

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is entered into by the undersigned (“Bidder”) in favor and for the benefit of the Federal Deposit Insurance Corporation in its corporate capacity and the Federal Deposit Insurance Corporation in its capacity as receiver for Franklin Bank, S.S.B. (the “Receiver” and, in either capacity, the “FDIC”). This Agreement is effective as of July 9, 2009.

RECITALS

WHEREAS, the FDIC is offering certain mortgage servicing rights (the “MSRs”) for sale (the “Proposed Sale”); and

WHEREAS, in connection with the Proposed Sale, the FDIC is distributing or otherwise making available to prospective bidders a package of materials (“Bid Package”), including, among other things, an Announcement of the Proposed Sale (the “Announcement”) and access to other information about the MSRs; and

WHEREAS, Bidder has expressed interest in having the FDIC provide Bidder with access to certain documents and/or other information relating to the Proposed Sale for inspection and review; and

WHEREAS, in consideration of the FDIC’s furnishing Bidder with access to information regarding the Proposed Sale, Bidder desires to enter into certain agreements regarding the Evaluation Material (defined below);

WHEREAS, Bidder’s execution of this Agreement, without modification, is a prerequisite to receipt of or access to any Evaluation Material; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Bid Package.

NOW, THEREFORE, in consideration of the foregoing and in order to induce the FDIC to furnish the Evaluation Material to Bidder for its inspection and review, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bidder hereby acknowledges and agrees as follows:

Section 1. Term. This Agreement shall terminate as to Bidder with respect to assets purchased (directly or indirectly) by Bidder in connection with the Proposed Sale, but only upon closing of the purchase of such assets. This Agreement shall terminate as to Bidder with respect to assets not purchased (directly or indirectly) by Bidder upon the later of (i) the date that is five (5) years after the Effective Date hereof, or (ii) the date that all copies of the Evaluation Material held or controlled by the Bidder or any of its Representatives have been destroyed and the hard drives provided to Bidder as part of the Evaluation Materials and all

replications thereof are returned to the FDIC (and a certification to that effect has been provided to the FDIC).

Section 2. Limitation on Use. Bidder shall use the Evaluation Material solely for the purpose of evaluating a purchase of the assets, including the MSR, in connection with the Proposed Sale and for no other purpose. “Evaluation Material” shall mean any information that the FDIC or its Representatives, directly or indirectly, furnish or make available to Bidder in connection with the Proposed Sale, including information on any hard drives provided by the FDIC or its Representatives, and all copies (electronic or otherwise) thereof and all notes, analyses, compilations, studies or other documents, whether prepared by Bidder or Representatives of Bidder, which contain or otherwise reflect any such information, provided that the term “Evaluation Material” shall not include information that (a) is or becomes generally available to the public other than as a result of a disclosure by Bidder which results in a breach of this Agreement, (b) was in Bidder’s possession prior to its disclosure by the FDIC or its Representatives, or (c) becomes available to Bidder from a person other than the FDIC or its Representatives, who, to the knowledge of the Bidder after due inquiry, is not otherwise bound by confidentiality obligations to the FDIC or its Representatives in connection with such information. “Representatives” shall mean, with respect to any person, the Affiliates of such person and its and their (a) directors, officers and employees and (b) agents, contractors, investment bankers, financial experts, potential financing sources, legal counsel, accountants or other advisers retained by or that are working on the Proposed Sale with such person.

Section 3. Limitation on Further Due Diligence. Bidder shall not contact or attempt to contact any borrower, obligor or guarantor or any of their respective officers, employees, agents or attorneys with respect to any loan that is subject to the MSR, unless:

- (a) Prior to initiating any contact with such individual or entity, other than pursuant to clause (b) of this Section 3, Bidder obtains the written consent of the FDIC, which consent may be withheld in the FDIC’s sole and absolute discretion or;
- (b) (i) Bidder has an ongoing business relationship with such individual or entity, which relationship pre-dates the date of this Agreement, or (ii) any such individual or entity initiates contact with Bidder to establish a business relationship, in which case Bidder may communicate with such individual or entity identified in clause (i) or (ii) in the ordinary course of Bidder’s business so long as Bidder does not use or disclose any Evaluation Material in its communications with such individual or entity or disclose Bidder’s involvement in the Proposed Sale.

Section 4. Limited Access And Return of Hard Drives. Without the prior, written consent of the FDIC, to be granted or withheld in its sole and absolute discretion, Bidder shall not disseminate or divulge any of the Evaluation Material to any individual or entity, other than to: (a) Bidder’s Representatives, and (b) to the extent not covered by clause (a), any third parties who are assisting Bidder in its review or analysis of the assets (such as equity investors, servicers, rating agencies and lenders), provided, however, that (x) in each

case such person (i) has a need for access to the Evaluation Material for the purpose of assisting and advising Bidder in the evaluation of the Proposed Sale or in the making of a bid in connection therewith, and (ii) has been advised by Bidder of the confidential nature of such information and directed by Bidder, and has agreed with Bidder, to treat such information confidentially in a manner so as to comply with all the terms of this Agreement, or is otherwise legally obligated under the terms of such person's engagement or relationship with Bidder or by law to maintain the confidentiality of the Evaluation Material, and (y) Bidder shall be liable to the FDIC for any failure on the part of any such individual or entity, including Representatives, to comply with Bidder's obligations under this Agreement.

Bidder acknowledges and agrees that the hard drives provided to Bidder by or on behalf of the FDIC or its Representatives are the property of the FDIC. Bidder agrees to return to the FDIC the hard drives and any replications thereof within five (5) days after notifying Bidder that the Bidder is not the successful bidder in the Proposed Sale.

Section 5. Confidentiality; Destruction of Documents. Bidder agrees that Bidder shall take reasonable precautions to ensure that all individuals or entities to whom the Evaluation Material is disclosed shall keep the Evaluation Material confidential. At a minimum, Bidder shall treat the Evaluation Material according to the same internal security procedures and with the same degree of care regarding its secrecy and confidentiality as similar information belonging to it is treated within its organization and in compliance with all applicable laws, including laws relating to privacy. In addition, Bidder acknowledges that (i) the Evaluation Material is subject to the confidentiality provisions of 12 C.F.R. Part 309 and may contain customer information subject to the Right to Financial Privacy Act, and (ii) any unauthorized use of the Evaluation Material may result in the imposition of criminal penalties under 18 U.S.C. Section 641. Bidder shall be responsible for any breach of the terms of this Agreement by Bidder or any of its Representatives or any other person to whom Bidder provides access to the Evaluation Materials, and agrees to take all reasonable measures to restrain its Representatives and all other persons to whom Bidder provides access to the Evaluation Material from prohibited or unauthorized disclosure or use of any Evaluation Material. With respect to any assets not directly or indirectly purchased by Bidder pursuant to the Proposed Sale, and subject to the obligation to return all hard drives and replications thereof to the FDIC, Bidder shall destroy, and shall ensure that all individuals or entities to whom any Evaluation Material has been disclosed destroy, all copies of the Evaluation Material, unless otherwise directed by the FDIC, or unless doing so would violate: (a) record-keeping requirements mandated by applicable law or regulation, or (b) internal Bidder record maintenance policies and controls. Any Evaluation Material not destroyed because of subsections (a) or (b) of this Section 5 shall remain confidential and subject to this Agreement. Bidder will inform the FDIC immediately of any improper disclosure of any of the Evaluation Material, and of any breach of any provision of this Agreement, which may come to Bidder's attention unless such notification would itself violate any applicable law, regulation or court order.

Section 6. Other Disclosure. To the extent that Bidder is legally compelled to disclose the Evaluation Material pursuant to the requirements of any action, suit, subpoena,

arbitration or other dispute resolution process or other legal proceedings, whether civil or criminal, including before any court or administrative or legislative body, Bidder shall notify the FDIC within one business day after its knowledge of such legally required disclosure so that the FDIC may seek an appropriate protective order and/or waive Bidder's compliance with this Agreement. Notice shall be both by telephone and in writing. In the absence of a protective order or waiver, Bidder may disclose the relevant Evaluation Material if, in the written opinion of its outside counsel, failure to disclose such Evaluation Material would subject Bidder to liability for contempt, censure or other legal penalty or liability.

Section 7. Liability. If the FDIC determines that Bidder has breached any provision of this Agreement (including any failure, by any individual or entity to whom any Evaluation Material is disclosed, to maintain such Evaluation Material as confidential in accordance with this Agreement), then the FDIC may, in its sole and absolute discretion, exercise any or all legal or equitable rights or remedies against Bidder to which the FDIC is entitled on account of such breach. The FDIC shall not be deemed to have waived any of its rights or remedies on account of its failure, delay or forbearance in exercising any such right or remedy in a particular instance. Bidder agrees that, due to the unique nature of the Evaluation Material, there can be no adequate remedy at law for any breach or threatened breach of Bidder's obligations hereunder and, accordingly, (i) the FDIC shall be entitled to equitable relief, including injunction, in the event of any breach of the provisions of this Agreement (or any threat thereof), in addition to whatever remedies it might have at law, and (ii) Bidder shall not oppose the granting of such relief and hereby irrevocably waives any requirement for the security or posting of any bond in connection with such relief. In addition to all legal and equitable remedies, the FDIC may, in its sole and absolute discretion, also choose to refuse to consider selling the assets to Bidder and may refuse to allow Bidder to conduct due diligence on or otherwise participate in the sale of any other assets offered for sale by the FDIC now or in the future.

Section 8. Indemnification. Bidder shall defend, indemnify and hold harmless the FDIC and its Representatives from and against any and all claims, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including attorneys' fees) asserted against or incurred by the FDIC or any of its Representatives (whether as a result of a third party claim asserted against the FDIC or otherwise) as a result of any violation of, or failure to comply with, the provisions of this Agreement by Bidder (including any failure, by any individual or entity to whom any Evaluation Material is disclosed, to maintain such Evaluation Material as confidential in accordance with this Agreement).

Section 9. Release of the FDIC. Bidder acknowledges and understands that some or all of the Evaluation Material may have been prepared by parties other than the FDIC, and further acknowledges and understands that the FDIC makes no representation or warranty whatsoever, express or implied or by operation of law, with respect to the content, completeness or accuracy of the Evaluation Material except as otherwise provided in a written sale agreement. Bidder hereby releases the FDIC and its Representatives from any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including attorneys' fees) asserted against or incurred by Bidder by reason of Bidder's

reliance on or knowledge of the Evaluation Material or for any other reason arising in connection with the Proposed Sale.

Section 10. Governing Law. Federal law shall control this Agreement. To the extent that federal law does not supply a rule of decision, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without reference to any conflict of laws rule or principle that might refer the governance or construction to the law of another jurisdiction. Nothing in this Agreement shall require any unlawful action or inaction by any party. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. Bidder and the FDIC intend that the terms and provisions of this Agreement be given the broadest possible interpretation to protect the interests of the FDIC hereunder.

Section 11. Corporate as Successor. Bidder acknowledges that the Receiver may assign its right, title and interest under this Agreement, in whole or in part, to FDIC in its corporate capacity and that in the event of such assignment, among other things, FDIC in its corporate capacity shall be entitled to exercise any and all of the Receiver's rights or remedies hereunder.

Section 12. Miscellaneous. This Agreement contains the entire understanding and agreement between Bidder and the FDIC relating to the receipt, use and disclosure of the Evaluation Material and supersedes any and all prior understandings and agreements with respect thereto. This Agreement has been duly authorized, executed and delivered by Bidder and constitutes a legal and valid obligation of Bidder enforceable in accordance with its terms.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN DULY EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE.

By: _____

Name: _____

Title: _____

Bidder's Name and Address

Bidder Contact Person

Telephone Number of Bidder Contact Person