

Sample Agreement — Purchase and Assumption

(This sample agreement may not be entirely applicable to transactions involving interim national banks or to partial purchase and assumption transactions.)

Agreement to Purchase the Assets and Assume the Liabilities

Made and entered into this _____ day of _____, 20____, by and between _____, a (national) banking association organized and existing under the laws of the United States, having its principal office and place of business in the city of _____, state of _____, (hereinafter called "seller"), and _____, a national banking association organized and existing under the laws of the United States, having its principal office and place of business in the city of _____, state of _____, (hereinafter called "purchaser").

WHEREAS, seller intends to cease the transaction of the business for which it was organized and thereafter proceed with the voluntary liquidation of its assets, and dissolution; and

WHEREAS, upon obtaining the requisite approval to this contemplated action by the shareholders of seller, seller will dispose of all of its assets and will provide for the payment of all of its outstanding obligations and liabilities and will distribute the overplus to its shareholders; and

WHEREAS, purchaser is willing to enter into an agreement with seller to assume and agree to pay and discharge the deposit and all of the other obligations and liabilities of seller (other than its liability to its shareholders as such) and to purchase all of the assets of the seller for a price which will give to each shareholder of seller \$ _____ for each share held.

FIRST: On the closing date, purchaser assumes, and agrees to pay discharge as and when due and payable, the deposits and all other liabilities and obligations of seller as such liabilities and obligations may exist (other than its liability to its shareholders as such).

SECOND: On the closing date, seller agrees to sell and transfer and purchaser agrees to purchase, all of the assets of seller of every kind and nature whatsoever, real, personal or mixed, tangible or intangible, for a total price equal to the amount of the deposit and other liabilities and obligations of seller assumed by purchaser, plus \$ _____.

The purchase price to be paid by purchaser for the respective assets shall be determined in the manner set forth in Exhibit A, attached, and made part of this agreement.

THIRD: On the closing date, purchaser will pay the purchase price of the assets of seller to be purchased by it by offsetting against such purchase price the total amount of deposit and other obligations and liabilities of seller assumed by it, and by paying the balance of \$ _____ in cash or by cashier's check of purchaser.

FOURTH: On the closing date the seller will:

1. Deliver to purchaser the assets purchased as shall be capable of physical delivery.
2. Execute, acknowledge and deliver to purchaser all such endorsements, assignments, bills of sale, deeds and other instruments of conveyance, assignment and transfer as shall

be reasonably necessary or advisable, in the opinion of counsel, for purchaser to consummate the sale and transfer the purchased assets to purchaser.

3. If requested by purchaser, assign and deliver by proper endorsement, any and all insurance policies, whether fire, life, fidelity or otherwise, previously taken out by seller for its own protection, so that purchaser, after the closing date, may be protected to the satisfaction of its counsel.

4. Assign and deliver to purchaser all real estate leases in force and all leases and agreements for its safe deposit boxes, which purchaser agrees to take over and perform.

5. Assign and deliver to purchaser all collateral security of any nature whatever held by seller as collateral security for any indebtedness owing to seller.

6. Deliver books, records and accounts, including tax returns which become the property of purchaser, but will be available at all times to the liquidating agents of sellers.

FIFTH: On and after the closing date seller agrees to give such further assurance and to execute, acknowledge and deliver such bills of sale, deeds, acknowledgments and other instruments of conveyance and transfer as in the judgment of purchaser shall be necessary and appropriate to effectively vest in the purchaser the full legal and equitable title of all assets of seller, free and clear of all liens and encumbrances.

SIXTH: Seller warrants, covenants and agrees that its condition as of the close of business of the closing date will not change materially from its condition as of the date of this agreement and that there are no actions, suits or proceedings pending, or to the knowledge of seller threatened against or affecting seller that involve the likelihood of any judgment of liability that may cause any materially adverse change in the business, properties or assets of seller and that for all mortgages and loans and discounts the amounts due and owing thereon as shown by the books of seller are correct.

SEVENTH: Purchaser agrees to pay for all expenses and costs in connection with the carrying out of this agreement and the liquidation and dissolution of seller, *provided, however,* that all such expenses and costs shall be approved by purchaser prior to their being incurred by seller or by its liquidating committee.

EIGHTH: Seller agrees that immediately after the closing date it will proceed to complete its liquidation by distributing its assets and thereupon dissolve.

NINTH: Seller agrees to enter into an agreement with the liquidating agent or agents, to be elected by the shareholders provided that such liquidating agent or agents shall receive no compensation for their services in liquidating the assets of the seller, distributing such assets to the shareholders, and proceeding to dissolution.

TENTH: The closing date shall be the close of business of the day on which the seller shall cease to do business preparatory to its liquidation and dissolution, such date to be fixed by the shareholders of seller.

ELEVENTH: This agreement is subject to the approval of the Plan of Voluntary Dissolution and Complete Liquidation of seller by a vote of two-thirds of its stockholders, and is further subject to approval by the Comptroller of the Currency and said Comptroller's consent to the establishment and operation by the purchaser of a branch bank at the present location of seller.

