

AGREEMENT AND PLAN OF MERGER

DATED AS OF OCTOBER 20, 2010

AMONG

FBNBY BANCORP, INC.,

MODERN CAPITAL HOLDINGS LLC,

MADNAT ACQUISITION CORPORATION,

MADISON NATIONAL BANCORP, INC.

AND

MADISON NATIONAL BANK

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER, dated as of October 20, 2010 (as amended, modified or supplemented, this "Agreement"), is among FBNBY Bancorp, Inc., a Delaware corporation ("Parent"), Modern Capital Holdings LLC, a Delaware limited liability company and the general partner of the sole shareholder of Parent ("Modern Capital"), MadNat Acquisition Corporation, a New York corporation and a direct, wholly owned subsidiary of Parent ("Merger Sub"), Madison National Bancorp, Inc., a New York corporation (the "Company") and Madison National Bank, a national banking association and a direct, wholly owned subsidiary of the Company (the "Bank").

RECITALS

WHEREAS, the respective Boards of Directors of the Company, Parent and Merger Sub have deemed it advisable and in the best interests of their respective corporations and stockholders that the Company, Parent and Merger Sub engage in a business combination; and

WHEREAS, in furtherance thereof, the respective Boards of Directors of the Company, Parent and Merger Sub have approved and declared advisable this Agreement and the merger (the "Merger") of Merger Sub with and into the Company, on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements set forth in this Agreement, and intending to be legally bound hereby, the parties hereby agree as follows:

ARTICLE I THE MERGER; CERTAIN RELATED MATTERS

Section 1.1 The Merger.

(a) Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub shall be merged with and into the Company in accordance with the Business Corporation Law of the State of New York (the "NYBCL") and the separate corporate existence of Merger Sub shall thereupon cease. The Company shall be the surviving corporation in the Merger (with respect to all post-Closing periods, the "Surviving Corporation"). At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of the NYBCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation, all as provided under the NYBCL.

Section 1.2 Closing. The Closing, subject to the fulfillment or waiver of the conditions set forth in Article VII, shall take place at the offices of Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York at 9:00 a.m. New York City time on the third Business

Day after all of the conditions set forth in Article VII have been fulfilled or waived (other than those conditions that by their nature are to be satisfied at the Closing) in accordance with this Agreement, or at such other place and time and/or on such other date as the Company and Parent may agree in writing (the "Closing Date").

Section 1.3 Effective Time. Subject to the provisions of this Agreement, as soon as practicable on the Closing Date, the parties shall file a certificate of merger as contemplated by the NYBCL (the "Certificate of Merger"), together with any required certificates, filings or recordings, with the New York Department of State, in such form as required by, and executed in accordance with, the NYBCL. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the New York Department of State on the Closing Date, or at such later time as Parent and the Company shall agree and specify in the Certificate of Merger. As used herein, the "Effective Time" shall mean the time at which the Merger shall become effective.

Section 1.4 Certificate of Incorporation. The certificate of incorporation of the Surviving Corporation shall be amended and restated at the Effective Time to be in the form attached as Exhibit A hereto and, as so amended and restated, such certificate of incorporation shall be the certificate of incorporation of the Surviving Corporation (the "Certificate of Incorporation"), until thereafter amended as provided therein or by applicable Law.

Section 1.5 By-Laws. The by-laws of Merger Sub in effect immediately prior to the Effective Time shall be the by-laws of the Surviving Corporation (the "By-Laws") until thereafter amended as provided therein or by applicable Law.

Section 1.6 Directors. The directors of Merger Sub immediately prior to the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Certificate of Incorporation and the By-Laws.

Section 1.7 Officers. The officers of the Company immediately prior to the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Certificate of Incorporation and the By-Laws.

Section 1.8 Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of any holder thereof:

(a) each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (collectively, the "Shares") (other than any Excluded Shares) shall be converted into the right to receive in cash, without interest, the Per Share Merger Consideration;

(b) all Shares (other than Excluded Shares) shall cease to be outstanding and shall be canceled and retired, and each certificate that immediately prior to the Effective Time represented any such Shares (the "Certificates") shall thereafter represent only the right to receive the Per Share Merger Consideration with respect to the Shares (other than Excluded Shares) formerly represented thereby;

(c) each Excluded Share shall cease to be outstanding and shall be canceled and retired and no consideration shall be delivered in exchange therefor; and

(d) each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time, shall be converted into one validly issued, fully paid and non-assessable share of common stock, par value \$0.01 per share, of the Surviving Corporation and such shares shall constitute the only issued and outstanding shares of common stock of the Surviving Corporation.

Section 1.9 Treatment of Company Stock Options and Warrants.

(a) Each Company Stock Option granted under the option plans of the Company, whether vested or unvested, that is outstanding immediately prior to the Effective Time will at the Effective Time be cancelled and the holder of such Company Stock Option will, in full settlement of such Company Stock Option, receive from the Surviving Corporation an amount (subject to any applicable withholding tax) in cash equal to the product of (x) the excess, if any, of the Per Share Merger Consideration over the exercise price per share of Company Common Stock multiplied by (y) the total number of Shares subject to such Company Stock Option (the aggregate amount of such cash, the Option Consideration).

(b) Each Warrant that is outstanding immediately prior to the Effective Time will at the Effective Time be cancelled and the holder of such Warrant will, in full settlement of such Warrant, receive from the Surviving Corporation an amount (subject to any applicable withholding tax) in cash equal to the product of (x) the excess, if any, of the Per Share Merger Consideration over the per share exercise price set forth in such Warrant multiplied by (y) the total number of Shares subject to such Warrant, subject to all of the terms, provisions, limitations and procedures of this Agreement (the aggregate amount of such cash, the Warrant Consideration).

(c) As of the date hereof, the Company shall have obtained from each holder of a Company Stock Option such holder's consent to, in accordance with Section 1.9(a), (x) cancel such holder's Company Stock Options and (y) receive such holder's pro ration portion of the Option Consideration in connection with the cancellation of such holder's Company Stock Options.

Section 1.10 Per Share Merger Consideration. The Per Share Merger Consideration shall be equal to (a) \$9.09 minus (b) the aggregate amount, expressed on a per share basis and calculated to give effect to any associated tax benefit that has or will be realized (i.e., by having reduced the amount of tax that would otherwise currently be payable) in respect of the period ending on the Closing Date, of (i) the loan loss charge-offs of the Bank net of recoveries that occur subsequent to June 30, 2010 and (ii) any mark-to-market adjustments for non-performing loans of the Bank as required by Statement of Financial Accounting Standards No. 114 as of the Closing Date, provided that the Per Share Merger Consideration shall not be less than \$8.18. The amounts referenced by (i) and (ii) above shall be the amounts reflected in the financial statements of the Bank as prepared in accordance with GAAP as of the calendar month end immediately prior to the Closing Date, including, without duplication, any net charge-offs or

mark-to-market adjustments specifically required in writing by any applicable regulator through the day immediately prior to the Closing Date.

Section 1.11 Certain Adjustments. If, between the date of this Agreement and the Effective Time, the Company Common Stock is changed into a different number of shares or different class by reason of any reclassification, recapitalization, stock split, split-up, combination or exchange of shares, or a stock dividend or dividend payable in any other securities is declared with a record date within such period, or any similar event occurs, the Per Share Merger Consideration shall be appropriately adjusted to provide to the holders of Company Common Stock the same economic effect as contemplated by this Agreement prior to such event.

Section 1.12 Appraisal Rights. Notwithstanding anything in this Agreement to the contrary, Dissenting Shares shall not be converted into the right to receive the Per Share Merger Consideration but shall instead be converted into the right to receive such consideration as may be determined to be due with respect to such Dissenting Shares pursuant to applicable Law. Following the Closing, the consent of Parent shall be required in order for the Company to voluntarily make any payment with respect to, or settle or offer to settle, any such purchase demand made by any holder of Dissenting Shares (a "Dissenting Stockholder") under applicable Law. The Company also agrees to give Parent prompt notice of any written demand for appraisal of any Company Common Stock, attempted withdrawals of such demands, and any other instruments received by the Company related to any rights of appraisal. Each Dissenting Stockholder who, pursuant to the provisions of applicable Law, becomes entitled to payment of the "fair value" for their shares of Company Common Stock shall receive payment therefor (but only after the value therefor shall have been agreed upon or finally determined pursuant to such provisions). If, after the Effective Time, any Dissenting Stockholder shall fail to perfect or shall effectively waive, withdraw or lose such Dissenting Stockholder's rights under Section 910 of the NYBCL, then such Person's Dissenting Shares shall thereupon cease to be Dissenting Shares and shall be deemed to have been canceled at the Effective Time, and Parent shall issue and deliver, upon surrender by such stockholder of certificate or certificates representing shares of Company Common Stock, the Per Share Merger Consideration to which such stockholder would otherwise theretofore have been entitled under this Agreement.

ARTICLE II EXCHANGE OF CERTIFICATES

Section 2.1 Exchange Fund. Prior to the Effective Time, Parent shall appoint a commercial bank or trust company reasonably acceptable to the Company to act as exchange agent hereunder for the purpose of exchanging Certificates for the Per Share Merger Consideration, Company Stock Options for the Option Consideration and Warrants for the Warrant Consideration (the "Exchange Agent"). At or prior to the Effective Time, Parent or Modern Capital shall deposit with the Exchange Agent, in trust for the benefit of holders of shares of Company Common Stock and Company Stock Options, an amount of cash representing the aggregate cash consideration payable pursuant to Section 1.8 and Section 1.9. Parent shall, and Modern Capital shall cause Parent to, make available, or to cause the Surviving Corporation to make available, to the Exchange Agent from time to time as needed, cash sufficient to make

cash payments for the cash consideration pursuant to Section 1.8 and Section 1.9. Any cash deposited with the Exchange Agent shall hereinafter be referred to as the Exchange Fund.

Section 2.2 Exchange Procedures. Promptly, but not more than five Business Days, after the Effective Time, the Surviving Corporation shall cause the Exchange Agent to mail (x) to each holder of record, as of the Effective Time, of a Certificate (i) a letter of transmittal, which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates (or effective affidavits of loss in lieu thereof) or non-certificated shares represented by book-entry (Book-Entry Shares) to the Exchange Agent, and which letter shall be in customary form and have such other provisions as Parent may reasonably specify and (ii) instructions for effecting the surrender of such Certificates (or effective affidavits of loss in lieu thereof) or Book-Entry Shares in exchange for the Per Share Merger Consideration and (y) to each holder of a Company Stock Option, a check in an amount due and payable to such holder pursuant to Section 1.9. Upon surrender of a Certificate (or effective affidavit of loss in lieu thereof) or Book-Entry Shares to the Exchange Agent together with such letter of transmittal, duly executed and completed in accordance with the instructions thereto, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificate (or provider of an effective affidavit of loss in lieu thereof) or Book-Entry Shares shall be entitled to receive in exchange therefor a check in an amount equal to the Per Share Merger Consideration multiplied by the number of Shares represented by such holder's properly surrendered Certificates (or effective affidavits of loss in lieu thereof) or Book-Entry Shares. No interest will be paid or will accrue on any cash payable pursuant to Section 1.8. In the event of a transfer of ownership of Company Common Stock that is not registered in the transfer records of the Company a check in the proper amount of any cash consideration pursuant to Section 1.8 may be issued with respect to such Company Common Stock to such a transferee if the Certificate representing such shares of Company Common Stock is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer and to evidence that any applicable stock transfer taxes have been paid.

Section 2.3 No Further Ownership Rights in Company Common Stock. All cash paid upon conversion of the Shares in accordance with the terms of Article I and this Article II shall be deemed to have been issued or paid in full satisfaction of all rights pertaining to the Shares previously represented by such Certificates (or effective affidavits of loss in lieu thereof) or Book-Entry Shares.

Section 2.4 Termination of Exchange Fund. Any portion of the Exchange Fund that remains undistributed to the holders of Certificates for six months after the Effective Time shall be delivered to the Surviving Corporation (or otherwise on the instruction of Parent), and any holders of the Certificates who have not theretofore complied with this Article II shall thereafter look only to the Surviving Corporation for the Per Share Merger Consideration with respect to the Shares formerly represented thereby to which such holders are entitled pursuant to Section 1.8. Any such portion of the Exchange Fund remaining unclaimed by holders of Shares two years after the Effective Time (or such earlier date immediately prior to such time as such amounts would otherwise escheat to or become property of any Governmental Entity) shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation free and clear of any claims or interest of any Person previously entitled thereto.

Section 2.5 No Liability. None of Parent, Merger Sub, Modern Capital, the Company, the Surviving Corporation, any of their respective Affiliates or the Exchange Agent shall be liable to any Person in respect of any Per Share Merger Consideration from the Exchange Fund delivered to a public official or Governmental Entity pursuant to any applicable abandoned property, escheat or similar Law.

Section 2.6 Investment of the Exchange Fund. The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent on a daily basis, provided that (a) such investments shall be in obligations of or guaranteed by the United States of America, in commercial paper obligations rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, respectively, or in certificates of deposit, bank repurchase agreements or banker's acceptances of commercial banks with capital exceeding \$1,000,000,000, and (b) no gain or loss thereon shall affect the amounts payable to the stockholders of the Company pursuant to Article I or this Article II. Any interest and other income resulting from such investments shall promptly be paid to Parent.

Section 2.7 Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such Person of a bond in such reasonable amount as the Surviving Corporation may direct as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent shall deliver in exchange for such lost, stolen or destroyed Certificate the applicable Per Share Merger Consideration with respect to the Shares formerly represented thereby.

Section 2.8 Withholding Rights. Each of Parent and the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of shares of Company Common Stock or Company Stock Options or any other equity rights in the Company such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code and the rules and regulations promulgated thereunder, or any provision of state, local or non-U.S. Law. To the extent that amounts are so withheld and paid to the appropriate taxing authority by Parent or the Exchange Agent, as the case may be, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the Shares in respect of which such deduction and withholding was made by the Surviving Corporation or Parent, as the case may be.

Section 2.9 Further Assurances. After the Effective Time, the officers and directors of the Surviving Corporation will be authorized to execute and deliver, in the name and on behalf of the Company or Merger Sub, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company or Merger Sub, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

Section 2.10 Stock Transfer Books. The stock transfer books of the Company shall be closed at the Effective Time and there shall be no further registration of transfers of shares of Company Common Stock on the records of the Company. From and after the Effective Time,

any Certificates (or effective affidavits of loss in lieu thereof) presented to the Exchange Agent or Parent for any reason shall be converted into the right to receive the Per Share Merger Consideration with respect to the shares of Company Common Stock formerly represented thereby.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as disclosed to Parent in the corresponding sections or subsections of the letter (the Company Disclosure Letter) delivered to it by the Company prior to the execution of this Agreement (it being understood that any item set forth in a particular section or subsection of the Company Disclosure Letter shall be deemed disclosed in each other section or subsection thereof to which the relevance of such information is reasonably apparent on its face), the Company represents and warrants to Parent and Merger Sub as follows:

Section 3.1 Organization. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of New York and has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. The Company has provided to Parent and Merger Sub true, correct and complete copies of the certificate of incorporation, the by-laws, all minute books and all other organizational documents of the Company, as amended and in full force and effect on the date of this Agreement. The Company is duly qualified or licensed to own, lease and operate its properties and to carry on its business as now being conducted in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so qualified would not, individually or in the aggregate, reasonably be expected to have or result in a Material Adverse Effect on the Company.

Section 3.2 Subsidiaries.

(a) Section 3.2(a) of the Company Disclosure Letter sets forth the name of each Company Subsidiary, its capitalization, and the state or jurisdiction of its organization. Each Company Subsidiary is a corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. Each Company Subsidiary is duly qualified or licensed to own, lease and operate its properties and to carry on its business as now being conducted in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so qualified would not, individually or in the aggregate, reasonably be expected to have or result in a Material Adverse Effect on the Company.

(b) The Company is, directly or indirectly, the record and beneficial owner of all of the outstanding shares of capital stock of each of the Company Subsidiaries, free and clear of any Liens. All of such shares and other equity interests so owned by the Company are validly issued,

fully paid and nonassessable (and no such shares have been issued in violation of any preemptive or similar rights).

(c) The Company does not own of record or beneficially (within the meaning of Rule 13d-3 of the Exchange Act), directly or indirectly, any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for, any equity or similar interest in any other Person.

Section 3.3 Capitalization.

(a) The authorized capital stock of the Company consists solely of 30,000,000 shares of Company Common Stock and 2,000,000 shares of preferred stock, par value \$0.01 per share (öCompany Preferred Stockö). As of the date hereof, (i) 3,685,800 shares of Company Common Stock were issued and outstanding, (ii) no shares of Company Preferred Stock have been issued or are outstanding, (iii) no shares of Company Common Stock are being held in treasury by the Company, (iv) 275,000 shares of Company Common Stock were reserved for issuance pursuant to the Warrants and (v) 921,448 shares of Company Common Stock were reserved for issuance pursuant to Company Stock Options. Section 3.3(a) of the Company Disclosure Letter sets forth the exercise price and expiration date for all outstanding Warrants. Section 3.3(a) of the Company Disclosure Letter contains a true and complete schedule as of the date of this Agreement setting forth (as applicable) the holder, number, exercise or reference price, number of shares for which it is exercisable, vesting date and expiration date of each outstanding Company Stock Option. Except as set forth above, no shares of capital stock of the Company are issued, reserved for issuance or outstanding. All issued and outstanding shares of Company Common Stock are and all shares of Company Common Stock which may be issued pursuant to the exercise of a Warrant or a Company Stock Option will be, when issued in accordance with the terms thereof, duly authorized, validly issued, fully paid and nonassessable.

(b) There are no preemptive or similar rights on the part of any holder of any class of securities of the Company or any Company Subsidiary. Neither the Company nor any Company Subsidiary has outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the stockholders of the Company or any such Company Subsidiary on any matter submitted to shareholders or a separate class of holders of capital stock. Except as set forth in Section 3.3(a) (including the section of the Company Disclosure Letter responsive thereto), there are not, as of the date hereof, any options, warrants, restricted stock, restricted stock units, calls, rights, convertible or exchangeable securities, öphantomö stock rights, stock appreciation rights, stock-based performance units, commitments, contracts, arrangements or undertakings of any kind to which the Company or any Company Subsidiary is a party or by which any of them is bound (i) obligating the Company or any Company Subsidiary to issue, deliver, sell or transfer or repurchase, redeem or otherwise acquire, or cause to be issued, delivered, sold or transferred or repurchased, redeemed or otherwise acquired, any shares of the capital stock of the Company or any Company Subsidiary, any additional shares of capital stock of, or other equity interests in, or any security exchangeable or exercisable for or convertible into any capital stock of, or other equity interest in, the Company or any Company Subsidiary, (ii) obligating the Company or any Company Subsidiary to issue, grant, extend or enter into any such option, warrant, call, right, security, commitment, contract, arrangement or undertaking,

(iii) obligating the Company or any Company Subsidiary pursuant to any right of first offer, right of first negotiation, right of first refusal, co-sale or similar provisions or (iv) giving any Person the right to receive any economic benefit or right similar to or derived from the economic benefits and rights accruing to holders of capital stock of, or other equity interests in, the Company or any Company Subsidiary. There are no outstanding contractual obligations of the Company or any of the Company Subsidiaries to sell, repurchase, redeem or otherwise acquire or to register any shares of capital stock of, or other equity interests in, the Company or any of the Company Subsidiaries. There are no proxies, voting trusts or other agreements or understandings to which the Company or any Company Subsidiary is a party or is bound with respect to the voting of the capital stock of, or other equity interests in, the Company or any Company Subsidiary. No Company Common Stock is held by any wholly owned Subsidiary of the Company.

Section 3.4 Authority for Agreements.

(a) The Company has all requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and, subject to the adoption of this Agreement and the approval of the Merger by the holders of two-thirds of the outstanding shares of Common Stock entitled to vote in accordance with the NYBCL and the Company's Constituent Documents (the "Company Stockholder Approval") to consummate the Merger and the other transactions contemplated hereby. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the Merger and the other transactions contemplated hereby have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of the Company are necessary for it to authorize this Agreement or to consummate the transactions contemplated hereby, except for the Company Stockholder Approval. This Agreement has been duly and validly executed and delivered by the Company and, assuming due authorization, execution and delivery by Parent and Merger Sub, is a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting the enforcement of creditors' rights or remedies in general as from time to time in effect or (ii) general principles of equity.

(b) The Board of Directors of the Company, at a meeting duly called and held, duly and adopted resolutions (i) approving this Agreement, the Merger and the other transactions contemplated hereby, (ii) determining that the terms of the Merger and the other transactions contemplated hereby are fair to and in the best interests of the Company and its stockholders, (iii) recommending that the Company's stockholders adopt this Agreement and (iv) declaring that this Agreement is advisable and in the best interests of the Company.

Section 3.5 Takeover Statute: No Restrictions on the Merger. The Company has taken all action necessary to exempt the Merger, this Agreement and the transactions contemplated hereby from Section 912 of New York Law, and, accordingly, neither such Section nor any other antitakeover or similar statute or regulation applies or purports to apply to any such transactions. No other "control share acquisition," "fair price," "moratorium" or other antitakeover laws enacted under U.S. state or federal laws apply to this Agreement or any of the transactions contemplated hereby.

Section 3.6 Consents and Approvals; No Violations.

(a) Assuming compliance with the matters set forth in Section 3.6(c) and the receipt of the Company Stockholder Approval, the execution and delivery of this Agreement by the Company does not, and the performance by the Company of its obligations hereunder, including the consummation of the transactions contemplated hereby will not, (i) conflict with any provision of the Company's Constituent Documents or the Constituent Documents of any Company Subsidiary; (ii) result (with or without the giving of notice or the lapse of time or both) in any violation of or default or loss of a benefit under, or permit the acceleration, amendment or termination of any obligation under, any mortgage, indenture, lease, permit, concession, grant, franchise, license, agreement or other instrument or obligation applicable to the Company; (iii) violate any Law or Order binding upon or applicable to the Company or its Subsidiaries; (iv) result in the creation or imposition of any Lien upon any properties or assets of the Company or any Company Subsidiary; or (v) cause the suspension or revocation of any permit, license, governmental authorization, consent or approval under which the Company or any Company Subsidiary conducts its business, except in the case of clauses (ii), (iii), (iv) and (v) above, which would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

(b) Except for (i) the Company Stockholder Approval and (ii) those consents or approvals the failure of which to be obtained would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, no consent or approval of any other Person (other than any Governmental Entity) is required to be obtained by the Company for the execution, delivery or performance of this Agreement by the Company, the performance by the Company of its obligations hereunder or the consummation by the Company of the transactions contemplated hereby.

(c) Except with respect to those consents, approvals, orders, authorizations, declarations, registrations or filings the failure of which to be made or obtained would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, no consent, approval, order or authorization of, or declaration, registration or filing with, or notice to, any Governmental Entity is required to be made or obtained by the Company or any Company Subsidiary in connection with the execution or delivery of this Agreement by the Company or the consummation by the Company of the transactions contemplated hereby, except for (i) the Bank Regulatory Approvals and (ii) the filing of the Certificate of Merger with the New York Department of State.

Section 3.7 Financial Statements.

(a) The Company has furnished to Parent true, correct and complete copies of (i) audited consolidated balance sheets of the Company as of December 31, 2007, December 31, 2008 and December 31, 2009 and an unaudited consolidated balance sheet of the Bank as of June 30, 2010; and (ii) audited consolidated income statements of the Company for the years ended December 31, 2008 and December 31, 2009 and an unaudited consolidated income statement of the Bank for the six-month period ended June 30, 2010 (collectively, the "Financial Statements"), copies of which are attached hereto as Section 3.7 of the Company Disclosure Letter. The Financial Statements have been prepared by the Company on the basis of the books

and records maintained by the Company in the ordinary course of business in a manner consistently used and applied throughout the periods involved. The Financial Statements have been prepared in accordance with GAAP (except as indicated in the footnotes thereto) and present fairly the financial position, cash flows and results of operations of the Bank as at, and for the periods ending on, the respective dates thereof, except that the Company's unaudited consolidated balance sheet as of June 30, 2010 and income statement for the six-month period then ended are subject to normal adjustments in the ordinary course of business (none of which will be material).

(b) The books and records of the Company to which such statements relate are complete and fully and fairly reflect bona fide transactions set forth therein. The Company maintains proper and adequate internal accounting controls that provide assurance that (i) transactions are executed with management's authorization; (ii) transactions are recorded as necessary to permit reliable and accurate preparation of the financial statements of the Bank and to maintain accountability for the assets of the Company; (iii) access to the assets of the Company is permitted only in accordance with management's authorization; and (iv) the reporting of the assets of the Company is compared with existing assets at regular intervals. The Company has no disagreements with its outside independent public accountants which has had or could reasonably be expected to have a Material Adverse Effect.

Section 3.8 Proxy Statement. The Proxy Statement will, at the date mailed to stockholders of the Company and at the time of the Company Stockholder Meeting, not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading, except that no representation or warranty is made by the Company with respect to statements made therein based on information supplied by Parent or Merger Sub or any of their representatives specifically for inclusion therein.

Section 3.9 Absence of Certain Changes. Except for liabilities incurred in connection with this Agreement or the transactions contemplated hereby, since January 1, 2007 (a) the Company and the Company Subsidiaries have conducted their respective businesses, in all material respects, in the ordinary course consistent with past practice; (b) there has not been any action taken by the Company or any Company Subsidiary that, if taken during the period from the date of this Agreement through the Effective Time, would constitute a breach of Section 5.1; and (c) there has not been any change, circumstance or event that, individually or in the aggregate, have had or would reasonably be expected to have or result in a Material Adverse Effect on the Company.

Section 3.10 Litigation. Except as described in Section 3.10 of the Company Disclosure Letter, there is no (i) suit, action, cause of action, proceeding, claim, complaint, grievance, arbitration proceeding, demand, citation, summons, subpoena, cease and desist letter, injunction, notice of violation or irregularity, review or investigation (whether civil, criminal, regulatory or otherwise and whether at law or in equity, before or by any Governmental Entity or before any arbitrator) (each, a "Claim") pending or, to the knowledge of the Company, threatened, against or affecting the Company or any Company Subsidiary, or their respective properties or rights, or any of their officers, employees or directors in their capacity as such, or, to the knowledge of the Company, any other Person with respect to which, in whole or in part,

the Company or any Company Subsidiary is liable or has agreed to indemnify such other Person and (ii) no Order of any Governmental Entity or arbitrator is outstanding against the Company or any Company Subsidiary, in each case of clause (i) or (ii), that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

Section 3.11 Compliance with Laws; Permits.

(a) Each of the Company and the Company Subsidiaries is and, since January 1, 2007 has been, in compliance in all material respects with all applicable Laws (including Laws relating to sensitive payments and other applicable federal and state privacy Laws) and, to the knowledge of the Company, is not under investigation with respect to, and has not been threatened to be charged with or given notice of any violation of, any Law. Notwithstanding anything contained in this Agreement to the contrary, no representation or warranty shall be deemed to be made in this Section 3.11(a) to the extent otherwise covered by representations and warranties contained in Section 3.7 (Financial Statements), Section 3.15 (Employee Benefit Plans and Related Matters; ERISA), Section 3.16 (Employees, Labor Matters) or Section 3.19 (Environmental Laws and Regulations).

(b) Each of the Company and the Company Subsidiaries possesses all federal, state, local and foreign governmental licenses, authorizations, consents, permits, registrations and approvals, and has otherwise satisfied all applicable legal or regulatory requirements, necessary for it to own, lease or operate its properties and assets and to carry on its business as now conducted (collectively, "Company Permits"), and no default has occurred under any such Company Permit, except where such failure or default thereunder would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company. Neither the Company nor any Company Subsidiary has received written notification from any Governmental Entity of any intent to revoke or terminate, or of any proceedings regarding, any such material Company Permits.

(c) Neither the Company nor any Company Subsidiary (i) has been excluded, debarred, suspended or been otherwise determined to be, or identified as, ineligible to participate in any program of any Governmental Entity; (ii) is the subject of any investigation or review regarding its participation in any such program; or (iii) been convicted of any crime relating to any such program.

Section 3.12 Absence of Undisclosed Liabilities. The Company and the Company Subsidiaries do not have any liabilities or obligations, known or unknown, contingent or otherwise, except for liabilities and obligations (a) reflected in and reserved against in the consolidated balance sheets (or the notes thereto) included in the Financial Statements, (b) incurred in the ordinary course of business consistent with past practice since the date of such balance sheets, (c) expressly permitted and contemplated by this Agreement and (d) which would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

Section 3.13 Taxes.

(a) The Company and each Company Subsidiary have timely filed or will timely file with the relevant Tax Authority all Tax Returns required by applicable law to be filed by them or on their behalf for all Pre-Closing Tax Periods, and such Tax Returns that have been filed are, and those Tax Returns to be filed will be, true, complete, correct and in conformity with applicable Tax laws in all material respects. The Company and each Company Subsidiary have paid, or will pay, all Taxes (whether or not required to be shown on any Tax Return) required to be paid by them on or before the Closing Date, or where payment is not yet due, have established or will establish, on or before the Closing Date, in accordance with GAAP, an adequate reserve on its books and financial records for the payment of all Taxes due from them, with respect to any Pre-Closing Tax Period. All Taxes that the Company and each Company Subsidiary are or were required by law to withhold, deposit or collect have been duly withheld, deposited or collected and, to the extent required, have been paid to the relevant Tax Authority. The Company and each Company Subsidiary have timely complied with all information and reporting and backup withholding requirements, including maintenance of required records with respect thereto, in connection with amounts paid or owing to any employee, creditor, independent contractor or other third party.

(b) There (i) is no material deficiency, claim, audit, suit, proceeding, request for information or investigation now pending, outstanding or threatened against or with respect to the Company or any Company Subsidiary in respect of any Taxes or Tax Returns, and (ii) are no requests for rulings or determinations in respect of any Taxes or Tax Returns pending between the Company or any Company Subsidiary and any authority responsible for such Taxes or Tax Returns. No information regarding any Tax matter has been requested by any Tax Authority and no issue has been raised or is currently pending by any Tax Authority in connection with any of the Tax Returns with respect to the Company or any Company Subsidiary.

(c) There are no claims, investigations, actions or proceedings pending or, to the knowledge of the Company, threatened, against the Company or any Company Subsidiary by any Tax Authority for any past due Taxes with respect to which it would be liable. There has been no waiver of any applicable statute of limitations nor any consent for the extension of the time for the assessment of any Tax against the Company or any Company Subsidiary.

(d) Neither the Company nor any Company Subsidiary is delinquent in the payment of any amount of Taxes and there are no Tax liens upon any property or assets of the Company or any Company Subsidiary, except liens for Taxes not yet due and payable.

(e) Neither the Company nor any Company Subsidiary will be required to include any item of income in, or exclude any item of deduction from, taxable income for any Tax period (or portion thereof) ending after the Closing Date as a result of any: (i) closing agreement as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Tax Law) executed on or prior to the Closing Date; (ii) installment sale or open transaction disposition made on or prior to the Closing Date; (iii) prepaid amount received on or prior to the Closing Date; (iv) change in method of accounting for a taxable period ending on or prior to the Closing Date; (v) election under Section 108(i) of the Code (or any corresponding or similar provision of state, local or foreign Tax Law); or (vi) an exchange under Section

1031(f)(3) of the Code with a related person (within the meaning of Section 1031(f)(3) of the Code).

(f) Neither the Company nor any Company Subsidiary is liable for the Taxes of any Person, including, without limitation, (i) under Treasury Regulation Section 1.1502-6 (or any corresponding or similar provision of state, local or foreign Tax Law); (ii) as a transferee or successor; or (iii) by contract, indemnity or otherwise. Neither the Company nor any Company Subsidiary has ever been a member of a consolidated, combined or unitary group for federal, state, local or foreign Tax purposes or has ever been included as part of a consolidated, combined or unitary Tax Return (other than a group the common parent of which is the Company).

(g) Neither the Company nor any Company Subsidiary is or has ever been a party to any Tax sharing agreement, Tax indemnity agreement or other similar arrangement with any third party.

(h) Neither the Company nor any Company Subsidiary does business in or derives income from any state, local, territorial or foreign taxing jurisdiction other than those for which all Tax Returns have been furnished to Parent. No claim has ever been asserted by a Tax Authority in a jurisdiction where neither the Company nor any Company Subsidiary filed Tax Returns that the Company or any Company Subsidiary is or may be subject to taxation by that jurisdiction.

(i) Section 3.13(i) of the Company Disclosure Letter sets forth each of the states for which the Company and any Company Subsidiary is currently filing income or franchise Tax Returns (or similar type of Tax Returns) or expects to be required to file such Tax Returns.

(j) The Company and the Company Subsidiaries have provided Parent with copies, attached hereto as Section 3.13(j) of the Company Disclosure Letter, of: (i) all Tax Returns filed by, or on behalf of, the Company and the Company Subsidiaries for periods beginning on or after January 1, 2007 (the "Post-2007 Period"); (ii) all notices, protests or other correspondence relating to any Post-2007 Period Taxes or Tax Returns; (iii) any elections or disclosure of any uncertain positions filed by or on behalf of the Company or any Company Subsidiary with any Tax Authority (whether or not filed with any Tax Return); (iv) any letter rulings, determination letters or similar documents issued by any Tax Authority with respect to the Company or any Company Subsidiary; (v) any closing agreement entered into by the Company or any Company Subsidiary with any Tax Authority; and (vi) any Tax Return workpapers relating to the Tax Returns referred to in clause (i).

(k) Except as set forth in Section 3.13(k) of the Company Disclosure Letter, neither the Company nor any Company Subsidiary is party to any compensatory plans, programs, agreements or arrangements (including, without limitation, any Plan) that provide for payments or benefits that could result in a nondeductible expense pursuant to Sections 162(m) or 280G of the Code or an excise tax to the recipient of such payment or benefit pursuant to Section 4999 of the Code.

(l) Neither the Company nor any Company Subsidiary has constituted either a "distributing corporation" or a "controlled corporation" (within the meaning of Section

355(a)(1)(A) of the Code) in a distribution of stock qualifying for tax-free treatment under Section 355 of the Code.

(m) The Company is not, and has not been during the five-year period ending on the date hereof, a "United States real property holding corporation" as defined in Section 897(c)(2) of the Code.

(n) Neither the Company nor any Company Subsidiary has participated in a "listed transaction" within the meaning of Treasury Regulations §1.6011-4(c)(3)(i)(A) or failed to report any "reportable transaction."

Section 3.14 Title to Properties; Absence of Liens.

(a) The Company does not own any real property.

(b) Section 3.14(b) of the Company Disclosure Letter sets forth a true and complete list of all real property leased to or by the Company or any Company Subsidiary or in which any of them has an interest (collectively, the "Leased Real Property"). Except as would not have, individually or in the aggregate, a Material Adverse Effect on the Company, the Company or one of the Company Subsidiaries has a valid leasehold interest in all Leased Real Property leased by the Company or any Company Subsidiary free and clear of all Liens except Permitted Liens.

(c) Except as would not have, individually or in the aggregate, a Material Adverse Effect on the Company, with respect to the Leased Real Property of the Company and Company Subsidiaries, (i) each of the agreements by which the Company or any Company Subsidiary has obtained a leasehold interest in such Leased Real Property leased by the Company or any Company Subsidiary (each, a "Lease") is in full force and effect in accordance with its respective terms, (ii) to the knowledge of the Company, there exists no default under any Lease and no circumstance exists which, with or without the giving of notice, the passage of time or both, would constitute or result in such a default and (iii) there are no leases, subleases, licenses, concessions or any other contracts granting to any person or entity other than the Company or any Company Subsidiary any right to the possession, use, occupancy or enjoyment of any Leased Real Property or any portion thereof.

(d) Except as would not have, individually or in the aggregate, a Material Adverse Effect on the Company, and each of the Company and the Company Subsidiaries has good and marketable title to all its owned assets and properties, in each case free and clear of all Liens other than Permitted Liens. Except as would not have, individually or in the aggregate, a Material Adverse Effect on the Company, the properties and assets presently owned, leased or licensed by the Company and any Company Subsidiary include all properties and assets necessary to permit the Company and the Company Subsidiaries to conduct their businesses in all material respects in the same manner as their businesses are being conducted as of the date of this Agreement.

Section 3.15 Employee Benefit Plans and Related Matters: ERISA.

(a) Section 3.15 of the Company Disclosure Letter sets forth a complete and correct list of the Company Benefit Plans. With respect to each such Company Benefit Plan, the

Company has provided or made available to Parent a complete and correct copy of such Company Benefit Plan, if written, or a description of such Company Benefit Plan if not written, and to the extent applicable, (i) all current trust agreements, insurance contracts or other funding arrangements, (ii) the two most recent actuarial and trust reports for both ERISA funding and financial statement purposes, (iii) the two most recent Forms 5500 with all attachments required to have been filed with the IRS or the Department of Labor or any similar reports filed with any comparable Governmental Entity in any non-U.S. jurisdiction having jurisdiction over any Company Benefit Plan and all schedules thereto, (iv) the most recent IRS determination letter or opinion letter, (v) all current summary plan descriptions, (vi) all material communications received from or sent to the IRS, the Pension Benefit Guaranty Corporation or the Department of Labor (including a written description of any oral communication) since January 1, 2007, (vii) any actuarial study within the last five years of any pension, disability, post-employment life or medical benefits provided under any such Company Benefit Plan, (viii) all current employee handbooks and manuals, (ix) material statements or other communications regarding withdrawal or other multiemployer plan liabilities (or similar liabilities pertaining to any non-U.S. employee benefit plan sponsored by the Company or any Company Subsidiary, if any) and (x) all current amendments and modifications to any such Company Benefit Plan. Except as described in Section 3.15(a) of the Company Disclosure Letter, none of the Company or any Company Subsidiary has communicated to any current or former employee thereof any intention or commitment to amend or modify any Company Benefit Plan or to establish or implement any other employee or retiree benefit or compensation plan or arrangement.

(b) Qualification. Each Company Benefit Plan intended to be qualified under Section 401(a) of the Code, and the trust (if any) forming a part thereof, is so qualified and has received a favorable determination letter or opinion letter from the IRS. All amendments and actions required to bring each Company Benefit Plan into conformity with the applicable provisions of ERISA, the Code and other applicable Law have been made or taken, except for any such amendment or action that is permitted to be delayed under applicable Law. The Company Benefit Plans have been operated in accordance with their terms and with applicable Law, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

(c) Liability. No Company Benefit Plan is subject to Title IV of ERISA or any of the minimum funding standards of ERISA or the Code. There has been no event or circumstance that has resulted in any material liability to the Company or any of its Affiliates under or pursuant to Title I or IV of ERISA, the penalty, excise Tax or joint and several liability provisions of the Code relating to employee benefit plans or any applicable provision of Law in any jurisdiction outside of the United States. To the knowledge of the Company, there has not been any event or circumstance that could reasonably be expected to result in any material liability (other than for the payment of benefits in the ordinary course) in respect of the Company Benefit Plans. There are no unfunded benefits liabilities in respect of any Company Benefit Plan that is a defined benefit or similar type plan. No Company Benefit Plan is a multiemployer plan (as defined in section 4001(a)(3) of ERISA) or a multiple employer plan within the meaning of section 4063 or 4064 of ERISA. Neither the Company nor any of its Affiliates has any liability or obligation to provide post-employment benefits of any kind to any employee or dependent other than the coverage mandated by section 4980B of the Code or similar state Law.

Each Company Benefit Plan may be amended or terminated after the Closing Date without material cost other than for claims incurred prior to the date of such amendment or termination.

(d) Acceleration or Increases in Compensation. Except as described in Section 3.15(d) of the Company Disclosure Letter, there is no Company Benefit Plan or other contract, agreement, plan or arrangement to which the Company or any of the Company Subsidiaries is a party covering any employee, former employee, officer, director, shareholder or contract worker of the Company or any of the Company Subsidiaries that, individually or collectively, could give rise to the payment of any amount that would constitute an "excess parachute payment" pursuant to Section 280G or 4999 of the Code or would otherwise result in the acceleration of payment of any benefits or an increase in the amount of benefits (including any indemnity or redundancy pay) payable, whether pursuant to the terms of any such Company Benefit Plan, at Law, by contract or otherwise, as a result, alone or in combination with any other event, of the entering into, or the consummation of the transactions contemplated by, this Agreement.

(e) Independent Contractors. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, the Company and each of the Company Subsidiaries have properly classified all individuals (including independent contractors and leased employees) under applicable Law. Any person providing services to the Company or any of the Company Subsidiaries who has not been classified as an employee is not eligible to participate in any Company Benefit Plan and is not entitled to receive any benefits or other compensation under or pursuant to any such Company Benefit Plan in respect of such non-employee service.

Section 3.16 Employees, Labor Matters. Neither the Company nor any Company Subsidiary is a party to or bound by any collective bargaining agreement, and there are no labor unions or other organizations representing or purporting or attempting to represent any employees employed by the Company or any Company Subsidiary. Since October 1, 2007, there has not occurred or, to the knowledge of the Company, been threatened any material strike, slowdown, picketing, work stoppage, concerted refusal to work overtime or other similar labor activity or organizing campaign with respect to any employees of the Company or any Company Subsidiary. There are no labor disputes currently subject to any external grievance procedure, arbitration or litigation and there is no representation petition pending or, to the knowledge of the Company, threatened with respect to any employee of the Company or any of the Company Subsidiaries. The Company and each of the Company Subsidiaries have complied with all Laws pertaining to the employment or termination of employment of their respective employees, including all such Laws relating to labor relations, equal employment, fair employment practices, prohibited discrimination or distinction and other similar employment practices or acts, except for any failure so to comply that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on the Company.

Section 3.17 Intellectual Property. The Company and the Company Subsidiaries exclusively own free and clear of any Liens, or are validly licensed or otherwise have the right to use as currently used, all Intellectual Property used in the conduct of the business of the Company and the Company Subsidiaries, except for such Intellectual Property where the failure to so own, be validly licensed or have the right to use, individually or in the aggregate, and for such Liens as, would not reasonably be expected to have or result in a Material Adverse Effect

on the Company. The Company and the Company Subsidiaries have taken all actions reasonably necessary to ensure full protection of their respective owned Intellectual Property under all applicable Laws, except where the failure to take any such actions, individually or in the aggregate, would not reasonably be expected to have or result in a Material Adverse Effect on the Company. No claims are pending that allege that the Company or any Company Subsidiary is infringing or otherwise adversely affecting the rights of any Person with regard to any Intellectual Property. To the knowledge of the Company, no Person is infringing the rights of the Company or any Company Subsidiary with respect to any Intellectual Property in a manner that, individually or in the aggregate, would reasonably be expected to have or result in a Material Adverse Effect on the Company. Section 3.17 of the Company Disclosure Letter lists all Intellectual Property owned by, licensed by and licensed to the Company or any Company Subsidiary.

Section 3.18 Contracts.

(a) Except as listed in Section 3.18 of the Company Disclosure Letter, neither the Company nor any Company Subsidiary is a party to or bound by:

(i) any agreement relating to direct or indirect indebtedness of the Company or any Company Subsidiary, other than agreements among direct or indirect wholly owned Company Subsidiaries, deposit account arrangements (other than deposit arrangements characterized as brokered deposits under applicable FDIC regulations) and ordinary course trade payables and accrued expenses (Indebtedness);

(ii) any joint venture, partnership, limited liability company or other similar agreements or arrangements relating to the formation, creation, operation, management or control of any partnership or joint venture material to the Company or any of its Subsidiaries;

(iii) any agreement or series of related agreements, including any option agreement, relating to the acquisition or disposition of any business or material real property (whether by merger, sale of stock, sale of assets or otherwise);

(iv) any agreement entered into with (A) any Person directly or indirectly owning, controlling or holding with power to vote, 5% or more of the outstanding voting securities of the Company or any Company Subsidiary, (B) any Person 5% or more of the outstanding voting securities of which are directly or indirectly owned, controlled or held with power to vote by the Company or any Company Subsidiary or (C) any current or former director or officer of the Company or any Company Subsidiary or any associates or members of the immediate family (as such terms are respectively defined in Rule 12b-2 and Rule 16a-1 of the Exchange Act) of any such director or officer;

(v) any agreement (including any exclusivity agreement) that purports to limit or restrict in any material respect either the type of business in which the Company or the Company Subsidiaries (or, after the Effective Time, the Surviving Corporation or its Subsidiaries) may engage or the manner or locations in which any of them may so engage

in any business (including any covenant not to compete or not to solicit employees) or which could require the disposition of any material assets or line of business of the Company or the Company Subsidiaries or, after the Effective Time, the Surviving Corporation or its Subsidiaries;

(vi) any sales, distribution, agency, commission-based, participating provider or other third-party payor, or other similar agreement providing for the sale by the Company or any Company Subsidiary of materials, supplies, goods, services, equipment or other assets, (A) involving payments to or by the Company or any Company Subsidiary in excess of \$100,000 in the aggregate or (B) that are otherwise material to the Company and the Company Subsidiaries taken as a whole;

(vii) except as to provisions in the Company's certificate of incorporation and by-laws, any material agreement that provides for continuing indemnification obligations of the Company or any of its Subsidiaries;

(viii) any agreement with any Governmental Entity;

(ix) any "take-or-pay" agreements or agreements with "most-favored nations" pricing or other terms; or

(x) any agreement otherwise required to be filed as an exhibit to an Annual Report on Form 10-K, as provided by Rule 601 of Regulation S-K promulgated under the Exchange Act which has not been so filed.

(each such contract or agreement referenced in subparts (i) through (x) above, a "Company Contract").

(b) Each Company Contract is a valid and binding agreement of the Company or the Company Subsidiary party thereto, as the case may be, and is in full force and effect, and none of the Company or the Company Subsidiary party thereto or, to the knowledge of the Company, any other party thereto is in default or breach in any material respect under the terms of, or has provided any written notice of any intention to terminate, any such Company Contract and, to the knowledge of the Company, no event or circumstance has occurred, or will occur by reason of this Agreement or the consummation of any of the transactions contemplated hereby, that, with or without notice or lapse of time or both, would constitute any event of default thereunder or would give rise to a right of termination, acceleration or material amendment thereof. True, correct and complete copies of (i) each Company Contract (including all material modifications and amendments thereto and waivers thereunder) and (ii) all form contracts, agreements or instruments used in and material to the Company and the Company Subsidiaries, taken as a whole, have been provided to Parent.

Section 3.19 Environmental Laws and Regulations. Except as, individually or in the aggregate, would not reasonably be expected to have or result in a Material Adverse Effect on the Company, (i) the Company and each Company Subsidiary has complied and is in compliance with all applicable Environmental Laws, (ii) no violation of any Environmental Law by the Company or any Company Subsidiary is being or has been alleged or, to the knowledge of the Company, threatened, (iii) no written notice of any Claim, request for information or order has

been received by the Company or any Company Subsidiary, no complaint has been filed, no penalty or fine has been assessed, and no Claim is pending or, to the knowledge of the Company, threatened by any Person involving the Company or any Company Subsidiary relating to or arising out of any Environmental Law, and (iv) to the knowledge of the Company, no Hazardous Substances are located and no Releases of Hazardous Substances have occurred at, on, above, under or from any properties currently or formerly owned, leased, operated or used by the Company, any Company Subsidiary or any predecessors in interest that are likely to result in any cost, liability or obligation of the Company or any Company Subsidiary under any Environmental Law.

Section 3.20 Insurance. The Company and the Company Subsidiaries maintain policies of insurance in such amounts and against such risks as are customary in the industry in which the Company and the Company Subsidiaries operates. Section 3.20 of the Company Disclosure Letter contains a true and complete list of such policies. All material premiums due on such insurance policies have been paid in a timely manner and the Company and the Company Subsidiaries have complied in all material respects with the terms and provisions of such insurance policies. All such insurance policies are in full force and effect in all material respects and will not in any way be affected by, or terminate or lapse by reason of, this Agreement or the consummation of any of the transactions contemplated hereby.

Section 3.21 Regulatory Capitalization. The Bank is, and immediately prior to the Effective Time will be, well capitalized, as such term is defined in the rules and regulations promulgated by the FDIC. The Company is, and immediately prior to the Effective Time will be, well capitalized as such term is defined in the rules and regulations promulgated by the FRB.

Section 3.22 Loans; Nonperforming and Classified Assets.

(a) Each loan agreement, note or borrowing arrangement, including, without limitation, portions of outstanding lines of credit and loan commitments (collectively, Loans), on the Company's or any Company Subsidiary's books and records, was made and has been serviced in accordance with the Company's lending standards in the ordinary course of business in all material respects; is evidenced by appropriate and sufficient documentation; to the extent secured, has been secured by valid liens and security interests which have been perfected; and constitutes, to the Company's knowledge, the legal, valid and binding obligation of the obligor named therein, enforceable in accordance with its terms in all material respects, subject to bankruptcy, insolvency, fraudulent conveyance and other laws of general applicability relating to or affecting creditor's rights and to general equity principles. The Company has previously made available to Investor complete and correct copies of its lending policies. The deposit and loan agreements of the Company and its Subsidiaries are in substantial compliance with all applicable laws, rules and regulations. The allowance for loan losses reflected in the Financial Statements, as of their respective dates, is adequate under GAAP and all regulatory requirements applicable to financial institutions.

(b) Section 3.22(b) of the Company Disclosure Letter discloses as of the date hereof: (i) any Loan under the terms of which the obligor is 60 or more days delinquent in payment of principal or interest, or to the knowledge of the Company, in default of any other provision

thereof; (ii) each Loan which has been classified as "other loans specially maintained," "classified," "criticized," "substandard," "doubtful," "credit risk assets," "watch list assets," "loss" or "special mention" (or words of similar import) by the Company, its Subsidiaries or a Governmental Entity (the "Classified Loans"); (iii) a listing of the real estate owned, acquired by foreclosure or by deed-in-lieu thereof, including the book value thereof; (iv) each Loan with any director, executive officer or five percent (5%) or greater shareholder of the Company, or to the knowledge of the Company, any Person controlling, controlled by or under common control with any of the foregoing; and (v) a listing of each residential mortgage Loan and the lien position with respect to the property securing the Loan. All Loans which are classified as "Insider Transactions" by Regulation O of the FRB have been made by the Company or any of its Subsidiaries in an arms-length manner made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other Persons and do not involve more than normal risk of collectibility or present other unfavorable features in comparison to the Company's other loans.

(c) The Company shall promptly after the end of each quarter after the date hereof and upon Closing inform Parent of the amount of Loans subject to each type of classification of the Classified Loans.

Section 3.23 Investment Management and Related Activities. None of the Company, any Company Subsidiary or the Company's or its Subsidiaries' directors, officers or employees is required to be registered, licensed or authorized under the laws or regulations issued by any Governmental Entity as an investment adviser, a broker or dealer, an insurance agency or company, a commodity trading adviser, a commodity pool operator, a futures commission merchant, an introducing broker, a registered representative or associated person, investment adviser, representative or solicitor, a counseling officer, an insurance agent, a sales person or in any similar capacity with a Governmental Entity.

Section 3.24 Derivative Transactions. All Derivative Transactions entered into by the Company or any Company Subsidiary were entered into in accordance, in all material respects, with applicable rules, regulations and policies of any Governmental Entity, and in accordance, in all material respects, with the investment, securities, commodities, risk management and other policies, practices and procedures employed by the Company and the Company Subsidiaries and were entered into with counterparties believed at the time to be financially responsible and able to understand (either alone or in consultation with their advisers) and to bear the risks of such Derivative Transactions. The Company and the Company Subsidiaries have duly performed all of their obligations under the Derivative Transactions to the extent that such obligations to perform have accrued, and, to the knowledge of the Company, there are no breaches, violations or defaults or allegations or assertions of such by any party thereunder. The Company and the Company Subsidiaries have adopted policies and procedures consistent with the publications of Governmental Entities with respect to their derivatives program.

Section 3.25 Repurchase Agreements. With respect to all agreements pursuant to which the Company or any Company Subsidiary has purchased securities subject to an agreement to resell, if any, the Company or any Company Subsidiary, as the case may be, has a valid, perfected first lien or security interest in the government securities or other collateral

securing the repurchase agreement, and, as of the date hereof, the value of such collateral equals or exceeds the amount of the debt secured thereby.

Section 3.26 Deposit Insurance. The deposits of the Bank are insured by the FDIC in accordance with the Federal Deposit Insurance Act (̈FDIÄ) to the fullest extent permitted by law, and the Bank has paid all premiums and assessments and filed all reports required by the FDIA. No proceedings for the revocation or termination of such deposit insurance are pending or, to the knowledge of the Company, threatened.

Section 3.27 CRA, Anti-money Laundering and Customer Information Security. Neither the Company nor any Company Subsidiary is a party to any agreement with any individual or group regarding Community Reinvestment Act matters and the Company is not aware of, and none of the Company and the Company Subsidiaries has been advised of, or has any reason to believe that any facts or circumstances exist, which would cause the Bank: (i) to be deemed not to be in satisfactory compliance with the Community Reinvestment Act, and the regulations promulgated thereunder, or to be assigned a rating for Community Reinvestment Act purposes by federal or state bank regulators of lower than ̈satisfactorÿ; or (ii) to be deemed to be operating in violation of the federal Bank Secrecy Act, as amended, and its implementing regulations (31 C.F.R. Part 103), the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, and the regulations promulgated thereunder (the ̈USA Patriot Acẗ), any sanctions regimes administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (̈OFAC̈), or any other applicable anti-money laundering statute, rule or regulation; or (iii) to be deemed not to be in satisfactory compliance with the applicable data privacy, safeguarding, and breach notice requirements for customer information requirements contained in any federal and state privacy laws and regulations, including, without limitation, in Title V of the Gramm-Leach-Bliley Act of 1999 and regulations promulgated thereunder, as well as the provisions of the information security program adopted by the Company Bank pursuant to 12 C.F.R. Part 364. Furthermore, the Board of Directors of the Bank has adopted and the Bank has implemented (i) an anti-money laundering program that contains adequate and appropriate customer identification verification procedures that has not been deemed ineffective by any Governmental Entity and that meets the requirements of Sections 352 and 326 of the USA Patriot Act, (ii) an OFAC sanctions compliance program; and (iii) a data privacy and safeguarding program under applicable federal requirements.

Section 3.28 Transactions with Affiliates. There are no outstanding amounts payable to or receivable from, or advances by the Company or any Company Subsidiary to, and neither the Company nor any Company Subsidiary is otherwise a creditor or debtor to, any shareholder, director, employee or Affiliate of the Company or any Company Subsidiary, other than as part of the normal and customary terms of such persons' employment or service as a director with the Company or any Company Subsidiary. Neither the Company nor any Company Subsidiary is a party to any transaction or agreement with any of its respective Affiliates, shareholders, directors or executive officers or any material transaction or agreement with any employee other than executive officers. All agreements between the Company and any of its Affiliates comply, to the extent applicable, with Regulations O and W of the FRB.

Section 3.29 Opinion of Financial Advisor. The Company has received a written opinion from the Company Financial Advisor, dated as of the date of this Agreement, to the effect that the Per Share Merger Consideration is fair, from a financial point of view, to the holders of shares of Company Common Stock, a signed copy of which opinion has been delivered to Parent. The Company has been authorized by the Company Financial Advisor to include such opinion in its entirety in the Proxy Statement.

Section 3.30 Brokers. No Person other than Sandler O'Neil and Partners. (the "Company Financial Advisor") is entitled to any brokerage, financial advisory, finder's or similar fee or commission payable by the Company or any Company Subsidiary in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company or any Company Subsidiary. The Company has furnished to Parent and Merger Sub a true and complete copy of each agreement between the Company or any Company Subsidiary and the Company Financial Advisor.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent, Modern Capital and Merger Sub jointly and severally represent and warrant to the Company as follows:

Section 4.1 Organization. Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, Modern Capital is a limited liability company validly existing and in good standing under the laws of the State of Delaware, and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of New York. Each of Parent, Modern Capital and Merger Sub has all requisite corporate or limited liability company power, as applicable, and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted. Each of Parent, Modern Capital and Merger Sub is duly qualified or licensed to own, lease and operate its properties and to carry on its business as now being conducted in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so qualified would not, individually or in the aggregate, reasonably be expected to have or result in a Material Adverse Effect on Parent, Modern Capital or Merger Sub.

Section 4.2 Capitalization; Interim Operations of Merger Sub. The authorized capital stock of Merger Sub consists solely of 1,000 shares of common stock, par value of \$.01 per share, all of which are issued and outstanding and owned by Parent as of the date hereof and will, as of the Effective Time, be owned by Parent or a permitted assignee thereof. All of the issued and outstanding shares of capital stock of Merger Sub have been, and as of the Effective Time will be, duly authorized and validly issued and are, and as of the Effective Time will be, fully paid and nonassessable and free of preemptive or other similar rights. Merger Sub has not conducted any business prior to the date hereof and has, and prior to the Effective Time will have, no assets, liabilities or obligations of any nature other than those incident to its formation or contemplated by this Agreement.

Section 4.3 Authority for Agreements. Each of Parent, Modern Capital and Merger Sub has all requisite corporate or limited liability company power, as applicable, and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Parent, Modern Capital and Merger Sub and the consummation by each of Parent and Merger Sub of the Merger and the other transactions contemplated hereby have been duly and validly authorized by all necessary corporate or limited liability company action, as applicable, and no other corporate or limited liability company proceedings on the part of Parent, Modern Capital or Merger Sub, as the case may be, are necessary for Parent, Modern Capital or Merger Sub to authorize this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by each of Parent, Modern Capital and Merger Sub and, assuming due authorization, execution and delivery by the Company, is a legal, valid and binding obligation of each of Parent, Modern Capital and Merger Sub, enforceable against each of Parent, Modern Capital and Merger Sub in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting the enforcement of creditors' rights or remedies in general as from time to time in effect or (ii) general principles of equity.

Section 4.4 Consents and Approvals; No Violations.

(a) The execution and delivery of this Agreement by Parent, Modern Capital and Merger Sub do not, and the performance by Parent, Modern Capital and Merger Sub of their obligations hereunder, including the consummation of the transactions contemplated hereby will not, (i) conflict with any provision of the Constituent Documents of Parent, Modern Capital or Merger Sub, (ii) result (with or without the giving of notice or the lapse of time or both) in any violation of or default or loss of a benefit under, or permit the acceleration, amendment or termination of any obligation under, any material mortgage, indenture, lease, permit, concession, grant, franchise, license, agreement or other instrument or obligation applicable to Parent, Modern Capital or Merger Sub; (iii) violate any Law or Order (assuming compliance with the matters set forth in Section 4.4(b)); or (iv) cause the suspension or revocation of any material permit, license, governmental authorization, consent or approval under which each of Parent, Modern Capital and Merger Sub conducts its business.

(b) No consent, approval, order or authorization of, or declaration, registration or filing with, or notice to, any Governmental Entity is required to be made or obtained by Parent, Modern Capital or Merger Sub in connection with the execution or delivery of this Agreement by Parent, Modern Capital and Merger Sub or the consummation by Parent, Modern Capital or Merger Sub of the transactions contemplated hereby, except for (i) the Bank Regulatory Approvals and (ii) the filing of the Certificate of Merger with the New York Department of State.

Section 4.5 Proxy Statement. None of the information supplied or to be supplied by Parent, Modern Capital or Merger Sub in writing for inclusion or incorporation by reference in the Proxy Statement will, at the date mailed to stockholders of the Company and at the time of the Company Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

Section 4.6 Brokers. No Person is entitled to any brokerage, financial advisory, finder's or similar fee or commission payable by Merger Sub or the Company in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent, Modern Capital or Merger Sub.

Section 4.7 No Additional Representations. Parent, Modern Capital and Merger Sub acknowledge that neither the Company nor any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Company furnished or made available to Parent, Modern Capital, Merger Sub, or their respective representatives except as expressly set forth in Article III (including, by reference, the Company Disclosure Letter), and neither the Company, its officers, directors, employees, agents or other representatives, nor any other Person, shall be subject to any liability to Parent, Modern Capital or Merger Sub or any other Person resulting solely from the Company's making available to Parent, Modern Capital or Merger Sub, or Parent's, Modern Capital's or Merger Sub's use of such information, including any information, documents, or material made available in the due diligence materials provided to Parent, Modern Capital or Merger Sub, including in the data room, management presentations (whether formal or informal) or any other form in connection with the transactions contemplated by this Agreement.

ARTICLE V CONDUCT OF BUSINESS

Section 5.1 Conduct of Business by the Company Pending the Merger. From the date of this Agreement until the Effective Time or the date, if any, on which this Agreement is earlier terminated pursuant to Section 8.1, and except (i) as Parent shall consent in writing which consent shall not be unreasonably withheld or (ii) as otherwise expressly provided for in this Agreement, the Company shall, and shall cause each of the Company Subsidiaries to, conduct its business in the ordinary course consistent with past practice and shall use commercially reasonable efforts to preserve intact its business organization and goodwill and relationships with customers, third party payors (including Governmental Entities, insurance carriers and other intermediaries), suppliers and others having business dealings with it and to keep available the services of its current officers and key employees on terms and conditions substantially comparable to those currently in effect and to maintain its current rights and franchises, subject to the terms of this Agreement. In addition to and without limiting the generality of the foregoing, except as otherwise expressly permitted by or provided for in this Agreement or except as to actions or events necessary to maintain compliance with applicable laws and regulations and any agency directed requirements, from the date hereof until the Effective Time or the date, if any, on which this Agreement is earlier terminated pursuant to Section 8.1, without the prior written consent of Parent which consent shall not be unreasonably withheld, the Company shall not, and shall not permit any Company Subsidiary to:

- (a) adopt or propose any change in its Constituent Documents;
- (b) (i) declare, set aside, make or pay any dividend or other distribution (whether in cash, stock or property) in respect of any of its capital stock, except for dividends or distributions by wholly owned Company Subsidiaries to the Company or

another wholly owned Subsidiary, (ii) adjust, split, combine or reclassify any of its capital stock or issue or propose or authorize the issuance of any other securities (including options, warrants or any similar security exercisable for, or convertible into, such other security) in respect of, in lieu of, or in substitution for, shares of its capital stock or (iii) repurchase, redeem or otherwise acquire any shares of the capital stock of the Company or any Company Subsidiary, or any other equity interests or any rights, warrants or options to acquire any such shares or interests;

(c) issue, sell, grant, pledge, grant any rights in respect of or otherwise encumber any shares of its capital stock or other securities (including any options, warrants or any similar security exercisable for, or convertible into, such capital stock or similar security) or make any changes (by combination, merger, consolidation, reorganization, liquidation or otherwise) in the capital structure of the Company or any Company Subsidiary, other than (i) issuances of shares of Company Common Stock upon the exercise of Company Stock Options in accordance with their terms in effect as of the date hereof, or (ii) issuances by a wholly owned Company Subsidiary of capital stock to such Company Subsidiary's parent or another wholly owned Company Subsidiary;

(d) merge or consolidate with any other Person or acquire a material amount of the assets or equity of any other Person, other than acquisitions of inventory, equipment or raw materials in the ordinary course of business consistent with past practice;

(e) sell, lease, license, subject to a Lien, other than a Permitted Lien, encumber or otherwise surrender, relinquish or dispose of any assets, property or rights (including capital stock or other equity interests of a Company Subsidiary) except in an amount not in excess of \$100,000 individually or \$500,000 in the aggregate;

(f) except in the case of clauses (ii) and (iii) below as to loan origination in the ordinary course of the Company's business which are in conformance with its underwriting policies and procedures as well as applicable law and any regulatory recommendations or instructions, (i) make any loans, advances or capital contributions to, or investments in, any other Person, other than by the Company or any Company Subsidiary to or in the Company or any Company Subsidiary, (ii) create, incur, guarantee or assume any Indebtedness, (iii) make or commit to make any material capital expenditure other than capital expenditures approved by the Board of Directors of the Company prior to the date hereof or within the Company's capital budget for fiscal 2010 previously provided to Parent or (iv) cancel any debts or waive any claims or rights of substantial value, except for cancellations made or waivers granted with respect to claims in the ordinary course of business consistent with past practice that, in the aggregate, are not material to the Company and its Subsidiaries, taken as a whole;

(g) except as required by employment agreements or Company Benefit Plans as of the date hereof or applicable Law, amend or otherwise modify the terms of or benefits provided under any Company Benefit Plan, accelerate the payment or vesting of benefits or amounts payable or to become payable under any Company Benefit Plan, fail

to make any required contribution to any Company Benefit Plan, or terminate or establish any Company Benefit Plan;

(h) grant any increase in the compensation or benefits of directors, officers, employees, consultants, representatives or agents of the Company or any Company Subsidiary, except for (i) increases required by Law or contracts existing on the date hereof and (ii) increases for officers and employees in the ordinary course of business, consistent with past practice;

(i) enter into or amend or modify any severance, consulting, retention or employment agreement, plan, program or arrangement;

(j) settle or compromise any material Claim or audit or enter into any consent decree, injunction or similar restraint or form of equitable relief in settlement of any material Claim or audit;

(k) (i) make or rescind any express or deemed election relating to Taxes, (ii) settle or compromise any Claim relating to Taxes, (iii) make a request for a written ruling of a Taxing Authority relating to Taxes, (iv) enter into a written and legally binding agreement with a Taxing Authority relating to Taxes, (v) except as required by Law, change any of its methods of reporting income or deductions for federal income tax purposes from those employed in the preparation of its federal income tax returns for the taxable year ended December 31, 2008 or (vi) change any method of accounting or accounting principles or practices by the Company or any Company Subsidiary, except for any such change required by a change in GAAP;

(l) other than in the ordinary course of business consistent with past practice, (i) modify or amend in any material respect or terminate any Company Contract, (ii) enter into any successor agreement to an expiring Company Contract that changes the terms of the expiring Company Contract in a way that is materially adverse to the Company or any Company Subsidiary, (iii) modify, amend or enter into any new agreement that would have been considered a Company Contract if it were entered into at or prior to the date hereof, or (iv) modify or amend in any material respect or terminate any compliance policy in respect of any applicable Law, Governmental Entity or third party payor with whom the Company or any Company Subsidiary does business, except insofar as required by applicable Law;

(m) enter into or renew or extend any agreements or arrangements that limit or otherwise restrict the Company or any Company Subsidiary or any of their respective Affiliates or any successor thereto, or that could, after the Effective Time, limit or restrict Parent or any of its Affiliates (including the Surviving Corporation) or any successor thereto, from engaging or competing in any line of business or in any geographic area;

(n) terminate, cancel, amend or modify any insurance policies maintained by it covering the Company or the Company Subsidiaries or their respective properties which is not replaced by a comparable amount of insurance coverage;

(o) adopt a plan of complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization of the Company or any Company Subsidiary;

(p) dispose of or permit to lapse any rights to the use of any Intellectual Property (and the Bank shall take all actions necessary in respect of any infringement of any Intellectual Property of which it has knowledge), or dispose of or disclose to any Person any trade secret not theretofore a matter of public knowledge;

(q) change its loan policies or procedures in effect as of the date hereof, except as required by any Governmental Entity;

(r) make any investment or commitment to invest in real estate or in any real estate development project (other than by way of foreclosure or acquisitions in a bona fide fiduciary capacity or in satisfaction of a debt previously contracted in good faith, in each case in the ordinary course of business consistent with past practice);

(s) except as to securities which may be acquired consistent with the investment policy of the Company and which are consistent with past practice, acquire (other than by way of foreclosures or acquisitions in a bona fide fiduciary capacity or in satisfaction of debts previously contracted in good faith, in each case in the ordinary course of business consistent with past practice) any debt security or equity investment other than U.S. government sponsored enterprise bonds with a term no greater than two years;

(t) incur any indebtedness for borrowed money (other than deposits, federal funds purchased, Federal Home Loan Bank advances, existing lines of credit and securities sold under agreements to repurchase, in each case in the ordinary course of business consistent with past practice) or assume, guarantee, endorse or otherwise as an accommodation become responsible for the obligations of any other Person, other than in the ordinary course of business consistent in amount and purpose with past practice and with a term of less than one year;

(u) enter into any Derivative Transactions;

(v) enter into any new material line of business; change its material lending, investment, underwriting, risk and asset liability management and other material banking and operating policies, except as required by applicable law, regulation or policies imposed by any Governmental Entity; or file any application or make any contract with respect to branching or site location or branching or site relocation;

(w) take any actions or omit to take any actions that would or would be reasonably likely to (i) result in any of the conditions to the consummation of the Merger set forth in Article VII not being satisfied, (ii) materially impair the ability of the Company to consummate the Merger in accordance with the terms hereof or materially delay such consummation (iii) violate any applicable law, rule or regulation, or (iv) violate the terms of the MOU; or

(x) agree or commit to do any of the foregoing.

Section 5.2 Conduct of Business by Parent and Merger Sub. From the date of this Agreement until the Effective Time or the date, if any, on which this Agreement is earlier terminated pursuant to Section 8.1, neither Parent nor Merger Sub shall take any actions or omit to take any actions that would or would be reasonably likely to (i) result in any of the conditions to the consummation of the Merger set forth in Article VII not being satisfied or (ii) materially impair the ability of Parent or Merger Sub to consummate the Merger in accordance with the terms hereof or materially delay such consummation; or agree or commit to do any of the foregoing.

ARTICLE VI ADDITIONAL AGREEMENTS

Section 6.1 Preparation of Proxy Statement. The Company, in consultation with Parent, shall prepare a statement (together with any amendments or supplements thereto and any other filings required under applicable law in connection with the Merger Agreement, the “Proxy Statement”) as soon as reasonably practicable following the date of this Agreement. At least ten Business Days prior to mailing the Proxy Statement to the Company’s stockholders, the Company shall furnish or otherwise make available to Parent a copy of the Proxy Statement, which shall be subject to reasonable review and comment by Parent. If at any time prior to the Company Stockholder Meeting there shall occur any event (including discovery of any fact, circumstance or event by any party hereto) that should be set forth in an amendment or supplement to the Proxy Statement, the party which discovers such information shall promptly notify the other parties hereto and the Company shall promptly prepare and mail to its stockholders such an amendment or supplement, in each case to the extent required by applicable Law. Parent shall cooperate with the Company in the preparation of the Proxy Statement or any amendment or supplement thereto, including by providing such information as the Company may reasonably request for inclusion in the Proxy Statement.

Section 6.2 Stockholder Meeting; Company Recommendation. The Company shall duly take all lawful action to call, give notice of, convene and hold a meeting of its stockholders on a date as soon as reasonably practicable following the mailing of the Proxy Statement (the “Company Stockholder Meeting”) for the purpose of obtaining the Company Stockholder Approval and shall take all lawful action to solicit the adoption of this Agreement by the Company Stockholder Approval; and the Board of Directors of the Company shall recommend adoption of this Agreement by the stockholders of the Company to the effect as set forth in Section 3.4 (the “Company Recommendation”), and shall not, before or after giving notice of the Company Stockholder Meeting, withdraw, modify or qualify (or propose to withdraw, modify or qualify) in any manner adverse to Parent such recommendation or take any action or make any statement inconsistent with such recommendation including approving or recommending or proposing to approve or recommend a third party Takeover Proposal with respect to the Company or failing to recommend the adoption of this Agreement (any of the foregoing, a “Change in the Company Recommendation”), provided that the Board of Directors of the Company may make a Change in the Company Recommendation pursuant to Section 6.3(b).

Section 6.3 No Solicitation.

(a) The Company shall cause its and its Subsidiaries and each of their representatives and agents to, immediately cease any discussions or negotiations with any parties that may be ongoing with respect to a Takeover Proposal. Subject to the provisions of Section 6.3(b), after the execution and delivery of this Agreement, the Company shall not, and shall cause its and its Subsidiaries and each of their representatives and agents not to, directly or indirectly, (i) solicit, initiate or knowingly encourage any inquiry with respect to, or the making, submission or announcement of, any proposal that constitutes or could reasonably be expected to lead to a Takeover Proposal, (ii) participate in any negotiations regarding a Takeover Proposal with, or furnish any nonpublic information relating to a Takeover Proposal to, any Person that has made or, to the knowledge of the Company, is considering making a Takeover Proposal, (iii) engage in discussions regarding a Takeover Proposal with any Person that has made or, to the knowledge of the Company, is considering making a Takeover Proposal, except to notify such Person of the existence of the provisions of this Section 6.3, (iv) approve, endorse or recommend any Takeover Proposal, (v) enter into any letter of intent or agreement in principle or any agreement providing for any Takeover Proposal (except for Qualifying Confidentiality Agreements permitted under Section 6.3(b)) or (vi) propose or agree to do any of the foregoing. The Company agrees that any violations of the restrictions set forth in this Section 6.3 by any representative of the Company shall be deemed to be a breach by the Company.

(b) Notwithstanding Section 6.3(a), if the Company receives a written and unsolicited Takeover Proposal which (i) did not result from a breach of Section 6.3(a), (ii) the Board of Directors reasonably believes to be *bona fide*, and (iii) the Board of Directors determines in good faith (after consultation with its financial advisors and outside counsel) is, or could reasonably be expected to result in, a Superior Proposal, the Company may take the following actions: (x) furnish nonpublic information to the Person making such Takeover Proposal, if, and only if, (A) prior to so furnishing such information, the Company has (1) complied with the following sentence of this Section 6.3(b) and (2) received from such Person a Qualifying Confidentiality Agreement, and (B) the Company promptly provides to Parent and Merger Sub any material nonpublic information concerning the Company provided to such other Person that was not previously provided to Parent and Merger Sub, and (y) engage in discussions or negotiations with such Person with respect to the Takeover Proposal. The Company promptly (and in any event within 48 hours) shall advise Parent orally and in writing of the receipt of (i) any proposal that constitutes or could reasonably be expected to lead to a Takeover Proposal, including the identity of the Person(s) making such proposal and the material terms of such proposal, and providing copies of any document or correspondence evidencing such proposal, and (ii) any request for non-public information relating to the Company or any Company Subsidiary other than requests for information not reasonably expected to be related to a Takeover Proposal. The Company shall keep Parent reasonably informed on a reasonably current basis of the status of any such proposal (including any material change to the terms thereof).

(c) Notwithstanding Section 6.2, at any time prior to obtaining the Company Stockholder Approval, if the Company has received a Superior Proposal, the Board of Directors of the Company may solely in connection with such Superior Proposal, (x) effect a Change in the Company Recommendation or (y) terminate this Agreement (and concurrently with or after such termination, cause the Company to enter into an acquisition agreement with respect to any

Superior Proposal), in each case if the Board of Directors of the Company has determined in good faith, after consultation with outside counsel, the failure to take such action would constitute a breach of its fiduciary obligations to the Company's stockholders under applicable Law, provided that the Board of Directors of the Company may not take the actions set forth in clause (x) or (y) unless the Company shall have provided prior written notice to Parent at least three Business Days in advance (the "Notice Period"), of its intention to take such actions, which notice shall specify the material terms and conditions of any such Superior Proposal (including the identity of the party making such Superior Proposal and copies of any documents or correspondence evidencing such Superior Proposal) and any modifications to any of the foregoing. In the event of any material revisions to the Superior Proposal, the Company shall deliver a new written notice to Parent.

(d) Nothing contained in this Section 6.3 shall prohibit the Company from (i) complying with Rule 14a-9, 14d-9 or 14e-2 promulgated under the Exchange Act, (ii) making any disclosure to the Company's stockholders if, after receipt of advice from its outside legal counsel, such disclosure would be required under applicable Law or (iii) informing any Person of the existence of the provisions contained in this Section 6.3.

(e) For purposes of this Agreement:

"Takeover Proposal" means any proposal or offer in respect of (i) a merger, consolidation, business combination, share exchange, reorganization, recapitalization, liquidation, dissolution or similar transaction (including a joint venture or licensing arrangement with similar effect) involving the Company or any Company Subsidiary (any of the foregoing, a "Business Combination Transaction") with any Person other than Parent, Merger Sub or any controlled Affiliate thereof (a "Third Party"), (ii) the Company's acquisition of any Third Party in a Business Combination Transaction in which the shareholders of the Third Party immediately prior to consummation of such Business Combination Transaction will own more than 15% of the Company's outstanding capital stock immediately following such Business Combination Transaction, including the issuance by the Company of more than 15% of any class of its voting equity securities as consideration for assets or securities of a Third Party, or (iii) any direct or indirect acquisition, whether by tender or exchange offer or otherwise, by any Third Party of 15% or more of any class of capital stock of the Company or of 15% or more of the consolidated assets of the Company and the Company Subsidiaries, in a single transaction or a series of related transactions.

"Superior Proposal" means any written proposal or offer made by a Third Party in respect of a Business Combination Transaction involving, or any purchase or acquisition of, (i) all or substantially all of the voting power of the Company's capital stock or (ii) all or substantially all of the consolidated assets of the Company and the Company Subsidiaries, which Business Combination Transaction or other purchase or acquisition contains terms and conditions that the Board of Directors determines in good faith, by resolution duly adopted after consultation with its outside counsel and financial advisors, would result in a transaction that (x) if consummated, would be more favorable to the stockholders of the Company than the Merger, taking into account all of the terms and conditions of such proposal and of this Agreement (including any proposal by Parent to

amend the terms of this Agreement), and (y) is reasonably capable of being consummated on the terms so proposed, taking into account all financial, regulatory, legal and other aspects of such proposal.

Section 6.4 Access to Information. The Company shall, and shall cause the Company Subsidiaries to, afford to the officers, directors, employees, accountants, counsel, financial advisors, consultants, financing sources and other advisors or representatives (collectively, Representatives) of Parent reasonable access during normal business hours to all of the Company's and its Subsidiaries' properties, books, records, contracts, commitments and personnel and shall furnish, and shall cause to be furnished, as promptly as practicable to Parent (a) a copy of each report, schedule and other document filed, furnished, published, announced or received by it during such period pursuant to the requirements of federal or state securities Laws or a Governmental Entity (other than routine reports or invoices), and (b) all other information as Parent may reasonably request, provided that the Company may restrict the foregoing access to the extent required by applicable Law. The Company shall (i) keep Parent reasonably informed from time to time as to status and developments regarding any audit, investigation, claim, suit or other proceeding with respect to Taxes and (ii) provide to Parent, when available and prior to filing, drafts of any income Tax Returns relating to the Company or any Company Subsidiary. No investigation pursuant to this Section 6.4 shall affect the representations, warranties or conditions to the obligations of the parties contained herein. The foregoing notwithstanding, the Company shall not be required to afford such access to the extent that it would unreasonably disrupt the operations of the Company or its Subsidiaries, would cause a violation of any material agreement to which the Company or its Subsidiaries is a party, or would constitute a violation of applicable Law.

Section 6.5 Reasonable Best Efforts.

(a) Subject to the terms and conditions of this Agreement, each of the Company, Modern Capital, Parent and Merger Sub will use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under this Agreement and applicable Laws and regulations to consummate the Merger in the most expeditious manner practicable after the date of this Agreement, including (i) preparing and filing as promptly as practicable all documentation to effect all necessary applications, notices, petitions, filings and other documents and to obtain as promptly as practicable all consents, clearances, waivers, licenses, orders, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the Merger and (ii) taking all reasonable steps as may be necessary to obtain all such material consents, clearances, waivers, licenses, registrations, permits, authorizations, orders and approvals.

(b) To the extent permissible under applicable Law or any rule, regulation or restriction of a Governmental Entity, each of the Company, Modern Capital and Parent shall, in connection with the efforts referenced above to obtain all requisite material approvals, clearances and authorizations for the transactions contemplated by this Agreement, including Bank Regulatory Approval or any other approval of a Governmental Entity, use its reasonable best efforts to (i) cooperate in all respects with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a

private party, (ii) promptly inform the other party of any communication received by such party from, or given by such party to any Governmental Entity and of any material communication received or given in connection with any proceeding by a private party regarding any of the transactions contemplated hereby, (iii) permit the other party, or the other party's legal counsel, to review any communication given by it to, and consult with each other in advance of any meeting or conference with, any Governmental Entity or, in connection with any proceeding by a private party, with any other Person and (iv) to the extent permitted by such Governmental Entity or other Person, give the other party the opportunity to attend and participate in such meetings and conferences.

(c) If any objections are asserted with respect to the transactions contemplated hereby under any applicable Law or if any suit is instituted by any Governmental Entity or any private party challenging any of the transactions contemplated hereby as violative of any applicable Law, each of the Company and Parent shall use its reasonable best efforts to resolve any such objections or challenge as such Governmental Entity or private party may have to such transactions under such applicable Law so as to permit consummation of the transactions contemplated by this Agreement..

(d) Within 30 days of receipt of formal or informal guidance from the OCC that it (i) finds the business plan submitted by Parent acceptable and (ii) will accept a Bank Merger Act filing in connection therewith, Parent, Modern Capital and all their Affiliates shall file the requisite applications to be filed by it to obtain Bank Regulatory Approval with the appropriate regulatory authorities and the Governmental Entities of the states in which Parent, the Company and their respective subsidiaries operate. Each of Parent, Modern Capital and the Company shall have the right to review in advance, and to the extent practicable each will consult with the other, in each case subject to applicable laws relating to the exchange of information, with respect to, all material written information submitted to any third party or any Governmental Entity in connection with the transactions contemplated by this Agreement. In exercising the foregoing right, each of the parties hereto agrees to act reasonably and as promptly as practicable. Each party hereto agrees that it will (i) consult with the other parties hereto with respect to the obtaining of all material permits, consents, approvals and authorizations of all third parties and Governmental Entities necessary or advisable to consummate the transactions contemplated by this Agreement, (ii) keep the other parties apprised of the status of material matters relating to completion of the transactions contemplated hereby and (iii) cooperate to obtain all such permits, consents, approvals and authorizations both in a reasonable time frame and in a manner that permits Parent and Modern Capital to achieve the objectives set forth in the business plan to the fullest extent reasonably possible.

Section 6.6 Fees and Expenses. Whether or not the Merger is consummated, all Expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such Expenses. As used in this Agreement, Expenses includes all out-of-pocket expenses (including all fees and expenses of counsel, accountants, investment bankers, experts and consultants to a party hereto and its Affiliates) incurred by a party or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and performance of this Agreement and the transactions contemplated hereby, including the preparation, printing, filing and mailing, as the case may be, of the Proxy

Statement and any amendments or supplements thereto, and the solicitation of the Company Stockholder Approval and all other matters related to the transactions contemplated hereby.

Section 6.7 Transfer Taxes. The Company and Parent shall cooperate in the preparation, execution and filing of all returns, questionnaires, applications or other documents regarding any real property transfer, sales, use, transfer, value added, stock transfer and stamp Taxes, and transfer, recording, registration and other fees and any similar Taxes that become payable in connection with the transactions contemplated by this Agreement.

Section 6.8 Directors and Officers Indemnification and Insurance.

(a) From and after the Effective Time, the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, (i) indemnify and hold harmless, against any costs or expenses (including attorney's fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any Claim and provide advancement of expenses to, all past and present directors and officers of the Company and the Company Subsidiaries (in all of their capacities) to the same extent such persons are indemnified or have the right to advancement of expenses as of the date of this Agreement by the Company pursuant to the Company's Constituent Documents and indemnification agreements, if any, in existence on the date hereof with any directors and officers of the Company and the Company Subsidiaries and provided to Parent prior to date hereof, and (ii) cause to be maintained for a period of six years after the Effective Time the current policies of directors and officers liability insurance and fiduciary liability insurance maintained by the Company (provided that the Surviving Corporation (or any successor) may substitute therefor policies of at least the same coverage and amounts containing terms and conditions which are, in the aggregate, no less advantageous to the insured) with respect to Claims arising from facts or events that occurred on or before the Effective Time (including for acts or omissions occurring in connection with the approval of this Agreement and the consummation of the transactions contemplated hereby), provided that in no event shall the Surviving Corporation be required to expend more than 200% of the amount expended by the Company and the Company Subsidiaries to maintain or procure such directors and officers liability insurance and fiduciary liability insurance immediately prior to the Effective Time.

(b) If the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of the Surviving Corporation shall assume all of the obligations set forth in this Section 6.8.

Section 6.9 Public Announcements. Parent and the Company shall develop a joint communications plan and each party shall (i) ensure that all press releases and other public statements or communications with respect to the transactions contemplated hereby shall be consistent with such joint communications plan and (ii) unless otherwise required by applicable Law or by obligations pursuant to any listing agreement with or rules of any securities exchange, consult with each other and provide each other with a reasonable opportunity to review and comment before issuing any press release or otherwise making any public statement or

communication with respect to this Agreement or the transactions contemplated hereby. In addition to the foregoing, except to the extent disclosed in the Proxy Statement in accordance with the provisions of Section 6.1 and as required by law or regulation, the Company shall not issue any press release or otherwise make any public statement or disclosure concerning its business, financial condition or results of operations without the written consent of Parent.

Section 6.10 Notification of Certain Matters. Each of the Company and Parent shall use its reasonable best efforts to give prompt notice to the other to the extent that it acquires knowledge of (i) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would be reasonably likely to cause the conditions set forth in Section 7.2(a) or Section 7.3(a) to fail to be satisfied and (ii) any material breach by it (and in the case of Parent, Merger Sub) to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder. Notwithstanding the foregoing, the delivery of any notice pursuant to this Section 6.10 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

Section 6.11 State Takeover Laws. If any "fair price," "business combination" or "control share acquisition" statute or other similar statute or regulation is or shall become applicable to the transactions contemplated hereby, Parent, the Company and their respective Boards of Directors shall use all reasonable efforts to grant such approvals and take such actions as are necessary so that the transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and shall otherwise act to minimize the effects of any such statute or regulation on the transactions contemplated hereby.

Section 6.12 Stockholder Litigation. The Company shall give Parent the opportunity to participate in the defense or settlement of any stockholder litigation against the Company and/or its directors relating to the transactions contemplated by this Agreement. The Company agrees that it shall not settle or offer to settle any litigation commenced prior to or after the date hereof against the Company or any of its directors or executive officers by any stockholder of the Company relating to this Agreement, the Merger, any other transaction contemplated hereby or otherwise, without the prior written consent of Parent.

Section 6.13 Post-Closing Operations.

(a) For a period of three years after the Effective Time, Parent agrees that Surviving Company shall, and shall cause Bank to, (subject to the right of the Surviving Company to terminate such obligations under this Section (a) as provided in subsection (b) below) (i) support the Bank's existing local communities by, among other things, encouraging the active involvement of management and employees in community events, maintaining a local presence and committing reasonable amounts of Surviving Company resources to support of community events; (ii) subject to supervision and oversight by the Board of Directors and senior management of the Surviving Company, preserve the local loan approval authority of the officers and employees of the Bank; and (iii) pursue the business plan using the Bank as a platform company.

(b) The obligations under subsection (a) of this Section may be terminated by Surviving Company as a result of (i) regulatory requirements, (ii) safe and sound banking

practices as required by bank regulatory agencies, or (iii) a determination by the Board of Directors of the Surviving Company that failure to effect such amendment or termination would be inconsistent with its fiduciary duties under applicable law.

Section 6.14 Coordination.

(a) The Company shall take any actions which are reasonably required in connection with Parent or Modern Capital obtaining regulatory approvals required under this Agreement prior to the Effective Time to facilitate the Merger and the transactions contemplated herein and shall make its senior officers and employees available to Parent on a regular, mutually convenient basis to discuss operational issues. Without limiting the foregoing, senior officers of Company and Parent shall meet from time to time as Parent may reasonably request, and in any event not less frequently than monthly, to review the financial and operational affairs of Company and the Bank, and Company shall give due consideration to Parent's input on such matters, with the understanding that, notwithstanding any other provision contained in this Agreement, Parent and Modern Capital shall not under any circumstance be permitted to exercise control of Company or the Bank prior to the Effective Time. Without limiting the foregoing, Parent and Modern Capital understand and agree that the bank regulators have substantial discretion in any regulatory process.

(b) Upon Parent's reasonable request, prior to the Effective Time and consistent with GAAP and applicable banking laws and regulations, each of Company and the Bank shall modify or change its loan, OREO, accrual, reserve, tax, litigation and real estate valuation policies and practices (including loan classifications and levels of reserves) as reasonably requested by Parent. Notwithstanding the foregoing, no such modifications, changes or divestitures of the type described in this Section 6.14(b) need be made prior to the satisfaction of the conditions set forth in Section 7.1(a) and Section 7.1(b).

(c) No accrual or reserve or change in policy or procedure made by Company or any of its Subsidiaries pursuant to this Section 6.14 shall constitute or be deemed to be a breach, violation of or failure to satisfy any representation, warranty, covenant, agreement, condition or other provision of this Agreement or otherwise be considered in determining whether any such breach, violation or failure to satisfy shall have occurred. The recording of any such adjustment shall not be deemed to imply any misstatement of previously furnished financial statements or information and shall not be construed as concurrence of Company or its management with any such adjustments.

Section 6.15 Severance.

(a) Employees of the Company or Bank who continue as employees of the Surviving Corporation or Bank after the Effective Time and whose employment is terminated for a reason other than for cause within twelve months following the Effective Time or any employee of the Company or the Bank who is not offered a position at the Surviving Corporation or Bank, other than employees who are parties to an employment or change in control agreement, shall receive two weeks of base salary for each year of service with a minimum payment based on four weeks salary and a maximum payment based on twelve weeks salary (for hourly employees, the amount

of base salary shall be the employee's hourly rate of pay multiplied by the number of hours schedule to work by such employee in a one week period).

(b) Following the Closing, in the event a Governmental Entity prohibits the Company, Bank or Surviving Corporation from making payments or providing benefits under any employment, change in control, consulting or non-compete agreement (including any agreement as provided in Section 7.3(c) of this Agreement) entered into before or after the Effective Time with Daniel L. Murphy, Michael P. Puorro, Stella Mendes, Thomas N. Gilmartin and William P. Mackey (collectively, the "Executive") and which remains in effect as of the Effective Time, Parent shall make such payments or provide such benefits due under such employment change-in-control, consulting or non-compete agreements and provide any benefits due the Executive under the applicable agreement.

Section 6.16 Compliance with Regulatory Actions. In connection with any cease-and-desist order or similar enforcement action or agreement (a "Regulatory Action"), the Company and the Bank shall (i) comply with the terms and intent of any such Regulatory Action, (ii) work in good faith to have such Regulatory Action terminated or lifted, (iii) provide Parent bi-weekly updates as to its efforts to respond to such Regulatory Action and (iv) promptly inform Parent if the Company or Bank foresees any difficulties in complying with the terms or intent of such Regulatory Action or if OCC raises any additional issues.

ARTICLE VII CONDITIONS PRECEDENT

Section 7.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of the Company, Parent and Merger Sub to effect the Merger are subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) Stockholder Approval. The Company shall have obtained the Company Stockholder Approval in accordance with the NYBCL.

(b) Bank Regulatory Approvals. The Company, Modern Capital, Parent and the Bank shall have received in writing any and all consents, approvals, authorizations, exemptions or waivers required by Law, including without limitation, the Bank Regulatory Approvals, and such consents, approvals, authorizations, exemptions or waivers shall not, in Parent's reasonable judgment, (i) require or result in any divestiture or impairment of the Bank's assets, or (ii) contain any material conditions, restrictions or limitations on the Bank's or Parent's activities related to the Bank that would imperil Parent's operation of the banking enterprise in the manner contemplated by the business plan within a reasonable period of time.

(c) Other Regulatory Approvals. All approvals, if any, required to be obtained from any Governmental Entity in connection with the consummation of the Merger and the transactions contemplated by this Agreement, in form and substance reasonably satisfactory to Parent, shall have been obtained and shall not have been revoked or modified.

(d) No Injunctions or Restraints, Illegality. No Laws shall have been adopted or promulgated, and no temporary restraining order, preliminary or permanent injunction or other order, judgment, decision, opinion or decree issued by a court or other Governmental Entity of competent jurisdiction shall be in effect, having the effect of making the Merger illegal or otherwise prohibiting consummation of the Merger; provided, however, that each of the parties shall have used their reasonable best efforts to prevent the entry of any such temporary restraining order, injunction or other order, including taking such action as is required to comply with Section 6.5, and to appeal as promptly as possible any injunction or other order that may be entered.

Section 7.2 Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the Merger are subject to the satisfaction of, or waiver by Parent, on or prior to the Closing Date of the following additional conditions:

(a) Representations and Warranties. The representation and warranty of the Company set forth in Section 3.9 (solely as to clause (c) thereof) shall be true and correct in all respects as of the date of this Agreement. Except with respect to the representation and warranty of the Company set forth in Section 3.9 (solely as to clause (c) thereof), each of the representations and warranties of the Company set forth in this Agreement, in each case, made as if none of such representations and warranties contained any qualifications or limitations as to *materiality* or Material Adverse Effect on the Company, shall be true and correct, in each case, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except to the extent in either case that any such representation and warranty expressly speaks as of another date, in which case such representation and warranty shall be true and correct as of such earlier date), except where the failure of such representations and warranties to be true and correct as so made does not have and is not, individually or in the aggregate, reasonably likely to have or result in a Material Adverse Effect on the Company. Parent shall have received a certificate of the chief executive officer or the chief financial officer of the Company certifying compliance with clauses (i) and (ii) above.

(b) Performance of Obligations of the Company. The Company shall have performed or complied in all material respects with all agreements and covenants required to be performed by it under this Agreement at or prior to the Closing Date and Parent shall have received a certificate of the chief executive officer or the chief financial officer of the Company to such effect.

(c) No Material Change. Since the date of this Agreement, there shall not have been any state of facts, event, change, circumstance or effect (or, with respect to facts, events, changes, circumstances or effects existing prior to the date hereof, any worsening thereof) that, individually or in the aggregate, has had or could reasonably be expected to have or result in a Material Adverse Effect on the Company.

(d) FIRPTA Certificate. The Company shall have delivered to Parent a certificate, issued by the Company pursuant to Section 1.1445-2(c) of the Treasury Regulations, certifying that the Company is not and has not been at any time during the

five-year period ending on the Closing Date a United States real property holding corporation, as defined in Section 897(c)(2) of the Code.

(e) No Other Regulatory Actions. Except for the Formal Agreement, no cease-and-desist order or similar enforcement action or agreement shall have been issued by any bank regulator with respect to the Bank, nor shall the Company or the Bank have entered into any other written agreement, consent agreement or memorandum of understanding with any bank regulator, or be subject to any order or directive by, or ordered to pay any civil money penalty by any bank regulator (excluding any agreements and memoranda of understanding to which Parent has given its consent).

(f) Employment Agreements. Each of Stella Mendes, Thomas N. Gilmartin and William P. Mackey shall have entered into an employment agreement, the form of which is substantially as attached as Exhibit B to this Agreement, and no Governmental Authority has prohibited Daniel L. Murphy from serving as the Chief Executive Officer of the Company and the Bank pursuant to the employment agreement between Mr. Murphy, Parent, the Company and the Bank, dated as of the date of this Agreement, and effective subject to the consummation of the Merger on the Closing Date.

Section 7.3 Conditions to Obligations of the Company. The obligations of the Company to effect the Merger are subject to the satisfaction of, or waiver by the Company, on or prior to the Closing Date of the following additional conditions:

(a) Representations and Warranties. Each of the representations and warranties of Parent, Modern Capital and Merger Sub set forth in this Agreement, in each case, made as if none of such representations and warranties contained any qualification or limitation as to "materiality" or Material Adverse Effect on Parent, shall be true and correct, in each case, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except to the extent in either case that such representations and warranties speak as of another date), except where the failure of such representations and warranties to be true and correct as so made does not have and is not, individually or in the aggregate, reasonably likely to have or result in, a Material Adverse Effect on Parent, and the Company shall have received a certificate of an executive officer of Parent certifying compliance with the above.

(b) Performance of Obligations of Parent and Merger Sub. Parent, Modern Capital and Merger Sub shall have performed or complied in all material respects with all agreements and covenants required to be performed by it under this Agreement at or prior to the Closing Date and the Company shall have received a certificate of an executive officer of Parent to such effect.

(c) Employment Agreements. Parent or Merger Sub shall have offered to enter into an employment agreement, the form of which is substantially as attached as Exhibit B to this Agreement, with Michael P. Puorro, Stella Mendes, Thomas N. Gilmartin and William P. Mackey effective as of the Effective Time, provided that each executive is employed with the Company or Bank at the Effective Time. The employment agreement offered to Michael P. Puorro shall be substantially similar to the

employment agreement entered into with Daniel L. Murphy. For the avoidance of doubt, Daniel L. Murphy has entered into an employment agreement with Parent, the Company and the Bank, dated as of the date of this Agreement, and effective subject to the consummation of the Merger on the Closing Date. Parent or Merger Sub shall offer to enter into a consulting and non-compete agreement with Michael P. Puorro in the event Mr. Puorro elects not to enter into an employment agreement as provided in this Section 7.3(c).

ARTICLE VIII TERMINATION AND AMENDMENT

Section 8.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Effective Time, whether before or after receipt of the Company Stockholder Approval:

(a) by mutual written consent of Parent and the Company;

(b) by either Parent or the Company, if:

(i) the Merger shall not have been consummated on or before July 31, 2011 (the "Outside Date"), provided that the right to terminate the Agreement pursuant to this Section 8.1(b)(i) shall not be available to any party whose material breach of this Agreement primarily contributes to the failure of the Merger to be consummated by such date;

(ii) any Governmental Entity of competent jurisdiction issues an order, judgment, decision, opinion, decree or ruling or takes any other action (which the party seeking to terminate this Agreement shall have used its reasonable best efforts to resist, resolve, annul, quash or lift, as applicable) permanently restraining, enjoining or otherwise prohibiting the Merger and such order, judgment, decision, opinion, decree or ruling or other action shall have become final and non-appealable; or

(iii) the Company Stockholder Approval shall not have been obtained at the Company Stockholder Meeting or any adjournment or postponement thereof;

(c) by Parent, if:

(i) the Company shall have breached or failed to perform any of its representations, warranties or covenants contained in this Agreement, which breach or failure to perform (A) has not been cured (or is incapable of being cured) by the Company prior to the earlier of (x) the Outside Date and (y) 20 days following written notice to the Company of Parent's intention to terminate this Agreement pursuant to this Section 8.1(c)(i) (which notice shall specify the basis

for such termination) and (B) would result in a failure of any condition set forth in Section 7.2(a) or Section 7.2(b);

(ii) the Company or any Company Subsidiary or any of their respective Representatives shall have breached in any material respect their respective obligations under Section 6.3; or

(iii) the Board of Directors of the Company shall have (A) failed to authorize, approve or recommend the Merger or to include its recommendation in any Proxy Statement, (B) effected a Change in the Company Recommendation or, in the case of a Takeover Proposal made by way of a tender offer or exchange offer, failed to recommend that the Company's stockholders reject such tender offer or exchange offer within the ten Business Day period specified in Section 14e-2(a) under the Exchange Act, (C) failed to reconfirm its authorization, approval or recommendation of the Merger within three Business Days after a written request by Parent to do so or (D) resolved to take any of the foregoing actions; or

(iv) Parent fails to raise the financing necessary to consummate the Merger; or

(d) by the Company:

(i) if Parent or Modern Capital shall have breached or failed to perform in any material respect any of its representations, warranties or covenants contained in this Agreement, which breach or failure to perform (A) has not been cured (or is incapable of being cured) by Parent prior to the earlier of (x) the Outside Date and (y) 20 days following written notice to Parent of the Company's intention to terminate this Agreement pursuant to this Section 8.1(d)(i) (which notice shall specify the basis for such termination) and (B) would result in a failure of any condition set forth in Section 7.3(a) or Section 7.3(b);

(ii) pursuant to Section 6.3(c), provided that (A) the Company is and has been in compliance in all material respects with Section 6.3, and (B) the Board of Directors of the Company concurrently approves, and the Company concurrently enters into, a definitive agreement providing for the implementation of a Superior Proposal and (C) the Company, prior to and as a condition of the termination of this Agreement, pays the Company Termination Fee (as defined in Section 8.3(a)) to Parent; or

(iii) Parent fails to raise the financing necessary to consummate the Merger.

Section 8.2 Effect of Termination. In the event of any termination of this Agreement as provided in Section 8.1, the obligations of the parties hereunder shall terminate and there shall be no liability on the part of any party hereto with respect thereto, except for the provisions of Section 4.6 and Article IX, each of which shall remain in full force and effect, provided, however, that except as otherwise provided herein no party hereto shall be relieved or released from any

liability or damages arising from a willful breach of any provision of this Agreement prior to such termination.

Section 8.3 Fees and Expenses.

(a) If this Agreement is terminated pursuant to any of the following provisions, the Company shall pay, as liquidated damages, to Parent a fee equal to \$1.5 million (the "Company Termination Fee"):

(i) Section 8.1(c)(ii) or (iii);

(ii) Section 8.1(d)(ii); or

(iii) Section 8.1(b)(i) or (iii), if (A) after the date of this Agreement, any Person or "group" (within the meaning of section 13(d)(3) of the Exchange Act) makes a Takeover Proposal or amends or reasserts a Takeover Proposal made prior to the date of this Agreement and such Takeover Proposal becomes publicly known or is otherwise communicated to the Board of Directors of the Company prior to the Company Stockholder Meeting, and (B) within one year after the date of such termination, the Company enters into a definitive agreement to consummate, or consummates, the transactions contemplated by any Takeover Proposal.

(b) If the Company is required to pay Parent the Company Termination Fee, such Termination Fee shall be payable immediately prior to the termination of this Agreement in the event of termination by the Company, and not later than two Business Days after the receipt by the Company of a notice of termination from Parent in the event of termination by Parent, in each case by wire transfer of immediately available funds to an account designated by Parent (except that, in the case of termination pursuant to Section 8.1(b)(i) or (iii), such payment shall be made within two Business Days of the first to occur of either of the events referred to in clause (B) of Section 8.3(a)(iii)). The payment of the Company Termination Fee as set forth in this Section 8.3 shall be the sole and exclusive remedy of Parent, Modern Capital and Merger Sub against the Company for any loss or damage suffered by Parent or Merger Sub as a result of the circumstances giving rise to such termination.

(c) If this Agreement is terminated pursuant to Section 8.1(c)(iv), Section 8.1(d)(i) or Section 8.1(d)(iii), the Company and Parent shall as soon as practical but in any event within two business days of such termination consummate the purchase and sale of the Additional Shares pursuant to the Stock Purchase Agreement (to the extent not so consummated prior to such termination). The obligation of Parent to consummate the purchase of the Additional Shares pursuant to the Stock Purchase Agreement shall be the sole and exclusive remedy of the Company and the Bank against Parent or Merger Sub for any loss or damage suffered by the Company, Modern Capital or the Bank as a result of the circumstances giving rise to such termination.

(d) The parties each agree that the agreements contained in this Section 8.3 are an integral part of the transaction contemplated by this Agreement, and that, without these agreements, the parties would not enter into this Agreement; accordingly, if the any party fails promptly to pay any amounts due under this Section 8.3 and, in order to obtain such payment, the

party entitled to payment hereunder commences a suit that results in a judgment against the Company for such amounts, the party obligated to pay such amounts shall also pay interest on such amounts from the date payment of such amounts were due to the date of actual payment at the rate of interest published from time to time in *The Wall Street Journal*, Eastern Edition (or any successor publication thereto), designated therein as the prime rate on the date such payment was due, together with the reasonable out-of-pocket costs and expenses of the party entitled to payment hereunder (including reasonable legal fees and expenses) in connection with such suit.

ARTICLE IX GENERAL PROVISIONS

Section 9.1 Non-Survival of Representations, Warranties and Agreements. None of the representations, warranties, covenants and other agreements in this Agreement or in any instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants and other agreements, shall survive the Effective Time, except for those covenants and agreements contained herein and therein that by their terms apply or are to be performed in whole or in part after the Effective Time and this Article IX.

Section 9.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or by telecopy or telefacsimile, upon confirmation of receipt, (b) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service, or (c) on the third Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to Parent, Modern Capital or Merger Sub, to:

152 West 57th Street, 52nd Floor
New York, NY 10019
Attention: Ronald S. Krolick
Telephone: 212-218-4078
E-mail: ronald.krolick@fnbny.com

with a copy to (which shall not constitute notice):

Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Attention: Gregory V. Gooding, Esq.
Gregory J. Lyons, Esq..
Telephone: 212-909-6000
Fax: 212-909-6836

If to the Company, to:

Madison National Bank
888 Veterans Highway, Suite 400
Hauppauge, New York 11788
Attention: Daniel J. Murphy
Telephone: 631-348-6999
Fax: 631-348-0099

with a copy to (which shall not constitute notice):

Luse Gorman Pomerenk & Schick, P.C.
5335 Wisconsin Ave, N.W.
Washington, D.C. 20015
Attention: Lawrence M.F. Spaccasi, Esq.
Telephone: 202-274-2037
Fax: 202-362-2902

Section 9.3 Interpretation.

(a) When a reference is made in this Agreement to a Section, Exhibit or Schedule, such reference shall be to a Section of or Exhibit or Schedule to this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

Section 9.4 Counterparts; Effectiveness. This Agreement may be executed in two or more counterparts, including by facsimile, each of which shall be deemed to be an original but all of which shall constitute one and the same instrument. This Agreement shall become effective when each party hereto has received counterparts thereof signed and delivered (by telecopy or otherwise) by all of the other parties hereto.

Section 9.5 Entire Agreement; No Third Party Beneficiaries.

(a) This Agreement (including the Exhibits and Schedules) constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and thereof.

(b) This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and, except as provided in Section 6.8, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person not a party to this Agreement any rights, benefits or remedies of any nature whatsoever.

Section 9.6 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially

adverse to any party. Notwithstanding the foregoing, upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 9.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other parties, and any attempt to make any such assignment without such consent shall be null and void, except that (i) Merger Sub may assign, in its sole discretion, any or all of its rights, interests and obligations under this Agreement to any wholly owned Subsidiary of Parent without the consent of the Company, but no such assignment shall relieve Merger Sub of any of its obligations under this Agreement and (ii) Parent may assign any or all of its rights, interests and obligations under this Agreement to any Affiliate of Parent without the consent of the Company, but no such assignment shall relieve Parent of any of its obligations under this Agreement. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 9.8 Amendment. This Agreement may be amended by the parties, by action taken or authorized by their respective Boards of Directors, at any time before or after the Company Stockholder Approval is obtained, but after such approval no amendment shall be made which by Law or in accordance with the rules of any relevant stock exchange requires further approval by the Company's stockholders without such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties.

Section 9.9 Extension; Waiver. At any time prior to the Effective Time, the parties, by action taken or authorized by their respective Boards of Directors, may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights.

Section 9.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law rules of such state.

Section 9.11 Jurisdiction. The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in any federal court located in the Southern District of New York or any state court located in the Borough of Manhattan in New York City, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection

that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 9.2 shall be deemed effective service of process on such party.

Section 9.12 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 9.13 Definitions. As used in this agreement:

Additional Shares has the meaning assigned to it in the Stock Purchase Agreement.

An Affiliate of any Person means another Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person, where control means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by contract, as trustee or executor or otherwise.

Bank Regulatory Approvals shall mean the approval of (i) the OCC, and, if applicable, the FDIC and the appropriate state regulatory authority, of the Merger and the business plan of the Surviving Corporation as submitted by Parent, and (ii) the FRB of the bank holding company applications of Parent and its affiliates as required by the Bank Holding Company Act of 1956, as amended, in connection with the transactions contemplated hereby.

beneficial ownership or beneficially own has the meaning under Section 13(d) of the Exchange Act and the rules and regulations thereunder.

Board of Directors means the Board of Directors of any specified Person and any committees thereof.

Business means the business and operations of the Company and the Company Subsidiaries as currently conducted.

Business Day means any day on which banks are not required or authorized to close in the City of New York.

Code means the Internal Revenue Code of 1986, as amended from time to time.

Company Benefit Plans means each written or oral employee benefit plan, scheme, program, policy, arrangement and contract (including any employee benefit plan, as defined in Section 3(3) of ERISA, whether or not subject to ERISA, and any

bonus, deferred compensation, stock bonus, stock purchase, restricted stock, stock option or other equity-based arrangement, and any employment, termination, retention, bonus, change in control or severance agreement, plan, program, policy, arrangement or contract) for the benefit of any current or former officer, employee or director of the Company or any Company Subsidiary that is maintained or contributed to by the Company or any Company Subsidiary, or with respect to which any of them could incur liability under the Code or ERISA or any similar non-U.S. law.

“Company Common Stock” means the common stock, \$.01 par value, of the Company.

“Company Stock Option” means any option to purchase Company Common Stock.

“Company Subsidiary” means any Subsidiary of the Company and any corporation or other organization, whether incorporated or unincorporated, through which the Company or any Company Subsidiary conducts any joint venture, strategic alliance or similar arrangement.

“Constituent Documents” means, with respect to any entity, the Certificate or Articles of Incorporation, certificate of formation, limited liability company agreement, By-laws, minute books, or any similar charter or other organizational documents of such entity.

“Derivative Transactions” mean any swap transaction, option, warrant, forward purchase or forward sale transaction, futures transaction, cap transaction, floor transaction or collar transaction relating to one or more currencies, commodities, bonds, equity securities, loans, interest rates, credit-related events or conditions or any indexes, or any other similar transaction or combination of any of these transactions, including collateralized mortgage obligations or other similar instruments or any debt or equity instruments evidencing or embedding any such types of transactions, and any related credit support, collateral or other similar arrangements related to such transactions.

“Dissenting Shares” means shares of Company Common Stock as to which the holder thereof has exercised appraisal rights pursuant to Section 910 of the NYBCL.

“Environmental Law” means any foreign, federal, state or local law, treaty, statute, rule, regulation, order, ordinance, decree, injunction, judgment, governmental restriction or any other requirement of law (including common law) regulating or relating to the protection of human health and safety, natural resources or the environment, including laws relating to wetlands, pollution, contamination or the use, generation, management, handling, transport, treatment, disposal, storage, Release or threatened Release of Hazardous Substances.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Excluded Shares” means any shares of Company Common Stock held by the Company, Parent, Merger Sub, any other wholly owned Subsidiary of Parent or by any wholly owned Subsidiary of the Company.

“Executive” has the meaning set forth in Section 6.15(b).

“FDIC” means the Federal Deposit Insurance Corporation.

“Formal Agreement” means the Formal Agreement, dated as of June 11, 2010, by and between the Bank and the OCC.

“GAAP” means generally accepted accounting principles and practices in effect from time to time within the United States, applied consistently throughout the periods involved.

“Governmental Entity” means any nation or government or multinational body, any state, agency, commission, or other political subdivision thereof or any entity (including a court) exercising executive, legislative, judicial or administration functions of or pertaining to government, any stock exchange or self regulatory entity supervising, organizing and supporting any stock exchange.

“Hazardous Substances” means any substance or material that: (i) is or contains asbestos, urea formaldehyde insulation, polychlorinated biphenyls, petroleum, petroleum products or petroleum-derived substances or wastes, radon gas, microbial or microbiological contamination or related materials, (ii) requires investigation or remedial action pursuant to any Environmental Law, or is defined, listed or identified as a “hazardous waste,” “hazardous substance,” “toxic substance” or words of similar import thereunder, or (iii) is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is regulated under any Environmental Law.

“Intellectual Property” means all trademarks, service marks, trade names, trade dress, including all goodwill associated with the foregoing, domain names, copyrights, software and computer programs, internet web sites, mask works and other semiconductor chip rights, and similar rights, and registrations and applications to register or renew the registration of any of the foregoing, patents and patent applications and rights, trade secrets and all similar intellectual property rights.

“IRS” means the Internal Revenue Service.

“knowledge of the Company” means the actual knowledge of Daniel L. Murphy, Michael P. Puorro, Stella Mendes, Thomas N. Gilmartin and William P. Mackey.

“knowledge of Parent” and/or “knowledge of Merger Sub” means the actual knowledge of Ronald S. Krolick and Michael J. Del Giudice.

Law (and with the correlative meaning Laws) means rule, regulation, statute, order, ordinance, guideline, code or other legally enforceable requirement, including, but not limited to common law, state and federal laws or securities laws and laws of foreign jurisdictions.

Liens means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), other charge or security interest; or any preference, priority or other agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, or any capital lease having substantially the same economic effect as any of the foregoing).

Material Adverse Effect means:

(A) As to the Company, any event, change, circumstance or effect that individually or in the aggregate is or is reasonably likely to be materially adverse to (i) the business, assets (including intangible assets), liabilities, financial condition or results of operations of the Company and its Subsidiaries, taken as a whole, other than any event, change, circumstance or effect relating to (v) political conditions, the economy, market interest rate fluctuations or financial markets in general, (w) the announcement of the transactions contemplated by this Agreement or other communication by Parent or Merger Sub of their plans or intentions with respect to the businesses of the Company and its Subsidiaries, (x) other than with respect to the representations and warranties in Section 3.6, the consummation of the transactions contemplated by this Agreement or any actions by Parent, Merger Sub or the Company taken pursuant to this Agreement, (y) any change in the market price or trading volume of the Company Common Stock or any failure by the Company to meet any revenue or earnings predictions released by the Company or provided to Parent or Merger Sub or the revenue or earnings predictions if equity analysts (it being agreed that the events, changes, circumstances or effects giving rise to or contributing to any such change or failure may constitute or give rise to a Material Adverse Effect) and (z) changes in the industry in which the Company operates, provided, however, that the effect of the changes in clauses (v) and (z) shall be included to the extent of, and in the amount of, the disproportionate impact (if any) they have on such party and its Subsidiaries, taken as a whole; or (ii) the ability of the Company to perform without material delay its obligations under this Agreement or to consummate without material delay the transactions contemplated by this Agreement.

(B) As to Merger Sub or Parent, as the case may be, any event, change, circumstance or effect that individually or in the aggregate is or is reasonably likely to be materially adverse to the ability of such party to perform without material delay its obligations under this Agreement or to consummate without material delay the transactions contemplated by this Agreement.

OCC means the Office of the Comptroller of the Currency or any successor thereto.

Option Consideration has the meaning set forth in Section 1.9.

Order means any charge, order, writ, injunction, judgment, decree, ruling, determination, directive, award or settlement, whether civil, criminal or administrative and whether formal or informal, applicable to the Company or any Company Subsidiary.

other party means, with respect to the Company, Parent and Merger Sub, and means, with respect to Parent or Merger Sub, the Company, unless the context otherwise requires.

Per Share Merger Consideration has the meaning set forth in Section 1.10.

Permitted Liens means (i) any Liens for Taxes not yet due or which are being contested in good faith by appropriate proceedings; (ii) carriers' warehousemen's, mechanics' materialmen's, repairmen's or other similar Liens; (iii) leases or subleases (other than capital leases and leases underlying sale and leaseback transactions); (iv) pledges or deposits in connection with workers' compensation, unemployment insurance, and other social security legislation; (v) easements, rights-of-way and other restrictions or encumbrances incurred in the ordinary course of business which, in the aggregate, are not substantial in amount and which do not in any case materially detract from the value of the property subject thereto; and (vi) Liens the existence of which are disclosed in the consolidated balance sheet of the Company or the notes thereto included in any documents filed with, or furnished to, the Securities and Exchange Commission prior to the date of this Agreement.

Person means an individual, corporation, limited liability company, partnership, association, trust, unincorporated organization, other entity or group (as defined in the Exchange Act).

Pre-Closing Tax Period means any Tax period ending on or before the Closing Date.

Post-2007 Period has the meaning set forth in Section 3.13(i).

Qualifying Confidentiality Agreement means an executed agreement requiring any Person receiving nonpublic information with respect to the Company to keep such information confidential, subject to customary exceptions.

Release means any releasing, disposing, discharging, injecting, spilling, leaking, leaching, pumping, dumping, emitting, escaping, emptying, seeping, dispersal, migration, transporting, placing and the like, including the moving of any materials through, into or upon, any land, soil, surface water, groundwater or air, or otherwise entering into the indoor or outdoor environment.

Securities Act means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Stock Purchase Agreement” means the Stock Purchase Agreement, dated as of the date hereof, by and among the Company, the Bank and Parent.

“Subsidiary” when used with respect to any party means any corporation or other organization, whether incorporated or unincorporated, (i) of which such party or any other Subsidiary of such party is a general partner (excluding partnerships, the general partnership interests of which held by such party or any Subsidiary of such party do not have a majority of the voting interests in such partnership), (ii) a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such party or by any one or more of its Subsidiaries, or by such party and one or more of its Subsidiaries.

“Tax” (and with the correlative meaning “Taxes”) means (i) income, gross receipts, franchise, sales, use, ad valorem, property, payroll, withholding, excise, severance, transfer, employment, estimated, alternative or add-on minimum, stamp, occupation, premium, environmental or windfall profits taxes, and other taxes, charges, fees, levies, imposts, customs, duties, licenses or other assessments, together with any interest and any penalties (including penalties for failure to file or late filing of any return, report or other filing, and any interest in respect of such penalties and additions, additions to tax or additional amounts imposed by any and all federal, state, local, foreign or other taxing authority); (ii) any liability for payment of amounts described in clause (i) whether as a result of transferee liability, of being a member of an affiliated, consolidated, combined or unitary group for any period, or otherwise through operation of law, and (iii) any liability for the payment of amounts described in clauses (i) or (ii) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement to indemnify any other person.

“Tax Return” means any declaration, statement, report, return, information return or claim for refund relating to Taxes (including information required to be supplied to a Governmental Entity in respect of such report or return) including, if applicable, any combined or consolidated return for any group of entities that includes the Company or any Company Subsidiary.

“Taxing Authority” means, with respect to any Tax, the Governmental Entity that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such Governmental Entity.

“Treasury Regulations” means the regulations of the United States Treasury promulgated under the Code.

“Warrant” means an issued and outstanding warrant to purchase Company Common Stock.

“Warrant Consideration” has the meaning set forth in Section 1.9.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Parent, Merger Sub, Modern Capital and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

MADISON NATIONAL BANCORP, INC.

By: _____
Name:
Title:

MADISON NATIONAL BANK

By: _____
Name:
Title:

FBNBY BANCORP, INC.

By: _____
Name:
Title:

MODERN CAPITAL HOLDINGS LLC

By: _____
Name:
Title:

MADNAT ACQUISITION CORPORATION

By: _____
Name:
Title:

[Signature Page to Merger Agreement]

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Exhibit A

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF THE SURVIVING CORPORATION

FORM OF EMPLOYMENT AGREEMENT