
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 8-K

Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 24, 2014

Shepherd's Finance, LLC

(Exact name of registrant as specified in its charter)

Commission File Number: 333-181360

DELAWARE

(State or other jurisdiction of incorporation)

36-4608739

(IRS Employer Identification No.)

12627 San Jose Blvd., Suite 203, Jacksonville, FL 32223

(Address of principal executive offices, including zip code)

302-752-2688

(Registrant's telephone number, including area code)

None

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into Material Definitive Agreement

On December 24, 2014, Shepherd's Finance, LLC (the "Registrant") entered into a loan purchase and sale agreement (the "Agreement") by and between the Registrant and 1st Financial Bank USA ("1st Financial"), pursuant to which 1st Financial shall have the right, from time to time, to purchase from Registrant senior priority interests in certain loans made to fund the vertical construction of one to four family residential dwellings, that have been approved by 1st Financial's internal credit committee (referred to herein as "Eligible Loans"). Each Eligible Loan will be evidenced by notes secured by, among other things, mortgages or deeds of trust encumbering the respective construction properties.

Subject to the terms and conditions of the Agreement, 1st Financial shall have the right from time to time to purchase from Registrant a senior loan interest in each Eligible Loan which Registrant agrees to sell to 1st Financial. Registrant will also be required to offer to sell certain Eligible Loans to 1st Financial during an "Exclusivity Period". During the Exclusivity Period 1st Financial has the right to buy Eligible Loans to borrowers of Registrant when 1st Financial has previously purchased from Registrant under this Agreement a loan to the same borrower, and this Exclusivity is only under specific conditions outlined in Sections 1.2 and 2.7 of the Agreement. Outside of any Exclusivity Period, if Registrant desires to sell an interest in an Eligible Loan to a borrower when 1st Financial has previously purchased from Registrant under this Agreement a loan to the same borrower, Registrant will offer the sale of that loan to 1st Financial prior to offering to another potential purchaser. In all cases, 1st Financial will make an independent credit decision to purchase or not in its sole discretion.

The purchase price for each senior loan purchased by 1st Financial shall be expressed in a "Loan Notification" (as described in Section 2.1 of the Agreement) and, unless otherwise agreed by the parties, shall be an amount equal to the lesser of (i) an amount equal to 50% of the Eligible Balance (as defined in Section 1.2 of the Agreement) at the time of the closing of sale of the senior loan interest in such Eligible Loan and (ii) the Senior Loan Amount (as defined below); provided that the purchase price shall not include any loan fee or portion thereof. Unless another amount is set forth in the Loan Notification, the Senior Loan Amount shall be equal to the lowest of (i) 55% of the Registrant-approved appraised value of the property securing the loan, (ii) \$249,999.00, and (iii) 50% of the maximum principal amount of the Eligible Loan after deducting the loan fee. Except as otherwise provided in the Agreement, interest on the Purchase Price and all advances shall accrue at a per annum interest rate equal to the greater of (i) 10% per annum, or (ii) the effective interest rate of the loan pursuant to the Loan Documents (as described in Section 1.2 of the Agreement). 1st Financial's share of such interest shall be calculated based on the actual days funded by 1st Financial. All other amounts payable by a borrower in respect of the obligations under the loan shall be determined in accordance with the Loan Documents. 1st Financial shall not be entitled to any portion of the loan fee charged to the borrower, and Registrant shall generally be the servicer of the loan.

Pursuant to the procedures set forth in Sections 5.7 through 5.9 of the Agreement, Registrant, upon written notice to 1st Financial, shall have the right at any time (the "Call Option") to repurchase from 1st Financial any senior loan. The Call Option purchase price for each senior loan shall be an amount equal to the outstanding principal amount of the senior loan held by 1st Financial plus accrued interest, provided that if the aggregate interest paid to 1st Financial in respect of such senior loan as of the repurchase date shall be less than four percent (4%) of the total commitment amount of 1st Financial in respect of such senior loan, then the purchase price shall be increased by an amount equal to such shortfall. Likewise, 1st Financial, upon written notice to Registrant, shall have the right at any time (the "Put Option"), to elect to require Registrant to repurchase the transferred rights pertaining to any senior loan, or any portion of a senior loan held by 1st Financial. The Put Option purchase price shall be an amount equal to the outstanding principal amount of the senior loan held by 1st Financial plus accrued interest, provided that the aggregate put prices payable in respect of all senior loans put to Registrant during any trailing twelve month period ending on the date of the put notice shall never exceed the Put Option Limit, which is an amount equal to 10% of all fundings made by 1st Financial to Registrant under the senior loans during such twelve month period.

Registrant agrees that until the prior payment of all amounts due to 1st Financial in respect of the senior loan and the transferred rights: (a) all payments by Registrant or 1st Financial from or on behalf of borrowers under or pursuant to the Loan Documents will be applied *first*, to the payment of any amounts due to 1st Financial in respect of the senior loan and the other transferred rights, and *second*, to the payment of any amounts due to Registrant in respect of the subordinated loan; (b) all payments received by Registrant or 1st Financial in connection with a realization on any loan collateral will be applied *first*, to the payment of any amounts due to 1st Financial in respect of the senior loan and the transferred rights, and *second*, to the payment of any amounts due to Registrant in respect of the subordinated loan; and (c) the rights of Registrant in and to the loan collateral or any security interests granted under Loan Documents shall be subordinated to any and all rights of 1st Financial in and to such collateral and interests.

Unless otherwise agreed to in writing by the parties, the Agreement shall terminate: (a) when the entire indebtedness due under the Loan Documents for all senior loans held by 1st Financial shall have been paid, and Registrant has paid to 1st Financial all amounts due under the Agreement, and no new amounts become due thereunder within 30 days thereafter; or (b) when all senior loans and subordinate loans and the rights under the Agreement relating thereto shall be owned and held by one person, firm or corporation for its own account for a period exceeding 30 days; or (c) upon written notice by either party to the other if 1st Financial has not purchased a senior loan on or before March 1, 2015. However, no such termination shall occur during an Exclusivity Period.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits.

10.1 Loan Purchase and Sale Agreement

Signature(s)

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

SHEPHERD'S FINANCE, LLC

Date: December 29, 2014

By: /s/ Daniel M. Wallach
Daniel M. Wallach
Chief Executive Officer and Manager

LOAN PURCHASE AND SALE AGREEMENT

This LOAN PURCHASE AND SALE AGREEMENT (this “**Agreement**”) dated as of the 24th day of December, 2014 between **SHEPHERD’S FINANCE, LLC**, a Delaware limited liability company (“**Seller**”) having an address at 12627 San Jose Boulevard, Suite 203, Jacksonville, Florida 32223, and **1st FINANCIAL BANK USA**, a South Dakota chartered banking corporation (“**Buyer**”) having an address at 331 Dakota Dunes Blvd, Dakota Dunes, South Dakota 57049.

RECITALS

A. Seller is engaged in the business of originating commercial loans (hereinafter referred to individually as a “**Loan**” or collectively as “**Loans**”) to certain builders (hereinafter referred to individually as a “**Borrower**” or collectively as “**Borrowers**”) for the construction of residential dwellings and/or the development of residential buildings lots (hereinafter referred to individually as a “**Property**” or collectively as “**Properties**”). The Loans will be evidenced by certain notes (hereinafter referred to individually as a “**Note**” or collectively as “**Notes**”). The obligations under the Notes will be secured by, among other things, mortgages or deeds of trust encumbering the Properties (hereinafter referred to individually as a “**Mortgage**” or collectively as “**Mortgages**”), as more particularly described in the Mortgages.

B. Seller desires to sell and Buyer desires to buy, from time to time, senior priority interests in certain Loans made to fund the vertical construction of one to four family residential dwellings, that have been approved by Buyer’s internal credit committee, in its sole and absolute discretion (hereinafter referred to individually as a an “**Eligible Loan**” and collectively as “**Eligible Loans**”).

C. Subject to the terms and conditions contained herein, Seller will service the Eligible Loans and act as administrative agent for Buyer and Seller in respect of the Loans.

ARTICLE 1

INCORPORATION OF RECITALS; DEFINITIONS

1.1 **Incorporation of Recitals.** The above recitals are incorporated herein by this reference as if they were set forth herein in their entirety.

1.2 **Definitions.**

As used in this Agreement, the following terms have the following respective meanings:

“**Accepted Servicing Practices**” shall mean a contractual (non-fiduciary) duty of Seller to Buyer to exercise the same degree of care that administrative agents customarily apply in administering Loans similar to the Eligible Loans, or that Seller would exercise if it owned one hundred percent (100%) of and were administering the Eligible Loans solely for Seller’s own account, whichever is higher; in each case with a view to the maximization of timely recovery of principal and interest on the Eligible Loans on a cost-effective basis, and without regard to conflicting interests; provided, however, that (i) prior to the Title Insurance Requirement Date, Seller shall not be required to purchase title insurance on any Eligible Loans and (ii) for all Eligible Loans with a Senior Loan Amount less than \$250,000, Buyer accepts Seller’s practice of allowing the Borrower to select the appraiser.

“**Advances(s)**” means any monies advanced or credit extended to a Borrower by Seller under the Loan Documents.

“**Affiliate**” of a specified Person means a Person that (at the time when the determination is to be made) directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified Person. As used in the foregoing sentence, the term “control” (including, with correlative meaning, the terms “controlling,” “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to vote 10% or more of the voting securities of any Person.

“**Aggregate Receipts**” means, for any specified period, the aggregate amount of all Receipts during such period.

“**Applicable Law**” means any order, law, statute, regulation, rule, ordinance, writ, injunction, directive, judgment, decree, principle of common law, constitution or treaty enacted, promulgated, issued, enforced or entered by any Governmental Authority applicable to the Parties, or any of their respective businesses, properties or assets.

“**Assumed Obligations**” means all obligations and liabilities of Seller with respect to, or in connection with, the Transferred Rights resulting from facts, events or circumstances arising or occurring on or after the Effective Date; excluding, however, the Retained Obligations.

“**Business Day**” means all days except (i) Saturdays and Sundays, and (ii) days which are observed by the federal or state governments or commercial banks as legal holidays.

“**Buyer Event of Default**” has the meaning given to such term in Section 9.1.

“**Buyer’s Investment Amount**” means the aggregate amount of Buyer’s commitments (funded and unfunded) under Eligible Loans purchased by Buyer in connection with this Agreement and the Senior Loans.

“**Closing**” means the occurrence of all acts required by this Agreement to assign and transfer the Transferred Rights from Seller to Buyer.

“**Closing Conditions**” has the meaning given to such term in Section 2.2(b).

“**Default Interest Rate**” means, as to each Eligible Loan, the Interest Rate plus a margin of six percent (6%) (the “Seller Default Margin”). The Default Interest Rate is the rate at which interest shall accrue on the Senior Loans during the existence of a Seller Event of Default under this Agreement. For the avoidance of doubt, during any period of time when a Borrower is in default under the Loan Documents for a Senior Loan and therefore the Interest Rate applicable to such Senior Loan has been increased by the Default Rate Margin (as defined in the underlying Loan Documents) payable by the Borrower under the Loan Documents for such Senior Loan, then the Seller Default Margin shall not be applicable to such Senior Loan during such period of time.

“**Distribution**” means any payment or distribution of Receipts to Buyer pursuant to and in accordance with Section 4.8.

“**Effective Date**” means, with respect to this Agreement, the date of execution, and for each Eligible Loan, the date upon which each of the conditions set forth in Section 2.2 have been satisfied by Seller or otherwise waived in writing by Buyer.

“**Eligible Balance**” means, at any specific point in time for any Eligible Loan, an amount equal to (a) all Advances made by Seller to a Borrower pursuant to an Eligible Loan minus (b) the sum of (i) all accrued lender fees, (ii) all escrowed builder deposit amounts, (iii) all accrued or net funded builder deposit amounts, (iv) all accrued or net funded amounts for the payment of interest that are, as of yet, not earned, (v) all other cash escrow amounts, including but not limited to, interest escrows funded by Borrower, and (vi) any payoff made by Borrower.

“**Exclusivity Period**” means the period of time commencing on the Effective Date of this Agreement and ending one hundred eighty (180) days following the first funding made by Buyer to Seller pursuant to the terms of this Agreement, which period shall be extended by ninety (90) days (to two hundred seventy (270) days) if, as of such one hundred eightieth (180th) day, Buyer’s Investment Amount exceeds One Million (\$1,000,000.00) Dollars. The Exclusivity Period shall also include any period of time during the Term of this Agreement when Buyer’s Investment Amount exceeds Five Million (\$5,000,000.00) Dollars. However, in no event shall the Exclusivity Period include any period of time during which Buyer requires Seller to purchase title insurance on Eligible Loans.

“**Governmental Authority**” means the United States of America, and any federal, national, state, provincial, local or similar government, governmental, regulatory or administrative authority, agency or commission, including any state insurance regulatory authority, or any court, tribunal, or judicial or arbitral body within the United States of America.

“**Guaranty**” means any guaranty of a Borrower’s obligations under a Loan.

“**Interest Rate**” means, for each Eligible Loan, a per annum interest rate which is the greater of (i) ten percent (10%) per annum, or (ii) the effective interest rate of the Loan pursuant to the Loan Documents, including any Default Interest Rate Interest payable by a Borrower.

“**Loan Collateral**” means any property, whether real or personal, tangible or intangible, of whatever kind and wherever located, whether now owned or hereafter acquired or created, which has been pledged, mortgaged, assigned or otherwise transferred by a Borrower to, or in or over which an encumbrance has been, or is purported to have been, granted to (or otherwise created) for the benefit of, Seller and/or Buyer under the Loan Documents.

“**Loan Documents**” means collectively the Note, Mortgage and all other agreements, instruments and documents executed and/or delivered in connection with an Eligible Loan, all as may be supplemented, restated, superseded, amended or replaced from time to time.

“**Major Decision**” means (i) the release of any Loan Collateral; (ii) the release of any party from any liability under the Loan; (iii) except as expressly set forth in the Loan Documents, the changing of the interest rate payable under the Loan; (iv) any amendment or modification of any of the Loan Documents, including without limitation, the changing of the maturity date or amount of the Loan; (v) the granting of consent to or acceptance of any cancellation or termination of any of the Loan Documents; (vi) the waiver of a material obligation of, or release of any material claim against, Borrower or any co-maker, guarantor or endorser of the Loan; (vii) the pursuit of any remedy upon a default under any of the Loan Documents; or (viii) acceptance of a deed in lieu of foreclosure.

“Material Adverse Change” means any event, occurrence or change in conditions of any nature which could materially and adversely affect the Loan, the Loan Collateral or Borrower’s or guarantor’s ability to perform its respective obligations under any Loan Document. In determining whether any individual event would result in a “Material Adverse Change”, notwithstanding that such event does not in and of itself have such an effect, a “Material Adverse Change” also shall be deemed to have occurred if the cumulative effect of such event and all other than occurring events, occurrences and changes in conditions would result in a “Material Adverse Change”.

“Person” means any individual, partnership (whether general or limited), corporation, joint stock company, limited liability company, trust (including a business or statutory trust), estate, association, custodian, nominee, joint venture or other entity, or a Governmental Authority.

“Protective Advance” means an advance made by Buyer or Seller to preserve or protect the Loan Collateral or Buyer’s and Seller’s interest therein upon a default by Borrower in its obligation to do so, including but not limited to payment of taxes, insurance premiums, and amounts to remove or prevent imposition of liens (other than the Mortgage) on the Property, and reasonable attorneys’ fees and court costs incurred in connection therewith. Without limiting the generality of the foregoing, any advance made to finish completion of renovations or construction of a Property, to fund a receivership estate relating to a Property, to fund operating shortfalls, or to fund capital improvements to a Property, shall be considered a Protective Advance.

“Qualified Transferee” means a bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, or real estate investment trust, or any entity controlled by any of the foregoing, provided that any such entity) has total assets in excess of \$100,000,000 and is regularly engaged in the business of making or owning commercial real estate loans (or interests in commercial real estate loans) or operating commercial properties.

“Receipts” means any payments or other distributions received by Seller in respect of an Eligible Loan, whether received by voluntary payment, involuntary payment setoff or otherwise, and whether in the form of cash, notes, securities, or other property (including Loan Collateral), including, without limitation, all payments of principal, interest, default interest, late charges, prepayment fees, commitment fees, exit fees and other fees of any kind or character, indemnification payments, reimbursements of expenses, insurance proceeds and condemnation awards.

“Retained Obligations” means all obligations and liabilities of Seller relating to the Transferred Rights that (i) as to each Eligible Loan, result from facts, events or circumstances arising or occurring prior to the Effective Date of such Eligible Loan, (ii) result from Seller’s breach of its representations, warranties, covenants, or agreements under this Agreement or the Loan Documents, (iii) result from Seller’s bad faith, gross negligence, or willful misconduct, or (iv) are attributed to Seller’s actions or obligations in any capacity under the Loan Documents.

“Seller Event of Default” has the meaning given to such term in [Section 7.1](#).

“Senior Loan” means the portion of an Eligible Loan purchased by Buyer.

“Senior Loan Amount” means the amount (expressed in Dollars) of the portion of an Eligible Loan purchased by Buyer. Unless another amount is set forth in the Loan Notification, such amount shall be equal to the lowest of (i) fifty-five percent (55%) of the Seller-approved appraised value of the Property securing the Loan (as evidenced by an appraisal satisfactory to Buyer in all respects), (ii) Two Hundred Forty-Nine Thousand Nine Hundred Ninety-Nine and 00/100 Dollars (\$249,999.00), and (iii) fifty percent (50%) of the maximum principal amount of the Eligible Loan after deducting the loan fee.

"Senior Loan Percentage" means the Senior Loan Amount divided by the amount of the maximum principal amount of the Eligible Loan after deducting the loan fee.

"Subordinated Loan" means the remaining portion of an Eligible Loan not purchased by Buyer.

"Subordinated Loan Amount" means the principal amount of an Eligible Loan less the Senior Loan Amount.

"Subordinate Loan Percentage" means the amount of the Subordinate Loan divided by the amount of the Eligible Loan.

"Title Insurance Requirement Date" means the date on which Buyer elects pursuant to Section 3.28(e) to start requiring Seller to obtain title insurance for all new Loans.

"Title Insurance Requirement Notice" means a notice delivered to Seller by Buyer informing Seller that title insurance is required for all new Loans as provided for in Section 3.28(e).

"Transferred Rights" means any and all of Seller's right, title and interest in, to and under the Senior Loans (including any commitment to make Advances) and, to the extent related thereto, the following:

(a) all amounts funded by or payable to Seller under the Loan Documents, and all obligations owed to Seller in connection with the Senior Loan;

(b) the Note, the Mortgage and the other Loan Documents;

(c) all claims (including "claims" as defined in Bankruptcy Code §101(5)), suits, causes of action, and any other right of Seller, whether known or unknown, against Borrower, Guarantor or any other obligor, or any of their respective Affiliates, agents, representatives, contractors, advisors, or any other entity that in any way is based upon, arises out of or is related to any of the foregoing, including, to the extent permitted to be assigned under Applicable Law, all claims (including contract claims, tort claims, malpractice claims, and claims under any law governing the purchase and sale of, or indentures for, securities), suits, causes of action, and any other right of Seller against any attorney, accountant, financial advisor, or other entity arising under or in connection with the Loan Documents or the transactions described therein;

(d) all Guaranties and all Loan Collateral and security of any kind for or in respect of the foregoing; and

(e) all proceeds of the foregoing.

ARTICLE 2

PURCHASE AND SALE OF ELIGIBLE LOANS; ADVANCES

2.1 Purchase and Sale.

(a) Subject to the terms and conditions of this Agreement, Buyer shall have the right from time to time to purchase from Seller a Senior Loan interest in each Eligible Loan which Seller agrees to sell to Buyer (or is required to sell to Buyer in accordance with the terms of this Agreement relating to the Exclusivity Period). Seller shall sell to Buyer a Senior Loan interest in each such offered Eligible Loan which Buyer elects to purchase in its sole discretion. Except as to Loans in existence prior to the date of this Agreement (which Loans may be presented by Seller to Buyer at any time), Seller shall notify Buyer no later than fourteen (14) days after Seller has originated and closed a Loan transaction with a Borrower by notification in the form of Exhibit "A" annexed hereto (a "**Loan Notification**"). Each Loan Notification shall include copies of the documents set forth in Section 2 of the Loan Notification with respect to such Loan (the "**Due Diligence Documents**"). Each Loan Notification (i) shall constitute, as to each Eligible Loan as to which Seller elects to or is required to offer to sell a Senior Loan interest in, an offer for Buyer to purchase a Senior Loan interest therein, and (ii) shall set forth, among other things, the total Eligible Loan, the Eligible Balance, the Senior Loan Amount and the Senior Loan Percentage being offered to Buyer. The commencement of the 14-day requirement shall not be triggered by delivery by Seller to Buyer of a term sheet or other loan information concerning a Loan prior to closing of the Loan or by any preapproval of a Loan by Buyer.

(b) Buyer shall have seven (7) Business Days from receipt of a Loan Notification (the "**Due Diligence Period**") to complete its due diligence, to determine if a particular Loan qualifies as an Eligible Loan, and to determine whether Buyer shall purchase the applicable Senior Loan. If Buyer notifies Seller at any time during the Due Diligence Period that Buyer will purchase an applicable Senior Loan, the parties will proceed to a Closing of Buyer's purchase of such Senior Loan on the terms set forth in the Loan Notification and in accordance with the terms of this Agreement. From time to time upon written request by Seller, Buyer shall provide to Seller, as to Eligible Loans which have not yet closed, a preapproval in writing within seven (7) Business Days after receipt by Buyer of a term sheet or other information concerning an Eligible Loan.

(c) In the event of a conflict between the terms of a Loan Notification and this Agreement, the terms of the Loan Notification shall prevail, provided that this sentence shall not be interpreted to permit Seller to disregard the terms of this Agreement or to excuse a breach of this Agreement by Seller.

2.2 Purchase Price; Closing Conditions; Closing.

(a) The purchase price for each Senior Loan purchased by Buyer shall be expressed in the Loan Notification and, unless otherwise agreed by Seller and Buyer, shall be an amount (the "**Purchase Price**") equal to the lesser of (i) an amount equal to fifty percent (50%) of the Eligible Balance at the time of the Closing of sale of the Senior Loan interest in such Eligible Loan and (ii) the Senior Loan Amount; provided that in no event shall the Purchase Price include any loan fee or portion thereof.

(b) Buyer shall pay the Purchase Price to Seller by cash or wire transfer of immediately available funds at each Closing, provided the following conditions have been satisfied by Seller (the “Closing Conditions”):

(i) Seller has been, and continues to, provide reporting to Buyer on its entire portfolio of Loans, which reporting shall be satisfactory to Buyer, in its sole and absolute discretion;

(ii) Seller has been, and continues to, provide specific and detailed reporting to Buyer on all Eligible Loans purchased by Buyer, which specifications and details shall be satisfactory to Buyer, in its sole and absolute discretion;

(iii) The Eligible Loan is performing in all respects at the time of the Closing;

(iv) All representations of Seller in this Agreement are accurate at the time of the Closing;

(v) Seller makes such additional representations to Buyer relating to the Eligible Loan as Buyer shall request;

(vi) Seller delivers the original Note duly endorsed to Buyer in a form approved by Buyer;

(vii) Seller delivers an original and duly executed assignment of Mortgage in customary form for the jurisdiction in which the Property is located and reasonably acceptable to Buyer, which assignment may be recorded against the Property by Buyer only in accordance with Section 7.2, Remedies;

(viii) Seller delivers to Buyer copies of all other Loan Documents relating to the Eligible Loan, and, after recording, the original recorded Mortgage (Buyer and Seller agree that a recorded mortgage may not be available for delivery to Buyer at the initial funding, but delivery thereof to Buyer shall be a condition precedent to all subsequent advances by Buyer in respect of that Loan;

(ix) Seller delivers proof satisfactory to Buyer that the Mortgage securing the Eligible Loan has been (or, if Buyer is purchasing a Senior Loan interest in such loan on the date of closing of such loan with the Borrower, satisfactory proof that the Mortgage will be) properly recorded in the applicable recording office in which the Property is located;

(x) Prior to the Title Insurance Requirement Date, Seller delivers to Buyer a copy of all title work related to the Eligible Loan and provides representations and warranties to Buyer to the effect that (1) Seller is performing title work consistent with its current procedures and policies, and (2) title to the Property securing such Loan is reasonably clear and defect-free.

(xi) On and after the Title Insurance Requirement Date, Seller shall deliver to Buyer a copy of all title work related to the Eligible Loan and upon receipt by Seller, a copy of the title insurance policy insuring such Eligible Loan.

(xii) Seller delivers to Buyer any contracts of sale, purchase agreements and leases relating to the Property; and

(xiii) Seller delivers to Buyer any other items or documents that Buyer may reasonably request in connection with the purchase of the Senior Loan.

(c) At the Closing, and in consideration of the payment of the Purchase Price and the mutual covenants and agreements contained herein, and subject to the terms and conditions of, this Agreement:

(i) Seller shall irrevocably sell, assign, transfer, grant and convey the Transferred Rights to Buyer;

(ii) Buyer shall acquire the Transferred Rights and agree to perform and comply with the Assumed Obligations; and

(iii) Seller shall remain responsible for, and shall assume and agree to perform and comply with the Retained Obligations. Buyer assumes no obligations other than the Assumed Obligations.

2.3 **Reserved.**

2.4 **Advances to Borrowers; Senior Loan Fundings.**

(a) Subject to the terms and conditions of this Agreement, each time during the term of an Eligible Loan that a Borrower requests an Advance from Seller under an Eligible Loan (the “**Advance Request**”), Seller shall fund such Advance from Seller’s own funds and provide Buyer with a written request (a “**Senior Loan Funding Request**”) for Buyer to reimburse Seller for a portion of such Advance in an amount equal to the Senior Loan Percentage of such Advance (each such reimbursement, a “**Senior Loan Funding**”). Each Senior Loan Funding Request shall include: (i) the amount of the Advance requested by Borrower; (ii) the amount of the requested Senior Loan Funding; (iii) electronic funds transfer instructions for the account of Seller to which Buyer is to remit the Senior Loan Funding; (iv) a copy of Borrower’s draw notice, certifications and all other items required in connection with an Advance under the Loan Documents; (v) an inspection report confirming the status of construction and percent of work complete, if requested by Buyer; (vi) evidence that Seller has funded the Advance to Borrower, (vii) evidence that all Closing Conditions have been satisfied, and (viii) such other items as may be reasonably requested by Buyer. Subject to the terms of this Agreement, Buyer shall, within three (3) Business Days of receipt of the Advance Request together with all of the foregoing items, reimburse Seller for a portion of the Advance in an amount equal to the Senior Loan Percentage of such Advance. Each Senior Loan Funding by Buyer shall be deemed the direct funding by Buyer to Borrower of the Senior Loan Percentage of the Advance in question.

(b) Notwithstanding anything to the contrary contained herein, Buyer shall not be obligated to reimburse Seller for Advances in respect of an Eligible Loan (i) in an amount which, when combined with all other Senior Loan Fundings in respect of such Eligible Loan, would exceed the Senior Loan Amount, (ii) if there has been a Material Adverse Change with respect to the Borrower, the Eligible Loan, the Loan Collateral or the Loan Documents, from the date of the Closing, (iii) if there has been, or currently exists, an Seller Event of Default by Seller under this Agreement, (iv) any default exists under the Loan Documents for such Eligible Loan or (v) any loan fee or portion thereof.

2.5 **Protective Advances.** Seller shall monitor and evaluate the need for Protective Advances and shall notify Buyer from time to time if Seller recommends that it is in the best interests of Seller and Buyer to make a Protective Advance in accordance with Accepted Servicing Practices. If Buyer agrees to make a Protective Advance recommended by Seller, Buyer shall remit the Senior Loan Percentage of the Protective Advance and Seller shall fund the balance. For purposes of this Section 2.5, such a Protective Advance shall be deemed to have been made concurrently by both Buyer and Seller on the date that both parties have funded their respective shares thereof, and shall constitute an Advance under the Eligible Loan. Protective Advances shall bear interest at the Interest Rate.

2.6 **Interest Rate.** Except as otherwise expressly provided herein, interest on the Purchase Price and all Advances shall accrue at the Interest Rate and shall be calculated as specified in the Loan Documents. Buyer’s share of such interest shall be calculated based on the actual days funded by Buyer. All other amounts payable by Borrower in respect of the obligations under the Loan, whether for fees, reimbursement of expenses or otherwise, shall be determined in accordance with the other Loan Documents.

2.7 **Exclusivity.** Provided Buyer has purchased a Senior Loan from Seller or has made an Advance within the past three hundred sixty five (365) days, then as to any Borrower to which Buyer has previously participated in an Eligible Loan by purchasing a Senior Loan from Seller (a “**Qualifying Borrower**”), Seller hereby agrees as follows:

(a) during any Exclusivity Period, Seller shall be obligated, as to each additional Loan for such Qualifying Borrower, to offer to Buyer the right to purchase a Senior Loan in such Loan; provided, however, if Buyer elects not to purchase an offered Loan, Seller is not restricted in any manner from using the Loan, including without limitation as collateral for any type of financing, selling such Loan or selling participation interest in such Loan to any third-party; and provided, further, on and after the Title Insurance Requirement Date, Seller may alternatively use such Loan as secured collateral in a non-Line of Credit financing, provided the new lender does not require, and will not obtain, title insurance in respect of such loan; and

(b) during any time period which is not within an Exclusivity Period, Seller may elect to either (i) offer Buyer the right to purchase a Senior Loan in such Loan ; provided, however, if Buyer elects not to purchase an offered Loan, Seller is not restricted in any manner from using the Loan, including without limitation as collateral for any type of financing, selling such Loan or selling participation interest in such Loan to any third-party, (ii) hold the Loan in its portfolio on an unencumbered basis, (iii) use the Loan as secured collateral for a Line of Credit or (iv) on or after the Title Insurance Requirement Date, use such Loan as secured collateral in a non-Line of Credit financing, provided the new lender does not require, and will not obtain, title insurance in respect of the Loan.

For purposes of this Section 2.7, the term “**Line of Credit**” means only a loan or credit facility extended to Seller which is secured by either a pledge of all assets of Seller or an assignment of all or substantially all first mortgage construction loan assets of Seller. The outstanding amounts under any Line of Credit shall not exceed than the greater of (i) One Million Five Hundred Thousand (\$1,500,00.00) Dollars, or (ii) twenty percent (20%) of the total amount of all Loans outstanding based upon the highest point of total Loan commitments by Seller in the past three hundred sixty five (365) days.

Seller shall certify to Buyer in writing at least quarterly that Seller is in compliance with the terms of this Section 2.7.

2.8 **Non-Compete.** Buyer shall not originate loans to Borrowers with whom Buyer developed a relationship solely pursuant to Buyer’s participation in the funding of Loans through the purchase of Senior Loans from Seller under this Agreement, or as to which Buyer has received Confidential Information as a result of its relationship with Seller in connection with this Agreement. However, Buyer may originate loans to Borrowers whom Buyer has developed a relationship outside the terms of this Agreement and not in violation of the August 6, 2014 Confidentiality Agreement between Buyer and Seller.

SECTION 3

SELLER’S REPRESENTATIONS, WARRANTIES AND COVENANTS

Seller hereby represents and warrants to Buyer that as of the Effective Date of this Agreement and as to any particular Eligible Loan, as of the date of the sale of any applicable Senior Loan to Buyer:

3.1 **Status.** Seller has been duly organized and validly exists as a limited liability company in good standing under the laws of its jurisdiction.

3.2 **Authority.** Seller has been duly authorized and empowered by all necessary limited liability company action to execute and deliver this Agreement and any other document or instrument executed and delivered in connection herewith, and to perform its obligations thereunder. The execution and delivery of this Agreement and the performance of the obligations to be performed hereunder do not, and will not, violate any provisions of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect applying to it or its limited liability company agreement.

3.3 **Licensing.** Seller holds all applicable federal, state, local and other licenses or permits, authorizations and approvals required for the proper conduct of its business and to perform its obligations under this Agreement in compliance with Applicable Law, is not in violation of any of the requirements of any such licenses, permits, authorizations and approvals, and has not received any notice of proceedings relating to the revocation or modification of any such license.

3.4 **No Breach.** Seller is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or governmental agency, which default would materially and adversely affect the condition (financial or other) or operations of Seller or its properties or would materially adversely affect its performance hereunder. The execution and delivery of this Agreement and the performance of the obligations by Seller to be performed hereunder do not and will not result in a breach of or constitute a default under any indenture, loan or credit agreement, lease, or any other agreement or instrument to which it is a party or by which it or its assets may be bound or affected.

3.5 **Validity.** When duly executed and delivered, this Agreement constitutes the legal, valid and binding obligation of Seller. Seller is in full compliance with all applicable federal and state regulatory capital requirements and is not operating under any order by any federal or state agency regulating its activities that would restrict its ability to enter into or perform this Agreement.

3.6 **No Litigation and Claims.** There is no civil, criminal or administrative notice, action, suit, demand, claim, hearing, proceeding, notice of violation, inquiry or investigation from, by or before any Government Authority pending or, to the knowledge of the Seller threatened, against the Seller or any of its Affiliates that, individually or in the aggregate, would have a Material Adverse Change on this Agreement or on any action taken or to be taken in connection with Seller's obligations contemplated herein, or which would be likely to impair materially its ability to perform under the terms of this Agreement. The Seller is not subject to any order, writ, judgment, award, injunction or decree of any Governmental Authority of competent jurisdiction or any arbitrator or arbitrators that, individually or in the aggregate, would be likely to impair materially its ability to perform under the terms of this Agreement.

3.7 **No Material Misstatements.** No representation, warranty or written statement made by or on behalf of Seller in this Agreement, or in any schedule, exhibit, report, written statement, certificate or other document furnished by Seller in connection with the transactions contemplated herein, or with respect to any Loans, contains or will contain any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

3.8 **No Adverse Selection.** Seller has not used any means to adversely select Loans for sale from the rest of Seller's portfolio which is not the subject of the sale, including without limitation, identifying Loans subject to additional levels of risk to Buyer which risks are known to Seller but not disclosed to Buyer.

3.9 **Right to Transfer**. The sale of the Transferred Rights hereunder is and will be free of any lawful claim by any party claiming by, through or under Seller.

3.10 **No Modification**. Seller has not modified any Mortgage or Note or any other Loan Document in any material respect, or satisfied, canceled or subordinated any Mortgage or Note in whole or in part or released all or any material portion from the lien of the Mortgage, or executed any instrument of release, cancellation or satisfaction.

3.11 **Loan Documents**. The list of loan documents attached to this Agreement as **Exhibit "B"** is a true, complete and correct list of all documents for a typical Loan.

3.12 **No Previous Transfers**. In the event Seller has previously pledged, encumbered, sold, conveyed or assigned any interest in the Loan or the Loan Documents to any other party, such previous holder of any interest in the Loan or the Loan Documents has duly released or reassigned such interest to Seller and Seller has identified such circumstance(s) to Buyer. At the time of the sale of the Transferred Rights to Buyer, each of the Loan and the Loan Documents is free from any liens, contract rights or other encumbrances whatsoever.

3.13 **Ownership of Loan**. Subject to the interest of Buyer pursuant to this Agreement, Seller is the sole legal and beneficial owner and holder of the Loans and the Transferred Rights. The Senior Loans were originated, closed, funded and transferred to Buyer in full compliance with all applicable federal, state and local laws and regulations, and any and all other consumer protection and applicable disclosure requirements. Without limiting the foregoing, Seller has disclosed to Borrowers, as required by applicable law, all compensation paid to Seller in connection with the origination and sale of Loans.

3.14 **Defenses**. There is no right of rescission, offset, defense (including the defense of usury) or counterclaim to the Note or Mortgage, including the obligation of the Borrower to pay the unpaid principal and interest on such Note. As of the date of purchase of the Senior Loans, there are no mechanics' liens or other claims or encumbrances that affect the lien priority of the Mortgage relating to the Loan.

3.15 **Origination and Servicing Practices**. The origination, servicing and collection practices used by Seller with respect to the Loans comply with all Applicable Laws and investor or insurer guidelines, and have been, in all respects, legal and proper. With respect to escrow payments, all such payments are in the possession of Seller and there exists no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. Any party which holds (directly or through an agent) any Loan Documents shall promptly deliver the Loan Documents for any Eligible Loan to any attorney who is commencing an enforcement action against a Borrower in respect of such Eligible Loan and who has requested such Loan Documents in writing.

3.16 **Enforceability**. The original Notes and Mortgages are genuine and each is the sole legal, valid and binding obligation of the maker thereof, enforceable in accordance with its respective terms. All parties to the Notes and Mortgages had the legal capacity to execute and deliver the Notes and Mortgages, and the Notes and Mortgages have been duly and properly executed by such parties.

3.17 **No Proceedings**. To the best of Seller's knowledge, there are no proceedings or investigations pending or threatened before any court or governmental body (i) asserting the invalidity of the Loans, (ii) asserting the bankruptcy or insolvency of a Borrower, (iii) seeking to prevent payment and discharge of the Loans, or (iv) seeking any determination or ruling that might materially and adversely affect the validity or enforceability of the Loans.

3.18 **Full Disclosure.** Seller has disclosed to Buyer all material information in Seller's possession or control relating to the Loans and the Borrower.

3.19 **Affiliate Transactions.** Except as a lender to Borrower or as otherwise disclosed in writing by Seller to Buyer, neither Seller nor any of its Affiliates has engaged in any kind of business with Borrower, any guarantor on the Loans or any of their respective subsidiaries, owners (direct or indirect and including partners, shareholders and members) or Affiliates. Seller has no interest in any Borrower.

3.20 **Due Diligence.** Seller has obtained copies of all documents and instruments required to be provided by Borrower in connection with the Loans pursuant to Seller's policies and procedures, and all conditions to making any Advances set forth in the Loan Documents have been satisfied.

3.21 **Information.** Seller shall timely deliver to Buyer all financial and non-financial information regarding the Borrowers and the Loans received from time to time, including (i) all notices of default given or received under the Loan Documents, and (ii) all financial statements, if any, and copies of other reports obtained under the Loan Documents.

3.22 **Books and Records.** Seller shall maintain books and records reflecting all transactions relating to the Loans, and shall make copies available to Buyer upon request.

3.23 **Segregated Accounts.** Seller shall segregate from its own funds Buyer's share of any Receipts received by Seller.

3.24 **Amendment of Loan Documents.** Seller agrees that Seller will not modify, cancel or otherwise change in any manner any of the terms, covenants, or conditions of any of the Loan Documents nor enter into any other agreements affecting the Loans without the prior written consent of Buyer.

3.25 **Compliance Certificate.** Seller shall deliver to Buyer, within fifteen (15) calendar days after the end of each calendar quarter, a certificate dated as of the end of the quarter in question and signed by a responsible officer of Seller stating (i) that as of the date thereof no default or event of default has occurred and is continuing under the terms of this Agreement, (ii) that Seller has notified Buyer of any default or event of default that has occurred under the terms of the Loan Documents and (iii) that all representations and warranties of Seller set forth in this Agreement remain true and correct as of the date of such compliance certificate.

3.26 **Reserved.**

3.27 **Reporting.** In addition to any other reports required to be delivered herein, Seller shall deliver to Buyer the following reports and notifications:

(a) Monthly Aggregate Receipts. Not later than the twentieth (20th) day of each calendar month, a report of Aggregate Receipts during the preceding month, which report shall include (i) a reasonably detailed breakdown by payment category and by Loan of all Receipts received by Seller from Borrowers during the preceding calendar month, and (ii) an accounting of the total amount, as of the end of such calendar month, of all payments made by Seller to Buyer;

(b) Distribution Report. In conjunction with each Distribution, Seller shall provide Buyer a statement indicating the amount of the Distribution with (i) a reasonably detailed breakdown by payment category of the Receipts underlying the Distribution (i.e., interest, principal or other fee payable under the Loan Documents) and (ii) a reasonably detailed breakdown by category of the Distribution to Buyer and Seller pursuant to Section 4.8;

(c) Interest Report: Not later than the twentieth (20th) day of each calendar month, a report of interest accrued and paid under Eligible Loans, which report shall include, without limitation, (i) the amount of accrued interest which a Borrower is not obligated to pay on a monthly basis pursuant to the Loan Documents, and (ii) the amount of accrued interest which Seller pays to Buyer which is not collected from a Borrower; for avoidance of doubt, amounts not yet due and payable under a Senior Loan are not yet due and payable hereunder;

(d) Seller Event of Default. Immediately upon any officer or manager of Seller becoming aware of the occurrence of any default or event of default by any Borrower under the Loan Documents, a certificate of an authorized officer or manager of Seller setting forth the details thereof and, the action which Seller proposes to take with respect thereto; and

(e) Financial Condition. Prompt notification of any change in the financial condition of any Borrower that could result in a Material Adverse Change on repayment of the Loan.

3.28 **Representations Regarding the Properties.** Seller represents and warrants that Seller has conducted a due diligence investigation of each Borrower and each Loan and, based on such investigation, further represents and warrants as follows:

(a) Title. Each Borrower is the owner of the respective Property(ies) in fee simple, subject only to those liens and encumbrances in favor of Seller in accordance with the Loan Documents.

(c) Utilities. All utility services necessary for the construction of the proposed improvements on the Property are available at the boundaries of the Property.

(d) Environmental Matters. Seller has no knowledge of the existence of any violation with respect to the Property of any Applicable Laws of any Governmental Authority relating to environmental, pollution, health or safety matters that will or threatens to impose a material liability on the Borrower or the Property or would require a material expenditure by the Borrower to cure, except any matters disclosed in written reports delivered by Seller to Buyer prior to Buyer's purchase of an interest in the Loan secured by the Property.

(e) First Lien Priority, Title Insurance. Each Mortgage is a valid and enforceable first lien on the Property and for mortgages dated on and after the Title Insurance Requirement Date, is insured by an American Land Title Association (“**ALTA**”) lenders' loan title insurance policy issued by an underwriter acceptable to Buyer, which policy is subject only to the lien of current real estate taxes and assessments, and covenants, conditions and restrictions, rights of way, easements and other matters of public record as of the date of recording of such Mortgage, such exceptions appearing of record and being acceptable to mortgage lending institutions generally or specifically reflected in the survey of the Property. The title insurance policy relating to the Loan, if applicable, is in full force and effect and will be in force and effect upon the consummation of the transactions contemplated by this Agreement. No claims have been made under such title insurance policy.

(f) **Insurance.** The Properties are insured by customary property insurance policies issued by an insurer acceptable to Buyer, and name the Seller as mortgagee/loss payee. The Mortgage obligates the Borrower thereunder to maintain the property insurance policy at Borrower's cost and expense, and on Borrower's failure to do so, the Mortgage authorizes the holder of the Mortgage to obtain and maintain such insurance at such Borrower's cost and expense, and to seek reimbursement from Borrower. Seller has not engaged in, and has no knowledge of any Borrower having engaged in, any act or omission which would impair the coverage of any such policy, the benefits of the endorsement provided for herein, or the validity and binding effect of the policy. If the Property is located in a flood hazard area, the Property is insured by a flood insurance policy acceptable to Buyer, and all federal, state and local requirements with respect to both hazard and flood insurance have been complied with in all material respects.

(g) **No Impairment.** No action, error, omission, misrepresentation, negligence, fraud or similar occurrence with respect to the Loans have taken place on the part of any person, including, without limitation, the Borrower, any appraiser, any builder or developer or insurer or any party involved in the origination of the Loans or in the application for any insurance relating to the Loans that might result in a denial, failure or impairment of full and timely coverage under any insurance policies required to be obtained or any pool insurance policy covering the Loans.

(h) **Seller Compensation.** Seller has not received any fee or other compensation except as permitted by applicable law and regulation, and that it has disclosed any fee or other compensation in writing to the Borrower and Buyer as required by applicable law and regulation.

(j) **Fair Consideration.** In the opinion of Seller, Seller has received fair consideration and reasonably equivalent value in exchange for the sale of each Senior Loan to Buyer pursuant to this Agreement.

3.29 **Consent to a Transfer by Borrower.** Seller shall not consent to Borrower's assignment or transfer of any Property or of any of Borrower's rights or obligations under the Loan Documents without the prior written consent of Buyer.

3.30 **Compliance with Loan Documents.** Seller has complied with, and has performed, all obligations required to be complied with or performed by it under the Loan Documents, and Seller has not breached any of its representations, warranties, obligations, agreements or covenants under any of the Loan Documents.

Each of the above representations and warranties in this Article 3 (i) applies to all Senior Loans sold by Seller to Buyer, (ii) is for the benefit of Buyer and its successors and/or assigns, and (iii) is in addition to any specific representation and warranties contained elsewhere herein. Each representation relating to a specific Property is made only as of the date Buyer acquires an interest in the Loan secured by such Property. Each representation regarding a specific Property or a specific Loan shall survive only until the Senior Loan relating thereto has been paid to Buyer in full.

ARTICLE 4

BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer hereby represents and warrants to Seller that as of the Effective Date of this Agreement and as to any particular Eligible Loan, as of the date of the sale of any applicable Senior Loan to Buyer:

4.1 **Organization and Good Standing.** Buyer has been duly organized and shall be validly existing as a South Dakota chartered banking corporation, and has power and authority to own its properties and to conduct its business as such properties shall then be owned and such business is then conducted.

4.2 **Power and Authority.** Buyer has the organizational power and authority to execute and deliver this Agreement and to carry out its terms; Buyer shall have full power and authority to purchase the property to be purchased and shall have duly authorized such purchase; and the execution, delivery and performance of this Agreement shall have been duly authorized by Buyer by all necessary corporate action.

4.3 **Binding Obligation.** This Agreement shall constitute a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally or by general principles of equity.

4.4 **No Conflicts or Breaches.** Buyer's actions and conduct in consummating the transactions contemplated by this Agreement and the fulfillment of the terms hereof do not and will not violate or breach any of the terms or provisions of, or constitute an event of default under, any agreement to which it is a party or by which it is bound; not violate any order, judgment or decree applicable to each of any federal or state court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over it or its properties; which violation, breach or default (other than with respect to the formation documents) would have a material adverse effect on the validity or enforceability of this Agreement, or on the ability of it to perform its obligations under this Agreement;

4.5 **No Litigation and Claims.** There is no civil, criminal or administrative notice, action, suit, demand, claim, hearing, proceeding, notice of violation, inquiry or investigation from, by or before any Government Authority pending or, to the knowledge of the Buyer threatened, against the Buyer or any of its Affiliates that, individually or in the aggregate, would have a Material Adverse Change on this Agreement or on any action taken or to be taken in connection with Buyer's obligations contemplated herein, or which would be likely to impair materially its ability to perform under the terms of this Agreement. The Buyer is not subject to any order, writ, judgment, award, injunction or decree of any Governmental Authority of competent jurisdiction or any arbitrator or arbitrators that, individually or in the aggregate, would be likely to impair materially its ability to perform under the terms of this Agreement.

ARTICLE 5

ADMINISTRATION AND SERVICING OF THE LOAN; PUT AND CALL OPTIONS; DISTRIBUTION WATERFALL

5.1. **Seller to Administer the Loans.** Subject to the terms of this Agreement (including without limitation Article 9), Seller, as administrative agent for Buyer, shall administer and service the Senior Loans in accordance with Accepted Servicing Practices, consistent with applicable law and regulations, and in accordance with the Loan Documents, subject to the specific rights, duties and limitations set forth herein.

5.2. **Collections and Distributions.**

(a) While Seller is administrative agent and servicer for any Eligible Loans, Seller shall collect all payments due from Borrowers under the Loan Documents for such Loans (other than payoff amounts, which are to be paid by Borrowers directly to Buyer) and distribute them in accordance with Sections 5.8 and 5.9 of this Agreement on the last Business Day of each calendar month. Seller shall pay to Buyer within ten (10) days after receipt of any Receipts all sums due to Buyer in respect of such Receipts as provided in Section 5.8 and 5.9 of this Agreement; provided that in the event Seller receives any Receipts representing the payment of principal due under an Eligible Loan, Seller shall within one Business Day deposit all such Receipts into an account with Buyer that is controlled by Buyer. All fees associated with the account controlled by Buyer shall be paid by Buyer.

(b) Buyer shall distribute to Seller and Buyer payoff amounts deposited with Buyer under this section (i) on the same Business Day if received by Buyer before 12:00 pm New York time, or (ii) on the next Business Day if received by Buyer after 12:00 pm New York time, and in any event in accordance with the distribution priorities set forth in Section 5.8 and 5.9 of this Agreement.

(c) If either party fails to distribute funds in accordance with this Section 5.2 when due, the party failing to make such distribution shall be obligated to pay interest on the undistributed amount to the other party at the rate of the Interest Rate.

5.3. **Servicing.** Except as otherwise expressly set forth in this Agreement (including without limitation Article 9), Seller shall be responsible for all servicing duties required pursuant to the Loan Documents in connection with the administration of the Eligible Loans, including, without limitation, making Advances, monitoring compliance by Borrower under the Loan Documents, conducting periodic lien and title searches and undertaking all other duties relating to the administration of the Loans; provided, however, that in the event Seller desires to undertake any act constituting a Major Decision, Seller shall be required to notify and obtain the consent of Buyer and Buyer shall have five (5) Business Days to notify Seller in writing of its approval or disapproval of Seller's proposed course of action. If Buyer does not approve the proposed course of action, Seller shall refrain from taking such action. In the event Buyer approves Seller's proposed Major Decision, Seller shall carry out the proposed action.

5.4. **Deposits.** Seller shall be entitled to receive and retain all interest earned on Borrower deposits held by Seller which Seller is not obligated to pay over to the Borrower (collectively, "**Deposit Earnings**").

5.5. **Call Option.** Seller, upon written notice to Buyer (a "**Call Notice**"), shall have the right at any time (the "**Call Option**") to repurchase from Buyer at any time the Transferred Rights pertaining to any Senior Loan or two (2) or more Senior Loans. The purchase price (the "**Call Price**") for each Senior Loan shall be an amount equal to the outstanding principal amount of the Senior Loan held by Buyer plus accrued interest at the Interest Rate, provided that if the aggregate interest paid to Buyer in respect of such Senior Loan as of the repurchase date shall be less than an amount equal to four percent (4%) of the total commitment amount of Buyer in respect of such Senior Loan, then the purchase price shall be increased by an amount equal to such shortfall (such that Buyer's minimum return is four percent (4%) of such commitment amount).

5.6. **Put Option.** Buyer, upon written notice to Seller (a "**Put Notice**"), shall have the right at any time (the "**Put Option**"), in its sole and absolute discretion, to elect to require Seller to repurchase the Transferred Rights pertaining to any Senior Loan, or any portion of a Senior Loan, or two (2) or more Senior Loans held by Buyer. The purchase price (the "**Put Price**") shall be an amount equal to the outstanding principal amount of the Senior Loan held by Buyer plus accrued interest at the Interest Rate, provided that the aggregate Put Prices payable in respect of all Senior Loans put to Seller under this Section 5.6 during any trailing twelve (12) month period ending on the date of the Put Notice shall never exceed the Put Option Limit. The "**Put Option Limit**" means an amount equal to ten percent (10%) of all fundings made by Buyer to Seller under the Senior Loans during such twelve (12) month period. If the aggregate Put Prices would exceed the Put Option Limit, Seller shall notify promptly Buyer of such fact and Buyer shall revoke the Put Notice as to any portion of a Senior Loan, or one or more Senior Loans, such that the Put Price shall be brought below the Put Option Limit, and then the Put Option shall be completed in accordance with Section 5.7.

5.7 **Put-Call Procedure.** If Buyer exercises the Put Option or Seller exercises the Call Option, Buyer and Seller shall consummate the transactions contemplated thereby in accordance with the following procedures (the “**Put-Call Procedure**”):

(a) The transfer date for a Call Option will be the date which is ten (10) days after the delivery of the Call Notice.

(b) The transfer date for a Put Option will be the date which is forty-five (45) days after the delivery of the Put Notice.

(c) At any Put Option closing, Seller shall pay the Put Price to Buyer by wire transfer of immediately available funds to an account designated by Buyer.

(d) At any Call Option closing, Seller shall pay the Call Price to Buyer by wire transfer of immediately available funds to an account designated by Buyer.

5.8 **Distributions Waterfall.** Except as otherwise specifically provided herein, all Receipts received by Seller will be applied in the following order of priority on a Loan by Loan basis:

(a) From all collections of interest payments under the Loan, an amount equal to all accrued, unpaid interest due to Buyer on the Senior Loan, calculated at the Interest Rate, shall be paid to Buyer;

(b) All remaining collected interest payments and all fee income shall be paid to Seller;

(c) From all collections of principal payments under the Loan, an amount equal to the outstanding balance of the Senior Loan shall be paid to Buyer, including without limitation all Protective Advances made by Buyer under the Senior Loan, shall be paid to Buyer; and

(d) All remaining collected principal payments shall be paid to Seller.

5.9 **Waterfall After a Put Default.** All Receipts received by Seller while a Put Default (as defined in Section 8.1(e)) exists under this Agreement will be applied in the following order of priority on a Loan by Loan basis:

(a) First, an amount equal to all sums then due and payable under all Senior Loans held by Buyer, including without limitation principal and interest calculated at the Interest Rate, shall be paid to Buyer; for the avoidance of doubt, Receipts shall not be applied to pay any principal amounts that are not yet due and payable;

(b) Second, an amount equal to the aggregate unpaid amount of the Put Prices in respect of which Buyer has previously exercised a Put Option shall be paid to Buyer;

(c) Third, an amount equal to all sums then due and payable under all Subordinate Loans held by Seller, including without limitation principal and interest calculated at the Interest Rate, shall be paid to Seller; for the avoidance of doubt, Receipts shall not be applied to pay any principal amounts that are not yet due and payable; and

(d) Finally, any remaining amounts shall be paid to Seller and Buyer in accordance with their respective initial Senior Loan Percentage and Subordinate Loan Percentage of such Eligible Loan.

5.10 **Priority of Senior Loan.** Seller hereby irrevocably agrees that, notwithstanding any term or provision to the contrary set forth in this Agreement (including, but not limited to, Section 5.8) or any of the Loan Documents, until the prior indefeasible payment in full of all amounts due to Buyer in respect of the Senior Loan and the Transferred Rights:

(a) all amounts or other payments by Seller or Buyer from or on behalf of Borrowers under or pursuant to the Loan Documents will be applied *first*, to the payment of any amounts due to Buyer in respect of the Senior Loan and the other Transferred Rights, and *second*, to the payment of any amounts due to Seller in respect of the Subordinated Loan;

(b) all amounts or other payments received by Seller or Buyer in connection with the foreclosure upon or other realization on any Loan Collateral will be applied *first*, to the payment of any amounts due to Buyer in respect of the Senior Loan and the Transferred Rights, and *second*, to the payment of any amounts due to Seller in respect of the Subordinated Loan; and

(c) the rights of Seller in and to the Loan Collateral or any security interests granted under the Mortgage or other Loan Documents shall be subordinated to any and all rights of Buyer in and to the Loan Collateral and any security interests granted under the Mortgage or other Loan Documents.

ARTICLE 6

INDEMNIFICATION

6.1 **Indemnification by Seller.** Seller, as an Indemnifying Party, hereby agrees to indemnify, defend and hold harmless Buyer and its successors and assigns and their respective Affiliates, as an Indemnified Party, from and against any and all claims, losses, damages, fines, penalties, forfeitures, legal fees, judgments and any other costs, fees and expenses relating to a breach by Seller or its agents of any covenant, representation, warranty or obligation contained in this Agreement.

6.2 **Indemnification by Buyer.** Buyer, as an Indemnifying Party, hereby agrees to indemnify, defend and hold harmless Seller and its successors and assigns and their respective Affiliates, as an Indemnified Party, from and against any and all claims, losses, damages, fines, penalties, forfeitures, legal fees, judgments and any other costs, fees and expenses relating to a breach by Buyer or its agents of any covenant, representation, warranty or obligation contained in this Agreement.

6.3 **Indemnification Procedures.** If at any time a party entitled to indemnification hereunder ("**Indemnified Party**") learns of any claim or loss for which indemnification by an indemnifying party hereunder ("**Indemnifying Party**") may be asserted, the Indemnified Party shall give to the Indemnifying Party written notice within such time as is reasonable under the circumstances, describing such claim or loss in reasonable detail. In the event that a demand or claim for indemnification is made hereunder with respect to losses the amount or extent of which is not yet known or certain, the notice of demand for indemnification shall so state, and, where practicable, shall include an estimate of the amount of the losses. In the case of any notice of indemnification hereunder involving any claim of any third party, the Indemnifying Party shall have responsibility for, and shall assume all expense with respect to, the defense or settlement of such claim; provided however, that:

(a) the Indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim; and

(b) the Indemnifying Party shall obtain the prior written approval of the Indemnified Party before entering into any settlement of such claim or ceasing to defend against such claim if, pursuant to or as a result of such settlement or cessation, (a) injunctive or other relief (excepting the payment of money damages) would be imposed against any Indemnified Party, or (b) settlement would involve admission of guilt or other action resulting in any criminal law sanctions, or (c) the settlement or cessation shall result in an indemnification obligation of the Indemnifying Party that, in the reasonable judgment of the Indemnified Party, cannot be fulfilled by the Indemnifying Party in accordance with the terms of this Agreement. If the Indemnifying Party does not provide to the Indemnified Party, within fifteen (15) days after receipt of a notice of indemnification, a written acknowledgement that the Indemnifying Party shall assume responsibility for the defense or settlement of such claim as provided in this Section 6.3, the Indemnified Party shall have the right to defend and settle the claim in such manner as it may deem appropriate at the cost and expense of the Indemnifying Party, and the Indemnifying Party shall promptly reimburse the Indemnified Party therefor in accordance with this Agreement.

ARTICLE 7

GUARANTY

7.1 Guaranty. If at any time Buyer shall not have acquired a Senior Loan from Seller within the immediately preceding six (6) month period, Seller shall thereupon automatically deemed to be a guarantor of (and Seller hereby agrees to guaranty) the full payment of interest to Buyer when due of all sums payable by Borrower in respect of all Senior Loans then held by Buyer. Such guaranty shall remain in effect as to each Senior Loan until it has been paid in full.

ARTICLE 8

SELLER EVENTS OF DEFAULT; BUYER'S REMEDIES

8.1 Seller Default. The occurrence of any one or more of the following events shall constitute a "Seller Event of Default" under this Agreement:

(a) Representations and Warranties. Any representation or warranty made by Seller pursuant to this Agreement, or any statement or other document furnished pursuant hereto or in connection with the transactions contemplated hereby shall prove to be false, misleading, incomplete or untrue in any material respect as of the date on which such representation or warranty is made;

(b) Covenants. Any breach by Seller of any covenant, term, agreement or condition contained in this Agreement shall occur and shall continue unremedied for a period of thirty (30) calendar days after Seller has or reasonably should have had notice thereof (provided that such thirty (30) calendar day grace period shall only be allowed to Seller if Seller uses diligent efforts during such time to cure such breach) or such shorter amount of time permitted for cure that is specifically provided herein;

(c) **Bankruptcy or Insolvency.** (i) The commencement of any proceeding under any bankruptcy or insolvency laws by or against Seller or its principal Daniel Wallach and such proceeding shall not be dismissed within sixty (60) calendar days after the date of filing; (ii) Seller is unable, or admits in writing its inability, to pay its recourse debts as they become due; (iii) Seller makes an assignment for the benefit of creditors; (iv) Seller files a petition or applies to any tribunal for the appointment of a custodian, receiver or any trustee for all or any portion of its assets; (v) Seller, by any act or omission, indicates its consent, approval of, or acquiescence in the appointment of a receiver, custodian or trustee for all or any portion of its property; (vi) Seller is adjudicated a bankrupt; (vii) Seller becomes insolvent however otherwise evidenced; or (viii) Seller ceases doing business as a going concern;

(d) **Failure to Collect or Pay Interest.** Any failure on the part of Seller to pay to Buyer any distributions to Buyer in accordance with Sections 5.8 and 5.9, which failure is not cured within ten (10) days;

(e) **Put Option.** Any failure to repurchase a Loan under a Put Option and pay the Put Price to Buyer, which failure continues for sixty (60) calendar days after delivery of a Put Notice by Buyer to Seller (a “**Put Default**”); or

(f) **Maturity.** Any Eligible Loan remains outstanding for more than twelve (12) months from the date of closing of such Eligible Loan, except for Loans where the Seller has executed a Call Option and is waiting for Buyer to complete transaction.

(g) **Key Person Event.** Daniel Wallach no longer remains as a senior officer or manager of Seller, or has become disabled for a period exceeding thirty (30) days, or has died.

8.2 **Buyer’s Remedies.** Upon the occurrence of any Seller Event of Default, Buyer shall have the following rights and remedies:

(a) In calculating all Distributions to Buyer under this Agreement, interest shall accrue and be payable to Buyer at the Default Interest Rate rather than the Interest Rate;

(b) Buyer may record assignments of mortgage;

(c) Buyer may exercise any and all rights available to Buyer at law or in equity;

(d) Buyer may exercise all other rights and remedies expressly provided under this Agreement; and

(e) Such other remedies as are available at law or in equity.

In addition, except in the case of a default solely under Section 8.1(g), amounts advanced by Buyer hereunder and still outstanding shall bear interest at the Default Interest Rate.

8.3 **Transfer of Servicing.** Upon the occurrence of an Seller Event of Default under Section 8.1(a), (b), (c) or (g), Buyer shall have the right to relieve Seller from, and to assume, all loan administration and servicing rights and responsibilities under this Agreement with respect to all Eligible Loans in which Buyer holds an interest. Upon the occurrence of a Seller Event of Default under Section 8.1 (D), (E) or (F), Buyer shall have the right to relieve Seller from, and to assume, all loan administration and servicing rights and responsibilities under this Agreement as to such Eligible Loan. Buyer may exercise its rights under this Section 8.3 by giving not less than two (2) Business Days prior written notice to Seller, provided that as to each Seller Event of Default, any such notice shall be given within forty five (45) days of the occurrence of such Seller Event of Default.

8.4 **Remedies Cumulative.** All remedies available to Buyer are cumulative and not exclusive.

ARTICLE 9

BUYER EVENTS OF DEFAULT; SELLER'S REMEDIES

9.1 **Buyer Default.** The occurrence of any one or more of the following events shall constitute a "**Buyer Event of Default**" under this Agreement:

(a) **Failure to Fund an Advance.** Any failure by Buyer to fund an Advance that Buyer is required to fund under the terms of this Agreement, provided that if Buyer fails to advance within the time period required under this Agreement, Seller shall provide notice to Buyer and Buyer shall have ten days from receipt of such notice to cure such failure;

(b) **Bankruptcy or Insolvency.** (i) The commencement of any proceeding under any bankruptcy or insolvency laws by or against Buyer and such proceeding shall not be dismissed within sixty (60) calendar days after the date of filing; (ii) Buyer is unable, or admits in writing its inability, to pay its recourse debts as they become due; (iii) Buyer makes an assignment for the benefit of creditors; (iv) Buyer files a petition or applies to any tribunal for the appointment of a custodian, receiver or any trustee for all or any portion of its assets; (v) Buyer, by any act or omission, indicates its consent, approval of, or acquiescence in the appointment of a receiver, custodian or trustee for all or any portion of its property; (vi) Buyer is adjudicated a bankrupt; (vii) Buyer becomes insolvent however otherwise evidenced; (viii) control of Buyer is taken by a regulatory agency; or (ix) Buyer ceases doing business as a going concern;

(c) **Failure to Distribute Principal.** Buyer fails to distribute to Seller cash from payoffs received by Seller in accordance with this Agreement which is not cured within ten (10) days of written notice;

(d) **Failure to Release Documents.** Buyer fails to release and deliver (or cause its agent to release and deliver), promptly following written demand, (i) to a closing attorney a Mortgage or Note in Buyer's possession or control when the related Mortgage Loan is paid in full (or into escrow with the closing attorney in anticipation of a payoff when required under local law) or (ii) to an attorney handling an enforcement action a Mortgage or Note in Buyer's possession or control when required by such attorney in connection with the enforcement action; provided that if Buyer fails to release such documents within the time period required under this Agreement, Seller shall provide notice to Buyer and Buyer shall have ten days from receipt of such notice to cure such failure; or

(e) **Call Option.** Any failure to transfer a Loan under a Call Option within the time period required under this Agreement; provided that if Buyer fails to transfer the Loan within the time period required under this Agreement, Seller shall provide notice to Buyer and Buyer shall have ten days from receipt of such notice to cure such failure.

9.2 **Seller's Remedies.** During the existence of any Buyer Event of Default, Seller shall have the following rights and remedies:

(a) the four percent (4%) minimum interest requirement under Section 5.5 shall not apply;

(b) Seller may offset against any payments due to Buyer under this Agreement an amount equal to the Advance amount that Buyer has failed to fund;

(c) The control account in Section 5.2 will be reversed, with funds going into a Seller controlled account, and Seller being obligated to send Buyer's proceeds (after giving effect to Section 9.2(b)) to Buyer under the same timing requirements;

(d) Section 2.7(a) of this Agreement shall not be applicable; and

(e) Such other remedies as are available at law or in equity.

Upon a cure of any Events of Default, Seller's right to exercise any remedies as to such default shall cease.

9.3 **Remedies Cumulative.** All remedies available to Seller are cumulative and not exclusive.

ARTICLE 10

TERM; TERMINATION

10.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue until terminated in accordance with Section 10.2 below (hereinafter the "Term").

10.2 **Termination.** Unless otherwise agreed to in writing by the parties at the time, this Agreement shall terminate:

(a) when the entire indebtedness due under the Loan Documents for all Senior Loans held by Buyer shall have been paid in immediately available funds, and Seller has paid to Buyer, in immediately available funds, all amounts due under this Agreement, and no new amounts become due hereunder within 30 days thereafter, provided that no termination shall occur due to operation of this clause (a) during an Exclusivity Period; or

(b) when all Senior Loans and Subordinate Loans and the rights under this Agreement relating thereto shall be owned and held by one person, firm or corporation for its own account for a period exceeding 30 days, provided that no termination shall occur due to operation of this clause (b) during an Exclusivity Period; or

(c) upon written notice by either party to the other if Buyer has not purchased a Senior Loan on or before March 1, 2015.

Each party will execute and deliver all instruments, in recordable form, as may be necessary and appropriate to reflect the satisfaction of their respective interests and/or the termination of this Agreement.

ARTICLE 11

GENERAL PROVISIONS

11.1 **Modification.** Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, except by an instrument in writing signed by the parties hereto.

11.2 **Successors and Assigns.** This Agreement shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that Seller may not transfer or assign any or all of its rights or obligations hereunder without the prior written consent of Buyer, and Buyer may not transfer or assign any or all of its rights or obligations hereunder to any person other than a Qualified Transferee without the prior written consent of Seller, which consent shall not be unreasonably withheld. In connection with any such transfer, assignment or sale or proposed transfer, assignment or sale, Buyer may furnish any information concerning this Agreement, the Loan or Seller to such actual or potential assignees or transferees provided that the actual or potential assignee or transferee agrees to keep all such information confidential.

11.3 **Captions.** Captions used in this Agreement are for ease of reference only and do not define or limit provisions.

11.4 **Severability.** The provisions of this Agreement are specifically agreed to be severable. If any part hereof is unenforceable, the remainder of the Agreement may be enforced as if such portion were not contained herein.

11.5 **Governing Law.** This Agreement shall be governed, interpreted and construed in accordance with the internal laws of the State of New York, without regard to any conflict of law provision thereof that would require the application of the laws of any other jurisdiction. Each of the parties hereto, to the extent permitted by law, knowingly, intentionally and voluntarily (i) submits to personal jurisdiction in the State of New York over any suit, action or proceeding by any person arising from or relating to this Agreement, (ii) agrees that any such action, suit or proceeding may be brought in any state or federal court of competent jurisdiction sitting in the State of New York, (iii) submits to the jurisdiction of such courts, (iv) to the fullest extent permitted by law, agrees that it will not bring any action, suit or proceeding in any other forum other than in the State of New York, and (v) agrees that the State of New York is the proper venue for any suit, action or proceeding by any person arising from or relating to the Agreement.

11.6 **Attorneys' Fees.** In the event suit is filed with respect to this Agreement, or any documents executed pursuant hereto, the prevailing party, in addition to all other sums which it may be entitled to, shall be entitled to recover its actual, reasonable attorneys' fees from the other party.

11.7 **Notices.** All notices (including without limitation notices of default), demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing and given by both (i) personal delivery or by prepaid overnight delivery service and (ii) email. Notices so given shall be effective when personally served, or one Business Day after sending when sent by prepaid overnight delivery service. Notwithstanding the foregoing, all Loan Notifications, funding requests and reports shall be sent by electronic mail only. The time period in which a response of any such notice, demand or request must be given, however, shall commence to run from the date of receipt on the return receipt of the notice, demand or request by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of change of address of which no notice was given shall be deemed to be receipt of the note, demand or request sent. Such notice, demand or request shall be addressed as follows:

To Seller: Shepherd's Finance, LLC
12627 San Jose Blvd.
Suite 203
Jacksonville, FL 32223
Attention: Dan Wallach
Email: danwallach@shepherdsfinance.com

To Buyer: 1st Financial Bank USA
Box 98 Main Street
Dupree, SD 57623
Attention: Home Builder Finance
Email: builderfinance@1fbusa.com

with a copy to: 1st Financial Funding & Investment Corporation
55 E. 59th Street, 6th Floor
New York, NY 10022
Attention: Andrew Hegyi
andrewhegyi@1fbusa.com

11.8 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument when each party has signed one such counterpart.

11.9 **Entire Agreement; Amendments.** This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters. This Agreement may be amended by written agreement of amendment executed by both parties hereto, but not otherwise.

11.10. **Time of the Essence; Non-Business Days.** Subject to the next full sentence, time is of the essence of this Agreement. Whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time or by a particular date that ends or occurs on a non-Business Day, then such period or date shall be extended until the immediately following Business Day.

11.11. **No Third Party Beneficiaries.** Nothing in this Agreement, expressed or implied, is intended to confer any rights or remedies upon any person, other than the parties hereto and, subject to any restrictions on assignment herein contained, their respective successors and assigns.

11.12 **Relationship Between Buyer and Seller.** The relationship between Seller and Buyer shall be that of seller and buyer. This Agreement shall not be construed to create a partnership or joint venture between Buyer and Seller. In no event shall the transactions contemplated by this Agreement be deemed or be construed, in whole or in part, as a loan from Buyer and Seller.

11.13 **Reserved.**

11.14 **Waivers.** Neither party shall be deemed to have waived any of its rights or remedies hereunder unless such waiver is (i) in writing, and (ii) signed by such party, and then only to the extent specifically recited. No failure to exercise and no delay or omission in exercising any right, remedy or recourse on the right of any party shall operate or be deemed as a waiver of such right, remedy or recourse hereunder or thereunder or preclude any other or further exercise thereof. A waiver or release on any one occasion shall not be construed as continuing, as a bar to, or as a waiver or release of any subsequent right, remedy or recourse on any subsequent occasion.

11.15 **Dispute Resolution.** Any controversy regarding any provision of this Agreement, any Exhibit, or addendum hereto, shall be submitted to binding arbitration in accordance with the then existing rules of the American Arbitration Association of JAMS, Inc. Any award made by the arbitrator (s) may be enforced as a final judgment in any court of competent jurisdiction. The site for any such arbitration shall be New York, New York. The arbitration shall be heard before an arbitrator mutually agreeable to by the parties; provided, that if the parties cannot agree on the choice of arbitrator within ten (10) days after the first party seeking arbitration has given written notice, then the arbitration shall be heard by three (3) arbitrators, one (1) chosen by each party, and the third chosen by those two (2) arbitrators. The arbitrators will be selected from a panel of persons having experience with and knowledge of the mortgage lending industry and at least one (1) of the arbitrators selected will be an attorney. Each party shall bear its own attorneys' fees, expert witness fees and costs in connection with such arbitration. A party shall be determined by the arbitrator to be the prevailing party if its proposal for the resolution of the dispute is the closer to that adopted by the arbitrator.

11.16 **True Sale; Not a Loan or Pledge.** The purchase and sale of the Transferred Rights are intended to be a sale by Seller and a purchase by Buyer of the Senior Loans. From and after the date hereof, Buyer and Seller shall own beneficially their respective Senior Loan Percentage and Subordinate Loan Percentage in the Eligible Loan and the Loan Documents. This Agreement shall not be deemed to represent a loan by Buyer to Seller, or a pledge by either party to the other party. In the event, however, that any court of competent jurisdiction or binding arbitration were to hold that any transaction made pursuant hereto constitutes a loan and not a purchase and sale, it is the intention of the parties hereto that this Agreement shall constitute a security agreement under applicable law and that the Assignments of Mortgage and Endorsed Promissory Notes held by Buyer are security for the loan.

11.17 **Undivided Interest in Loan Documents and Loan Collateral.** Buyer and Seller shall each have an undivided interest in the Loan Documents and in any property taken as security for each Eligible Loan, and if any such property or the proceeds thereof shall be applied in reduction of the principal balance of the Eligible Loan, then each party shall be entitled to receive its pro rata share of such application in accordance with the terms of this Agreement (giving due consideration to the priority of distributions provided for herein). The parties acknowledge and agree that the Loan represents a single "claim" under Section 101 of the Bankruptcy Code, and that neither party shall be a separate creditor of Borrower under the Bankruptcy Code.

11.18 **Notes are Not Securities.** No Note shall be deemed to be a security within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934.

11.19 **Confidentiality.** In no event shall either party to this Agreement issue any press release to any media of general circulation regarding this Agreement or the transactions contemplated hereby or otherwise disclose any Confidential Information; provided, however, that nothing herein shall be deemed to limit or impair in any way any party's ability to disclose the details of the transaction contemplated hereby to its legal and financial advisors or as may be necessary pursuant to any court or governmental order or applicable law or in litigation. Notwithstanding the foregoing, no party hereunder shall have any liability by reason of the details of the transaction contemplated hereby becoming known by means beyond the reasonable control of such party. The term "**Confidential Information**" shall mean this Agreement and all proprietary information, data, trade secrets, business information and other information of any kind whatsoever that a party discloses, in writing, digitally, orally or visually, to the other party or to which is obtained in connection the negotiation and performance of this Agreement.

[signatures on next page]

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

SELLER:

SHEPHERD'S FINANCE, LLC
a Delaware limited liability company

Date: December 24, 2014

By: /s/ Daniel M. Wallach
Daniel M. Wallach
Chief Executive Officer and Manager

BUYER:

1st FINANCIAL BANK USA
a South Dakota chartered banking corporation

Date: December 24, 2014

By: /s/ Wayne R. Nesje
Wayne R. Nesje
SVP

EXHIBIT A

Shepherd's Finance, LLC
LOAN NOTIFICATION AND OFFER FORM

Reference is made to that certain the Loan Purchase and Sale Agreement between Seller and Buyer dated _____, 201_ (the "Loan PSA"). All capitalized terms used herein which are defined in the Loan PSA shall have the meanings given to them in the Loan PSA. Seller hereby offers to sell to Buyer a Senior Loan in the following Eligible Loan:

Section 1: Eligible Loan Information

1. Loan Number:
 2. Borrower:
 3. Resume:
 4. Relationship/Affiliate Transactions: Borrower Investor \$ _____
 Other:
 5. History with SF: 0 Closed Loan; 0 Open loans;
 6. History with 1FB: 0 Closed Loan; 0 Open loans;
 7. Loan Collateral:
 8. Status: Spec Pre-sale
 9. Current % Complete:
 10. Exceptions:
 11. Initial Interest Rate:
 12. Closing Date:
-

Loan Size and Funding by Buyer

Appraised Value **\$0**
Loan Amount **\$0**
LTV 0%

Senior Loan Percentage **0%**

Purchase Price (lesser of)

\$0.00 (i) the Senior Loan Amount
\$0.00 (ii) 50% of Eligible Balance

\$0.00 Purchase Price

(i) Senior Loan Amount (lesser of)

\$0.00 (a) 55% of appraised value
\$249,999.00 (b) \$249,999
\$0.00 (c) 50% of loan, less loan fee
\$0.00 Senior Loan Amount

(ii) Eligible Balance ("a" less other line items)

\$0.00 (a) Outstanding balance
\$0.00 (b) lender fees
\$0.00 (c) builder deposit
\$0.00 (d) remaining interest escrow
\$0.00 (e) other cash
\$0.00 (f) payoffs

\$0.00 Eligible Balance

\$0.00 50% of Eligible Balance

Section 2: Due Diligence Documents

Included with Loan Notification Form	Buyer requires for Final Approval	Document
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	1. Appraisal
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	2. Application
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	3. Credit References
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	4. Credit Report
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	5. Business registration/licenses
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	6. Proof of registration with State Sec. of State/Certificate of Good Standing (<i>if obtained</i>)
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	7. Project Estimate
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	8. Land Purchase Contract
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	9. Home Purchase Contract (<i>if applicable</i>)
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	10. Insurance: Builder's Risk / General Liability/ Flood Cert / Flood Insurance (<i>if applicable</i>)
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	11. Copy of Promissory Note with allonge (unexecuted)
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	12. Copy of Recorded Mortgage/Deed of Trust
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	13. Copy of Mortgage/Deed of Trust Assignment (unexecuted)
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	14. Copy of Recorded Assignment of Rents
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	15. Copy of Assignment of Rents Assignment (unexecuted)
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	16. Construction Loan Agreement/Building Loan Agreement
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	17. Settlement Statement (HUD-1), if applicable
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	18. Disbursement Request and Authorization
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	19. Guaranty(s)
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	20. Resolution
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	21. Builder Deposit Agreement
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	22. Interest Escrow Agreement
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	23. W-9
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	24. Customer Information Profile with ID
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	25. Title Search before closing or title commitment
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	26. Title Search after closing
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	27. Foundation Survey
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	28. Inspection (most recent)
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	29. Plans (<i>if obtained</i>)
<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	<input type="checkbox"/>	30. Other:

Section 3: Submission & Receipt

Seller hereby represents and warrants to Buyer that;

1. The Loan described in this Loan Notification is an Eligible Loan.
2. All information in this Loan Notification is true and correct.
3. No default or event of default exists under the Loan or the Loan PSA.

Submitted by Seller

By _____

Name: _____

Title _____

Date _____

Section 4: Acceptance or Rejection by Buyer

Buyer's due diligence is complete and Buyer:

- Declines to purchase a Senior Loan in the above Loan.
- Agrees to purchase a Senior Loan in the above Loan.
- Agrees to purchase a Senior Loan in the above Loan contingent upon receipt and acceptance of remaining due diligence documents indicated

1st FINANCIAL BANK

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT B

List of Typical Loan Documents

Builder Deposit Agreement
Closing instructions
Construction Loan Agreement
Customer Information Profile
Disbursement Request
Disburser's Notice-the original will arrive in your office today by USPS overnight mail
Deed of trust/mortgage
Draw Request
Guaranty
Hazardous Substance Agreement
Interest Escrow
Promissory Note
W-9
Customer Information Profile Instructions
ACH AGREEMENT
Assignment
Resolution