

Multibank Structured Transaction 2010-1 RAD/CADC

EXECUTION COPY

**LIMITED LIABILITY COMPANY INTEREST
SALE AND ASSIGNMENT AGREEMENT**

by and among

MREC FUNDING, LLC,

**FEDERAL DEPOSIT INSURANCE CORPORATION,
AS RECEIVER OF THE VARIOUS FAILED FINANCIAL INSTITUTIONS
LISTED ON SCHEDULE I HERETO**

and

2010-1 RAD/CADC VENTURE, LLC

Dated as of August 26, 2010

**LIMITED LIABILITY COMPANY INTEREST
SALE AND ASSIGNMENT AGREEMENT**

THIS LIMITED LIABILITY COMPANY INTEREST SALE AND ASSIGNMENT AGREEMENT (this “**Agreement**”) is made as of August 26, 2010, by and among MREC Funding, LLC, a limited liability company organized and existing under the laws of Delaware (the “**Private Owner**”), and the Federal Deposit Insurance Corporation (in any capacity, the “**FDIC**”), as receiver for each of the various failed financial institutions listed on Schedule I hereto (including its successors and assigns thereto, the “**Initial Member**”), and 2010-1 RAD/CADC Venture, LLC, a limited liability company organized and existing under the laws of Delaware (the “**Company**”). Capitalized terms used and not defined in this Agreement shall have the respective meanings set forth in the Agreement of Common Definitions (as hereinafter defined).

RECITALS

WHEREAS, the FDIC has separately been appointed receiver for each of the various failed financial institutions listed on Schedule I hereto (individually or collectively, the “**Failed Banks**”); and

WHEREAS, the Initial Member formed the Company by causing the Certificate of Formation of the Company to be filed with the Secretary of State of the State of Delaware on August 16, 2010, holds the sole limited liability company interest in the Company, and has entered into the Original LLC Operating Agreement; and

WHEREAS, the parties to this Agreement, together with certain additional parties, have entered into the Agreement of Common Definitions – 2010-1 RAD/CADC Venture, LLC dated as of the date hereof (the “**Agreement of Common Definitions**”);

WHEREAS, pursuant to the Contribution Agreement, the Initial Member has contributed in part and sold in part to the Company all of the Initial Member’s right, title and interest in and to the Assets; and

WHEREAS, after conducting a sealed bid sale for a forty percent (40%) LLC Interest (the “**Transferred LLC Interest**”), the FDIC selected Mariner Real Estate Partners, LLC (the “**Sponsor**”) as the successful bidder pursuant to the bid form submitted by it (the “**Bid Form**”) and, in accordance with the instructions governing the sealed bid sale, the Sponsor has deposited \$5,212,088.83 (the “**Earnest Money Deposit**”) with the FDIC; and

WHEREAS, following its selection as the successful bidder, the Sponsor formed the Private Owner as a Qualified Transferee; and

WHEREAS, the Initial Member desires to transfer the Transferred LLC Interest to the Private Owner (upon which the Initial Member will retain a sixty percent (60%) LLC Interest) and enter into the LLC Operating Agreement in the form attached hereto as Exhibit A, and the Private Owner desires to acquire the Transferred LLC Interest and

enter into the LLC Operating Agreement; and

WHEREAS, the Initial Member and the Private Owner desire, as capital contributions to the Company pro rata in accordance their proportionate LLC Interests (after giving effect to the transfer of the Transferred LLC Interest), to fund the Working Capital Reserve with an aggregate amount of \$3,000,000.00 (such sum, the “**WCR Account Deposit**”);

WHEREAS, the Initial Member’s pro rata share of such WCR Account Deposit is \$1,800,000.00 (the “**Initial Member WCR Account Deposit**”) and Private Owner’s pro rata share of such WCR Account Deposit is \$1,200,000.00 (the “**Private Owner WCR Account Deposit**”);

WHEREAS, the Initial Member desires to fund the Initial Member Development Funding Account with an aggregate amount of \$10,424,177.65 (such sum, the “**Initial Member Development Funding Account Deposit**”), for the purposes and uses as forth in the LLC Operating Agreement;

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

1. **Sale and Assignment; Purchase Price; Funding of Working Capital Reserve; Closing.**

(a) **Sale and Assignment.** Subject to the terms and conditions of this Agreement, the Initial Member hereby sells to the Private Owner, and the Private Owner hereby purchases from the Initial Member, all of the Initial Member’s right, title and interest in and to the Transferred LLC Interest for a purchase price of \$52,120,888.26 (the “**Transferred LLC Interest Sale Price**”). On the date hereof, in satisfaction of its obligation to pay the Transferred LLC Interest Sale Price, the Private Owner shall (i) remit to the Initial Member, by wire transfer of immediately available funds, to such account as the Initial Member may direct in writing, an amount (the “**Purchase Price Payment**”) equal to the positive difference (if any) between (x) the Transferred LLC Interest Sale Price and (y) the sum of (A) the Earnest Money Deposit, (B) the Initial Member WCR Account Deposit, and (C) the Initial Member Development Funding Account Deposit, and (ii) (x) remit, on behalf of the Initial Member, by wire transfer of immediately available funds, (A) an amount equal to the Initial Member WCR Account Deposit to the Paying Agent for credit to the Working Capital Reserve Account, and (B) an amount equal to the Initial Member Development Funding Account Deposit to the Paying Agent for credit to the Initial Member Development Funding Account, and (y) remit, on its own behalf, by wire transfer of immediately available funds, an amount equal to the Private Owner WCR Account Deposit to the Paying Agent for credit to the Working Capital Reserve Account.

(b) **Closing Procedure.** Upon (i) the receipt by the Initial Member of

(x) the Purchase Price Payment, (y) evidence of the establishment of the Working Capital Reserve Account in accordance with the provisions of Section 3.6 of the Custodial and Paying Agency Agreement and the Initial Member Development Funding Account in accordance with Section 3.4 of the Custodian and Paying Agency Agreement, and (z) confirmation of receipt by the Paying Agent of each of the Initial Member WCR Account Deposit, the Private Owner WCR Account Deposit and the Initial Member Development Funding Account Deposit, (ii) the delivery of the executed LLC Operating Agreement by the parties thereto (as required by Section 2), (iii) the delivery of the Additional Security (as required by Section 3), (iv) the delivery of the completed Asset Value Schedule, in the form attached hereto as Exhibit B allocating the Transferred LLC Interest Sale Price among the Assets (the “**Asset Value Schedule**”), which shall be appended to the Contribution Agreement as the Asset Value Schedule thereunder, (v) the delivery of the executed Transferee Acknowledgment and Certification, in the form attached hereto as Exhibit C, and (vi) the delivery of the executed Joinder and Consent Agreement, in the form attached hereto as Exhibit D, the sale and assignment of the Transferred LLC Interest to the Private Owner and the closing of the other transactions contemplated hereby (collectively, the “**Closing**”) shall be effective.

2. **LLC Operating Agreement**. Contemporaneously with the execution and delivery of this Agreement, the Private Owner shall execute and deliver to the Company and the Initial Member the LLC Operating Agreement.

3. **Additional Security**. Contemporaneously with the execution of this Agreement and the LLC Operating Agreement, the Private Owner shall, pursuant to the applicable provisions in the LLC Operating Agreement and the Custodial and Paying Agency Agreement, establish the Private Owner Pledged Account and deliver (or cause to be delivered) to the Initial Member the Additional Security, in the form of a Qualifying Letter of Credit, in an amount not less than \$5,000,000.

4. **Representations and Warranties of Private Owner**. The Private Owner hereby represents and warrants separately to each of the Initial Member and the Company as follows:

(a) The Private Owner is a “Qualified Transferee,” as such term is defined in the LLC Operating Agreement, and as such, represents and warrants that each item included in such definition is true and correct in all respects as of the date hereof as if set forth herein.

(b) All information and documents provided to the Initial Member or its agents by or on behalf of the Private Owner or any Affiliate thereof (including the Sponsor) in connection with this Agreement and the transactions contemplated hereby, including, but not limited to, the Purchaser Eligibility Certification, the Bid Certification, the Structured Transaction Qualification Request, the Bidder Qualification Request and the Confidentiality Agreement, are true and correct in all respects as of the date hereof and do not fail to state any fact necessary to make the information contained therein not misleading.

5. **Exclusivity of Representations.** THE TRANSFERRED LLC INTEREST IS SOLD “AS IS” AND “WITH ALL FAULTS,” WITHOUT ANY REPRESENTATION, WARRANTY, GUARANTY OR RECOURSE WHATSOEVER, INCLUDING AS TO ITS VALUE (OR THE VALUE, COLLECTABILITY OR CONDITION OF THE LOANS HELD BY THE COMPANY OR ANY OF THE COLLATERAL FOR SUCH LOANS), FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE OR ANY OTHER MATTER, WHETHER EXPRESS OR IMPLIED OR BY OPERATION OF LAW OR OTHERWISE, AND THE INITIAL MEMBER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE TRANSFERRED LLC INTEREST, THE LOANS, OR THE COLLATERAL SECURING THE LOANS.

6. **Assignment.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs (in the case of any individual), successors and permitted assigns; provided, however, that the Private Owner may not assign this Agreement or any of its rights, interests or obligations hereunder. Any purported assignment or delegation in violation of this Agreement shall be null and void *ab initio*.

7. **Beneficiaries.** This Agreement shall inure to the benefit of, and may be enforced by, the Initial Member, the Private Owner and the Company and their respective successors and assigns. Except for the FDIC (in its corporate capacity), which shall be considered a third party beneficiary to this Agreement, there shall be no other third party beneficiaries hereunder.

8. **Waivers and Amendments.** No amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and executed by the Initial Member, the Private Owner, the Company and the FDIC (in its corporate capacity).

9. **Failure to Consummate Transaction.** If for any reason, without fault of the Initial Member, the Private Owner fails to consummate the purchase of the Transferred LLC Interest, upon the terms and conditions set forth in this Agreement, the Initial Member’s liquidated damages, and sole and exclusive remedy, shall be to retain the Earnest Money Deposit. The Private Owner and the Initial Member agree that the failure or refusal of the Initial Member to alter or modify, in any way, the terms or conditions of this Agreement, the LLC Operating Agreement or any Transaction Document shall not constitute fault on the part of the Initial Member. The Private Owner shall not be liable for any of the foregoing damages if the Private Owner is forced to withdraw its bid made pursuant to the Bid Form after award as the result of a supervisory directive given by the FDIC or any other federal or state financial regulatory agency, provided that the Initial Member shall be satisfied that such supervisory directive is legally effective. In such event, the Initial Member shall refund the Earnest Money Deposit.

10. **Governing Law.** EACH PARTY TO THIS AGREEMENT AGREES AND ELECTS THAT, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION, AND EACH PARTY TO THIS AGREEMENT UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAWS OF ANY OTHER JURISDICTION GOVERN THIS AGREEMENT. Nothing in this Agreement shall require any unlawful action or inaction by any party hereto.

11. **Jurisdiction; Venue and Service.**

(a) Each of the Private Owner and the Company, in each case on behalf of itself and its Affiliates, hereby irrevocably and unconditionally:

(i) consents to the jurisdiction of the United States District Court for the Southern District of New York and to the jurisdiction of the United States District Court for the District of Columbia for any suit, action or proceeding against it or any of its Affiliates commenced by the Initial Member arising out of, relating to, or in connection with this Agreement or any Transaction Document, and waives any right to:

(A) remove or transfer such suit, action or proceeding to any court or dispute-resolution forum (other than the court in which the Initial Member files the action, suit or proceeding) without the consent of the Initial Member;

(B) assert that venue is improper in either the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia; or

(C) assert that the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia is an inconvenient forum;

(ii) consents to the jurisdiction of the Supreme Court of the State of New York, County of New York, for any suit, action or proceeding against it or any of its Affiliates commenced by the Initial Member arising out of, relating to, or in connection with this Agreement or any Transaction Document (other than the LLC Operating Agreement), and waives any right to:

(A) remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Initial Member);

(B) assert that venue is improper in the Supreme Court of the State of New York, County of New York; or

(C) assert that the Supreme Court of the State of New York, County of New York is an inconvenient forum;

(iii) agrees to bring any suit, action or proceeding by it or any of its Affiliates against the Initial Member arising out of, relating to, or in connection with this Agreement or any Transaction Document (other than the LLC Operating Agreement) in only the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Initial Member, and agrees to consent thereafter to transfer of the suit, action or proceeding to either the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia at the option of the Initial Member; and

(iv) agrees, if the United States District Court for the Southern District of New York and the United States District Court for the District of Columbia both lack jurisdiction to hear a suit, action or proceeding falling within Section 11(a)(iii), to bring that suit, action or proceeding in only the Supreme Court of the State of New York, County of New York, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Initial Member.

(b) Each of the Private Owner and the Company, in each case on behalf of itself and its Affiliates, hereby irrevocably and unconditionally agrees that any final judgment entered against it in any suit, action or proceeding falling within Section 11(a) may be enforced in any court of competent jurisdiction.

(c) Subject to the provisions of Section 11(d), each of the Private Owner and the Company, in each case on behalf of itself and its Affiliates, and the Initial Member, hereby irrevocably and unconditionally agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 11(a) or Section 11(b) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address for notices pursuant to Section 11 (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 11(c) shall affect the right of any party to serve process in any other manner permitted by Law.

(d) Nothing in this Section 11 shall constitute consent to jurisdiction in any court by the FDIC, other than as expressly provided in Section 11(a)(iii) and Section 11(a)(iv), or in any way limit the FDIC's right to remove, transfer, seek to dismiss, or otherwise respond to any suit, action, or proceeding against the FDIC in any forum.

12. **Waiver of Jury Trial.** EACH OF THE PRIVATE OWNER AND THE

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

13. **Notices.** All notices, requests, demands and other communications required or permitted to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be given by certified or registered mail, postage prepaid, by delivery by hand or by nationally recognized courier service, or by electronic mail, in each case mailed or delivered to the applicable address or electronic mail address specified in, or in the manner provided in, this Section 13 below. All such notices, requests, demands and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt (or refusal thereof) by the relevant party hereto and (ii) (A) if delivered by hand or by nationally recognized courier service, when signed for (or refused) by or on behalf of the relevant party hereto; (B) if delivered by mail, when delivered (or refused), and (C) if delivered by electronic mail (which form of delivery is subject to the provisions of this paragraph), when delivered and capable of being accessed from the recipient's office computer, provided that any notice, request, demand or other communication that is received other than during regular business hours of the recipient shall be deemed to have been given at the opening of business on the next business day of the recipient. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder. From time to time, any party may designate a new address for purposes of notice to it hereunder by notice to such effect to the other parties hereto in the manner set forth in this Section 13.

If to the Initial Member, to:

Assistant Director, Structured Deals
Federal Deposit Insurance Corporation
550 17th Street, NW (Room F-7014)
Washington, D.C. 20429-0002
Attention: Ralph Malami
Email Address: rmalami@fdic.gov

with a copy to:

Senior Counsel
FDIC Legal Division
Litigation and Resolutions Branch, Receivership Section
Special Issues Unit
3501 Fairfax Drive (Room E-7056)
Arlington, Virginia 22226
Attention: David Gearin
Email Address: dgearin@fdic.gov

If to the Private Owner or to the Company, to:

2010-1 RADC/CADC Venture, LLC
4200 W. 115th Street, Suite 100
Leawood, Kansas 66211
Attention: Ryan Anderson and Kirk Lambright
E-mail Addresses: [REDACTED]

with a copy to:

Greenberg Traurig, LLP
1750 Tysons Boulevard, Suite 1200
McLean, Virginia 22102
Attention: Thomas Galli, Shareholder
E-mail Address: [REDACTED]

14. **Counterparts; Facsimile Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. It shall not be necessary for any counterpart to bear the signature of all parties hereto. This Agreement and any amendments hereto, to the extent signed and delivered by facsimile or other electronic means, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No signatory to this Agreement shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation or enforceability of a contract and each such Person forever waives any such defense.

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

16. **Compliance with Law; Rules of Construction.** Except as otherwise specifically provided herein, each party to this Agreement shall, at its own cost and expense, obey and comply with all Laws, as they may pertain to such party's performance of its obligations hereunder. Section 1.2 of the Contribution Agreement (Construction) is hereby incorporated by reference into this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

PRIVATE OWNER:

MREC FUNDING, LLC

By: Mariner Real Estate Management, its
Manager

By: 
Name: Kirk Lambright
Title: Chief Legal Officer

INITIAL MEMBER:

**FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER OF
THE VARIOUS FAILED FINANCIAL
INSTITUTIONS LISTED ON
SCHEDULE I HERETO**

By: _____
Name: J. M. Elliott
Title: Attorney-in-Fact

COMPANY:

2010-1 RADDC/CADC VENTURE, LLC

By: Federal Deposit Insurance Corporation,
as Receiver the Various Financial
Institutions Listed on Schedule I Hereto

By: _____
Name: J. M. Elliott
Title: Attorney-in-Fact

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

PRIVATE OWNER:

MREC FUNDING, LLC

By: Mariner Real Estate Management, its
Manager

By: _____
Name: Kirk Lambright
Title: Chief Legal Officer

INITIAL MEMBER:

**FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER OF
THE VARIOUS FAILED FINANCIAL
INSTITUTIONS LISTED ON
SCHEDULE I HERETO**

By: _____
Name: J. M. Elliott
Title: Attorney-in-Fact

COMPANY:

2010-1 RADC/CADC VENTURE, LLC

By: Federal Deposit Insurance Corporation,
as Receiver the Various Financial
Institutions Listed on Schedule I Hereto

By: _____
Name: J. M. Elliott
Title: Attorney-in-Fact

SCHEDULE I

List of Failed Financial Institutions

Bank Name	City	State	Fund	Closing Date
IndyMac Bank, FSB	Pasadena	CA	10007	July 11, 2008
First Georgia Community Bank	Jackson	GA	10025	December 5, 2008
Bank of Clark County	Vancouver	WA	10029	January 16, 2009
Haven Trust Bank	Duluth	GA	10027	December 12, 2008
First City Bank	Stockbridge	GA	10047	March 20, 2009
New Frontier Bank	Greeley	CO	10050	April 10, 2009
American Southern Bank	Kennesaw	GA	10053	April 24, 2009
First Bank of Beverly Hills	Calabasas	CA	10054	April 24, 2009
First Bank of Idaho	Ketchum	ID	10055	April 24, 2009
Michigan Heritage Bank	Farmington Hills	MI	10056	April 24, 2009
America West Bank	Layton	UT	10057	May 1, 2009
Citizens Community Bank	Ridgewood	NJ	10058	May 1, 2009
Silverton Bank	Atlanta	GA	10059	May 1, 2009
Westsound Bank	Bremerton	WA	10060	May 8, 2009
Bank of Lincolnwood	Lincolnwood	IL	10064	June 5, 2009
Community Bank of West Georgia	Villa Rica	GA	10068	June 26, 2009
First State Bank of Altus	Altus	OK	10093	July 31, 2009
Integrity Bank	Jupiter	FL	10095	July 31, 2009
Community Bank of Nevada	Las Vegas	NV	10100	August 14, 2009
Union Bank	Chandler	AZ	10102	August 14, 2009