of Directors may from time to time prescribe or as the chief executive officer may from time to time delegate.

Section 11: Secretary.

(a) The secretary shall attend all meetings of the Board of Directors and all meetings of the shareholders and record all votes, actions and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the executive and other committees when required.

(b) The secretary shall give, or cause to be given, notice of all meetings of the shareholders and special meetings of the Board of Directors.

(c) The secretary shall keep in safe custody the seal of the Bank and, when authorized by the Board of Directors or the executive committee, affix it to any instrument requiring it. When so affixed, it shall be attested by the secretary's signature or by the signature of the treasurer or an assistant secretary.

(d) The secretary shall be under the supervision of the chief executive officer and shall perform such duties and have such authority and powers as the Board of Directors may from time to time prescribe or as the chief executive officer may from time to time delegate.

Section 12: Assistant Secretary. The assistant secretaries, as such offices are created by the Board of Directors, in the order of their seniority, unless otherwise determined by the Board of Directors, shall, in the absence or disability of the secretary, perform the duties and have the authority and exercise the powers of the secretary. They shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe or as the chief executive officer or the president may from time to time delegate.

ARTICLE 6: INDEMNIFICATION

Section 1: Indemnification of Directors.

(a) Except to the extent provided otherwise in the Articles, (a)the Bank shall indemnify and hold harmless, to the fullest extent permitted by applicable law, any person (an "Indemnified Person") who was or is a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or other proceeding, whether civil, criminal, administrative or investigative and whether formal or informal, by reason of the fact that he, or a person for whom he is a legal representative (or other similar representative), is or was a director of the Bank or is or was serving at the Bank's request as a director, officer, partner, trustee, employee or agent of another association, corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines, amounts paid in settlement or other similar costs actually and reasonably incurred in connection with such action, suit or proceeding. For purposes of this Article 6, all terms used herein that are defined in Section 33-8-500 of the Code or any successor provision or provisions shall have the meanings so prescribed in such Section.

(b) Without limiting the provisions of Section 1(a) of this Article 6, the Bank shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a director of the Bank against reasonable expenses incurred by him in connection with the proceeding. In addition, the Bank shall indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if: (i) he conducted himself in good faith; (ii) he reasonably believed: (A) in the case of conduct in his official capacity with the Bank, that his conduct was in its best interest; and (B) in all other cases, that his conduct was at least not opposed to its best interest; and (iii) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this subsection (b). The determination of whether the director met the standard of conduct described in this subsection (b) shall be made in accordance with Section 33-8-550 of the Code or any successor provision or provisions.

Section 2: Advancement of Expenses.

(a) With respect to any proceeding to which an Indemnified Person is a party because he is or was a director of the Bank, the Bank shall, to the fullest extent permitted by applicable law, pay for or reimburse the Indemnified Person's reasonable expenses (including, but not limited to, attorneys' fees and disbursements, court costs, and expert witness fees) incurred by the Indemnified Person in advance of final disposition of the proceeding.

(b) Without limiting the provisions of Section 2(a) of this Article 6, the Bank shall, to the fullest extent permitted by applicable law, pay for or reimburse the reasonable expenses (including, but not limited to, attorneys' fees and disbursements, court costs and expert witness fees) incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if: (a) the director furnishes the Bank a written affirmation of his good faith belief that he has met the standard of conduct described in Section 1(b) of this Article 6; (b) the director furnishes the Bank a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet such standard of conduct; and (c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this Article 6. The Bank shall expeditiously pay the amount of such expenses to the director following the director's delivery to the Bank of a written request for an advance pursuant to this Section 2 together with a reasonable accounting of such expenses. The

undertaking required by this Section 2 shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment. Determinations and authorizations of payments under this Section 2 shall be made in the manner specified in Section 33-8-550 of the Code or any successor provision or provisions.

Section 3: Indemnification of Officers, Employees and Agents. An officer of the Bank who is not a director is entitled to the same indemnification rights which are provided to directors of the Bank in Section 1 of this Article 6 and the Bank shall advance expenses to officers of the Bank who are not directors to the same extent and in the same manner as to directors as provided in Section 2 of this Article 6. In addition, the Board of Directors shall have the power to cause the Bank to indemnify, hold harmless and advance expenses to any officer, employee or agent of the Bank who is not a director to the fullest extent permitted by public policy, by adopting a resolution to that effect identifying such officers, employees or agents (by position and name) and specifying the particular rights provided, which may be different for each of the persons identified. Any officer entitled to indemnification pursuant to the first sentence of this Section 3 and any officer, employee or agent granted indemnification by the Board of Directors in accordance with the second sentence of this Section 3 shall, to the extent specified herein or by the Board of Directors, be an "Indemnified Party" for the purposes of the provisions of this Article 6.

Section 4: Insurance. The Bank may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee or agent of the Bank, or who, while a director, officer, employee or agent of the Bank, is or was serving at the request of the Bank as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, association, partnership, joint venture, trust, employee benefit plan or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee or agent, whether or not the Bank would have the power to indemnify him against the same liability under this Article 6.

Section 5: Nonexclusivity of Rights; Agreements. The rights conferred on any person by this Article 6 shall neither limit nor be exclusive of any other rights which such person may have or hereafter acquire under any statute, agreement, provision of the Articles, these Bylaws, vote of shareholders or otherwise. The provisions of this Article 6 shall be deemed to constitute an agreement between the Bank and each person entitled to indemnification hereunder. In addition to the rights provided in this Article 6, the Bank shall have the power, upon authorization by the Board of Directors, to enter into an agreement or agreements providing to any person who is or was a director, officer, employee or agent of the Bank certain indemnification rights. Any such agreement between the Bank and any director, officer, employee or agent of the Bank concerning indemnification shall be given full force and effect, to the fullest extent permitted by applicable law, even if it provides rights to such director, officer, employee or agent more favorable than, or in addition to, those rights provided under this Article 6.

Section 6: Continuing Benefits; Successors. The indemnification and advancement of expenses provided by or granted pursuant to this Article 6 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person. For purposes of this Article 6, the term "Bank" shall include any association, joint venture, trust, partnership or unincorporated business association that is the successor to all or substantially all of the business or assets of this Bank, as a result of merger, consolidation, sale, liquidation or otherwise, and any such successor shall be liable to the persons indemnified under this Article 6 on the same terms and conditions and to the same extent as this Bank.

Section 7: Interpretation; Construction. This Article 6 is intended to provide indemnification to the directors and permit indemnification to the officers of the Bank to the fullest extent permitted by applicable law as it may presently exist or may hereafter be amended and shall be construed in order to accomplish this result. To the extent that a provision herein prevents a director or officer from receiving indemnification to the fullest extent intended, such provision shall be of no effect in such situation. If at any time the Code is amended so as to permit broader indemnification rights to the directors and officers of this Bank, then these Bylaws shall be deemed to automatically incorporate these broader provisions so that the directors and officers of the Bank shall continue to receive the intended indemnification to the fullest extent permitted by applicable law.

Section 8: Amendment. Any amendment to this Article 6 that limits or otherwise adversely affects the right of indemnification, advancement of expenses or other rights of any Indemnified Person hereunder shall, as to such Indemnified Person, apply only to claims, actions, suits or proceedings based on actions, events or omissions (collectively, "Post Amendment Events") occurring after such amendment and after delivery of notice of such amendment to the Indemnified Person so affected. Any Indemnified Person shall, as to any claim, action, suit or proceeding based on actions, events or omissions occurring prior to the date of receipt of such notice, be entitled to the right of indemnification, advancement of expenses and other rights under this Article 6 to the same extent as if such provisions had continued as part of the Bylaws of the Bank without such amendment. This Section 8 cannot be altered, amended or repealed in a manner effective as to any Indemnified Person (except as to Post Amendment Events) without the prior written consent of such Indemnified Person.

Section 9: Severability. Each of the Sections of this Article 6, and each of the clauses set forth herein, shall be deemed separate and independent, and should any part of any such Section or clause be declared invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall in no way render invalid or unenforceable any other part thereof or any separate Section or clause of this Article 6 that is not declared invalid or unenforceable.

ARTICLE 7: CERTIFICATES AND SHAREHOLDERS

Section 1: Certificates. Certificates in the form determined by the Board of Directors shall be delivered representing all shares of which shareholders are entitled. Certificates shall be consecutively numbered and shall be entered in the books of the Bank as they are issued. At a minimum, each share certificate must state on its face: (a) the name of the Bank and that it is organized under the laws of South Carolina; (b) the name of the person to whom the certificate is issued; and (c) the number and class of shares and the designation of the series, if any, the certificate represents. Each share certificate (a) must be signed (either manually or in facsimile) by at least two officers, including the chief executive officer, the president, the secretary, or such other officer or officers as the Board of Directors shall designate; and (b) may bear the corporate seal or its facsimile. If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

Section 2: Issuance of Shares. The Board of Directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the Bank, including cash, promissory notes, services performed, written contracts for services to be performed or other securities of the Bank. Before the Bank issues shares, the Board of Directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the Board of Directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable. When the Bank receives the consideration for which the Board of Directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

Section 3: Rights of Bank with Respect to Registered Owners. Prior to due presentation for transfer of registration of its shares, the Bank may treat the registered owner of the shares as the person exclusively entitled to vote the shares, to receive any dividend or other distribution with respect to the shares, and for all other purposes; and the Bank shall not be bound to recognize any equitable or other claim to or interest in the shares on the part of any other person, whether or not it has express or other notice of such a claim or interest, except as otherwise provided by law.

Section 4: Transfers of Shares. Transfers of shares shall be made upon the books of the Bank kept by the Bank or by the transfer agent designated to transfer the shares, only upon direction of the person named in the certificate or by an attorney lawfully constituted in writing. Before a new certificate is issued, the old certificate shall be surrendered for cancellation or, in the case of a certificate alleged to have been lost, stolen or destroyed, the provisions of these Bylaws shall have been complied with.

Section 5: Registration of Transfer. The Bank shall register the transfer of a certificate for shares presented to it for transfer if: (a) the certificate is properly endorsed by the registered owner or by his duly authorized attorney; (b) the signature of such person has been guaranteed by a commercial bank or brokerage firm that is a member of the National Association of Securities Dealers and reasonable assurance is given that such endorsements are effective; (c) the Bank has no notice of an adverse claim or has discharged any duty to inquire into such a claim; (d) any applicable law relating to the collection of taxes has been complied with; and (e) the transfer is in compliance with applicable provisions of any transfer restrictions of which the Bank shall have notice.

Section 6: Lost, Stolen or Destroyed Certificates. The Bank shall issue a new certificate in place of any certificate for shares previously issued if the registered owner of the certificate: (a) makes proof in affidavit form that the certificate has been lost, destroyed or wrongfully taken; (b) requests the issuance of a new certificate before the Bank has notice that the certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim; (c) gives a bond in such form, and with such surety or sureties, with fixed or open penalty, as the Bank may direct, to indemnify the Bank (and its transfer agent and registrar, if any) against any claim that may be made on account of the alleged loss, destruction or theft of the certificate; and (d) satisfies any other reasonable requirements imposed by the Bank. When a certificate has been lost, apparently destroyed or wrongfully taken, and the holder of record fails to notify the Bank within a reasonable time after he has notice of it, and the Bank registers a transfer of the shares represented by the certificate before receiving such notification, the holder of record is precluded from making any claim against the Bank for the transfer or for a new certificate.

Section 7: Restrictions on Shares. The Board of Directors, on behalf of the Bank, or the shareholders may impose restrictions on the transfer of shares (including any security convertible into, or carrying a right to subscribe for or acquire shares) to the maximum extent permitted by law. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction. A restriction on the transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this Section 7 and its existence is noted conspicuously on the front or back of the certificate.

Section 8: Voting of Stock Held. Unless otherwise provided by resolution of the Board of Directors, the chief executive officer, the president or any executive vice president shall from time to time appoint an attorney or attorneys or agent or agents of this Bank, in the name and on behalf of this Bank, to cast the vote which this Bank may be entitled to cast as a shareholder or otherwise in any other association, any of whose stock or securities may be held by this Bank, at meetings of the holders of the stock or other securities of such other association, or to consent in writing to any action by any of such other association, and shall instruct the person or persons so appointed as to the manner of casting such votes or giving such consent and may execute or cause to be executed on behalf of this Bank and under its corporate seal or

otherwise, such written proxies, consents, waivers or other instruments as may be necessary or proper; or, in lieu of such appointment, the chief executive officer, the president or any executive vice president may attend in person any meetings of the holders of stock or other securities of any such other association and their vote or exercise any or all power of this Bank as the holder of such stock or other securities of such other association.

ARTICLE 8: GENERAL PROVISIONS

Section 1: Distributions. The Board of Directors may authorize, and the Bank may make, distributions (including dividends on its outstanding shares) in the manner and upon the terms and conditions provided by applicable law and the Articles.

Section 2: Books and Records. The Bank shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and Board of Directors.

Section 3: Execution of Documents. The Board of Directors or these Bylaws shall designate the officers, employees and agents of the Bank who shall have the power to execute and deliver deeds, contracts, mortgages, bonds, debentures, checks and other documents for and in the name of the Bank, and may authorize such officers, employees and agents to delegate such power (including authority to redelegate) to other officers, employees or agents of the Bank. Unless so designated or expressly authorized by these Bylaws, no officer, employee or agent shall have any power or authority to bind the Bank by any contract or engagement or to pledge its credit or to render it liable pecuniarily for any purpose or any amount.

Section 4: Fiscal Year. The fiscal year of the Bank shall be the same as the calendar year.

Section 5: Seal. The Bank may provide a seal which contains the name of the Bank and the name of the state of association. The seal may be used by impressing it or reproducing a facsimile of it or otherwise.

Section 6: Resignation. A director may resign by delivering written notice to the Board of Directors, the chairman or the Bank. Such resignation of a director is effective when the notice is delivered unless the notice specifies a later effective date. An officer may resign at any time by delivering notice to the Bank. Such resignation of an officer is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation of an officer is made effective at a later date and the Bank accepts the future effective date, the Board of Directors may fill the pending vacancy before the effective date if the Board of Directors provides that the successor does not take office until the effective date.

Section 7: Computation of Days. In computing any period of days prescribed hereunder the day of the act after which the designated period of days begins to run is not to be included. The last day of the period so computed is to be included.

Section 8: Amendment of Bylaws.

(a) Except to the extent required otherwise by law, these Bylaws, or the Articles, these Bylaws may be altered, amended or repealed or new Bylaws may be adopted at any meeting of the Board of Directors at which a quorum is present, by the affirmative vote of majority of the directors then in office, provided notice of the proposed alteration, amendment or repeal is contained in the notice of the meeting.

(b) Except to the extent required otherwise by law, these Bylaws, or the Articles, these Bylaws may also be altered, amended or repealed or new Bylaws may be adopted at any meeting of the shareholders at which a quorum is present or represented by proxy, by the affirmative vote of the holders of a majority of each class of shares entitled to vote thereon, provided notice of the proposed alteration, amendment or repeal is contained in the notice of the meeting.

(c) Upon adoption of any new bylaw by the shareholders, the shareholders may provide expressly that the Board of Directors may not adopt, amend or repeal that bylaw or any bylaw on that subject.

Section 9: Construction. If any portion of these Bylaws shall be invalid or inoperative, then, so far as is reasonable and possible: (a) the remainder of these Bylaws shall be considered valid and operative and (b) effect shall be given to the intent manifested by the portion held invalid or inoperative.

Section 10: Headings. The headings are for convenience of reference only and shall not affect in any way the meaning or interpretation of these Bylaws.

The undersigned, as Chief Executive Officer of the Bank, hereby certifies that the bylaws contained herein are the true and correct bylaws adopted by the Bank's Board of Directors in compliance with any procedural requirements of the Bank's Articles of Incorporation and the laws of the State of South Carolina, and the rules and regulations promulgated thereunder.

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

MAY 07 2014

ARTICLES OF AMENDMENT

[Signature]
SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant Section 33-10-106 of the 1976 South Carolina Code of Laws, as amended, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

1. The name of the corporation is SCBT
2. Date of Incorporation June 28, 2012
3. Agent's Name and Address V. Nicole Comer - 520 Gertrude St + Columbia, SC
4. On December 5, 2013, the corporation adopted the following Amendment (s) of its Articles of Incorporation: (Type or attach the complete text of each Amendment)

Item 1 of the Articles of Incorporation should be amended to read as follows:

"1. The full corporate title of the Bank shall be 'South State Bank' (the 'Bank')."

5. The manner, if not set forth in the Amendment, in which any exchange, reclassification, or cancellation of issued shares provided for in the Amendment shall be effected, is as follows: (if not applicable, insert "not applicable" or "NA").

Not applicable

6. Complete either "a" or "b", whichever is applicable.

- a. ☒ Amendment(s) adopted by shareholder action.
At the date of adoption of the Amendment, the number of outstanding shares of each voting group entitled to vote separately on the Amendment, and the vote of such shares was:

Voting Group	Number of Outstanding Shares	Number of Votes Entitled to be Cast	Number of Votes Represented at the meeting	Number of Undisputed* Shares
				For or Against
1	566,290	566,290	566,290	566,290 0

140507-0244
SOUTH STATE BANK

FILED: 05/07/2014

Filing Fee: \$110.00 ORIG



Mark Hammond

South Carolina Secretary of State

SCBT

Name of Corporation

***NOTE:** Pursuant to Section 33-10-106(6)(i) of the 1976 South Carolina Code of Laws, as amended, the corporation can alternatively state the total number of disputed shares cast for the amendment by each voting group together with a statement that the number of cast for the amendment by each voting group was sufficient for approval by that voting group.

- b. ☐ The Amendment(s) was duly adopted by the incorporators or board of directors without shareholder approval pursuant to Section 33-6-102(d), 33-10-102 and 33-10-105 of the 1976 South Carolina Code of Laws, as amended, and shareholder action was not required.
7. Unless a delayed date is specified, the effective date of these Articles of Amendment shall be the date of acceptance for filing by the Secretary of State (See Section 33-1-230(b) of 1976 South Carolina Code of Laws, as amended) June 30, 2014

Date May 5, 2014

SCBT

Name of Corporation



Signature

Robert R. Hill, Jr., Chief Executive Officer
 Type or Print Name and Office
FILING INSTRUCTIONS

- Two copies of this form, the original and either a duplicate original or a conformed copy, must be filed.
- If the space in this form is insufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form.
- Filing fees and taxes payable to the Secretary of State at time of filing application.

Filing Fee	\$10.00
Filing tax	\$100.00
Total	\$110.00

Return to: Secretary of State
 1205 Pendleton Street, Suite 525
 Columbia, SC 29201

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
)
) C/A No.: 2019-CP-26-
)
)

South State Bank,

Plaintiff,

v.

Chester A. Crockett, Trustee and Beth
Crockett, Trustee of the Crockett Family
Trust, and CresCom Bank,

Defendants.

SUMMONS

TO: THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their address at P.O. Box 5478, Florence, South Carolina 29502, within thirty (30) days after the service thereof; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

TURNER PADGET GRAHAM & LANEY P.A.

August 7, 2019

By s/Jeffrey L. Payne
Jeffrey L. Payne, SC Bar Number 15136
319 S. Irby Street
Florence, SC 29501
Telephone: (843) 662-9008
JPayne@turnerpadget.com

**ATTORNEYS FOR PLAINTIFF SOUTH
STATE BANK**

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) Civil Action No. 2019-CP-26-_____

South State Bank,)
))
Plaintiff,)
))
vs.)
))
Chester A. Crockett, Trustee and Beth)
Crockett, Trustee of the Crockett Family)
Trust, and CresCom Bank,)
))
Defendants.)

**COMPLAINT
(NON-JURY)**

NOW COMES THE PLAINTIFF, South State Bank, who alleges and states as follows:

PARTIES AND JURISDICTION

1. Plaintiff South State Bank is a banking corporation organized under the laws of the State of South Carolina.
2. Chester A. Crockett and Beth Crockett are the trustees of the Crockett Family Trust ("Trust") which has a principal place of administration in Horry County, South Carolina.
3. CresCom Bank is a banking corporation with a mortgage against the real property that is the subject of this action.
4. The property hereinafter described, which is the subject of this action, is situated and located in Horry County, South Carolina.
5. Jurisdiction and venue are proper in the Circuit Court for Horry County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Foreclosure on Judgment Lien)

6. Plaintiff incorporates by reference the allegations in the paragraphs above as if fully stated herein.

7. On March 11, 2010, South State Bank filed and obtained a deficiency judgment (the "Judgment") against Chester Crockett in Horry County, South Carolina, in Case No. 2009-CP-26-5915 in the total amount of \$773,471.01, which continues to accrue interest at the Judgment rate thereafter.

8. On December 14th, 2015, Chester A. Crockett and Beth A. Crockett purchased the real estate property known as 9451 Bellasera Circle ("Bellasera Circle" or "Subject Property") and obtained a Deed recorded in the Horry County Register of Deeds office in Book 3877, at Page 3324. The Subject Property is described as follows:

All that certain piece, parcel or lot of land, situate, lying and being in Dogwood Neck Township, County of Horry, State of South Carolina, and shown and designated as Lot 43, Members Club, Phase 2, the Golf Village at Grande Dunes shown on subdivision plat entitled "Bonded Final Plat, Members Club Residential Phase 2 for Grande Dunes Development Company, LLC", prepared by Hobbs, Upchurch and Associates, P.A. dated October 18, 2005, revised January 16, 2006 and recorded March 7, 2006 in Plat Book 212, at Page 85, in the office of the ROD for Horry County, South Carolina.

9. The Judgment lien attached to the Subject Property on December 14, 2015.

10. Thereafter, on October 24th, 2018, Chester Crockett and Beth Crockett conveyed the Subject Property to the Crockett Family Trust via Deed recorded in the Horry County Register of Deeds Office in Book 4153, at Page 2040.

11. Thereafter, the Crockett Family Trust re-recorded the Deed for the Subject Property with the Horry County Register of Deeds Office in Deed Book 4156, at page 3327, to add "Chester A. Crockett Trustee and Beth Crockett Trustee" to the name of the Grantee.

12. The indebtedness evidenced by the Judgment and secured by valid lien on the Subject Property has not been paid and remains due and owing in full.

13. The outstanding amount currently due and owing on the Judgment as of July 29, 2019 is \$1,552,924.37, plus post-judgment interest thereon and the costs of this action.

14. As result, Plaintiff is entitled to a judgment of foreclosure against the Defendant Trust in the amount of \$1,552,924.37, plus post-judgment interest thereon and the costs of this action. The Plaintiff seeks the foreclosure of its judgment lien and the sale of the Subject Property.

15. The Plaintiff is informed and believes that its Judgment constitutes a valid first lien on the Subject Property.

16. The Plaintiff is further informed and believes that the following Defendant may claim an interest in all or a portion of the Subject Property by virtue of the following:

(a) CresCom Bank by virtue of that certain mortgage recorded February 7th, 2018 with the Horry County Register of Deeds Office in Book 5960 at Page 3473. Any interest claimed by this Defendant is junior and subordinate to the lien of the Plaintiff's Judgment.

17. The Plaintiff expressly reserves the right to have the proceeds from the sale of the Subject Property applied to the outstanding balance of its Judgment, with any unpaid balance thereof remaining as a personal judgment against Chester A. Crockett.

WHEREFORE, Plaintiff respectfully prays:

A. That the amounts due to Plaintiff on its Judgment be ascertained and determined under the direction of the Court, together with the costs of this action;

B. For a judgment of foreclosure for the amount found due and owing to Plaintiff, together with the costs of this action;

C. That the Subject Property be sold pursuant to order of this Court, the equities of redemption be barred, and the proceeds of sale be first applied to the costs and expenses of this action, with the remaining proceeds to be paid to Plaintiff, with any amount in excess to be held by the Court until further ordered;

D. That Defendants and all persons whomsoever claiming by or through Defendants be forever barred of all right, title, and interest in and to the Subject Property, and each and every part thereof;

E. That any unpaid balance on the Judgment after applying proceeds from the sale remain as a personal judgment against Chester A. Crockett; and

F. For such other and further relief as the Court may deem just and proper.

TURNER PADGET GRAHAM & LANEY P.A.

By: s/Jeffrey L. Payne
P.O. Box 5478
Florence, South Carolina 29501
Telephone: (843) 656-4432
Jpayne@turnerpadget.com
ATTORNEYS FOR PLAINTIFF

August 7, 2019

2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A NO.: 2019-CP-26-05015
	)	
South State Bank,	)	
	)	
	)	SUMMONS
	)	AMENDED ANSWER AND
	)	COUNTERCLAIMS OF DEFENDANTS
	)	CHESTER A. CROCKETT, TRUSTEE
	)	AND
	)	BETH CROCKETT, TRUSTEE
	)	OF THE CROCKETT FAMILY TRUST
	)	(Jury Trial Demanded)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Chester A. Crockett, Trustee and Beth	)	
Crockett, Trustee of the Crockett Family	)	
Trust, and CresCom Bank,	)	
	)	
Defendants.	)	
	)	

TO: THE PLAINTIFF ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to reply to the Amended Answer and Counterclaims in this action, of which a copy is herewith served upon you, and to serve a copy of your reply to the said Amended Answer and Counterclaims on the subscribers at their office at 1000 29th Avenue North, Myrtle Beach, South Carolina 29577, and to file your reply with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to reply to the Amended Answer and Counterclaims within the time aforesaid, the Defendants Chester A. Crockett, Trustee and Beth Crockett, Trustee of the Crockett Family Trust in this action will apply to the Court for judgment by default for the relief demanded in the Amended Answer and Counterclaims and a judgment will be rendered against you.

s/Robert S. Shelton
Robert S. Shelton, SC Bar 68543
BELLAMY, RUTENBURG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
Phone: 843-448-2400
Fax: 843-448-3022
Email: rshelton@bellamylaw.com

ATTORNEY FOR DEFENDANTS
CHESTER A. CROCKETT, TRUSTEE
AND BETH CROCKETT, TRUSTEE OF
THE CROCKETT FAMILY TRUST

October 9, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A NO.: 2019-CP-26-05015
	)	
South State Bank,	)	
	)	
	)	
Plaintiff,	)	AMENDED ANSWER
	)	AND COUNTERCLAIMS
v:	)	OF DEFENDANTS
	)	CHESTER A. CROCKETT, TRUSTEE
	)	AND
Chester A. Crockett, Trustee and Beth	)	BETH CROCKETT, TRUSTEE
Crockett, Trustee of the Crockett Family	)	OF THE CORCKETT FAMILY TRUST
Trust, and CresCom Bank,	)	(Jury Trial Demanded)
	)	
Defendants.	)	
	)	

Defendants Chester A. Crockett, Trustee and Beth Crockett, Trustee of the Crockett Family Trust (hereinafter "Defendants Crockett") through their undersigned counsel hereby amend their answer and counterclaims to the Complaint filed by Plaintiff.

FOR A FIRST DEFENSE

1. All allegations of the Complaint not specifically admitted are denied and strict proof demanded thereof.
2. Defendants Crockett crave specific reference to the entire original agreements, if any, which are the subject of this action, along with all supplemental related agreements, and specifically state that the terms and/or provisions of said documents in their entirety speak for themselves.
3. Defendants Crockett affirmatively object to and deny any and all attempts to characterize, interpret, or delineate any document, or term thereof, which is in any way related to the transactions which are the subject of this action.

FOR A SECOND DEFENSE

4. Defendants Crockett re-allege all allegations elsewhere herein as if repeated verbatim.

5. Defendants Crockett admit the allegations contained within Paragraph One (1) of Plaintiff's Complaint upon information and belief.

6. Defendants Crockett admit the allegations contained within Paragraphs Two, Three, Four, and Five (2, 3, 4, and 5) of Plaintiff's Complaint.

7. Paragraph Six (6) of Plaintiff's Complaint is a pleading paragraph which requires no response from Defendants Crockett; however, to the extent any response may be required, Defendants Crockett deny the allegations therein and crave specific reference herein.

8. Defendants Crockett deny the allegations contained within Paragraph Seven (7) of Plaintiff's Complaint and demand strict proof thereof.

9. Defendants Crockett admit the allegations contained within Paragraph Eight (8) of Plaintiff's Complaint upon information and belief.

10. Defendants Crockett deny the allegations contained within Paragraph Nine (9) of Plaintiff's Complaint and demand strict proof thereof.

11. Defendants Crockett admit the allegations contained within Paragraphs Ten and Eleven (10 and 11) of Plaintiff's Complaint upon information and belief.

12. Defendants Crockett deny the allegations contained within Paragraphs Twelve, Thirteen, Fourteen, Fifteen, Sixteen, Sixteen (a), and Seventeen (12, 13, 14, 15, 16, 16 (a), and 17) of Plaintiff's Complaint and demand strict proof thereof.

FOR A THIRD DEFENSE

13. Defendants Crockett re-allege all allegations elsewhere herein as if repeated verbatim.

14. Plaintiff's claims are barred by waiver, laches, estoppel and/or equitable estoppel based on Plaintiff's delay and sitting upon its rights, and failing to attempt to enforce or collect on the judgment, and further based on its wrongdoing as outlined elsewhere herein.

FOR A FOURTH DEFENSE

15. Defendants Crockett re-allege all allegations elsewhere herein as if repeated verbatim.

16. Plaintiff cannot establish it received a valid or express assignment of the judgment it seeks to enforce or complied with the contractual obligations necessary to such an assignment, and thus does not have proper standing to pursue this action. As such, Plaintiff's claims are barred in their entirety.

FOR A FIFTH DEFENSE

17. Defendants Crockett re-allege all allegations elsewhere herein as if repeated verbatim.

18. Plaintiff's action is barred by the doctrine of unclean hands as it and/or its predecessor comes before this Court with unclean hands in its wrongful banking practices as outlined in the Audit Report of the Inspector General dated August 15, 2016 (OIG-16-052) (attached hereto and incorporated herein as Exhibit A) and the Cease and Desist Order (SE-10-032) (attached hereto and incorporated herein as Exhibit B) and in bringing this action with the knowledge of its or its predecessor's wrongdoing.

FOR A SIXTH DEFENSE

19. Defendants Crockett re-allege all allegations elsewhere herein as if repeated verbatim.

20. Plaintiff's claim is barred by the defense of illegality, as this action contravenes the Cease and Desist Order applicable to this matter.

FOR A SEVENTH DEFENSE

21. Defendants Crockett re-allege all allegations elsewhere herein as if repeated verbatim.

22. Plaintiff's claims fail to state facts sufficient to constitute action and the Complaint should be dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*.

FOR AN EIGHTH DEFENSE

23. Defendants Crockett re-allege all allegations elsewhere herein as if repeated verbatim.

24. Defendants Crockett reserve the right to assert, and do not waive, any additional or further defenses as may be revealed by additional information that may be acquired in discovery, trial, or otherwise.

FOR A NINTH DEFENSE

25. Defendants Crockett re-allege all allegations elsewhere herein as if repeated verbatim.

26. If Plaintiff was assigned the judgment as an asset, which is denied, it is barred by the non-recourse provisions since it has already collected funds from the disposition of the

underlying real estate.

FOR A TENTH DEFENSE

27. Defendants Crockett re-allege all allegations elsewhere herein as if repeated verbatim.

28. Plaintiff nor its predecessor have recorded a valid assignment as required by statute and thus cannot enforce it. Plaintiff is not the judgment holder and thus does not have standing or capacity to sue in this action on the judgment.

FOR AN ELEVENTH DEFENSE AND BY WAY OF A FIRST COUNTERCLAIM
(South Carolina Unfair Trade Practices Act)

29. Defendants Crockett re-allege all allegations elsewhere herein as if repeated verbatim.

30. Defendants Crockett allege that Plaintiff, in filing this action on the judgment, is engaging in an unfair or deceptive trade practice in violation of the South Carolina Unfair Trade Practices Act. The independent act of pursuing this new action, with knowledge that it or its predecessor in interest was found culpable by the federal government of wrongful acts in the lending process (including the one involved herein) resulting in its failure as a bank, is unfair and deceptive. Defendants Crockett have recently become aware of the Audit Report of the Office of the Inspector General, Department of Treasury, dated August 15, 2016 and identified as OIG-16-052 and entitled Safety and Soundness: Analysis of Bank Failures Reviewed by the Department of the Treasury Office of Inspector General. In that government audit, and in the timeframe applicable to the loan in question and many others, Plantation Federal as Plaintiff's alleged predecessor was specifically found to have engaged in inadequate credit administration

and risk management (including appraisal processes and other wrongdoing) resulting in the underlying loan and in its failure. Having knowledge of this report and its conclusions, yet moving forward with this action, is an unfair and deceptive trade practice.

31. Pursuit of this action against Defendants Crockett on behalf of the defunct bank's interest is an unfair or deceptive act of practice in the conduct of trade or commerce and is therefore unlawful. Defendants Crockett have suffered an ascertainable loss of money or property as a result of the use or employment by Plaintiff of this unfair or deceptive method, act or practice. Plaintiff has acted in willful or knowing violation of S.C. Code 39-5-20 and Defendants Crockett are thus entitled to treble damages, costs, and attorney's fees. The acts are capable of repetition and in fact have been repeated, and have great impact on the public interest, as other matters against other customers have been and are being pursued by Plaintiff on behalf of this defunct and culpable bank's interests.

FOR A TWELFTH DEFENSE AND BY WAY OF A SECOND COUNTERCLAIM
(Abuse of Process)

32. Defendants Crockett re-allege all allegations elsewhere herein as if repeated verbatim.

33. Plaintiff is employing this action to impose unfair and undue pressure without justification by implicating unrelated and clearly innocent parties.

34. Defendants Crockett are therefore entitled to actual and punitive damages as a result, including but not limited to the attorney's fees incurred as a result of the abuse of process.

FOR A THIRTEENTH DEFENSE AND BY WAY OF A THIRD COUNTERCLAIM
(Fraud on the Court)

35. Defendants Crockett re-allege all allegations elsewhere herein as if repeated

verbatim.

36. Plaintiff, or its predecessor in interest, has engaged in extrinsic fraud since during the underlying litigation resulting in the judgment upon which this action is based, and Plaintiff, or its predecessor in interest, engaged in a scheme to deceive or defraud the court. With intent to deceive, it sought to obtain a judgment with the knowledge that it had engaged in wrongful banking practices as borne out by the Inspector General's Audit Report cited above. As noted in that report among other wrongdoing: "...[B]anks failed to obtain appraisals or had improper appraisal practices, such as untimely, incomplete, or inadequate support for appraisal values...[T]his resulted in approved loans for borrowers with financial weaknesses,...deficient collateral...[B]anks identified some of these weaknesses prior to approving the loans. Appraisal deficiencies often resulted in properties being overvalued, violating standard appraisal requirements..." Knowing that it had participated in such wrongdoing, and failing to disclose the same to the Court when pursuing foreclosure of such a loan was misrepresentation with intent to deceive. The Court is not required to be impotent and mute and a helpless victim of the bank's deception and fraud. This fraud induced the defendants in the underlying case not to present a case or deprived them of the opportunity to be heard. The bank's fraud prevented those defendants, including the Crocketts, from fully exhibiting and trying their case, and there has never been a real contest before the court on the subject matter of the action. Those defendants certainly had no ability to prove the fraud since the government through its massive resources and ability to obtain access to otherwise private documents did not conclude and publish its finding of wrongdoing until August 15, 2016, over 6 years after the foreclosure judgment was obtained.

37. Based on the above, the judgment Plaintiff seeks to enforce should be set aside and Defendants Crockett herein granted relief from the judgment, barring this claim.

FOR A FOURTEENTH DEFENSE

38. Defendants Crockett re-allege all allegations elsewhere herein as if repeated verbatim.

39. Defendants Crockett specifically demand this matter be tried by a jury of their peers, after adequate discovery related to the facts and circumstances of this case.

WHEREFORE, Defendants Crockett demand a trial by jury, request reasonable discovery be conducted pursuant to the *South Carolina Rules of Civil Procedure*, and specifically object to any referral of this matter. Defendants Crockett further pray this Honorable Court dismiss with costs the claims in the Complaint, and grant judgment to each of the Defendants herein for actual, treble, punitive, and special damages, setting aside the judgment, and granting such other and further relief as the Court deems just and proper.

s/Robert S. Shelton
Robert S. Shelton, SC Bar 68543
BELLAMY, RUTENBURG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
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Email: rshelton@bellamylaw.com

ATTORNEY FOR DEFENDANTS
CHESTER A. CROCKETT, TRUSTEE
AND BETH CROCKETT, TRUSTEE OF
THE CROCKETT FAMILY TRUST

October 9, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Case No. 2009-CP-26-05915

RECEIVED
OCT 22 2019
SC Court of Appeals

South State Bank.....Respondent,

v.

Chester A. Crockett.....Appellant,

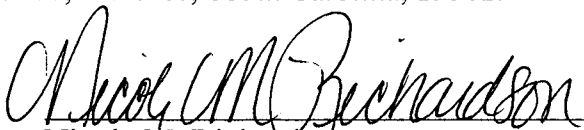
and

C&C Development, LLC; Michael Chaffin; Bruce J. Ahmes;
S&D General Contractors, LLC; Col-Cor Industries, Inc.
d/b/a Active Glass and Mirror; First Electric, Inc.; Wallcraft
Construction, Inc. and Carolina Dirt Works, LLC..... Other Defendants.

PROOF OF SERVICE

I certify that I have served Appellant's Return to Respondent's Motion to Dismiss on Respondent South State Bank by depositing a copy of it in the United States mail, postage prepaid, on October 21, 2019, addressed to its attorneys of record, J. Rene Josey, Esquire and Jeffrey L. Payne, Esquire, Turner Padgett, P.O. Box 5478, Florence, South Carolina, 29502.

October 21, 2019



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October 21, 2019

VIA FEDERAL EXPERS

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: South State Bank v. C & C Development, LLC, et al
C/A No.: 2009-CP-26-05915

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of Appellant's Return to Respondent's Motion to Dismiss and Proof of Service in this case. Please return a clocked copy of the Proof of Service to our office in the self-addressed and stamped envelope enclosed for your convenience. Should you have any questions or require any additional information, please do not hesitate to contact our office.

With kindest regards, I remain

Yours truly,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

Robert S. Shelton/nmr
Robert S. Shelton, Esq.

RSS:nmr

Enclosures as stated

cc: J. Rene Josey, Esq.
Jeffrey L. Payne, Esq.
Client

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