

**STOCK PURCHASE AGREEMENT**

**between**

**MADISON NATIONAL BANCORP, INC.,**

**MADISON NATIONAL BANK**

**and**

**FNBNY BANCORP, INC.**

**Dated as of October 20, 2010**

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## **STOCK PURCHASE AGREEMENT**

This STOCK PURCHASE AGREEMENT, dated as of October 20, 2010 (this Agreement), is made by and among Madison National Bancorp, Inc., a New York corporation (the Company), Madison National Bank, a national banking association and a direct, wholly owned subsidiary of the Company (the Bank), and FBNBY Bancorp, Inc., a Delaware corporation (Buyer).

### **RECITALS:**

**WHEREAS**, the Company desires to issue and sell to Buyer shares of the common stock, par value \$0.01 per share, of the Company (the Common Stock) upon the terms and conditions of this Agreement; and

**WHEREAS**, Buyer desires to purchase from the Company shares of the Common Stock upon the terms and subject to the conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual premises recited above and the representations, warranties, covenants and agreements contained in this Agreement, the parties hereto, intending to be legally bound, hereby agree as follows:

### **ARTICLE I ISSUANCE AND SALE OF THE SHARES**

1.1 Issuance and Sale of the Initial Shares. Upon the terms and subject to the conditions set forth below, Buyer agrees to subscribe for and purchase, and the Company agrees to issue and sell to Buyer, 182,260 shares of the Common Stock (such shares being purchased hereby, the Initial Shares) for a purchase price of \$8.23 (the Initial Purchase Price).

1.2 Issuance and Sale of the Additional Shares. Upon the terms and subject to the conditions set forth below, Buyer agrees to subscribe for and purchase, and the Company agrees to issue and sell to Buyer, an additional number of shares of the Common Stock (such shares being purchased hereby, the Additional Shares) and, together with the Initial Shares, the Shares equal to the lesser of (a) 182,260 shares and (b) such number of shares as would result in Buyer owning 9.9% of the shares of Common Stock outstanding on the Closing Date for a per share purchase price equal to the tangible book value per share of the Common Stock, as determined in accordance with GAAP as of the most recent month-end prior to the Closing Date (the Additional Purchase Price).

1.3 Closings.

(a) The closing of the issuance and sale by the Company of the Initial Shares to Buyer (the "Initial Closing") shall be held at the offices of Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York, at 11:00 A.M., local time, on the date hereof, subject to the satisfaction of all the conditions to closing set forth in this Agreement. The date of the Initial Closing is herein referred to as the "Initial Closing Date."

(b) The closing of the issuance and sale by the Company of the Additional Shares to Buyer (the "Second Closing," and each of the Initial Closing and the Second Closing, a "Closing") shall be held at the offices of Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York, at 11:00 A.M., local time, on March 31, 2011, subject to the satisfaction of all the conditions to closing set forth in this Agreement. The date of the Second Closing is herein referred to as the "Second Closing Date," and, together with the Initial Closing Date, a "Closing Date."

(c) By mutual agreement of the parties, a Closing may be alternatively accomplished by facsimile or electronic transmission to the respective officer or legal counsel for the parties of the requisite documents, duly executed where required, with originals to be delivered by overnight courier service on the next Business Day following the Initial Closing Date or the Second Closing Date, as the case may be.

1.4 Company's Deliveries at each Closing. At the Initial Closing and the Second Closing, the Company shall deliver (or cause to be delivered) to Buyer (i) certificate(s) evidencing the Initial Shares or the Additional Shares, as the case maybe, free and clear of any Encumbrances of any nature whatsoever and (ii) the certificates and other documents contemplated by ARTICLE V.

1.5 Buyer's Deliveries at each Closing. At the Initial Closing and the Second Closing, Buyer shall (i) pay the Initial Purchase Price or the Additional Purchase Price, as the case may be, multiplied, in each case, by the number of Shares to be purchased at such Closing, to an account which the Company shall designate in writing to Buyer not less than two (2) Business Days prior to the Closing Date or the Additional Closing Date, as the case may be, and (ii) deliver the certificates and other documents contemplated by ARTICLE V.

1.6 Deposit. From the date hereof until the earliest of (i) the Second Closing, (ii) the consummation of the Merger, and (iii) the termination of this Agreement pursuant to Section 7.1, Buyer shall keep on deposit at the Bank the sum of \$1.5 million as security for Buyer's obligations to consummate the purchase of the Additional Shares at the Second Closing in accordance with the terms hereof.

## ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE BANK

Except as disclosed to Buyer 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 Buyer on the date hereof and on each Closing Date as follows:

2.1 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 Buyer 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.

### 2.2 Subsidiaries.

(a) Section 2.2(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.

### 2.3 Capitalization.

(a) The authorized capital stock of the Company consists solely of 30,000,000 shares of Common Stock and 2,000,000 shares of Preferred Stock. As of the date hereof, (i) 3,685,800 shares of Common Stock were issued and outstanding, (ii) no shares of Preferred Stock have been issued or are outstanding, (iii) no shares of 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 Common Stock were reserved for issuance pursuant to Company Stock Options. Section 2.3(a) of the Company Disclosure Letter sets forth the exercise price and expiration date for all outstanding Warrants. Section 2.3(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 Common Stock are and all shares of 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 2.3(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, "phantom" 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 Common Stock is held by any wholly owned Subsidiary of the Company.

#### 2.4 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. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the 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. This Agreement has been duly and validly executed and delivered by the Company and, assuming due authorization, execution and delivery by Buyer, 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) determining that the terms of the transactions contemplated hereby are fair to and in the best interests of the Company and its stockholders and (ii) approving this Agreement and the transactions contemplated hereby.

#### 2.5 Consents and Approvals; No Violations.

(a) Assuming compliance with the matters set forth in Section 2.5(c), 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 any Company Subsidiary; (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 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.

## 2.6 Financial Statements.

(a) The Company has furnished to Buyer 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 2.6 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.

2.7 Absence of Certain Changes. Except for liabilities incurred in connection with this Agreement or the transactions contemplated hereby, since January 1, 2007 (i) the Company and the Company Subsidiaries have conducted their respective businesses, in all material respects, in the ordinary course consistent with past practice and (ii) 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.

2.8 Litigation. 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.

## 2.9 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 2.9(a) to the extent otherwise covered by representations and warranties contained in Section 2.6 (Financial Statements), Section 2.13 (Employee Benefit Plans and Related Matters; ERISA), Section 2.14 (Employees, Labor Matters) or Section 2.17 (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.

2.10 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 (i) reflected in and reserved against in the consolidated balance sheets (or the notes thereto) included in the Financial Statements, (ii) incurred in the ordinary course of business consistent with past practice since the date of such balance sheets, (iii) expressly permitted and contemplated by this Agreement and (iv) which would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

## 2.11 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 such Closing Date, or where payment is not yet due, have established or will establish, on or before such 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 such 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 such Closing Date; (ii) installment sale or open transaction disposition made on or prior to such Closing Date; (iii) prepaid amount received on or prior to such Closing Date; (iv) change in method of accounting for a taxable period ending on or prior to such 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 Buyer. 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 2.11(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 Buyer with copies, attached hereto as Section 2.11(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 2.11(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 disclosed transaction within the meaning of Treasury Regulations §1.6011-4(c)(3)(i)(A) or failed to report any reportable transaction.

## 2.12 Title to Properties; Absence of Liens.

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

(b) Section 2.12(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.

## 2.13 Employee Benefit Plans and Related Matters; ERISA.

(a) Section 2.13(a) 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 Buyer 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 2.13(a) of the Company Disclosure Schedule, 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 such 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 2.13(d) of the Company Disclosure Schedule, 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.

2.14 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.

2.15 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 2.15 of the Company Disclosure Letter lists all Intellectual Property owned by, licensed by and licensed to the Company or any Company Subsidiary.

2.16 Contracts.

(a) Except as listed in Section 2.16 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;

(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 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;

(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 or 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 Buyer.

2.17 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.

2.18 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 2.18 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.

2.19 Regulatory Capitalization. The Bank is, and immediately prior to such Closing, 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 such Closing will be, "well capitalized" as such term is defined in the rules and regulations promulgated by the FRB.

2.20 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 Buyer 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 is adequate under GAAP and all regulatory requirements applicable to financial institutions.

(b) Section 2.20(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 such Closing inform Buyer of the amount of Loans subject to each type of classification of the Classified Loans.

2.21 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.

2.22 Derivative Transactions. All Derivative Transactions (as defined below) 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. For purposes of this Agreement, "Derivative Transactions" shall 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, or equity.

2.23 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.

2.24 Deposit Insurance. The deposits of the Bank are insured by the FDIC in accordance with the Federal Deposit Insurance Act ("FDIA") 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.

2.25 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 "satisfactory"; 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 Act"), any sanctions regimes administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), 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 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.

2.26 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.

2.27 Broker's Fees. No Person 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 Buyer a true and complete copy of each agreement between the Company or any Company Subsidiary and the Company Financial Advisor.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to the Company and the Bank as of the date hereof and as of each Closing Date as follows:

3.1 Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

3.2 Authority for Agreements. Buyer has all requisite corporate power 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 Buyer and the consummation by Buyer of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action, and no other corporate or proceedings on the part of Buyer are necessary for Buyer to authorize this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer and, assuming due authorization, execution and delivery by the Company, is a legal, valid and binding obligation of Buyer, enforceable against Buyer 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.

### 3.3 Consents and Approvals; No Violations.

(a) The execution and delivery of this Agreement by Buyer do not, and the performance by Buyer of its obligations hereunder, including the consummation of the transactions contemplated hereby will not, (i) conflict with any provision of the Constituent Documents of Buyer, (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 Buyer; (iii) violate any Law or Order (assuming compliance with the matters set forth in Section 3.3(b)), or (iv) cause the suspension or revocation of any material permit, license, governmental authorization, consent or approval under which Buyer 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 Buyer in connection with Buyer's purchase of the Initial Shares.

3.4 Broker's Fees. Neither Buyer nor anyone acting on its behalf has made any commitment or done any other act which would create any liability of the Company for any brokerage, finder's or similar fees or commissions in connection with the transactions contemplated by this Agreement.

3.5 Acquisition for Investment. Buyer is acquiring the Shares solely for its own account for investment and not with a view to, or for the sale or other disposition in connection with, any distribution within the meaning of the Securities Act, nor with any present intention of selling or otherwise disposing of same.

3.6 Sophistication, Financial Strength, Access, etc. Buyer is an accredited investor (as that term is defined in Rule 501 promulgated by the Securities and Exchange Commission under the Securities Act). Buyer acknowledges that it is fully informed that the Shares being sold hereunder are being sold pursuant to an exemption under the Securities Act and are not being registered under the Securities Act or under the securities or blue sky laws of any state or foreign

jurisdiction; that the Shares must be held indefinitely unless they are subsequently registered under the Securities Act and any applicable state securities or blue sky laws, or unless an exemption from registration is available thereunder, and that the Company has no obligation to register the Shares.

3.7 Agreements with Governmental Authorities. Neither Buyer nor any of its Affiliates is a party to any commitment, letter, written agreement, memorandum of understanding or order to cease and desist with any federal or state Governmental Entity charged with the supervision or regulation of banking, mortgage banking, insurance, mortgage brokerage, credit finance our lending institutions which materially restricts the conduct of its business or materially adversely affects such entity's or person's ability to perform its or his obligations hereunder.

3.8 Bank Holding Company Compliance. Buyer is not on the date hereof a bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended (the "BHCA").

#### **ARTICLE IV ACTIONS BY THE COMPANY, THE BANK AND BUYER PRIOR TO THE SECOND CLOSING**

4.1 Regulatory Matters. Each party hereto shall cooperate and use its commercially reasonable efforts to promptly prepare and file all necessary documentation, to effect all necessary applications, notices, petitions, filings and other documents and to use all commercially reasonable efforts to file and obtain all Governmental Authorizations necessary to consummate the transactions contemplated by this Agreement. The Company and Buyer shall promptly furnish each other with copies of all written communications received by either party, as the case may be from, or delivered by any of the foregoing to, any Governmental Entity in respect of the transactions contemplated by this Agreement.

4.2 Agreements as to Efforts to Consummate. Except where otherwise provided in this Agreement, each party will use its commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to cause the satisfaction of all of the conditions to each Closing and to consummate the transactions contemplated by this Agreement, including, if necessary appealing any adverse ruling in respect of a required regulatory approval, provided that nothing herein shall preclude any party from exercising its rights under this Agreement.

4.3 Publicity. Buyer and the Company shall consult with each other prior to issuing any press releases or otherwise making public statements or disseminating information to any third party with respect to the transactions contemplated hereby.

4.4 Advice of Changes. The Company and Buyer shall promptly advise the other of any change or event: (i) which, individually or in the aggregate with other such changes or events, would, or would be reasonably likely to, cause or constitute a material breach of any of its representations, warranties or covenants set forth herein or has or would reasonably be expected to have a Material Adverse Effect or a material adverse effect on its ability to consummate the transactions contemplated by this Agreement on a timely basis; or (ii) which it believes would or would be reasonably likely to cause a condition to any Closing not to be satisfied or satisfaction thereof to be materially delayed.

4.5 No Control of Other Party's Business. Nothing contained in this Agreement is intended to give Buyer, directly or indirectly, the right to control or direct the Company's or any Company Subsidiary's operations.

4.6 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 of Buyer 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 Buyer (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 Buyer may reasonably request, provided that the Company may restrict the foregoing access to the extent required by applicable Law. The Company shall (i) keep Buyer 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 Buyer, 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 4.6 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.

4.7 Fees and Expenses. Whether or not the transactions contemplated hereby are 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.

4.8 Transfer Taxes. The Company and Buyer 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.

4.9 Public Announcements. Buyer 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, 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 Buyer.

4.10 Notification of Certain Matters. Each of the Company and Buyer 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 5.1(a) or Section 5.2(a) to fail to be satisfied and (ii) any material breach by it 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 4.10 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

4.11 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 V CONDITIONS TO EACH CLOSING

5.1 Conditions to Obligations of Buyer. All obligations of Buyer hereunder to consummate the transactions contemplated by this Agreement are subject to the fulfillment to the satisfaction of Buyer, prior to or at the Initial Closing or the Second Closing, as the case may be, of each of the following conditions, except to the extent that Buyer may waive any one or more thereof:

(a) The representations and warranties made by the Company in this Agreement and in all certificates and other documents delivered or to be delivered by the Company pursuant hereto or in connection with the transactions contemplated hereby (i) to the extent qualified by materiality shall be true, complete and accurate; and (ii) to the extent not qualified by materiality shall be true, complete and accurate in all material respects, when made and as of the applicable Closing Date as though such representations and warranties were made at and as of such Closing Date;

(b) The Company shall have performed and complied in all material respects with all agreements, obligations and conditions required by this Agreement to be performed or complied with by it or him on or prior to such Closing;

(c) Required Board Approval shall not have been withheld, withdrawn, qualified or modified in a manner adverse to Buyer;

(d) No suit, action, investigation, inquiry or other proceeding by any Governmental Entity or other Person or legal or administrative proceeding shall have been instituted or, to Knowledge, threatened, which seeks to restrain, enjoin, prevent the consummation or otherwise affect the transactions contemplated by this Agreement or which questions the validity or legality of the transactions contemplated hereby;

(e) The Company shall not have suffered any Material Adverse Effect;

(f) The Company shall have delivered to Buyer, or caused to be delivered to Buyer, the other items required to be delivered to Buyer in accordance with Section 1.4 hereof;

(g) The Company shall have furnished Buyer with a certificate signed by the Chief Executive Officer of the Company that evidences compliance with the conditions set forth in Sections 5.1(a), (b), (d) and (e);

(h) The Company shall have furnished Buyer with a certificate signed by the Secretary of the Company setting forth a copy of the resolutions adopted by the Company's Board of Directors authorizing and approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and attaching a copy of the Company's charter and by-laws; and

(i) The Company, the Bank, Buyer and MadNat Acquisition Corporation shall have entered into the Merger Agreement, the Merger Agreement shall remain in full force and effect and there shall be no default by the Company or the Bank thereunder.

5.2 Conditions to Obligations of the Company. All obligations of the Company hereunder to consummate the transactions contemplated by this Agreement are subject to the fulfillment to the satisfaction of the Company, prior to or at the Initial Closing or the Second Closing, as the case may be, of each of the following conditions, except to the extent that the Company may waive any one or more thereof:

(a) The representations and warranties made by Buyer in this Agreement, and in all certificates and other documents delivered or to be delivered by Buyer pursuant hereto or in connection with the transactions contemplated hereby (i) to the extent qualified by materiality shall be true, complete and accurate and (ii) to the extent not qualified by materiality shall be true, complete and accurate in all material respects, when made and as of such Closing Date as though such representations and warranties were made at and as of such Closing Date;

(b) Buyer shall have performed and complied in all material respects with all agreements, obligations and conditions required by this Agreement to be performed or complied with by Buyer on or prior to such Closing;

(c) No suit, action, investigation, inquiry or other proceeding by any Governmental Entity or other Person or legal or administrative proceeding shall have been instituted or, to Knowledge, threatened, which seeks to restrain, enjoin, prevent the consummation or otherwise affect the transactions contemplated by this Agreement or which questions the validity or legality of the transactions contemplated hereby;

(d) Buyer shall have delivered to the Company the other items required to be delivered to the Company in accordance with Section 1.5 hereof;

(e) Buyer shall have furnished the Company with a certificate of the Secretary of Buyer setting forth a copy of the resolutions of Buyer's Board of Directors authorizing and approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and attaching a copy of Buyer's charter and by-laws; and

(f) The Company, the Bank, Buyer, Modern Capital Holdings LLC and MadNat Acquisition Corporation shall have entered into the Merger Agreement, the Merger Agreement shall remain in full force and effect and there shall be no default by Buyer thereunder.

5.3 Additional Conditions to Obligations of Buyer at Second Closing. All obligations of Buyer hereunder to purchase of Additional Shares at the Second Closing in accordance with Section 1.2 are subject to the fulfillment to the satisfaction of Buyer, prior to or at the Second Closing, of the conditions set forth in Section 5.1 and each of the following conditions, except to the extent that Buyer may waive any one or more thereof:

(a) A director nominated by Buyer shall have been elected to the Board of Directors of Parent and the Bank;

(b) Buyer, the Company and the Bank shall have received in writing any and all consents, approvals, authorizations, exemptions or waivers required by Law with respect to Buyer's ability to purchase the Additional Shares, including without limitation, confirmation from the FRB and the OCC that no regulatory approval is required for Buyer to purchase the Additional Shares, and such consents, approvals, authorizations, exemptions or waivers shall not, in Buyer's reasonable judgment, require or result in any material divestiture or material impairment of the Bank's assets; and

(c) the Merger shall not have been consummated.

## **ARTICLE VI INDEMNIFICATION**

6.1 Survival. The representations and warranties under this Agreement shall survive until the earlier of (a) fifteen (15) Business Days after the Company delivers to Buyer both the audited consolidated balance sheet of the Company as of December 31, 2011 and audited income statements of the Company for the year ended December 31, 2011 and (b) the consummation of the Merger (the "Survival Period") and no action or claim for Damages resulting from any inaccuracy in or breach of warranty shall be brought or made after the Survival Period, except that such time limitation shall not apply to:

(i) claims for inaccuracies in or breach of warranties relating to Section 2.2 (Subsidiaries) Section 2.3 (Capitalization), Sections 2.4 and 3.2 (Authority for Agreements), Sections 2.27 and 3.4 (Broker's Fees), and Section 3.1 (Organization), or claims relating to breaches of covenants, all of which may be asserted without limitation;

(ii) claims for inaccuracies in or breach of warranties relating to Section 2.11 (Taxes), Section 2.17 (Environmental Laws and Regulations) and Section 2.13 (Employee Benefit Plans and Related Matters; ERISA) which may be asserted through the date that is sixty (60) days after the expiration of the applicable statute of limitations (giving effect to any extension or waiver hereof); and

(iii) any claims which have been asserted and which are the subject of a written notice from the Company or the Bank, as applicable, to Buyer, or from Buyer to the Company or the Bank, as applicable, prior to the expiration of the applicable Survival Period.

## 6.2 Indemnification by the Company.

(a) Subject to Section 6.6, the Company shall indemnify, defend, and hold harmless Buyer and its Affiliates, and their respective officers, directors, partners, equityholders, employees, agents and representatives, (the "Buyer Indemnitees") against and in respect of any and all losses, costs, expenses, claims (including third party claims whether or not meritorious), damages, actions, suits, proceedings, hearings, investigations, charges, complaints, demands, injunctions, judgments, orders, decrees, rulings, directions, dues, penalties, fines, deficiencies, amounts paid in settlement, liabilities, obligations, Taxes, liens, losses and fees and court costs, including interest, penalties, and attorneys' consultants' and other reasonable professional fees and disbursements ("Damages"), arising out of, based upon or otherwise in respect of:

(i) any breach of any covenant or obligation of the Company contained in this Agreement; and

(ii) the enforcement by Buyer of its indemnification rights related to breaches of items under this Agreement, provided that such right to indemnification shall terminate upon and no such action or claim for Damages shall be brought or made after the consummation of the Merger.

6.3 Indemnification by Buyer. Subject to Section 6.6, Buyer shall indemnify, defend, and hold harmless the Company and its Affiliates, and their respective officers, directors, partners, equityholders, employees, agents and representatives ("Company Indemnitees") against and in respect of any and all Damages which the Company Indemnitees may suffer, incur or become subject to arising out of, based upon or otherwise in respect of any breach of any covenant or obligation of Buyer contained in this Agreement, provided that such right to indemnification shall terminate upon and no such action or claim for shall be brought or made after the consummation of the Merger.

6.4 Inter-Party Claims. Any party seeking indemnification pursuant to this ARTICLE VI (the "Indemnified Party") shall in writing promptly give notice to the other party or parties from whom such indemnification is sought (the "Indemnifying Party") of the Indemnified Party's assertion of such claim for indemnification, describing the basis of such claim to the extent known (a "Claims Notice") but failure to give such notice within any particular time period shall not adversely affect the Indemnified Party's rights to indemnification except to the extent that the failure to give such notice on a timely basis materially and adversely affected the Indemnifying Party's ability to defend the claim. Each Indemnifying Party to whom a Claims Notice is given shall respond to any Indemnified Party that has given a Claims Notice (a "Claim Response") within thirty (30) days (the "Response Period") after the date that the Claims Notice is given. Any Claim Response shall specify whether or not the Indemnifying Party given the Claim Response disputes the claim described in the Claims Notice. If any Indemnifying Party fails to give a Claim Response within the Response Period, such Indemnifying Party shall be deemed not to dispute the claim described in the related Claims Notice. If any Indemnifying

Party elects not to dispute a claim described in a Claims Notice, whether by failing to give a timely Claim Response or otherwise, then the amount of such claim shall be conclusively deemed to be an obligation of such Indemnifying Party. If an Indemnifying Party shall be obligated to indemnify a Indemnified Party hereunder, the Indemnifying Party shall pay to such Indemnified Party within thirty (30) days after the last day of the applicable Response Period the amount to which such Indemnified Party shall be entitled. If any Indemnifying Party fails to pay all or any part of any indemnification obligation on or before the later to occur of (i) thirty (30) days after the last day of the applicable Response Period; and (ii) if the Claims Notice relates to Damages that have not been liquidated as of the date of the Claims Notice, the date on which all or any part of such Damages shall have become liquidated and determined, then the Indemnifying Party shall also be obligated to pay to the Indemnified Party interest on the unpaid amount for each day during which the obligation remains unpaid at a rate per annum equal to the prime rate, as reported by *The Wall Street Journal*, calculated daily on the basis of a year of 365 days and the actual number of days elapsed.

#### 6.5 Third Party Claims.

(a) An Indemnified Party shall in writing promptly notify the Indemnifying Party of the assertion by any third party of any claim with respect to which the indemnification set forth in this ARTICLE VI relates (which shall also constitute the notice required by Section 6.4) (a Third Party Claim), but failure to give such notice promptly shall not adversely affect the Indemnified Party's rights to indemnification except to the extent that the Indemnifying Party can show that the failure to give such notice on a timely basis materially and adversely affected the Indemnifying Party's ability to defend the claim.

(b) The Indemnifying Party shall have the right, upon written notice to the Indemnified Party within thirty (30) Business Days after the receipt of any such notice, to undertake the defense of such claim using counsel reasonably acceptable to the Indemnified Party. The failure of the Indemnifying Party to give such notice and to undertake the defense of such a claim shall constitute a waiver of the Indemnifying Party's rights under this Section 6.5(b) and in the absence of gross negligence or willful misconduct on the part of the Indemnified Party shall preclude the Indemnifying Party from disputing the manner in which the Indemnified Party may conduct the defense of such claim or the reasonableness of any amount paid by the Indemnified Party in satisfaction of such claim.

(c) Notwithstanding subsection (b) above, the Indemnifying Party shall not have the right to assume control of such defense and will pay the reasonable fees and expenses of legal counsel retained by the Indemnified Party if any of the following conditions are not satisfied:

(i) the Indemnifying Party must enter into an agreement with the Indemnified Party pursuant to which the Indemnifying Party agrees to defend such proceeding and be fully responsible (with no reservation of any rights other than the right

to be subrogated to the rights of the Indemnified Party) for all Damages relating to such proceeding;

(ii) the Indemnifying Party must diligently defend such proceeding;

(iii) such proceeding shall not involve criminal actions or allegations of criminal conduct by the Indemnifying Party or involve Damages other than monetary damages;

(iv) the Damages arising from such proceeding in conjunction with all other Damages that have resulted or are likely to result from previous Claim Notices made by the Indemnified Party are not, in the reasonable judgment of the Indemnified Party, likely to result in Damages that will exceed the Maximum; and

(v) there does not exist, in the Indemnified Party's reasonable judgment, a conflict of interest which, under applicable principles of legal ethics, could reasonably be expected to prohibit a single legal counsel from representing both the Indemnified Party and the Indemnifying Party in such proceeding.

In the event any of the forgoing conditions become unsatisfied with respect to a proceeding, the Indemnifying Party shall lose the right to maintain control of the defense of such proceeding and will thereafter pay the reasonable fees and expenses of legal counsel retained by the Indemnified Party. In such case, the Indemnified Party shall be reimbursed on a monthly basis by the Indemnifying Party for the reasonable attorneys' fees and other expenses of contesting, defending, litigating and/or settling such proceeding which are incurred from time to time.

(d) The Indemnifying Party must obtain the prior written consent of the Indemnified Party (which the Indemnified Party will not unreasonably withhold) prior to entering into any settlement or compromise of such claim or proceeding or ceasing to defend such claim or proceeding. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party: (i) enter into any compromise or settlement which commits the Indemnified Party to take, or to forbear to take, any action; (ii) which does not provide for a complete release by such third party of the Indemnified Party; or (iii) requires payment by the Indemnified Party of any amount. The Indemnified Party shall have the sole and exclusive right to settle any Third Party Claim, on such terms and conditions as it deems reasonably appropriate, to the extent such Third Party Claim involves injunctive or other non-monetary relief that binds the Indemnified Party in any way, and shall have the right to settle any Third Party Claim involving monetary damages with the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. No failure by the Indemnifying Party to acknowledge in writing its indemnification obligations under this ARTICLE VI shall relieve it of such obligations to the extent such obligations exist.

(e) The election by the Indemnifying Party, pursuant to Section 6.5(b), to undertake the defense of a Third Party Claim shall not preclude the party against which such claim has been made also from participating or continuing to participate in such defense, so long as such party bears its own legal fees and expenses for so doing; provided, that the Indemnified Party shall be entitled to reimbursement therefor if the Indemnifying Party shall lose its right to contest, defend, litigate and settle the Third Party Claim. The Indemnifying Party shall not be entitled, or shall lose its right, to contest, defend, litigate and settle such Third Party Claim if the Indemnified Party shall give written notice to the Indemnifying Party of any objection thereto based upon the conditions set forth in Section 6.5(c).

(f) The failure of the Indemnified Party to provide prompt notice of a claim shall not affect the obligations of the Indemnifying Party unless it shall have been prejudiced by the delay in notification.

#### 6.6 Limitations and Requirements.

(a) Except in the case of fraud or knowing misrepresentation or intentional breach of any warranty or covenant contained herein (for which no limitations set forth herein shall be applicable) or as otherwise expressly provided in this Agreement, the indemnification obligations of the parties contained in this ARTICLE VI shall be the sole remedies of the parties hereto and their successors and assigns in respect of any claim for monetary damages arising under this Agreement.

(b) No right of indemnification hereunder shall be limited by reason of any investigation or audit conducted before or after such Closing or the knowledge of any party of any breach of a covenant or agreement by the other party at any time, or the decision of any party to complete such Closing;

(c) The Company shall not be required to indemnify any Buyer Indemnitee for any Damages to the extent resulting from, arising out of, or caused by, such Indemnitee's negligence, willful misconduct, or fraud and any such Damages shall take into account any tax benefits and insurance proceeds actually received by such Indemnitee.

### **ARTICLE VII TERMINATION AND ABANDONMENT**

7.1 Termination of Agreement. The parties may terminate this Agreement prior to the Second Closing as follows:

(a) Buyer, the Company and the Bank may terminate this Agreement by mutual written consent.

(b) Buyer may terminate this Agreement by giving written notice to the Company if there shall have been any material breach of any representation, warranty, covenant or other obligation by the Company and in either such case such breach cannot be, or shall not have been, remedied within thirty (30) days after receipt by the Company, as applicable, of written notice specifying the nature of such breach and requesting that it be remedied or which breach, by its nature, cannot be cured prior to the Second Closing.

(c) The Company may terminate this Agreement by giving written notice to Buyer if there shall have been any material breach of any representation, warranty, covenant or other obligation by Buyer and such breach cannot be, or shall not have been, remedied within thirty (30) days after receipt by Buyer of written notice specifying the nature of such breach and requesting that it be remedied or which breach, by its nature, cannot be cured prior to the Second Closing.

(d) Buyer may terminate this Agreement by giving written notice to the Company if any Closing shall not have occurred by reason of the failure of any condition precedent under Section 5.1 or Section 5.3 hereof (unless the failure results primarily from a breach by Buyer of any representation, warranty or covenant contained in this Agreement), which breach or failure to perform (A) is incapable of being cured by the Company or (B) if capable of being cured, has not been cured by the Company within thirty days following written notice to the Company from Buyer of such breach; provided that Buyer shall not have the right to terminate this Agreement pursuant to this Section 7.1(d) if it is then in material breach of any representation, warranty, covenant or agreement hereunder.

(e) The Company or the Bank may terminate this Agreement by giving written notice to Buyer if any Closing shall have not occurred by reason of the failure of any condition precedent under Section 5.2 hereof (unless the failure results primarily from a breach by the Company of any representation, warranty or covenant contained in this Agreement) which breach or failure to perform (A) is incapable of being cured by Buyer or (B) if capable of being cured, has not been cured by Buyer within thirty days following written notice to Buyer from the Company of such breach; provided that the Company or the Bank shall not have the right to terminate this Agreement pursuant to this Section 7.1(e) if either the Company or the Bank is then in material breach of any representation, warranty, covenant or agreement hereunder.

7.2 Effect of Termination. Upon termination of this Agreement pursuant to Section 7.1:

(a) Each of Buyer, the Company and the Bank will redeliver to the party furnishing the same or destroy all documents, work papers and other material of any other party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof.

(b) Neither the Company, the Bank nor Buyer shall make or issue, or cause to be made or issued, any announcement or written statement concerning termination of this Agreement or the transactions contemplated hereby for dissemination to the general public without the prior written consent of the other parties except as required by Law or legal process.

(c) This Agreement shall become wholly void and of no force or effect, without any liability or further obligation on the part of the Company, the Bank or Buyer or any director, officer, or principal thereof, except for liabilities of one party hereto to another arising from a breach of this Agreement prior to termination in accordance with Section 7.1 (including without limitation the breach of a representation or a covenant that results in the failure of the Closing to occur) and except that the provisions set forth in this Section 7.2 and ARTICLE IX shall survive such termination.

## **ARTICLE VIII DEFINITIONS**

As used in this Agreement, each of the following terms shall have the following meaning:

Additional Purchase Price shall have the meaning ascribed to such term in Section 1.2.

Additional Shares shall have the meaning ascribed to such term in Section 1.2.

Affiliate shall mean an affiliate of a Person as the term "affiliate" is defined in Rule 144(a) under the Securities Act.

Agreement shall have the meaning ascribed to such term in the preamble.

Bank shall have the meaning ascribed to such term in the preamble of this Agreement.

BHCA shall have the meaning ascribed to such term in Section 3.8.

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

Business Day shall mean any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

Buyer shall have the meaning ascribed to such term in the preamble of this Agreement.

Buyer Indemnitees shall have the meaning ascribed to such term in Section 6.2(a).

Claim Response shall have the meaning ascribed to such term in Section 6.4.

Claims Notice shall have the meaning ascribed to such term in Section 6.4.

Closing shall have the meaning ascribed to such term in Section 1.3(b).

Closing Date shall have the meaning ascribed to such term in Section 1.3(b).

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

Common Stock shall have the meaning ascribed to such term in the recitals to this Agreement.

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 Stock Option means any option to purchase Common Stock.

Company Subsidiary shall mean 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.

Contract shall mean any contract, agreement, arrangement, license, commitment, lease, understanding or restriction of any kind, whether written or oral, to which the Company is a party or by which the Company is bound or to which the Company's assets are subject.

Damages shall have the meaning ascribed to such term in Section 6.2(a).

Encumbrances shall mean any claim, charge, mortgage, pledge, lien, restriction, security or other third party right or interest of any kind whatsoever, conditional sales agreement or other title retention agreement, lease, tenancy, ground rent, option, security agreement, covenant, condition, right-of-way, easement, encroachment, judgment, charge or other encumbrance (including the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction) of any kind affecting real or personal property, and any agreement or obligation to create or grant any of the aforesaid, and Encumber shall be construed accordingly.

Environmental Laws shall mean any Law relating to the environment, human health or safety or Hazardous Substances.

ERISA means the Employee Retirement Income Security Act of 1974, as amended and the rules and regulations promulgated thereunder.

Exchange Act shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

FDIC shall mean the Federal Deposit Insurance Corporation or any successor thereto.

Financial Statements shall have the meaning ascribed to such term in Section 2.6(a).

FRB shall mean the Board of Governors of the Federal Reserve System or any successor thereto.

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 Authorizations shall mean all governmental approvals, authorizations, certifications, consents, waivers, variances, permissions, licenses, directives, and permits to or from, or filings, notices, registrations, or recordings to or with Governmental Entities including, without limitation, the OCC and FRB.

Governmental Entity means any federal, state, local or foreign court of competent jurisdiction, governmental agency, authority, instrumentality or regulatory body, or any department or subdivision thereof.

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.

Indemnified Party shall have the meaning ascribed to such term in Section 6.4.

Indemnifying Party shall have the meaning ascribed to such term in Section 6.4.

Initial Closing shall have the meaning ascribed to such term in Section 1.3(a).

Initial Closing Date shall have the meaning ascribed to such term in Section 1.3(a).

Initial Purchase Price shall have the meaning ascribed to such term in Section 1.1.

Initial Shares shall have the meaning ascribed to such term in Section 1.1.

Intellectual Property shall mean all intellectual property which is recognized under the law of any jurisdiction anywhere in the world, whether under common law, by statute or otherwise.

Investment shall mean, as applied to any Person, (i) any direct or indirect purchase or other acquisition by such Person of any notes, obligations, instruments, stock, securities or ownership interest (including without limitation partnership interests and joint venture interests) of any Person; and (ii) any capital contribution by such Person to any other Person.

IRS shall mean the Internal Revenue Service.

Knowledge in relation to the Company or the Bank, means the actual knowledge, after reasonable inquiry, of Daniel L. Murphy, Michael P. Puorro, Stella Mendes, Thomas N. Gilmartin and William P. Mackey.

Knowledge in relation to Buyer, means the actual knowledge of Ronald Krolick based on written information provided to Buyer.

Law means any applicable federal, state, local or foreign law, statute, ordinance, treaty, judicial decision, regulation, rule, judgment, order, decree, injunction, permit or governmental restriction.

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 Buyer of its 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 Buyer 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 Buyer 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 Buyer, 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.

Merger means the merger contemplated by the Merger Agreement.

Merger Agreement shall mean that the Agreement and Plan of Merger, dated as of the date hereof, among Buyer, the Company, Modern Capital Holdings LLC, the Bank and MadNat Acquisition Corporation.

OCC shall mean the Office of the Comptroller of the Currency or any successor thereto.

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.

Permit shall mean any license, franchise, permit, consent, order, approval, authorization, certificate, exemption, or registration from, of or with a Governmental Entity or self-regulatory organization.

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 the Financial Statements.

Person shall mean an individual, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization or Governmental Entity or any department, agency or political subdivision thereof.

Post-2007 Period shall have the meaning ascribed to such term in Section 2.11(j).

Pre-Closing Tax Period shall mean any Tax period ending on or before any Closing Date.

Preferred Stock shall mean each outstanding share of the preferred stock, par value \$0.01 per share, of the Company.

Real Property means all fee or leasehold interests, easements, real estate licenses, rights to access and other rights with respect to real property.

Release shall mean any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, or disposing of Hazardous Substances (including the abandonment or discarding of barrels, containers or other closed receptacles containing Hazardous Substances) into the environment.

Required Board Approval shall mean the approval of the Board of Directors to enter into this Agreement and to issue the Shares.

Response Period shall have the meaning ascribed to such term in Section 6.4.

Second Closing shall have the meaning ascribed to such term in Section 1.3(b).

Second Closing Date shall have the meaning ascribed to such term in Section 1.3(b).

Securities Act means the Securities Act of 1933, as amended.

Shares shall have the meaning ascribed to such term in Section 1.2.

Subsidiary shall mean with respect to any Person, each entity of which a majority of the voting power or equity interest is owned, directly or indirectly, by such Person.

Survival Period shall have the meaning ascribed to such term in Section 6.1.

Tax shall mean any federal, territorial, state, local, or foreign income, gross receipts, license, payroll, wage, employment, excise, utility, communications, production, occupancy, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, capital levy, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, real property gains, recordation, business license, workers' compensation, PBGC, personal property, sales, use, transfer, registration, value added, ad valorem, alternative or add-on minimum, estimated, or other tax, fee, charge, premium, imposition of any kind whatsoever in the nature of taxes, however denominated, imposed by any Tax Authority, including any obligation to pay any such amount owed by another Person, together with any interest, penalties or other additions to tax and any interest on any such interest, penalties and additions to tax that may become payable in respect thereof.

Tax Authority shall mean IRS and any other federal, territorial, state, local or foreign government authority having jurisdiction over the assessment, determination, collection, or imposition of any Tax, including any agency, authority or political subdivision of any of the foregoing.

Tax Law shall mean the Code, any federal, territorial, state, county, local or foreign laws related to Taxes and any regulations or official administrative pronouncements released under any such Laws.

Tax Returns shall mean all reports, estimates, declarations of estimated tax, information statements and returns relating to, or required to be filed in connection with, any Taxes, including information returns or reports with respect to backup withholding and other payments to third parties.

Third Party Claim shall have the meaning ascribed to such term in Section 6.5(a).

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

USA Patriot Act shall have the meaning ascribed to such term in Section 2.25.

## ARTICLE IX

### MISCELLANEOUS

9.1 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties, except that Buyer may assign all or part of this Agreement and its rights hereunder (a) to a Buyer Affiliate or (b) from and after any Closing to a Person, not a party to this Agreement, who acquires substantially all of the assets of such Buyer and who assumes all of the obligations of such Buyer hereunder, provided in each such case that no such assignment shall release Buyer from its duties and obligations hereunder.

9.2 Notices. All notices, requests, demands, consents or waivers and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand, by telecopy or by electronic mail (with immediate confirmation), one (1) Business Day after being sent if by nationally recognized overnight courier or if mailed, then four (4) days after being sent by certified or registered mail, return receipt requested with postage prepaid:

- (i) If to the Company or the Bank:

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:

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

(ii) If to Buyer, to:

152 West 57th Street, 52<sup>nd</sup> Floor  
New York, NY 10019  
Attention: Ronald S. Krolick  
Telephone: 212-218-4067  
E-mail: ronald.krolick@fnbny.com

With a copy to:

Debevoise & Plimpton LLP  
919 Third Avenue  
New York, NY 10022  
Attention: Gregory V. Gooding, Esq.  
Gregory J. Lyons, Esq.  
Facsimile: (212) 909-6836  
E-Mail: ggooding@debevoise.com  
gjlyons@debevoise.com

or, in each case, to such other Person or address as any party shall furnish to the other parties in writing.

### 9.3 Governing Law; Consent to Jurisdiction and Venue.

(a) The parties acknowledge and agree that this Agreement constitutes a contract pertaining to a transaction covering in the aggregate not less than \$1,000,000 and that their choice of law and choice of jurisdiction specified below have been made pursuant to and in accordance with Sections 5-1401 and 5-1402, respectively, of the New York General Obligations Law. Accordingly, the parties acknowledge and agree that this Agreement shall be governed by the laws of the State of New York as to all matters including, but not limited to, matters of validity, construction, effect, performance and liability, without consideration of conflicts of laws provisions contained therein and that the courts of the State of New York shall have exclusive jurisdiction of all disputes with respect to an alleged breach of any representation, warranty, agreement or covenant of this Agreement, including without limitation, any dispute relating to the construction or interpretation of the rights and obligations of any party, which is not resolved through discussion between the parties.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of any New York State or Federal court sitting in New York County in any action or proceeding commenced by Buyer or to which Buyer is a party arising out of or relating to this Agreement or any transaction contemplated hereby. The Company and

the Bank hereby irrevocably waive, to the fullest extent they may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. The Company and the Bank also irrevocably and unconditionally agree that a final judgment in any such action or proceeding (after exhaustion of all appeals or expiration of the time for appeal) shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

9.4 Entire Agreement; Amendment; Waiver. This Agreement, including any Schedules hereto, sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter hereof, and supersedes all prior agreements, promises, covenants, arrangements, representations or warranties, whether oral or written, by any party hereto or any officer, director, employee or representative of any party hereto. No amendment, modification or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party to be charged therewith. The waiver of breach of any term or condition of this Agreement shall not be deemed to constitute a waiver of any other breach of the same or any other term or condition.

9.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.6 Invalidity. If in any jurisdiction, any provision of this Agreement or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction or its application to other parties or circumstances. In addition, if any one or more of the provisions contained in this Agreement shall for any reason in any jurisdiction be held to be excessively broad as to time, duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law of such jurisdiction as it shall then appear.

9.7 Further Assurances. At any time and from time to time after any Closing and without further consideration, each party hereby agrees to execute and deliver such agreements, deeds, novations, assignments, endorsements and other instruments and evidences of transfer and give such further assurances and perform such further acts as the other may reasonably request and as may reasonably be necessary in order to consummate the transactions contemplated by this Agreement.

9.8 Headings. The headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

9.9 Expenses. Except as otherwise previously agreed in writing, the Company, the Bank and Buyer will each be liable for its own costs and expenses incurred in connection with the negotiation, preparation, execution or performance of this Agreement.

9.10 Interpretation. Unless otherwise provided or unless the context requires otherwise, (i) all references in this Agreement to Articles, Sections, and Schedules shall mean and refer to Articles, Sections, and Schedules of this Agreement; (ii) all references to statutes and related regulations shall include all amendments of the same and any successor or replacement statutes and regulations; (iii) words of any gender shall be deemed to include each other gender; (iv) words used using the singular or plural number also shall include the plural and singular number, respectively; (v) references to "hereof," "herein," "hereby" and similar terms shall refer to this entire Agreement (including the Schedules); (vi) the word "including" shall be construed as "including without limitation"; and (vii) references to any Person shall be deemed to mean and include the successors and permitted assigns of such Person (or in the case of a Governmental Entity, Persons succeeding to the relevant function of such Person).

9.11 No Presumption. The Company, the Bank and Buyer have each participated in the negotiation and drafting of this Agreement and have each been represented throughout to its satisfaction by legal counsel of its choosing. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

9.12 Fax or PDF Signatures. Any signature page hereto delivered by a fax machine or PDF machine shall be binding to the same extent as an original signature page, with regard to this Agreement, any agreement subject to the terms hereof or any amendment hereto or thereto. Any party who delivers such a signature page agrees to later deliver an original counterpart to any party that requests it. No party hereto or to any such agreement or instrument shall raise the use of a fax or PDF machine to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a fax or PDF machine as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

9.13 Schedules. Information contained on the Schedules of the Company shall be deemed to cover the express disclosure requirement contained in a representation or warranty of this Agreement to which such information clearly relates and any other representation or warranty of this Agreement of the Company only where it is clearly cross-referenced to such Schedule with specificity and incorporated therein. The mere inclusion of an item in a Schedule as an exception to a representation or warranty shall not be deemed an admission by a party that such item represents a material exception or fact, event or circumstance or that such item is or could result in a Material Adverse Effect.

9.14 Enforcement of the Agreement. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered in New York, New York, all on the day and year first above written.

**MADISON NATIONAL BANCORP, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**MADISON NATIONAL BANK**

By: \_\_\_\_\_  
Name:  
Title:

**FBNBY BANCORP, INC.**

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to Stock Purchase Agreement]