

UNITED STATES DEPARTMENT OF THE TREASURY  
1500 PENNSYLVANIA AVENUE, NW  
WASHINGTON, D.C. 20220

Dear Ladies and Gentlemen:

The company set forth on the signature page hereto (the "*Company*") intends to issue in a private placement the number of shares of a series of its preferred stock set forth on Schedule A hereto (the "*Preferred Shares*") and a warrant to purchase the number of shares of a series of its preferred stock set forth on Schedule A hereto (the "*Warrant*" and, together with the Preferred Shares, the "*Purchased Securities*") and the United States Department of the Treasury (the "*Investor*") intends to purchase from the Company the Purchased Securities.

The purpose of this letter agreement is to confirm the terms and conditions of the purchase by the Investor of the Purchased Securities. Except to the extent supplemented or superseded by the terms set forth herein or in the Schedules hereto, the provisions contained in the Securities Purchase Agreement – Standard Terms attached hereto as Exhibit A (the "*Securities Purchase Agreement*") are incorporated by reference herein. Terms that are defined in the Securities Purchase Agreement are used in this letter agreement as so defined. In the event of any inconsistency between this letter agreement and the Securities Purchase Agreement, the terms of this letter agreement shall govern.

Each of the Company and the Investor hereby confirms its agreement with the other party with respect to the issuance by the Company of the Purchased Securities and the purchase by the Investor of the Purchased Securities pursuant to this letter agreement and the Securities Purchase Agreement on the terms specified on Schedule A hereto.


This letter agreement (including the Schedules hereto), the Securities Purchase Agreement (including the Annexes thereto), the Disclosure Schedules and the Warrant constitute the entire agreement, and supersede all other prior agreements, understandings, representations and warranties, both written and oral, between the parties, with respect to the subject matter hereof. This letter agreement constitutes the "Letter Agreement" referred to in the Securities Purchase Agreement.

This letter agreement may be executed in any number of separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same agreement. Executed signature pages to this letter agreement may be delivered by facsimile and such facsimiles will be deemed as sufficient as if actual signature pages had been delivered.

\* \* \*

In witness whereof, this letter agreement has been duly executed and delivered by the duly authorized representatives of the parties hereto as of the date written below.

UNITED STATES DEPARTMENT OF THE  
TREASURY

By:   
Name: **Neel Kashkari**  
Title: **Interim Assistant Secretary  
For Financial Stability**

COMPANY: NAPLES BANCORP. INC.

By: \_\_\_\_\_  
Name: Robert Guididas  
Title: President and CEO

Date: March 27, 2009

In witness whereof, this letter agreement has been duly executed and delivered by the duly authorized representatives of the parties hereto as of the date written below.

UNITED STATES DEPARTMENT OF THE  
TREASURY

By: \_\_\_\_\_

Name:

Title:

COMPANY: NAPLES BANCORP, INC.

By: Robert Guididas

Name: Robert Guididas

Title: President and CEO

Date: March 27, 2009

UST Seq. No. 939

EXHIBIT A

**SECURITIES PURCHASE AGREEMENT**

**EXHIBIT A**  
(Non-Exchange-Traded QFIs, excluding S Corps  
and Mutual Organizations)

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**SECURITIES PURCHASE AGREEMENT**  
**STANDARD TERMS**

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## SECURITIES PURCHASE AGREEMENT – STANDARD TERMS

### Recitals:

WHEREAS, the United States Department of the Treasury (the “*Investor*”) may from time to time agree to purchase shares of preferred stock and warrants from eligible financial institutions which elect to participate in the Troubled Asset Relief Program Capital Purchase Program (“*CPP*”);

WHEREAS, an eligible financial institution electing to participate in the CPP and issue securities to the Investor (referred to herein as the “*Company*”) shall enter into a letter agreement (the “*Letter Agreement*”) with the Investor which incorporates this Securities Purchase Agreement – Standard Terms;

WHEREAS, the Company agrees to expand the flow of credit to U.S. consumers and businesses on competitive terms to promote the sustained growth and vitality of the U.S. economy;

WHEREAS, the Company agrees to work diligently, under existing programs, to modify the terms of residential mortgages as appropriate to strengthen the health of the U.S. housing market;

WHEREAS, the Company intends to issue in a private placement the number of shares of the series of its Preferred Stock (“*Preferred Stock*”) set forth on Schedule A to the Letter Agreement (the “*Preferred Shares*”) and a warrant to purchase the number of shares of the series of its Preferred Stock (“*Warrant Preferred Stock*”) set forth on Schedule A to the Letter Agreement (the “*Warrant*” and, together with the Preferred Shares, the “*Purchased Securities*”) and the Investor intends to purchase (the “*Purchase*”) from the Company the Purchased Securities; and

WHEREAS, the Purchase will be governed by this Securities Purchase Agreement – Standard Terms and the Letter Agreement, including the schedules thereto (the “*Schedules*”), specifying additional terms of the Purchase. This Securities Purchase Agreement – Standard Terms (including the Annexes hereto) and the Letter Agreement (including the Schedules thereto) are together referred to as this “*Agreement*”. All references in this Securities Purchase Agreement – Standard Terms to “*Schedules*” are to the Schedules attached to the Letter Agreement.

**NOW, THEREFORE**, in consideration of the premises, and of the representations, warranties, covenants and agreements set forth herein, the parties agree as follows:

### Article I Purchase; Closing

1.1 Purchase. On the terms and subject to the conditions set forth in this Agreement, the Company agrees to sell to the Investor, and the Investor agrees to purchase from the Company, at the Closing (as hereinafter defined), the Purchased Securities for the price set forth on Schedule A (the “*Purchase Price*”).

1.2 Closing.

(a) On the terms and subject to the conditions set forth in this Agreement, the closing of the Purchase (the "*Closing*") will take place at the location specified in Schedule A, at the time and on the date set forth in Schedule A or as soon as practicable thereafter, or at such other place, time and date as shall be agreed between the Company and the Investor. The time and date on which the Closing occurs is referred to in this Agreement as the "*Closing Date*".

(b) Subject to the fulfillment or waiver of the conditions to the Closing in this Section 1.2, at the Closing the Company will deliver the Preferred Shares and the Warrant, in each case as evidenced by one or more certificates dated the Closing Date and bearing appropriate legends as hereinafter provided for, in exchange for payment in full of the Purchase Price by wire transfer of immediately available United States funds to a bank account designated by the Company on Schedule A.

(c) The respective obligations of each of the Investor and the Company to consummate the Purchase are subject to the fulfillment (or waiver by the Investor and the Company, as applicable) prior to the Closing of the conditions that (i) any approvals or authorizations of all United States and other governmental, regulatory or judicial authorities (collectively, "*Governmental Entities*") required for the consummation of the Purchase shall have been obtained or made in form and substance reasonably satisfactory to each party and shall be in full force and effect and all waiting periods required by United States and other applicable law, if any, shall have expired and (ii) no provision of any applicable United States or other law and no judgment, injunction, order or decree of any Governmental Entity shall prohibit the purchase and sale of the Purchased Securities as contemplated by this Agreement.

(d) The obligation of the Investor to consummate the Purchase is also subject to the fulfillment (or waiver by the Investor) at or prior to the Closing of each of the following conditions:

(i) (A) the representations and warranties of the Company set forth in (x) Section 2.2(g) of this Agreement shall be true and correct in all respects as though made on and as of the Closing Date, (y) Sections 2.2(a) through (f) shall be true and correct in all material respects as though made on and as of the Closing Date (other than representations and warranties that by their terms speak as of another date, which representations and warranties shall be true and correct in all material respects as of such other date) and (z) Sections 2.2(h) through (v) (disregarding all qualifications or limitations set forth in such representations and warranties as to "materiality", "Company Material Adverse Effect" and words of similar import) shall be true and correct as though made on and as of the Closing Date (other than representations and warranties that by their terms speak as of another date, which representations and warranties shall be true and correct as of such other date), except to the extent that the failure of such representations and warranties referred to in this Section 1.2(d)(i)(A)(z) to be so true and correct, individually or in the aggregate, does not have and would not reasonably be expected to have a Company Material Adverse Effect and (B) the Company shall have

performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing;

(ii) the Investor shall have received a certificate signed on behalf of the Company by a senior executive officer certifying to the effect that the conditions set forth in Section 1.2(d)(i) have been satisfied;

(iii) the Company shall have duly adopted and filed with the Secretary of State of its jurisdiction of organization or other applicable Governmental Entity the amendments to its certificate or articles of incorporation, articles of association, or similar organizational document ("*Charter*") in substantially the forms attached hereto as Annex A and Annex B (the "*Certificates of Designations*") and such filing shall have been accepted;

(iv) (A) the Company shall have effected such changes to its compensation, bonus, incentive and other benefit plans, arrangements and agreements (including golden parachute, severance and employment agreements) (collectively, "*Benefit Plans*") with respect to its Senior Executive Officers (and to the extent necessary for such changes to be legally enforceable, each of its Senior Executive Officers shall have duly consented in writing to such changes), as may be necessary, during the period that the Investor owns any debt or equity securities of the Company acquired pursuant to this Agreement or the Warrant, in order to comply with Section 111(b) of the Emergency Economic Stabilization Act of 2008 ("*EESA*") as implemented by guidance or regulation thereunder that has been issued and is in effect as of the Closing Date, and (B) the Investor shall have received a certificate signed on behalf of the Company by a senior executive officer certifying to the effect that the condition set forth in Section 1.2(d)(iv)(A) has been satisfied;

(v) each of the Company's Senior Executive Officers shall have delivered to the Investor a written waiver in the form attached hereto as Annex C releasing the Investor from any claims that such Senior Executive Officers may otherwise have as a result of the issuance, on or prior to the Closing Date, of any regulations which require the modification of, and the agreement of the Company hereunder to modify, the terms of any Benefit Plans with respect to its Senior Executive Officers to eliminate any provisions of such Benefit Plans that would not be in compliance with the requirements of Section 111(b) of the EESA as implemented by guidance or regulation thereunder that has been issued and is in effect as of the Closing Date;

(vi) the Company shall have delivered to the Investor a written opinion from counsel to the Company (which may be internal counsel), addressed to the Investor and dated as of the Closing Date, in substantially the form attached hereto as Annex D;

(vii) the Company shall have delivered certificates in proper form or, with the prior consent of the Investor, evidence of shares in book-entry form, evidencing the Preferred Shares to Investor or its designee(s); and

(viii) the Company shall have duly executed the Warrant in substantially the form attached hereto as Annex E and delivered such executed Warrant to the Investor or its designee(s).

1.3 Interpretation. When a reference is made in this Agreement to "Recitals," "Articles," "Sections," or "Annexes" such reference shall be to a Recital, Article or Section of, or Annex to, this Securities Purchase Agreement – Standard Terms, and a reference to "Schedules" shall be to a Schedule to the Letter Agreement, in each case, unless otherwise indicated. The terms defined in the singular have a comparable meaning when used in the plural, and vice versa. References to "herein", "hereof", "hereunder" and the like refer to this Agreement as a whole and not to any particular section or provision, unless the context requires otherwise. The table of contents and headings contained in this Agreement are for reference purposes only and are not part of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed followed by the words "without limitation." No rule of construction against the draftsperson shall be applied in connection with the interpretation or enforcement of this Agreement, as this Agreement is the product of negotiation between sophisticated parties advised by counsel. All references to "\$" or "dollars" mean the lawful currency of the United States of America. Except as expressly stated in this Agreement, all references to any statute, rule or regulation are to the statute, rule or regulation as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under the statute) and to any section of any statute, rule or regulation include any successor to the section. References to a "business day" shall mean any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

## Article II Representations and Warranties

### 2.1 Disclosure.

(a) On or prior to the Signing Date, the Company delivered to the Investor a schedule ("*Disclosure Schedule*") setting forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more representations or warranties contained in Section 2.2.

(b) "*Company Material Adverse Effect*" means a material adverse effect on (i) the business, results of operation or financial condition of the Company and its consolidated subsidiaries taken as a whole; *provided, however*, that Company Material Adverse Effect shall not be deemed to include the effects of (A) changes after the date of the Letter Agreement (the "*Signing Date*") in general business, economic or market conditions (including changes generally in prevailing interest rates, credit availability and liquidity, currency exchange rates and price levels or trading volumes in the United States or foreign securities or credit markets), or any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism, in

each case generally affecting the industries in which the Company and its subsidiaries operate, (B) changes or proposed changes after the Signing Date in generally accepted accounting principles in the United States ("GAAP") or regulatory accounting requirements, or authoritative interpretations thereof, or (C) changes or proposed changes after the Signing Date in securities, banking and other laws of general applicability or related policies or interpretations of Governmental Entities (in the case of each of these clauses (A), (B) and (C), other than changes or occurrences to the extent that such changes or occurrences have or would reasonably be expected to have a materially disproportionate adverse effect on the Company and its consolidated subsidiaries taken as a whole relative to comparable U.S. banking or financial services organizations); or (ii) the ability of the Company to consummate the Purchase and other transactions contemplated by this Agreement and the Warrant and perform its obligations hereunder or thereunder on a timely basis.

(c) "*Previously Disclosed*" means information set forth on the Disclosure Schedule, provided, however, that disclosure in any section of such Disclosure Schedule shall apply only to the indicated section of this Agreement except to the extent that it is reasonably apparent from the face of such disclosure that such disclosure is relevant to another section of this Agreement.

2.2 Representations and Warranties of the Company. Except as Previously Disclosed, the Company represents and warrants to the Investor that as of the Signing Date and as of the Closing Date (or such other date specified herein):

(a) Organization, Authority and Significant Subsidiaries. The Company has been duly incorporated and is validly existing and in good standing under the laws of its jurisdiction of organization, with the necessary power and authority to own its properties and conduct its business in all material respects as currently conducted, and except as has not, individually or in the aggregate, had and would not reasonably be expected to have a Company Material Adverse Effect, has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification; each subsidiary of the Company that would be considered a "significant subsidiary" within the meaning of Rule 1-02(w) of Regulation S-X under the Securities Act of 1933 (the "*Securities Act*"), has been duly organized and is validly existing in good standing under the laws of its jurisdiction of organization. The Charter and bylaws of the Company, copies of which have been provided to the Investor prior to the Signing Date, are true, complete and correct copies of such documents as in full force and effect as of the Signing Date.

(b) Capitalization. The authorized capital stock of the Company, and the outstanding capital stock of the Company (including securities convertible into, or exercisable or exchangeable for, capital stock of the Company) as of the most recent fiscal month-end preceding the Signing Date (the "*Capitalization Date*") is set forth on Schedule B. The outstanding shares of capital stock of the Company have been duly authorized and are validly issued and outstanding, fully paid and nonassessable, and subject to no preemptive rights (and were not issued in violation of any preemptive rights). As of the Signing Date, the Company does not have outstanding any securities or other obligations providing the holder the right to

acquire its Common Stock ("*Common Stock*") that is not reserved for issuance as specified on Schedule B, and the Company has not made any other commitment to authorize, issue or sell any Common Stock. Since the Capitalization Date, the Company has not issued any shares of Common Stock, other than (i) shares issued upon the exercise of stock options or delivered under other equity-based awards or other convertible securities or warrants which were issued and outstanding on the Capitalization Date and disclosed on Schedule B and (ii) shares disclosed on Schedule B. Each holder of 5% or more of any class of capital stock of the Company and such holder's primary address are set forth on Schedule B.

(c) Preferred Shares. The Preferred Shares have been duly and validly authorized, and, when issued and delivered pursuant to this Agreement, such Preferred Shares will be duly and validly issued and fully paid and non-assessable, will not be issued in violation of any preemptive rights, and will rank *pari passu* with or senior to all other series or classes of Preferred Stock, whether or not issued or outstanding, with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Company.

(d) The Warrant and Warrant Shares. The Warrant has been duly authorized and, when executed and delivered as contemplated hereby, will constitute a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity ("*Bankruptcy Exceptions*"). The shares of Warrant Preferred Stock issuable upon exercise of the Warrant (the "*Warrant Shares*") have been duly authorized and reserved for issuance upon exercise of the Warrant and when so issued in accordance with the terms of the Warrant will be validly issued, fully paid and non-assessable, and will rank *pari passu* with or senior to all other series or classes of Preferred Stock, whether or not issued or outstanding, with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Company.

(e) Authorization, Enforceability.

(i) The Company has the corporate power and authority to execute and deliver this Agreement and the Warrant and to carry out its obligations hereunder and thereunder (which includes the issuance of the Preferred Shares, Warrant and Warrant Shares). The execution, delivery and performance by the Company of this Agreement and the Warrant and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of the Company and its stockholders, and no further approval or authorization is required on the part of the Company. This Agreement is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to the Bankruptcy Exceptions.



(ii) The execution, delivery and performance by the Company of this Agreement and the Warrant and the consummation of the transactions contemplated hereby and thereby and compliance by the Company with the provisions hereof and thereof, will not (A) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of, any lien, security interest, charge or encumbrance upon any of the properties or assets of the Company or any subsidiary of the Company (each a "*Company Subsidiary*" and, collectively, the "*Company Subsidiaries*") under any of the terms, conditions or provisions of (i) its organizational documents or (ii) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Company or any Company Subsidiary is a party or by which it or any Company Subsidiary may be bound, or to which the Company or any Company Subsidiary or any of the properties or assets of the Company or any Company Subsidiary may be subject, or (B) subject to compliance with the statutes and regulations referred to in the next paragraph, violate any statute, rule or regulation or any judgment, ruling, order, writ, injunction or decree applicable to the Company or any Company Subsidiary or any of their respective properties or assets except, in the case of clauses (A)(ii) and (B), for those occurrences that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect.

(iii) Other than the filing of the Certificates of Designations with the Secretary of State of its jurisdiction of organization or other applicable Governmental Entity, such filings and approvals as are required to be made or obtained under any state "blue sky" laws and such as have been made or obtained, no notice to, filing with, exemption or review by, or authorization, consent or approval of, any Governmental Entity is required to be made or obtained by the Company in connection with the consummation by the Company of the Purchase except for any such notices, filings, exemptions, reviews, authorizations, consents and approvals the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(f) Anti-takeover Provisions and Rights Plan. The Board of Directors of the Company (the "*Board of Directors*") has taken all necessary action to ensure that the transactions contemplated by this Agreement and the Warrant and the consummation of the transactions contemplated hereby and thereby, including the exercise of the Warrant in accordance with its terms, will be exempt from any anti-takeover or similar provisions of the Company's Charter and bylaws, and any other provisions of any applicable "moratorium", "control share", "fair price", "interested stockholder" or other anti-takeover laws and regulations of any jurisdiction.

(g) No Company Material Adverse Effect. Since the last day of the last completed fiscal period for which financial statements are included in the Company Financial Statements (as defined below), no fact, circumstance, event, change, occurrence, condition or development

has occurred that, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect.

(h) Company Financial Statements. The Company has Previously Disclosed each of the consolidated financial statements of the Company and its consolidated subsidiaries for each of the last three completed fiscal years of the Company (which shall be audited to the extent audited financial statements are available prior to the Signing Date) and each completed quarterly period since the last completed fiscal year (collectively the "*Company Financial Statements*"). The Company Financial Statements present fairly in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as of the dates indicated therein and the consolidated results of their operations for the periods specified therein; and except as stated therein, such financial statements (A) were prepared in conformity with GAAP applied on a consistent basis (except as may be noted therein) and (B) have been prepared from, and are in accordance with, the books and records of the Company and the Company Subsidiaries.

(i) Reports.

(i) Since December 31, 2006, the Company and each Company Subsidiary has filed all reports, registrations, documents, filings, statements and submissions, together with any amendments thereto, that it was required to file with any Governmental Entity (the foregoing, collectively, the "*Company Reports*") and has paid all fees and assessments due and payable in connection therewith, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. As of their respective dates of filing, the Company Reports complied in all material respects with all statutes and applicable rules and regulations of the applicable Governmental Entities.

(ii) The records, systems, controls, data and information of the Company and the Company Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of the Company or the Company Subsidiaries or their accountants (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a material adverse effect on the system of internal accounting controls described below in this Section 2.2(i)(ii). The Company (A) has implemented and maintains adequate disclosure controls and procedures to ensure that material information relating to the Company, including the consolidated Company Subsidiaries, is made known to the chief executive officer and the chief financial officer of the Company by others within those entities, and (B) has disclosed, based on its most recent evaluation prior to the Signing Date, to the Company's outside auditors and the audit committee of the Board of Directors (x) any significant deficiencies and material weaknesses in the design or operation of internal controls that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or

other employees who have a significant role in the Company's internal controls over financial reporting.

(j) No Undisclosed Liabilities. Neither the Company nor any of the Company Subsidiaries has any liabilities or obligations of any nature (absolute, accrued, contingent or otherwise) which are not properly reflected or reserved against in the Company Financial Statements to the extent required to be so reflected or reserved against in accordance with GAAP, except for (A) liabilities that have arisen since the last fiscal year end in the ordinary and usual course of business and consistent with past practice and (B) liabilities that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect.

(k) Offering of Securities. Neither the Company nor any person acting on its behalf has taken any action (including any offering of any securities of the Company under circumstances which would require the integration of such offering with the offering of any of the Purchased Securities under the Securities Act, and the rules and regulations of the Securities and Exchange Commission (the "SEC") promulgated thereunder), which might subject the offering, issuance or sale of any of the Purchased Securities to Investor pursuant to this Agreement to the registration requirements of the Securities Act.

(l) Litigation and Other Proceedings. Except (i) as set forth on Schedule C or (ii) as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, there is no (A) pending or, to the knowledge of the Company, threatened, claim, action, suit, investigation or proceeding, against the Company or any Company Subsidiary or to which any of their assets are subject nor is the Company or any Company Subsidiary subject to any order, judgment or decree or (B) unresolved violation, criticism or exception by any Governmental Entity with respect to any report or relating to any examinations or inspections of the Company or any Company Subsidiaries.

(m) Compliance with Laws. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and the Company Subsidiaries have all permits, licenses, franchises, authorizations, orders and approvals of, and have made all filings, applications and registrations with, Governmental Entities that are required in order to permit them to own or lease their properties and assets and to carry on their business as presently conducted and that are material to the business of the Company or such Company Subsidiary. Except as set forth on Schedule D, the Company and the Company Subsidiaries have complied in all respects and are not in default or violation of, and none of them is, to the knowledge of the Company, under investigation with respect to or, to the knowledge of the Company, have been threatened to be charged with or given notice of any violation of, any applicable domestic (federal, state or local) or foreign law, statute, ordinance, license, rule, regulation, policy or guideline, order, demand, writ, injunction, decree or judgment of any Governmental Entity, other than such noncompliance, defaults or violations that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. Except for statutory or regulatory restrictions of general application or as set forth on Schedule D, no Governmental Entity has placed any restriction on the business or properties of

the Company or any Company Subsidiary that would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(n) Employee Benefit Matters. Except as would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect: (A) each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*")) providing benefits to any current or former employee, officer or director of the Company or any member of its "*Controlled Group*" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "*Code*")) that is sponsored, maintained or contributed to by the Company or any member of its Controlled Group and for which the Company or any member of its Controlled Group would have any liability, whether actual or contingent (each, a "*Plan*") has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations, including ERISA and the Code; (B) with respect to each Plan subject to Title IV of ERISA (including, for purposes of this clause (B), any plan subject to Title IV of ERISA that the Company or any member of its Controlled Group previously maintained or contributed to in the six years prior to the Signing Date), (1) no "reportable event" (within the meaning of Section 4043(c) of ERISA), other than a reportable event for which the notice period referred to in Section 4043(c) of ERISA has been waived, has occurred in the three years prior to the Signing Date or is reasonably expected to occur, (2) no "accumulated funding deficiency" (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived, has occurred in the three years prior to the Signing Date or is reasonably expected to occur, (3) the fair market value of the assets under each Plan exceeds the present value of all benefits accrued under such Plan (determined based on the assumptions used to fund such Plan) and (4) neither the Company nor any member of its Controlled Group has incurred in the six years prior to the Signing Date, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the PBGC in the ordinary course and without default) in respect of a Plan (including any Plan that is a "multiemployer plan", within the meaning of Section 4001(c)(3) of ERISA); and (C) each Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service with respect to its qualified status that has not been revoked, or such a determination letter has been timely applied for but not received by the Signing Date, and nothing has occurred, whether by action or by failure to act, which could reasonably be expected to cause the loss, revocation or denial of such qualified status or favorable determination letter.

(o) Taxes. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (i) the Company and the Company Subsidiaries have filed all federal, state, local and foreign income and franchise Tax returns required to be filed through the Signing Date, subject to permitted extensions, and have paid all Taxes due thereon, and (ii) no Tax deficiency has been determined adversely to the Company or any of the Company Subsidiaries, nor does the Company have any knowledge of any Tax deficiencies. "*Tax*" or "*Taxes*" means any federal, state, local or foreign income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add on minimum, ad valorem, transfer or excise tax, or any other tax, custom, duty,

governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, imposed by any Governmental Entity.

(p) Properties and Leases. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and the Company Subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens, encumbrances, claims and defects that would affect the value thereof or interfere with the use made or to be made thereof by them. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and the Company Subsidiaries hold all leased real or personal property under valid and enforceable leases with no exceptions that would interfere with the use made or to be made thereof by them.

(q) Environmental Liability. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect:

(i) there is no legal, administrative, or other proceeding, claim or action of any nature seeking to impose, or that would reasonably be expected to result in the imposition of, on the Company or any Company Subsidiary, any liability relating to the release of hazardous substances as defined under any local, state or federal environmental statute, regulation or ordinance, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, pending or, to the Company's knowledge, threatened against the Company or any Company Subsidiary;

(ii) to the Company's knowledge, there is no reasonable basis for any such proceeding, claim or action; and

(iii) neither the Company nor any Company Subsidiary is subject to any agreement, order, judgment or decree by or with any court, Governmental Entity or third party imposing any such environmental liability.

(r) Risk Management Instruments. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, all derivative instruments, including, swaps, caps, floors and option agreements, whether entered into for the Company's own account, or for the account of one or more of the Company Subsidiaries or its or their customers, were entered into (i) only in the ordinary course of business, (ii) in accordance with prudent practices and in all material respects with all applicable laws, rules, regulations and regulatory policies and (iii) with counterparties believed to be financially responsible at the time; and each of such instruments constitutes the valid and legally binding obligation of the Company or one of the Company Subsidiaries, enforceable in accordance with its terms, except as may be limited by the Bankruptcy Exceptions. Neither the Company or the Company Subsidiaries, nor, to the knowledge of the Company, any other party thereto, is in breach of any of its obligations under any such agreement or arrangement other than such breaches that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(s) Agreements with Regulatory Agencies. Except as set forth on Schedule E, neither the Company nor any Company Subsidiary is subject to any material cease-and-desist or other similar order or enforcement action issued by, or is a party to any material written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any capital directive by, or since December 31, 2006, has adopted any board resolutions at the request of, any Governmental Entity (other than the Appropriate Federal Banking Agencies with jurisdiction over the Company and the Company Subsidiaries) that currently restricts in any material respect the conduct of its business or that in any material manner relates to its capital adequacy, its liquidity and funding policies and practices, its ability to pay dividends, its credit, risk management or compliance policies or procedures, its internal controls, its management or its operations or business (each item in this sentence, a "*Regulatory Agreement*"), nor has the Company or any Company Subsidiary been advised since December 31, 2006 by any such Governmental Entity that it is considering issuing, initiating, ordering, or requesting any such Regulatory Agreement. The Company and each Company Subsidiary are in compliance in all material respects with each Regulatory Agreement to which it is party or subject, and neither the Company nor any Company Subsidiary has received any notice from any Governmental Entity indicating that either the Company or any Company Subsidiary is not in compliance in all material respects with any such Regulatory Agreement. "*Appropriate Federal Banking Agency*" means the "appropriate Federal banking agency" with respect to the Company or such Company Subsidiaries, as applicable, as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)).

(t) Insurance. The Company and the Company Subsidiaries are insured with reputable insurers against such risks and in such amounts as the management of the Company reasonably has determined to be prudent and consistent with industry practice. The Company and the Company Subsidiaries are in material compliance with their insurance policies and are not in default under any of the material terms thereof, each such policy is outstanding and in full force and effect, all premiums and other payments due under any material policy have been paid, and all claims thereunder have been filed in due and timely fashion, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(u) Intellectual Property. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (i) the Company and each Company Subsidiary owns or otherwise has the right to use, all intellectual property rights, including all trademarks, trade dress, trade names, service marks, domain names, patents, inventions, trade secrets, know-how, works of authorship and copyrights therein, that are used in the conduct of their existing businesses and all rights relating to the plans, design and specifications of any of its branch facilities ("*Proprietary Rights*") free and clear of all liens and any claims of ownership by current or former employees, contractors, designers or others and (ii) neither the Company nor any of the Company Subsidiaries is materially infringing, diluting, misappropriating or violating, nor has the Company or any of the Company Subsidiaries received any written (or, to the knowledge of the Company, oral) communications alleging that any of them has materially infringed, diluted, misappropriated or violated, any of the Proprietary Rights owned by any other person. Except as would not, individually or in the aggregate, reasonably be

expected to have a Company Material Adverse Effect, to the Company's knowledge, no other person is infringing, diluting, misappropriating or violating, nor has the Company or any of the Company Subsidiaries sent any written communications since January 1, 2006 alleging that any person has infringed, diluted, misappropriated or violated, any of the Proprietary Rights owned by the Company and the Company Subsidiaries.

(v) Brokers and Finders. No broker, finder or investment banker is entitled to any financial advisory, brokerage, finder's or other fee or commission in connection with this Agreement or the Warrant or the transactions contemplated hereby or thereby based upon arrangements made by or on behalf of the Company or any Company Subsidiary for which the Investor could have any liability.

### Article III Covenants

3.1 Commercially Reasonable Efforts. Subject to the terms and conditions of this Agreement, each of the parties will use its commercially reasonable efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or desirable, or advisable under applicable laws, so as to permit consummation of the Purchase as promptly as practicable and otherwise to enable consummation of the transactions contemplated hereby and shall use commercially reasonable efforts to cooperate with the other party to that end.

3.2 Expenses. Unless otherwise provided in this Agreement or the Warrant, each of the parties hereto will bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated under this Agreement and the Warrant, including fees and expenses of its own financial or other consultants, investment bankers, accountants and counsel.

#### 3.3 Sufficiency of Authorized Warrant Preferred Stock; Exchange Listing.

(a) During the period from the Closing Date until the date on which the Warrant has been fully exercised, the Company shall at all times have reserved for issuance, free of preemptive or similar rights, a sufficient number of authorized and unissued Warrant Shares to effectuate such exercise.

(b) If the Company lists its Common Stock on any national securities exchange, the Company shall, if requested by the Investor, promptly use its reasonable best efforts to cause the Preferred Shares and Warrant Shares to be approved for listing on a national securities exchange as promptly as practicable following such request.

3.4 Certain Notifications Until Closing. From the Signing Date until the Closing, the Company shall promptly notify the Investor of (i) any fact, event or circumstance of which it is aware and which would reasonably be expected to cause any representation or warranty of the Company contained in this Agreement to be untrue or inaccurate in any material respect or to

cause any covenant or agreement of the Company contained in this Agreement not to be complied with or satisfied in any material respect and (ii) except as Previously Disclosed, any fact, circumstance, event, change, occurrence, condition or development of which the Company is aware and which, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect; *provided, however*, that delivery of any notice pursuant to this Section 3.4 shall not limit or affect any rights of or remedies available to the Investor; *provided, further*, that a failure to comply with this Section 3.4 shall not constitute a breach of this Agreement or the failure of any condition set forth in Section 1.2 to be satisfied unless the underlying Company Material Adverse Effect or material breach would independently result in the failure of a condition set forth in Section 1.2 to be satisfied.

### 3.5 Access, Information and Confidentiality.

(a) From the Signing Date until the date when the Investor holds an amount of Preferred Shares having an aggregate liquidation value of less than 10% of the Purchase Price, the Company will permit the Investor and its agents, consultants, contractors and advisors (x) acting through the Appropriate Federal Banking Agency, or otherwise to the extent necessary to evaluate, manage, or transfer its investment in the Company, to examine the corporate books and make copies thereof and to discuss the affairs, finances and accounts of the Company and the Company Subsidiaries with the principal officers of the Company, all upon reasonable notice and at such reasonable times and as often as the Investor may reasonably request and (y) to review any information material to the Investor's investment in the Company provided by the Company to its Appropriate Federal Banking Agency. Any investigation pursuant to this Section 3.5 shall be conducted during normal business hours and in such manner as not to interfere unreasonably with the conduct of the business of the Company, and nothing herein shall require the Company or any Company Subsidiary to disclose any information to the Investor to the extent (i) prohibited by applicable law or regulation, or (ii) that such disclosure would reasonably be expected to cause a violation of any agreement to which the Company or any Company Subsidiary is a party or would cause a risk of a loss of privilege to the Company or any Company Subsidiary (*provided* that the Company shall use commercially reasonable efforts to make appropriate substitute disclosure arrangements under circumstances where the restrictions in this clause (ii) apply).

(b) From the Signing Date until the date on which all of the Preferred Shares and Warrant Shares have been redeemed in whole, the Company will deliver, or will cause to be delivered, to the Investor:

(i) as soon as available after the end of each fiscal year of the Company, and in any event within 90 days thereafter, a consolidated balance sheet of the Company as of the end of such fiscal year, and consolidated statements of income, retained earnings and cash flows of the Company for such year, in each case prepared in accordance with GAAP and setting forth in each case in comparative form the figures for the previous fiscal year of the Company, and which shall be audited to the extent audited financial statements are available; and



(ii) as soon as available after the end of the first, second and third quarterly periods in each fiscal year of the Company, a copy of any quarterly reports provided to other stockholders of the Company or Company management.

(c) The Investor will use reasonable best efforts to hold, and will use reasonable best efforts to cause its agents, consultants, contractors and advisors to hold, in confidence all non-public records, books, contracts, instruments, computer data and other data and information (collectively, "Information") concerning the Company furnished or made available to it by the Company or its representatives pursuant to this Agreement (except to the extent that such information can be shown to have been (i) previously known by such party on a non-confidential basis, (ii) in the public domain through no fault of such party or (iii) later lawfully acquired from other sources by the party to which it was furnished (and without violation of any other confidentiality obligation)); *provided* that nothing herein shall prevent the Investor from disclosing any Information to the extent required by applicable laws or regulations or by any subpoena or similar legal process.

(d) The Investor's information rights pursuant to Section 3.5(b) may be assigned by the Investor to a transferee or assignee of the Purchased Securities or the Warrant Shares or with a liquidation preference or, in the case of the Warrant, the liquidation preference of the underlying shares of Warrant Preferred Stock, no less than an amount equal to 2% of the initial aggregate liquidation preference of the Preferred Shares.

#### Article IV Additional Agreements

4.1 Purchase for Investment. The Investor acknowledges that the Purchased Securities and the Warrant Shares have not been registered under the Securities Act or under any state securities laws. The Investor (a) is acquiring the Purchased Securities pursuant to an exemption from registration under the Securities Act solely for investment with no present intention to distribute them to any person in violation of the Securities Act or any applicable U.S. state securities laws, (b) will not sell or otherwise dispose of any of the Purchased Securities or the Warrant Shares, except in compliance with the registration requirements or exemption provisions of the Securities Act and any applicable U.S. state securities laws, and (c) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of the Purchase and of making an informed investment decision.

4.2 Legends.

(a) The Investor agrees that all certificates or other instruments representing the Warrant will bear a legend substantially to the following effect:

"THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD

OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.

THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SECURITIES PURCHASE AGREEMENT BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID."

(b) In addition, the Investor agrees that all certificates or other instruments representing the Preferred Shares and the Warrant Shares will bear a legend substantially to the following effect:

"THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE NOT SAVINGS ACCOUNTS, DEPOSITS OR OTHER OBLIGATIONS OF A BANK AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY.

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER

TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SECURITIES PURCHASE AGREEMENT BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.”

(c) In the event that any Purchased Securities or Warrant Shares (i) become registered under the Securities Act or (ii) are eligible to be transferred without restriction in accordance with Rule 144 or another exemption from registration under the Securities Act (other than Rule 144A), the Company shall issue new certificates or other instruments representing such Purchased Securities or Warrant Shares, which shall not contain the applicable legends in Sections 4.2(a) and (b) above; *provided* that the Investor surrenders to the Company the previously issued certificates or other instruments.

4.3 Certain Transactions. The Company will not merge or consolidate with, or sell, transfer or lease all or substantially all of its property or assets to, any other party unless the successor, transferee or lessee party (or its ultimate parent entity), as the case may be (if not the Company), expressly assumes the due and punctual performance and observance of each and every covenant, agreement and condition of this Agreement to be performed and observed by the Company.

4.4 Transfer of Purchased Securities and Warrant Shares; Restrictions on Exercise of the Warrant. Subject to compliance with applicable securities laws, the Investor shall be permitted to transfer, sell, assign or otherwise dispose of (“*Transfer*”) all or a portion of the Purchased Securities or Warrant Shares at any time, and the Company shall take all steps as may be reasonably requested by the Investor to facilitate the Transfer of the Purchased Securities and the Warrant Shares; *provided* that the Investor shall not Transfer any Purchased Securities or Warrant Shares if such transfer would require the Company to be subject to the periodic reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (the “*Exchange Act*”). In furtherance of the foregoing, the Company shall provide reasonable cooperation to facilitate any Transfers of the Purchased Securities or Warrant Shares, including, as is reasonable under the circumstances, by furnishing such information concerning the Company and its business as a proposed transferee may reasonably request (including such information as is required by Section 4.5(k)) and making management of the Company

reasonably available to respond to questions of a proposed transferee in accordance with customary practice, subject in all cases to the proposed transferee agreeing to a customary confidentiality agreement.

4.5 Registration Rights.

(a) Unless and until the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company shall have no obligation to comply with the provisions of this Section 4.5 (other than Section 4.5(b)(iv)-(vi)); *provided* that the Company covenants and agrees that it shall comply with this Section 4.5 as soon as practicable after the date that it becomes subject to such reporting requirements.

(b) Registration.

(i) Subject to the terms and conditions of this Agreement, the Company covenants and agrees that as promptly as practicable after the date that the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (and in any event no later than 30 days thereafter), the Company shall prepare and file with the SEC a Shelf Registration Statement covering all Registrable Securities (or otherwise designate an existing Shelf Registration Statement filed with the SEC to cover the Registrable Securities), and, to the extent the Shelf Registration Statement has not theretofore been declared effective or is not automatically effective upon such filing, the Company shall use reasonable best efforts to cause such Shelf Registration Statement to be declared or become effective and to keep such Shelf Registration Statement continuously effective and in compliance with the Securities Act and usable for resale of such Registrable Securities for a period from the date of its initial effectiveness until such time as there are no Registrable Securities remaining (including by refiling such Shelf Registration Statement (or a new Shelf Registration Statement) if the initial Shelf Registration Statement expires). Notwithstanding the foregoing, if the Company is not eligible to file a registration statement on Form S-3, then the Company shall not be obligated to file a Shelf Registration Statement unless and until requested to do so in writing by the Investor.

(ii) Any registration pursuant to Section 4.5(b)(i) shall be effected by means of a shelf registration on an appropriate form under Rule 415 under the Securities Act (a "*Shelf Registration Statement*"). If the Investor or any other Holder intends to distribute any Registrable Securities by means of an underwritten offering it shall promptly so advise the Company and the Company shall take all reasonable steps to facilitate such distribution, including the actions required pursuant to Section 4.5(d); *provided* that the Company shall not be required to facilitate an underwritten offering of Registrable Securities unless the expected gross proceeds from such offering exceed (i) 2% of the initial aggregate liquidation preference of the Preferred Shares if such initial aggregate liquidation preference is less than \$2 billion and (ii) \$200 million if the initial aggregate liquidation preference of the Preferred Shares is equal to or greater than \$2 billion. The lead underwriters in any such distribution shall be selected by the Holders of a majority

of the Registrable Securities to be distributed; *provided* that to the extent appropriate and permitted under applicable law, such Holders shall consider the qualifications of any broker-dealer Affiliate of the Company in selecting the lead underwriters in any such distribution.

(iii) The Company shall not be required to effect a registration (including a resale of Registrable Securities from an effective Shelf Registration Statement) or an underwritten offering pursuant to Section 4.5(b): (A) with respect to securities that are not Registrable Securities; or (B) if the Company has notified the Investor and all other Holders that in the good faith judgment of the Board of Directors, it would be materially detrimental to the Company or its securityholders for such registration or underwritten offering to be effected at such time, in which event the Company shall have the right to defer such registration for a period of not more than 45 days after receipt of the request of the Investor or any other Holder; *provided* that such right to delay a registration or underwritten offering shall be exercised by the Company (1) only if the Company has generally exercised (or is concurrently exercising) similar black-out rights against holders of similar securities that have registration rights and (2) not more than three times in any 12-month period and not more than 90 days in the aggregate in any 12-month period.

(iv) If during any period when an effective Shelf Registration Statement is not available, the Company proposes to register any of its equity securities, other than a registration pursuant to Section 4.5(b)(i) or a Special Registration, and the registration form to be filed may be used for the registration or qualification for distribution of Registrable Securities, the Company will give prompt written notice to the Investor and all other Holders of its intention to effect such a registration (but in no event less than ten days prior to the anticipated filing date) and will include in such registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein within ten business days after the date of the Company's notice (a "Piggyback Registration"). Any such person that has made such a written request may withdraw its Registrable Securities from such Piggyback Registration by giving written notice to the Company and the managing underwriter, if any, on or before the fifth business day prior to the planned effective date of such Piggyback Registration. The Company may terminate or withdraw any registration under this Section 4.5(b)(iv) prior to the effectiveness of such registration, whether or not Investor or any other Holders have elected to include Registrable Securities in such registration.

(v) If the registration referred to in Section 4.5(b)(iv) is proposed to be underwritten, the Company will so advise Investor and all other Holders as a part of the written notice given pursuant to Section 4.5(b)(iv). In such event, the right of Investor and all other Holders to registration pursuant to Section 4.5(b) will be conditioned upon such persons' participation in such underwriting and the inclusion of such person's Registrable Securities in the underwriting if such securities are of the same class of securities as the securities to be offered in the underwritten offering, and each such person will (together with the Company and the other persons distributing their securities through such underwriting) enter into an underwriting agreement in customary form with

the underwriter or underwriters selected for such underwriting by the Company; *provided* that the Investor (as opposed to other Holders) shall not be required to indemnify any person in connection with any registration. If any participating person disapproves of the terms of the underwriting, such person may elect to withdraw therefrom by written notice to the Company, the managing underwriters and the Investor (if the Investor is participating in the underwriting).

(vi) If either (x) the Company grants "piggyback" registration rights to one or more third parties to include their securities in an underwritten offering under the Shelf Registration Statement pursuant to Section 4.5(b)(ii) or (y) a Piggyback Registration under Section 4.5(b)(iv) relates to an underwritten offering on behalf of the Company, and in either case the managing underwriters advise the Company that in their reasonable opinion the number of securities requested to be included in such offering exceeds the number which can be sold without adversely affecting the marketability of such offering (including an adverse effect on the per share offering price), the Company will include in such offering only such number of securities that in the reasonable opinion of such managing underwriters can be sold without adversely affecting the marketability of the offering (including an adverse effect on the per share offering price), which securities will be so included in the following order of priority: (A) first, in the case of a Piggyback Registration under Section 4.5(b)(iv), the securities the Company proposes to sell, (B) then the Registrable Securities of the Investor and all other Holders who have requested inclusion of Registrable Securities pursuant to Section 4.5(b)(ii) or Section 4.5(b)(iv), as applicable, *pro rata* on the basis of the aggregate number of such securities or shares owned by each such person and (C) lastly, any other securities of the Company that have been requested to be so included, subject to the terms of this Agreement; *provided, however,* that if the Company has, prior to the Signing Date, entered into an agreement with respect to its securities that is inconsistent with the order of priority contemplated hereby then it shall apply the order of priority in such conflicting agreement to the extent that it would otherwise result in a breach under such agreement.

(c) Expenses of Registration. All Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by the Company. All Selling Expenses incurred in connection with any registrations hereunder shall be borne by the holders of the securities so registered *pro rata* on the basis of the aggregate offering or sale price of the securities so registered.

(d) Obligations of the Company. Whenever required to effect the registration of any Registrable Securities or facilitate the distribution of Registrable Securities pursuant to an effective Shelf Registration Statement, the Company shall, as expeditiously as reasonably practicable:

(i) Prepare and file with the SEC a prospectus supplement or post-effective amendment with respect to a proposed offering of Registrable Securities pursuant to an effective registration statement, subject to Section 4.5(d), keep such registration

statement effective and keep such prospectus supplement current until the securities described therein are no longer Registrable Securities.

(ii) Prepare and file with the SEC such amendments and supplements to the applicable registration statement and the prospectus or prospectus supplement used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(iii) Furnish to the Holders and any underwriters such number of copies of the applicable registration statement and each such amendment and supplement thereto (including in each case all exhibits) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned or to be distributed by them.

(iv) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders or any managing underwriter(s), to keep such registration or qualification in effect for so long as such registration statement remains in effect, and to take any other action which may be reasonably necessary to enable such seller to consummate the disposition in such jurisdictions of the securities owned by such Holder; *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(v) Notify each Holder of Registrable Securities at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the applicable prospectus, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing.

(vi) Give written notice to the Holders:

(A) when any registration statement filed pursuant to Section 4.5(a) or any amendment thereto has been filed with the SEC (except for any amendment effected by the filing of a document with the SEC pursuant to the Exchange Act) and when such registration statement or any post-effective amendment thereto has become effective;

(B) of any request by the SEC for amendments or supplements to any registration statement or the prospectus included therein or for additional information;

(C) of the issuance by the SEC of any stop order suspending the effectiveness of any registration statement or the initiation of any proceedings for that purpose;

(D) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the applicable Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(E) of the happening of any event that requires the Company to make changes in any effective registration statement or the prospectus related to the registration statement in order to make the statements therein not misleading (which notice shall be accompanied by an instruction to suspend the use of the prospectus until the requisite changes have been made); and

(F) if at any time the representations and warranties of the Company contained in any underwriting agreement contemplated by Section 4.5(d)(x) cease to be true and correct.

(vii) Use its reasonable best efforts to prevent the issuance or obtain the withdrawal of any order suspending the effectiveness of any registration statement referred to in Section 4.5(d)(vi)(C) at the earliest practicable time.

(viii) Upon the occurrence of any event contemplated by Section 4.5(d)(v) or 4.5(d)(vi)(E), promptly prepare a post-effective amendment to such registration statement or a supplement to the related prospectus or file any other required document so that, as thereafter delivered to the Holders and any underwriters, the prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with Section 4.5(d)(vi)(E) to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Holders and any underwriters shall suspend use of such prospectus and use their reasonable best efforts to return to the Company all copies of such prospectus (at the Company's expense) other than permanent file copies then in such Holders' or underwriters' possession. The total number of days that any such suspension may be in effect in any 12-month period shall not exceed 90 days.

(ix) Use reasonable best efforts to procure the cooperation of the Company's transfer agent in settling any offering or sale of Registrable Securities, including with respect to the transfer of physical stock certificates into book-entry form in accordance with any procedures reasonably requested by the Holders or any managing underwriter(s).

(x) If an underwritten offering is requested pursuant to Section 4.5(b)(ii), enter into an underwriting agreement in customary form, scope and substance and take all



such other actions reasonably requested by the Holders of a majority of the Registrable Securities being sold in connection therewith or by the managing underwriter(s), if any, to expedite or facilitate the underwritten disposition of such Registrable Securities, and in connection therewith in any underwritten offering (including making members of management and executives of the Company available to participate in "road shows", similar sales events and other marketing activities), (A) make such representations and warranties to the Holders that are selling stockholders and the managing underwriter(s), if any, with respect to the business of the Company and its subsidiaries, and the Shelf Registration Statement, prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, in customary form, substance and scope, and, if true, confirm the same if and when requested, (B) use its reasonable best efforts to furnish the underwriters with opinions of counsel to the Company, addressed to the managing underwriter(s), if any, covering the matters customarily covered in such opinions requested in underwritten offerings, (C) use its reasonable best efforts to obtain "cold comfort" letters from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any business acquired by the Company for which financial statements and financial data are included in the Shelf Registration Statement) who have certified the financial statements included in such Shelf Registration Statement, addressed to each of the managing underwriter(s), if any, such letters to be in customary form and covering matters of the type customarily covered in "cold comfort" letters, (D) if an underwriting agreement is entered into, the same shall contain indemnification provisions and procedures customary in underwritten offerings (provided that the Investor shall not be obligated to provide any indemnity), and (E) deliver such documents and certificates as may be reasonably requested by the Holders of a majority of the Registrable Securities being sold in connection therewith, their counsel and the managing underwriter(s), if any, to evidence the continued validity of the representations and warranties made pursuant to clause (i) above and to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company.

(xi) Make available for inspection by a representative of Holders that are selling stockholders, the managing underwriter(s), if any, and any attorneys or accountants retained by such Holders or managing underwriter(s), at the offices where normally kept, during reasonable business hours, financial and other records, pertinent corporate documents and properties of the Company, and cause the officers, directors and employees of the Company to supply all information in each case reasonably requested (and of the type customarily provided in connection with due diligence conducted in connection with a registered public offering of securities) by any such representative, managing underwriter(s), attorney or accountant in connection with such Shelf Registration Statement.

(xii) Use reasonable best efforts to cause all such Registrable Securities to be listed on each national securities exchange on which similar securities issued by the Company are then listed or, if no similar securities issued by the Company are then listed on any national securities exchange, use its reasonable best efforts to cause all such

Registrable Securities to be listed on such securities exchange as the Investor may designate.

(xiii) If requested by Holders of a majority of the Registrable Securities being registered and/or sold in connection therewith, or the managing underwriter(s), if any, promptly include in a prospectus supplement or amendment such information as the Holders of a majority of the Registrable Securities being registered and/or sold in connection therewith or managing underwriter(s), if any, may reasonably request in order to permit the intended method of distribution of such securities and make all required filings of such prospectus supplement or such amendment as soon as practicable after the Company has received such request.

(xiv) Timely provide to its security holders earnings statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

(e) Suspension of Sales. Upon receipt of written notice from the Company that a registration statement, prospectus or prospectus supplement contains or may contain an untrue statement of a material fact or omits or may omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that circumstances exist that make inadvisable use of such registration statement, prospectus or prospectus supplement, the Investor and each Holder of Registrable Securities shall forthwith discontinue disposition of Registrable Securities until the Investor and/or Holder has received copies of a supplemented or amended prospectus or prospectus supplement, or until the Investor and/or such Holder is advised in writing by the Company that the use of the prospectus and, if applicable, prospectus supplement may be resumed, and, if so directed by the Company, the Investor and/or such Holder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in the Investor and/or such Holder's possession, of the prospectus and, if applicable, prospectus supplement covering such Registrable Securities current at the time of receipt of such notice. The total number of days that any such suspension may be in effect in any 12-month period shall not exceed 90 days.

(f) Termination of Registration Rights. A Holder's registration rights as to any securities held by such Holder (and its Affiliates, partners, members and former members) shall not be available unless such securities are Registrable Securities.

(g) Furnishing Information.

(i) Neither the Investor nor any Holder shall use any free writing prospectus (as defined in Rule 405) in connection with the sale of Registrable Securities without the prior written consent of the Company.

(ii) It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 4.5(d) that Investor and/or the selling Holders and the underwriters, if any, shall furnish to the Company such information regarding themselves, the Registrable Securities held by them and the intended method of

disposition of such securities as shall be required to effect the registered offering of their Registrable Securities.

(h) Indemnification.

(i) The Company agrees to indemnify each Holder and, if a Holder is a person other than an individual, such Holder's officers, directors, employees, agents, representatives and Affiliates, and each Person, if any, that controls a Holder within the meaning of the Securities Act (each, an "Indemnitee"), against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals incurred in connection with investigating, defending, settling, compromising or paying any such losses, claims, damages, actions, liabilities, costs and expenses), joint or several, arising out of or based upon any untrue statement or alleged untrue statement of material fact contained in any registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or any documents incorporated therein by reference or contained in any free writing prospectus (as such term is defined in Rule 405) prepared by the Company or authorized by it in writing for use by such Holder (or any amendment or supplement thereto); or any omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided*, that the Company shall not be liable to such Indemnitee in any such case to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon (A) an untrue statement or omission made in such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto or contained in any free writing prospectus (as such term is defined in Rule 405) prepared by the Company or authorized by it in writing for use by such Holder (or any amendment or supplement thereto), in reliance upon and in conformity with information regarding such Indemnitee or its plan of distribution or ownership interests which was furnished in writing to the Company by such Indemnitee for use in connection with such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto, or (B) offers or sales effected by or on behalf of such Indemnitee "by means of" (as defined in Rule 159A) a "free writing prospectus" (as defined in Rule 405) that was not authorized in writing by the Company.

(ii) If the indemnification provided for in Section 4.5(h)(i) is unavailable to an Indemnitee with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to therein or is insufficient to hold the Indemnitee harmless as contemplated therein, then the Company, in lieu of indemnifying such Indemnitee, shall contribute to the amount paid or payable by such Indemnitee as a result of such losses, claims, damages, actions, liabilities, costs or expenses in such proportion as is appropriate to reflect the relative fault of the Indemnitee, on the one hand, and the Company, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, actions, liabilities, costs or expenses as well as any other relevant

equitable considerations. The relative fault of the Company, on the one hand, and of the Indemnitee, on the other hand, shall be determined by reference to, among other factors, whether the untrue statement of a material fact or omission to state a material fact relates to information supplied by the Company or by the Indemnitee and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; the Company and each Holder agree that it would not be just and equitable if contribution pursuant to this Section 4.5(h)(ii) were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 4.5(h)(i). No Indemnitee guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from the Company if the Company was not guilty of such fraudulent misrepresentation.

(i) Assignment of Registration Rights. The rights of the Investor to registration of Registrable Securities pursuant to Section 4.5(b) may be assigned by the Investor to a transferee or assignee of Registrable Securities with a liquidation preference or, in the case of the Warrant, the liquidation preference of the underlying shares of Warrant Preferred Stock, no less than an amount equal to (i) 2% of the initial aggregate liquidation preference of the Preferred Shares if such initial aggregate liquidation preference is less than \$2 billion and (ii) \$200 million if the initial aggregate liquidation preference of the Preferred Shares is equal to or greater than \$2 billion; *provided, however*, the transferor shall, within ten days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the number and type of Registrable Securities that are being assigned.

(j) Clear Market. With respect to any underwritten offering of Registrable Securities by the Investor or other Holders pursuant to this Section 4.5, the Company agrees not to effect (other than pursuant to such registration or pursuant to a Special Registration) any public sale or distribution, or to file any Shelf Registration Statement (other than such registration or a Special Registration) covering any preferred stock of the Company or any securities convertible into or exchangeable or exercisable for preferred stock of the Company, during the period not to exceed ten days prior and 60 days following the effective date of such offering or such longer period up to 90 days as may be requested by the managing underwriter for such underwritten offering. The Company also agrees to cause such of its directors and senior executive officers to execute and deliver customary lock-up agreements in such form and for such time period up to 90 days as may be requested by the managing underwriter. "*Special Registration*" means the registration of (A) equity securities and/or options or other rights in respect thereof solely registered on Form S-4 or Form S-8 (or successor form) or (B) shares of equity securities and/or options or other rights in respect thereof to be offered to directors, members of management, employees, consultants, customers, lenders or vendors of the Company or Company Subsidiaries or in connection with dividend reinvestment plans.

(k) Rule 144; Rule 144A. With a view to making available to the Investor and Holders the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its reasonable best efforts to:

(i) make and keep public information available, as those terms are understood and defined in Rule 144(c)(1) or any similar or analogous rule promulgated under the Securities Act, at all times after the Signing Date;

(ii) (A) file with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act, and (B) if at any time the Company is not required to file such reports, make available, upon the request of any Holder, such information necessary to permit sales pursuant to Rule 144A (including the information required by Rule 144A(d)(4) under the Securities Act);

(iii) so long as the Investor or a Holder owns any Registrable Securities, furnish to the Investor or such Holder forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of Rule 144 under the Securities Act, and of the Exchange Act; a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as the Investor or Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities to the public without registration; and

(iv) take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act.

(l) As used in this Section 4.5, the following terms shall have the following respective meanings:

(i) "*Holder*" means the Investor and any other holder of Registrable Securities to whom the registration rights conferred by this Agreement have been transferred in compliance with Section 4.5(h) hereof.

(ii) "*Holders' Counsel*" means one counsel for the selling Holders chosen by Holders holding a majority interest in the Registrable Securities being registered.

(iii) "*Register*," "*registered*," and "*registration*" shall refer to a registration effected by preparing and (A) filing a registration statement or amendment thereto in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of effectiveness of such registration statement or amendment thereto or (B) filing a prospectus and/or prospectus supplement in respect of an appropriate effective registration statement on Form S-3.

(iv) "*Registrable Securities*" means (A) all Preferred Shares, (B) the Warrant (subject to Section 4.5(q)) and (C) any equity securities issued or issuable directly or indirectly with respect to the securities referred to in the foregoing clauses (A) or (B) by way of conversion, exercise or exchange thereof, including the Warrant Shares, or share dividend or share split or in connection with a combination of shares, recapitalization, reclassification, merger, amalgamation, arrangement, consolidation or other

reorganization, *provided* that, once issued, such securities will not be Registrable Securities when (1) they are sold pursuant to an effective registration statement under the Securities Act, (2) except as provided below in Section 4.5(p), they may be sold pursuant to Rule 144 without limitation thereunder on volume or manner of sale, (3) they shall have ceased to be outstanding or (4) they have been sold in a private transaction in which the transferor's rights under this Agreement are not assigned to the transferee of the securities. No Registrable Securities may be registered under more than one registration statement at any one time.

(v) "*Registration Expenses*" mean all expenses incurred by the Company in effecting any registration pursuant to this Agreement (whether or not any registration or prospectus becomes effective or final) or otherwise complying with its obligations under this Section 4.5, including all registration, filing and listing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses, expenses incurred in connection with any "road show", the reasonable fees and disbursements of Holders' Counsel, and expenses of the Company's independent accountants in connection with any regular or special reviews or audits incident to or required by any such registration, but shall not include Selling Expenses.

(vi) "*Rule 144*", "*Rule 144A*", "*Rule 159A*", "*Rule 405*" and "*Rule 415*" mean, in each case, such rule promulgated under the Securities Act (or any successor provision), as the same shall be amended from time to time.

(vii) "*Selling Expenses*" mean all discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for any Holder (other than the fees and disbursements of Holders' Counsel included in Registration Expenses).

(m) At any time, any holder of Securities (including any Holder) may elect to forfeit its rights set forth in this Section 4.5 from that date forward; *provided*, that a Holder forfeiting such rights shall nonetheless be entitled to participate under Section 4.5(b)(iv) – (vi) in any Pending Underwritten Offering to the same extent that such Holder would have been entitled to if the holder had not withdrawn; and *provided, further*, that no such forfeiture shall terminate a Holder's rights or obligations under Section 4.5(g) with respect to any prior registration or Pending Underwritten Offering. "*Pending Underwritten Offering*" means, with respect to any Holder forfeiting its rights pursuant to this Section 4.5(m), any underwritten offering of Registrable Securities in which such Holder has advised the Company of its intent to register its Registrable Securities either pursuant to Section 4.5(b)(ii) or 4.5(b)(iv) prior to the date of such Holder's forfeiture.

(n) Specific Performance. The parties hereto acknowledge that there would be no adequate remedy at law if the Company fails to perform any of its obligations under this Section 4.5 and that the Investor and the Holders from time to time may be irreparably harmed by any such failure, and accordingly agree that the Investor and such Holders, in addition to any other remedy to which they may be entitled at law or in equity, to the fullest extent permitted and

enforceable under applicable law shall be entitled to compel specific performance of the obligations of the Company under this Section 4.5 in accordance with the terms and conditions of this Section 4.5.

(o) No Inconsistent Agreements. The Company shall not, on or after the Signing Date, enter into any agreement with respect to its securities that may impair the rights granted to the Investor and the Holders under this Section 4.5 or that otherwise conflicts with the provisions hereof in any manner that may impair the rights granted to the Investor and the Holders under this Section 4.5. In the event the Company has, prior to the Signing Date, entered into any agreement with respect to its securities that is inconsistent with the rights granted to the Investor and the Holders under this Section 4.5 (including agreements that are inconsistent with the order of priority contemplated by Section 4.5(b)(vi)) or that may otherwise conflict with the provisions hereof, the Company shall use its reasonable best efforts to amend such agreements to ensure they are consistent with the provisions of this Section 4.5.

(p) Certain Offerings by the Investor. In the case of any securities held by the Investor that cease to be Registrable Securities solely by reason of clause (2) in the definition of "Registrable Securities," the provisions of Sections 4.5(b)(ii), clauses (iv), (ix) and (x)-(xii) of Section 4.5(d), Section 4.5(h) and Section 4.5(j) shall continue to apply until such securities otherwise cease to be Registrable Securities. In any such case, an "underwritten" offering or other disposition shall include any distribution of such securities on behalf of the Investor by one or more broker-dealers, an "underwriting agreement" shall include any purchase agreement entered into by such broker-dealers, and any "registration statement" or "prospectus" shall include any offering document approved by the Company and used in connection with such distribution.

(q) Registered Sales of the Warrant. The Holders agree to sell the Warrant or any portion thereof under the Shelf Registration Statement only beginning 30 days after notifying the Company of any such sale, during which 30-day period the Investor and all Holders of the Warrant shall take reasonable steps to agree to revisions to the Warrant to permit a public distribution of the Warrant, including entering into a warrant agreement and appointing a warrant agent.

4.6 Depository Shares. Upon request by the Investor at any time following the Closing Date, the Company shall promptly enter into a depository arrangement, pursuant to customary agreements reasonably satisfactory to the Investor and with a depository reasonably acceptable to the Investor, pursuant to which the Preferred Shares or the Warrant Shares may be deposited and depository shares, each representing a fraction of a Preferred Share or Warrant Share, as applicable, as specified by the Investor, may be issued. From and after the execution of any such depository arrangement, and the deposit of any Preferred Shares or Warrant Shares, as applicable, pursuant thereto, the depository shares issued pursuant thereto shall be deemed "Preferred Shares", "Warrant Shares" and, as applicable, "Registrable Securities" for purposes of this Agreement.

4.7 Restriction on Dividends and Repurchases.

(a) Prior to the earlier of (x) the third anniversary of the Closing Date and (y) the date on which all of the Preferred Shares and Warrant Shares have been redeemed in whole or the Investor has transferred all of the Preferred Shares and Warrant Shares to third parties which are not Affiliates of the Investor, neither the Company nor any Company Subsidiary shall, without the consent of the Investor, declare or pay any dividend or make any distribution on capital stock or other equity securities of any kind of the Company or any Company Subsidiary (other than (i) regular quarterly cash dividends of not more than the amount of the last quarterly cash dividend per share declared or, if lower, announced to its holders of Common Stock an intention to declare, on the Common Stock prior to November 17, 2008, as adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction, (ii) dividends payable solely in shares of Common Stock, (iii) regular dividends on shares of preferred stock in accordance with the terms thereof and which are permitted under the terms of the Preferred Shares and the Warrant Shares, (iv) dividends or distributions by any wholly-owned Company Subsidiary or (v) dividends or distributions by any Company Subsidiary required pursuant to binding contractual agreements entered into prior to November 17, 2008).

(b) During the period beginning on the third anniversary of the Closing Date and ending on the earlier of (i) the tenth anniversary of the Closing Date and (ii) the date on which all of the Preferred Shares and Warrant Shares have been redeemed in whole or the Investor has transferred all of the Preferred Shares and Warrant Shares to third parties which are not Affiliates of the Investor, neither the Company nor any Company Subsidiary shall, without the consent of the Investor, (A) pay any per share dividend or distribution on capital stock or other equity securities of any kind of the Company at a per annum rate that is in excess of 103% of the aggregate per share dividends and distributions for the immediately prior fiscal year (other than regular dividends on shares of preferred stock in accordance with the terms thereof and which are permitted under the terms of the Preferred Shares and the Warrant Shares); *provided* that no increase in the aggregate amount of dividends or distributions on Common Stock shall be permitted as a result of any dividends or distributions paid in shares of Common Stock, any stock split or any similar transaction or (B) pay aggregate dividends or distributions on capital stock or other equity securities of any kind of any Company Subsidiary that is in excess of 103% of the aggregate dividends and distributions paid for the immediately prior fiscal year (other than in the case of this clause (B), (1) regular dividends on shares of preferred stock in accordance with the terms thereof and which are permitted under the terms of the Preferred Shares and the Warrant Shares, (2) dividends or distributions by any wholly-owned Company Subsidiary, (3) dividends or distributions by any Company Subsidiary required pursuant to binding contractual agreements entered into prior to November 17, 2008) or (4) dividends or distributions on newly issued shares of capital stock for cash or other property.

(c) Prior to the earlier of (x) the tenth anniversary of the Closing Date and (y) the date on which all of the Preferred Shares and Warrant Shares have been redeemed in whole or the Investor has transferred all of the Preferred Shares and Warrant Shares to third parties which are not Affiliates of the Investor, neither the Company nor any Company Subsidiary shall, without the consent of the Investor, redeem, purchase or acquire any shares of Common Stock or other capital stock or other equity securities of any kind of the Company or any Company Subsidiary, or any trust preferred securities issued by the Company or any Affiliate of the Company, other



than (i) redemptions, purchases or other acquisitions of the Preferred Shares and Warrant Shares, (ii) in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice, (iii) the acquisition by the Company or any of the Company Subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Company or any other Company Subsidiary), including as trustees or custodians, (iv) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock or trust preferred securities for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case set forth in this clause (iv), solely to the extent required pursuant to binding contractual agreements entered into prior to the Signing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock (clauses (ii) and (iii), collectively, the "Permitted Repurchases"), (v) redemptions of securities held by the Company or any wholly-owned Company Subsidiary or (vi) redemptions, purchases or other acquisitions of capital stock or other equity securities of any kind of any Company Subsidiary required pursuant to binding contractual agreements entered into prior to November 17, 2008.

(d) Until such time as the Investor ceases to own any Preferred Shares or Warrant Shares, the Company shall not repurchase any Preferred Shares or Warrant Shares from any holder thereof, whether by means of open market purchase, negotiated transaction, or otherwise, other than Permitted Repurchases, unless it offers to repurchase a ratable portion of the Preferred Shares or Warrant Shares, as the case may be, then held by the Investor on the same terms and conditions.

(e) During the period beginning on the tenth anniversary of the Closing and ending on the date on which all of the Preferred Shares and Warrant Shares have been redeemed in whole or the Investor has transferred all of the Preferred Shares and Warrant Shares to third parties which are not Affiliates of the Investor, neither the Company nor any Company Subsidiary shall, without the consent of the Investor, (i) declare or pay any dividend or make any distribution on capital stock or other equity securities of any kind of the Company or any Company Subsidiary; or (ii) redeem, purchase or acquire any shares of Common Stock or other capital stock or other equity securities of any kind of the Company or any Company Subsidiary, or any trust preferred securities issued by the Company or any Affiliate of the Company, other than (A) redemptions, purchases or other acquisitions of the Preferred Shares and Warrant Shares, (B) regular dividends on shares of preferred stock in accordance with the terms thereof and which are permitted under the terms of the Preferred Shares and the Warrant Shares, or (C) dividends or distributions by any wholly-owned Company Subsidiary.

(f) "Junior Stock" means Common Stock and any other class or series of stock of the Company the terms of which expressly provide that it ranks junior to the Preferred Shares as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Company. "Parity Stock" means any class or series of stock of the Company the terms of which do not expressly provide that such class or series will rank senior or junior to the Preferred Shares as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Company (in each case without regard to whether dividends accrue cumulatively or non-cumulatively).

4.8 Executive Compensation. Until such time as the Investor ceases to own any debt or equity securities of the Company acquired pursuant to this Agreement or the Warrant, the Company shall take all necessary action to ensure that its Benefit Plans with respect to its Senior Executive Officers comply in all respects with Section 111(b) of the EESA as implemented by any guidance or regulation thereunder that has been issued and is in effect as of the Closing Date, and shall not adopt any new Benefit Plan with respect to its Senior Executive Officers that does not comply therewith. "*Senior Executive Officers*" means the Company's "senior executive officers" as defined in subsection 111(b)(3) of the EESA and regulations issued thereunder, including the rules set forth in 31 C.F.R. Part 30.

4.9 Related Party Transactions. Until such time as the Investor ceases to own any Purchased Securities or Warrant Shares, the Company and the Company Subsidiaries shall not enter into transactions with Affiliates or related persons (within the meaning of Item 404 under the SEC's Regulation S-K) unless (i) such transactions are on terms no less favorable to the Company and the Company Subsidiaries than could be obtained from an unaffiliated third party, and (ii) have been approved by the audit committee of the Board of Directors or comparable body of independent directors of the Company.

4.10 Bank and Thrift Holding Company Status. If the Company is a Bank Holding Company or a Savings and Loan Holding Company on the Signing Date, then the Company shall maintain its status as a Bank Holding Company or Savings and Loan Holding Company, as the case may be, for as long as the Investor owns any Purchased Securities or Warrant Shares. The Company shall redeem all Purchased Securities and Warrant Shares held by the Investor prior to terminating its status as a Bank Holding Company or Savings and Loan Holding Company, as applicable. "*Bank Holding Company*" means a company registered as such with the Board of Governors of the Federal Reserve System (the "*Federal Reserve*") pursuant to 12 U.S.C. §1842 and the regulations of the Federal Reserve promulgated thereunder. "*Savings and Loan Holding Company*" means a company registered as such with the Office of Thrift Supervision pursuant to 12 U.S.C. §1467(a) and the regulations of the Office of Thrift Supervision promulgated thereunder.

4.11 Predominantly Financial. For as long as the Investor owns any Purchased Securities or Warrant Shares, the Company, to the extent it is not itself an insured depository institution, agrees to remain predominantly engaged in financial activities. A company is predominantly engaged in financial activities if the annual gross revenues derived by the company and all subsidiaries of the company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to a financial activity, under subsection (k) of Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) represent at least 85 percent of the consolidated annual gross revenues of the company.

## Article V Miscellaneous

5.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by either the Investor or the Company if the Closing shall not have occurred by the 30<sup>th</sup> calendar day following the Signing Date; *provided, however*, that in the event the Closing has not occurred by such 30<sup>th</sup> calendar day, the parties will consult in good faith to determine whether to extend the term of this Agreement, it being understood that the parties shall be required to consult only until the fifth day after such 30<sup>th</sup> calendar day and not be under any obligation to extend the term of this Agreement thereafter; *provided, further*, that the right to terminate this Agreement under this Section 5.1(a) shall not be available to any party whose breach of any representation or warranty or failure to perform any obligation under this Agreement shall have caused or resulted in the failure of the Closing to occur on or prior to such date; or

(b) by either the Investor or the Company in the event that any Governmental Entity shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable; or

(c) by the mutual written consent of the Investor and the Company.

In the event of termination of this Agreement as provided in this Section 5.1, this Agreement shall forthwith become void and there shall be no liability on the part of either party hereto except that nothing herein shall relieve either party from liability for any breach of this Agreement.

5.2 Survival of Representations and Warranties. All covenants and agreements, other than those which by their terms apply in whole or in part after the Closing, shall terminate as of the Closing. The representations and warranties of the Company made herein or in any certificates delivered in connection with the Closing shall survive the Closing without limitation.

5.3 Amendment. No amendment of any provision of this Agreement will be effective unless made in writing and signed by an officer or a duly authorized representative of each party; *provided* that the Investor may unilaterally amend any provision of this Agreement to the extent required to comply with any changes after the Signing Date in applicable federal statutes. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative of any rights or remedies provided by law.

5.4 Waiver of Conditions. The conditions to each party's obligation to consummate the Purchase are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable law. No waiver will be effective unless it is in a writing signed by a duly authorized officer of the waiving party that makes express reference to the provision or provisions subject to such waiver.

5.5 Governing Law: Submission to Jurisdiction, Etc. This Agreement will be governed by and construed in accordance with the federal law of the United States if and to

the extent such law is applicable, and otherwise in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State. Each of the parties hereto agrees (a) to submit to the exclusive jurisdiction and venue of the United States District Court for the District of Columbia and the United States Court of Federal Claims for any and all civil actions, suits or proceedings arising out of or relating to this Agreement or the Warrant or the transactions contemplated hereby or thereby, and (b) that notice may be served upon (i) the Company at the address and in the manner set forth for notices to the Company in Section 5.6 and (ii) the Investor in accordance with federal law. To the extent permitted by applicable law, each of the parties hereto hereby unconditionally waives trial by jury in any civil legal action or proceeding relating to this Agreement or the Warrant or the transactions contemplated hereby or thereby.

5.6 Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a recognized next day courier service. All notices to the Company shall be delivered as set forth in Schedule A, or pursuant to such other instruction as may be designated in writing by the Company to the Investor. All notices to the Investor shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the Investor to the Company.

If to the Investor:

United States Department of the Treasury  
1500 Pennsylvania Avenue, NW, Room 2312  
Washington, D.C. 20220  
Attention: Assistant General Counsel (Banking and Finance)  
Facsimile: (202) 622-1974

5.7 Definitions

(a) When a reference is made in this Agreement to a subsidiary of a person, the term "*subsidiary*" means any corporation, partnership, joint venture, limited liability company or other entity (x) of which such person or a subsidiary of such person is a general partner or (y) of which a majority of the voting securities or other voting interests, or a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or persons performing similar functions with respect to such entity, is directly or indirectly owned by such person and/or one or more subsidiaries thereof.

(b) The term "*Affiliate*" means, with respect to any person, any person directly or indirectly controlling, controlled by or under common control with, such other person. For purposes of this definition, "*control*" (including, with correlative meanings, the terms "*controlled by*" and "*under common control with*") when used with respect to any person, means the possession, directly or indirectly, of the power to cause the direction of management and/or

policies of such person, whether through the ownership of voting securities by contract or otherwise.

(c) The terms "*knowledge of the Company*" or "*Company's knowledge*" mean the actual knowledge after reasonable and due inquiry of the "*officers*" (as such term is defined in Rule 3b-2 under the Exchange Act, but excluding any Vice President or Secretary) of the Company.

5.8 Assignment. Neither this Agreement nor any right, remedy, obligation nor liability arising hereunder or by reason hereof shall be assignable by any party hereto without the prior written consent of the other party, and any attempt to assign any right, remedy, obligation or liability hereunder without such consent shall be void, except (a) an assignment, in the case of a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Company's stockholders (a "*Business Combination*") where such party is not the surviving entity, or a sale of substantially all of its assets, to the entity which is the survivor of such Business Combination or the purchaser in such sale and (b) as provided in Sections 3.5 and 4.5.

5.9 Severability. If any provision of this Agreement or the Warrant, or the application thereof to any person or circumstance, is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, will remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

5.10 No Third Party Beneficiaries. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person or entity other than the Company and the Investor any benefit, right or remedies, except that the provisions of Section 4.5 shall inure to the benefit of the persons referred to in that Section.

\* \* \*

ANNEX A

**FORM OF CERTIFICATE OF DESIGNATIONS FOR PREFERRED STOCK**

[SEE ATTACHED]

**FORM OF [CERTIFICATE OF DESIGNATIONS]**  
**OF**  
**FIXED RATE CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES [●]**  
**OF**  
**[●]**

[*Insert name of Issuer*], a [corporation/bank/banking association] organized and existing under the laws of the [*Insert jurisdiction of organization*] (the "Issuer"), in accordance with the provisions of Section[s] [●] of the [*Insert applicable statute*] thereof, does hereby certify:

The board of directors of the Issuer (the "Board of Directors") or an applicable committee of the Board of Directors, in accordance with the [[certificate of incorporation/articles of association] and bylaws] of the Issuer and applicable law, adopted the following resolution on [●] creating a series of [●] shares of Preferred Stock of the Issuer designated as "Fixed Rate Cumulative Perpetual Preferred Stock, Series [●]".

**RESOLVED**, that pursuant to the provisions of the [[certificate of incorporation/articles of association] and the bylaws] of the Issuer and applicable law, a series of Preferred Stock, par value \$[●] per share, of the Issuer be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

Part 1. Designation and Number of Shares. There is hereby created out of the authorized and unissued shares of preferred stock of the Issuer a series of preferred stock designated as the "Fixed Rate Cumulative Perpetual Preferred Stock, Series [●]" (the "Designated Preferred Stock"). The authorized number of shares of Designated Preferred Stock shall be [●].

Part 2. Standard Provisions. The Standard Provisions contained in Schedule A attached hereto are incorporated herein by reference in their entirety and shall be deemed to be a part of this [Certificate of Designations] to the same extent as if such provisions had been set forth in full herein.

Part 3. Definitions. The following terms are used in this [Certificate of Designations] (including the Standard Provisions in Schedule A hereto) as defined below:

(a) "Common Stock" means the common stock, par value \$[●] per share, of the Issuer.

(b) "Dividend Payment Date" means February 15, May 15, August 15 and November 15 of each year.

(c) “Junior Stock” means the Common Stock, *[Insert titles of any existing Junior Stock]* and any other class or series of stock of the Issuer the terms of which expressly provide that it ranks junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Issuer.

(d) “Liquidation Amount” means \$[1,000]<sup>1</sup> per share of Designated Preferred Stock.

(e) “Minimum Amount” means \$*[Insert \$ amount equal to 25% of the aggregate value of the Designated Preferred Stock issued on the Original Issue Date]*.

(f) “Parity Stock” means any class or series of stock of the Issuer (other than Designated Preferred Stock) the terms of which do not expressly provide that such class or series will rank senior or junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Issuer (in each case without regard to whether dividends accrue cumulatively or non-cumulatively). Without limiting the foregoing, Parity Stock shall include the Issuer’s *[Insert title(s) of existing classes or series of Parity Stock]*.

(g) “Signing Date” means *[Insert date of applicable securities purchase agreement]*.

Part. 4. Certain Voting Matters. *[To be inserted if the Charter provides for voting in proportion to liquidation preferences:* Whether the vote or consent of the holders of a plurality, majority or other portion of the shares of Designated Preferred Stock and any Voting Parity Stock has been cast or given on any matter on which the holders of shares of Designated Preferred Stock are entitled to vote shall be determined by the Issuer by reference to the specified liquidation amount of the shares voted or covered by the consent as if the Issuer were liquidated on the record date for such vote or consent, if any, or, in the absence of a record date, on the date for such vote or consent. For purposes of determining the voting rights of the holders of Designated Preferred Stock under Section 7 of the Standard Provisions forming part of this [Certificate of Designations], each holder will be entitled to one vote for each \$1,000 of liquidation preference to which such holder’s shares are entitled.] *[To be inserted if the Charter does not provide for voting in proportion to liquidation preferences:* Holders of shares of Designated Preferred Stock will be entitled to one vote for each such share on any matter on which holders of Designated Preferred Stock are entitled to vote, including any action by written consent.]

*[Remainder of Page Intentionally Left Blank]*

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<sup>1</sup> If Issuer desires to issue shares with a higher dollar amount liquidation preference, liquidation preference references will be modified accordingly. In such case (in accordance with Section 4.6 of the Securities Purchase Agreement), the issuer will be required to enter into a deposit agreement.



IN WITNESS WHEREOF, *[Insert name of Issuer]* has caused this [Certificate of Designations] to be signed by [●], its [●], this [●] day of [●].

*[Insert name of Issuer]*

By: \_\_\_\_\_

Name:

Title:

**STANDARD PROVISIONS**

Section 1. General Matters. Each share of Designated Preferred Stock shall be identical in all respects to every other share of Designated Preferred Stock. The Designated Preferred Stock shall be perpetual, subject to the provisions of Section 5 of these Standard Provisions that form a part of the Certificate of Designations. The Designated Preferred Stock shall rank equally with Parity Stock and shall rank senior to Junior Stock with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Issuer.

Section 2. Standard Definitions. As used herein with respect to Designated Preferred Stock:

(a) "Applicable Dividend Rate" means (i) during the period from the Original Issue Date to, but excluding, the first day of the first Dividend Period commencing on or after the fifth anniversary of the Original Issue Date, 5% per annum and (ii) from and after the first day of the first Dividend Period commencing on or after the fifth anniversary of the Original Issue Date, 9% per annum.

(b) "Appropriate Federal Banking Agency" means the "appropriate Federal banking agency" with respect to the Issuer as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)), or any successor provision.

(c) "Business Combination" means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Issuer's stockholders.

(d) "Business Day" means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

(e) "Bylaws" means the bylaws of the Issuer, as they may be amended from time to time.

(f) "Certificate of Designations" means the Certificate of Designations or comparable instrument relating to the Designated Preferred Stock, of which these Standard Provisions form a part, as it may be amended from time to time.

(g) "Charter" means the Issuer's certificate or articles of incorporation, articles of association, or similar organizational document.

(h) "Dividend Period" has the meaning set forth in Section 3(a).

(i) "Dividend Record Date" has the meaning set forth in Section 3(a).

(j) "Liquidation Preference" has the meaning set forth in Section 4(a).

(k) "Original Issue Date" means the date on which shares of Designated Preferred Stock are first issued.

(l) "Preferred Director" has the meaning set forth in Section 7(b).

(m) "Preferred Stock" means any and all series of preferred stock of the Issuer, including the Designated Preferred Stock.

(n) "Qualified Equity Offering" means the sale and issuance for cash by the Issuer to persons other than the Issuer or any of its subsidiaries after the Original Issue Date of shares of perpetual Preferred Stock, Common Stock or any combination of such stock, that, in each case, qualify as and may be included in Tier I capital of the Issuer at the time of issuance under the applicable risk-based capital guidelines of the Issuer's Appropriate Federal Banking Agency (other than any such sales and issuances made pursuant to agreements or arrangements entered into, or pursuant to financing plans which were publicly announced, on or prior to November 17, 2008).

(o) "Standard Provisions" mean these Standard Provisions that form a part of the Certificate of Designations relating to the Designated Preferred Stock.

(p) "Successor Preferred Stock" has the meaning set forth in Section 5(a).

(q) "Voting Parity Stock" means, with regard to any matter as to which the holders of Designated Preferred Stock are entitled to vote as specified in Sections 7(a) and 7(b) of these Standard Provisions that form a part of the Certificate of Designations, any and all series of Parity Stock upon which like voting rights have been conferred and are exercisable with respect to such matter.

### Section 3. Dividends.

(a) Rate. Holders of Designated Preferred Stock shall be entitled to receive, on each share of Designated Preferred Stock if, as and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cumulative cash dividends with respect to each Dividend Period (as defined below) at a rate per annum equal to the Applicable Dividend Rate on (i) the Liquidation Amount per share of Designated Preferred Stock and (ii) the amount of accrued and unpaid dividends for any prior Dividend Period on such share of Designated Preferred Stock, if any. Such dividends shall begin to accrue and be cumulative from the Original Issue Date, shall compound on each subsequent Dividend Payment Date (*i.e.*, no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date) and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 20 calendar days after the Original Issue Date. In the event that any Dividend Payment Date would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a Business Day and no additional dividends will accrue as a result of that postponement. The period from and including any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a "Dividend Period", provided that the initial

Dividend Period shall be the period from and including the Original Issue Date to, but excluding, the next Dividend Payment Date.

Dividends that are payable on Designated Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on Designated Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Designated Preferred Stock on any Dividend Payment Date will be payable to holders of record of Designated Preferred Stock as they appear on the stock register of the Issuer on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a "Dividend Record Date"). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Holders of Designated Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on Designated Preferred Stock as specified in this Section 3 (subject to the other provisions of the Certificate of Designations).

(b) Priority of Dividends. So long as any share of Designated Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than dividends payable solely in shares of Common Stock) or Parity Stock, subject to the immediately following paragraph in the case of Parity Stock, and no Common Stock, Junior Stock or Parity Stock shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by the Issuer or any of its subsidiaries unless all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Designated Preferred Stock on the applicable record date). The foregoing limitation shall not apply to (i) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice; (ii) the acquisition by the Issuer or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Issuer or any of its subsidiaries), including as trustees or custodians; and (iii) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the Signing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date) in full upon Designated Preferred Stock and any shares of Parity Stock, all dividends declared on Designated Preferred Stock and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared *pro rata* so that the respective amounts of such dividends declared shall bear the same ratio to each other as all accrued and unpaid dividends per share on the shares of Designated Preferred Stock (including, if applicable as provided in Section 3(a) above, dividends on such amount) and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other. If the Board of Directors or a duly authorized committee of the Board of Directors determines not to pay any dividend or a full dividend on a Dividend Payment Date, the Issuer will provide written notice to the holders of Designated Preferred Stock prior to such Dividend Payment Date.

Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and holders of Designated Preferred Stock shall not be entitled to participate in any such dividends.

#### Section 4. Liquidation Rights.

(a) Voluntary or Involuntary Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Issuer, whether voluntary or involuntary, holders of Designated Preferred Stock shall be entitled to receive for each share of Designated Preferred Stock, out of the assets of the Issuer or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Issuer, subject to the rights of any creditors of the Issuer, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Issuer ranking junior to Designated Preferred Stock as to such distribution, payment in full in an amount equal to the sum of (i) the Liquidation Amount per share and (ii) the amount of any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount), whether or not declared, to the date of payment (such amounts collectively, the "Liquidation Preference").

(b) Partial Payment. If in any distribution described in Section 4(a) above the assets of the Issuer or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Issuer ranking equally with Designated Preferred Stock as

to such distribution, holders of Designated Preferred Stock and the holders of such other stock shall share ratably in any such distribution in proportion to the full respective distributions to which they are entitled.

(c) Residual Distributions. If the Liquidation Preference has been paid in full to all holders of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Issuer ranking equally with Designated Preferred Stock as to such distribution has been paid in full, the holders of other stock of the Issuer shall be entitled to receive all remaining assets of the Issuer (or proceeds thereof) according to their respective rights and preferences.

(d) Merger, Consolidation and Sale of Assets Not Liquidation. For purposes of this Section 4, the merger or consolidation of the Issuer with any other corporation or other entity, including a merger or consolidation in which the holders of Designated Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Issuer, shall not constitute a liquidation, dissolution or winding up of the Issuer.

#### Section 5. Redemption.

(a) Optional Redemption. Except as provided below, the Designated Preferred Stock may not be redeemed prior to the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date. On or after the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date, the Issuer, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, out of funds legally available therefor, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption.

Notwithstanding the foregoing, prior to the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date, the Issuer, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption; *provided* that (x) the Issuer (or any successor by Business Combination) has received aggregate gross proceeds of not less than the Minimum Amount (plus the "Minimum Amount" as defined in the relevant certificate of designations for each other outstanding series of preferred stock of such successor that was originally issued to the United States Department of the Treasury (the "Successor Preferred Stock") in connection with the Troubled Asset Relief Program Capital Purchase Program) from one or more Qualified Equity Offerings (including Qualified Equity Offerings of such successor), and (y) the aggregate

redemption price of the Designated Preferred Stock (and any Successor Preferred Stock) redeemed pursuant to this paragraph may not exceed the aggregate net cash proceeds received by the Issuer (or any successor by Business Combination) from such Qualified Equity Offerings (including Qualified Equity Offerings of such successor).

The redemption price for any shares of Designated Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Issuer or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 3 above.

(b) No Sinking Fund. The Designated Preferred Stock will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Designated Preferred Stock will have no right to require redemption or repurchase of any shares of Designated Preferred Stock.

(c) Notice of Redemption. Notice of every redemption of shares of Designated Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Issuer. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Designated Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Designated Preferred Stock. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Designated Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Designated Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(d) Partial Redemption. In case of any redemption of part of the shares of Designated Preferred Stock at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Board of Directors or a duly authorized committee thereof may determine to be fair and equitable. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Designated Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption

have been deposited by the Issuer, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Issuer, after which time the holders of the shares so called for redemption shall look only to the Issuer for payment of the redemption price of such shares.

(f) Status of Redeemed Shares. Shares of Designated Preferred Stock that are redeemed, repurchased or otherwise acquired by the Issuer shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Designated Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Designated Preferred Stock).

Section 6. Conversion. Holders of Designated Preferred Stock shares shall have no right to exchange or convert such shares into any other securities.

Section 7. Voting Rights.

(a) General. The holders of Designated Preferred Stock shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

(b) Preferred Stock Directors. Whenever, at any time or times, dividends payable on the shares of Designated Preferred Stock have not been paid for an aggregate of six quarterly Dividend Periods or more, whether or not consecutive, the authorized number of directors of the Issuer shall automatically be increased by two and the holders of the Designated Preferred Stock shall have the right, with holders of shares of any one or more other classes or series of Voting Parity Stock outstanding at the time, voting together as a class, to elect two directors (hereinafter the "Preferred Directors" and each a "Preferred Director") to fill such newly created directorships at the Issuer's next annual meeting of stockholders (or at a special meeting called for that purpose prior to such next annual meeting) and at each subsequent annual meeting of stockholders until all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been declared and paid in full at which time such right shall terminate with respect to the Designated Preferred Stock, except as herein or by law expressly provided, subject to reversion in the event of each and every subsequent default of the character above mentioned; *provided* that it shall be a qualification for election for any Preferred Director that the election of such Preferred Director shall not cause the Issuer to violate any corporate governance requirements of any securities exchange or other trading facility on which securities of the Issuer may then be listed or traded that listed or traded companies must have a majority of independent directors. Upon any



termination of the right of the holders of shares of Designated Preferred Stock and Voting Parity Stock as a class to vote for directors as provided above, the Preferred Directors shall cease to be qualified as directors, the term of office of all Preferred Directors then in office shall terminate immediately and the authorized number of directors shall be reduced by the number of Preferred Directors elected pursuant hereto. Any Preferred Director may be removed at any time, with or without cause, and any vacancy created thereby may be filled, only by the affirmative vote of the holders a majority of the shares of Designated Preferred Stock at the time outstanding voting separately as a class together with the holders of shares of Voting Parity Stock, to the extent the voting rights of such holders described above are then exercisable. If the office of any Preferred Director becomes vacant for any reason other than removal from office as aforesaid, the remaining Preferred Director may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred.

(c) Class Voting Rights as to Particular Matters. So long as any shares of Designated Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by the Charter, the vote or consent of the holders of at least 66 2/3% of the shares of Designated Preferred Stock at the time outstanding, voting as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization of Senior Stock. Any amendment or alteration of the Certificate of Designations for the Designated Preferred Stock or the Charter to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Issuer ranking senior to Designated Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Issuer;

(ii) Amendment of Designated Preferred Stock. Any amendment, alteration or repeal of any provision of the Certificate of Designations for the Designated Preferred Stock or the Charter (including, unless no vote on such merger or consolidation is required by Section 7(c)(iii) below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) so as to adversely affect the rights, preferences, privileges or voting powers of the Designated Preferred Stock; or

(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Designated Preferred Stock, or of a merger or consolidation of the Issuer with another corporation or other entity, unless in each case (x) the shares of Designated Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Issuer is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions

thereof, of Designated Preferred Stock immediately prior to such consummation, taken as a whole;

*provided, however,* that for all purposes of this Section 7(c), any increase in the amount of the authorized Preferred Stock, including any increase in the authorized amount of Designated Preferred Stock necessary to satisfy preemptive or similar rights granted by the Issuer to other persons prior to the Signing Date, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking equally with and/or junior to Designated Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of the Issuer will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Designated Preferred Stock.

(d) Changes after Provision for Redemption. No vote or consent of the holders of Designated Preferred Stock shall be required pursuant to Section 7(c) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of the Designated Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 5 above.

(e) Procedures for Voting and Consents. The rules and procedures for calling and conducting any meeting of the holders of Designated Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Charter, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which Designated Preferred Stock is listed or traded at the time.

Section 8. Record Holders. To the fullest extent permitted by applicable law, the Issuer and the transfer agent for Designated Preferred Stock may deem and treat the record holder of any share of Designated Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Issuer nor such transfer agent shall be affected by any notice to the contrary.

Section 9. Notices. All notices or communications in respect of Designated Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Charter or Bylaws or by applicable law. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of Designated Preferred Stock in any manner permitted by such facility.

Section 10. No Preemptive Rights. No share of Designated Preferred Stock shall have any rights of preemption whatsoever as to any securities of the Issuer, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted.

Section 11. Replacement Certificates. The Issuer shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Issuer. The Issuer shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Issuer of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be reasonably required by the Issuer.

Section 12. Other Rights. The shares of Designated Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Charter or as provided by applicable law.

ANNEX B

**FORM OF CERTIFICATE OF DESIGNATIONS  
FOR WARRANT PREFERRED STOCK**

[SEE ATTACHED]

**FORM OF [CERTIFICATE OF DESIGNATIONS]**  
**OF**  
**FIXED RATE CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES [●]**  
**OF**  
**[●]**

[*Insert name of Issuer*], a [corporation/bank/banking association] organized and existing under the laws of the [*Insert jurisdiction of organization*] (the "Issuer"), in accordance with the provisions of Section[s] [●] of the [*Insert applicable statute*] thereof, does hereby certify:

The board of directors of the Issuer (the "Board of Directors") or an applicable committee of the Board of Directors, in accordance with the [{certificate of incorporation/articles of association] and bylaws] of the Issuer and applicable law, adopted the following resolution on [●] creating a series of [●] shares of Preferred Stock of the Issuer designated as "Fixed Rate Cumulative Perpetual Preferred Stock, Series [●]".

**RESOLVED**, that pursuant to the provisions of the [{certificate of incorporation/articles of association] and the bylaws] of the Issuer and applicable law, a series of Preferred Stock, par value \$[●] per share, of the Issuer be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

Part 1. Designation and Number of Shares. There is hereby created out of the authorized and unissued shares of preferred stock of the Issuer a series of preferred stock designated as the "Fixed Rate Cumulative Perpetual Preferred Stock, Series [●]" (the "Designated Preferred Stock"). The authorized number of shares of Designated Preferred Stock shall be [●].

Part 2. Standard Provisions. The Standard Provisions contained in Schedule A attached hereto are incorporated herein by reference in their entirety and shall be deemed to be a part of this [Certificate of Designations] to the same extent as if such provisions had been set forth in full herein.

Part 3. Definitions. The following terms are used in this [Certificate of Designations] (including the Standard Provisions in Schedule A hereto) as defined below:

- (a) "Common Stock" means the common stock, par value \$[●] per share, of the Issuer.
- (b) "Dividend Payment Date" means February 15, May 15, August 15 and November 15 of each year.

(c) "Junior Stock" means the Common Stock, [*Insert titles of any existing Junior Stock*] and any other class or series of stock of the Issuer the terms of which expressly provide that it ranks junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Issuer.

(d) "Liquidation Amount" means \$[1,000]<sup>1</sup> per share of Designated Preferred Stock.

(e) "Minimum Amount" means \$[*Insert \$ amount equal to 25% of the aggregate value of the Designated Preferred Stock issued on the Original Issue Date*].

(f) "Parity Stock" means any class or series of stock of the Issuer (other than Designated Preferred Stock) the terms of which do not expressly provide that such class or series will rank senior or junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Issuer (in each case without regard to whether dividends accrue cumulatively or non-cumulatively). Without limiting the foregoing, Parity Stock shall include the Issuer's UST Preferred Stock [and] [*Insert title(s) of any other classes or series of Parity Stock*].

(g) "Signing Date" means [*Insert date of applicable securities purchase agreement*].

(h) "UST Preferred Stock" means the Issuer's Fixed Rate Cumulative Perpetual Preferred Stock, Series [●].

**Part. 4. Certain Voting Matters.** [*To be inserted if the Charter provides for voting in proportion to liquidation preferences:* Whether the vote or consent of the holders of a plurality, majority or other portion of the shares of Designated Preferred Stock and any Voting Parity Stock has been cast or given on any matter on which the holders of shares of Designated Preferred Stock are entitled to vote shall be determined by the Issuer by reference to the specified liquidation amount of the shares voted or covered by the consent as if the Issuer were liquidated on the record date for such vote or consent, if any, or, in the absence of a record date, on the date for such vote or consent. For purposes of determining the voting rights of the holders of Designated Preferred Stock under Section 7 of the Standard Provisions forming part of this [Certificate of Designations], each holder will be entitled to one vote for each \$1,000 of liquidation preference to which such holder's shares are entitled.] [*To be inserted if the Charter does not provide for voting in proportion to liquidation preferences:* Holders of shares of Designated Preferred Stock will be entitled to one vote for each such share on any matter on which holders of Designated Preferred Stock are entitled to vote, including any action by written consent.]

[*Remainder of Page Intentionally Left Blank*]

<sup>1</sup> If Issuer desires to issue shares with a higher dollar amount liquidation preference, liquidation preference references will be modified accordingly. In such case (in accordance with Section 4.6 of the Securities Purchase Agreement), the issuer will be required to enter into a deposit agreement.

IN WITNESS WHEREOF, *[Insert name of Issuer]* has caused this [Certificate of Designations] to be signed by [●], its [●], this [●] day of [●].

*[Insert name of Issuer]*

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

**STANDARD PROVISIONS**

Section 1. General Matters. Each share of Designated Preferred Stock shall be identical in all respects to every other share of Designated Preferred Stock. The Designated Preferred Stock shall be perpetual, subject to the provisions of Section 5 of these Standard Provisions that form a part of the Certificate of Designations. The Designated Preferred Stock shall rank equally with Parity Stock and shall rank senior to Junior Stock with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Issuer.

Section 2. Standard Definitions. As used herein with respect to Designated Preferred Stock:

(a) "Appropriate Federal Banking Agency" means the "appropriate Federal banking agency" with respect to the Issuer as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)), or any successor provision.

(b) "Business Combination" means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Issuer's stockholders.

(c) "Business Day" means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

(d) "Bylaws" means the bylaws of the Issuer, as they may be amended from time to time.

(e) "Certificate of Designations" means the Certificate of Designations or comparable instrument relating to the Designated Preferred Stock, of which these Standard Provisions form a part, as it may be amended from time to time.

(f) "Charter" means the Issuer's certificate or articles of incorporation, articles of association, or similar organizational document.

(g) "Dividend Period" has the meaning set forth in Section 3(a).

(h) "Dividend Record Date" has the meaning set forth in Section 3(a).

(i) "Liquidation Preference" has the meaning set forth in Section 4(a).

(j) "Original Issue Date" means the date on which shares of Designated Preferred Stock are first issued.

(k) "Preferred Director" has the meaning set forth in Section 7(b).



(l) "Preferred Stock" means any and all series of preferred stock of the Issuer, including the Designated Preferred Stock.

(m) "Qualified Equity Offering" means the sale and issuance for cash by the Issuer to persons other than the Issuer or any of its subsidiaries after the Original Issue Date of shares of perpetual Preferred Stock, Common Stock or any combination of such stock, that, in each case, qualify as and may be included in Tier 1 capital of the Issuer at the time of issuance under the applicable risk-based capital guidelines of the Issuer's Appropriate Federal Banking Agency (other than any such sales and issuances made pursuant to agreements or arrangements entered into, or pursuant to financing plans which were publicly announced, on or prior to November 17, 2008).

(n) "Standard Provisions" mean these Standard Provisions that form a part of the Certificate of Designations relating to the Designated Preferred Stock.

(o) "Successor Preferred Stock" has the meaning set forth in Section 5(a).

(p) "Voting Parity Stock" means, with regard to any matter as to which the holders of Designated Preferred Stock are entitled to vote as specified in Sections 7(a) and 7(b) of these Standard Provisions that form a part of the Certificate of Designations, any and all series of Parity Stock upon which like voting rights have been conferred and are exercisable with respect to such matter.

### Section 3. Dividends.

(a) Rate. Holders of Designated Preferred Stock shall be entitled to receive, on each share of Designated Preferred Stock if, as and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cumulative cash dividends with respect to each Dividend Period (as defined below) at a per annum rate of 9.0% on (i) the Liquidation Amount per share of Designated Preferred Stock and (ii) the amount of accrued and unpaid dividends for any prior Dividend Period on such share of Designated Preferred Stock, if any. Such dividends shall begin to accrue and be cumulative from the Original Issue Date, shall compound on each subsequent Dividend Payment Date (*i.e.*, no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date) and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 20 calendar days after the Original Issue Date. In the event that any Dividend Payment Date would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a Business Day and no additional dividends will accrue as a result of that postponement. The period from and including any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a "Dividend Period", provided that the initial Dividend Period shall be the period from and including the Original Issue Date to, but excluding, the next Dividend Payment Date.

Dividends that are payable on Designated Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on Designated Preferred Stock on any date prior to the end of a

Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Designated Preferred Stock on any Dividend Payment Date will be payable to holders of record of Designated Preferred Stock as they appear on the stock register of the Issuer on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a "Dividend Record Date"). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Holders of Designated Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on Designated Preferred Stock as specified in this Section 3 (subject to the other provisions of the Certificate of Designations).

(b) Priority of Dividends. So long as any share of Designated Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than dividends payable solely in shares of Common Stock) or Parity Stock, subject to the immediately following paragraph in the case of Parity Stock, and no Common Stock, Junior Stock or Parity Stock shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by the Issuer or any of its subsidiaries unless all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Designated Preferred Stock on the applicable record date). The foregoing limitation shall not apply to (i) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice; (ii) the acquisition by the Issuer or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Issuer or any of its subsidiaries), including as trustees or custodians; and (iii) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the Signing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date) in full upon Designated Preferred Stock and any shares of Parity Stock, all dividends declared on Designated Preferred Stock and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend

payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared *pro rata* so that the respective amounts of such dividends declared shall bear the same ratio to each other as all accrued and unpaid dividends per share on the shares of Designated Preferred Stock (including, if applicable as provided in Section 3(a) above, dividends on such amount) and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other. If the Board of Directors or a duly authorized committee of the Board of Directors determines not to pay any dividend or a full dividend on a Dividend Payment Date, the Issuer will provide written notice to the holders of Designated Preferred Stock prior to such Dividend Payment Date.

Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and holders of Designated Preferred Stock shall not be entitled to participate in any such dividends.

#### Section 4. Liquidation Rights.

(a) Voluntary or Involuntary Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Issuer, whether voluntary or involuntary, holders of Designated Preferred Stock shall be entitled to receive for each share of Designated Preferred Stock, out of the assets of the Issuer or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Issuer, subject to the rights of any creditors of the Issuer, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Issuer ranking junior to Designated Preferred Stock as to such distribution, payment in full in an amount equal to the sum of (i) the Liquidation Amount per share and (ii) the amount of any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount), whether or not declared, to the date of payment (such amounts collectively, the "Liquidation Preference").

(b) Partial Payment. If in any distribution described in Section 4(a) above the assets of the Issuer or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Issuer ranking equally with Designated Preferred Stock as to such distribution, holders of Designated Preferred Stock and the holders of such other stock shall share ratably in any such distribution in proportion to the full respective distributions to which they are entitled.

(c) Residual Distributions. If the Liquidation Preference has been paid in full to all holders of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Issuer ranking equally with Designated Preferred Stock as to such

distribution has been paid in full, the holders of other stock of the Issuer shall be entitled to receive all remaining assets of the Issuer (or proceeds thereof) according to their respective rights and preferences.

(d) Merger, Consolidation and Sale of Assets Not Liquidation. For purposes of this Section 4, the merger or consolidation of the Issuer with any other corporation or other entity, including a merger or consolidation in which the holders of Designated Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Issuer, shall not constitute a liquidation, dissolution or winding up of the Issuer.

#### Section 5. Redemption.

(a) Optional Redemption. Except as provided below, the Designated Preferred Stock may not be redeemed prior to the later of (i) first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date; and (ii) the date on which all outstanding shares of UST Preferred Stock have been redeemed, repurchased or otherwise acquired by the Issuer. On or after the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date, the Issuer, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, out of funds legally available therefor, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption.

Notwithstanding the foregoing, prior to the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date, the Issuer, at its option, subject to the approval of the Appropriate Federal Banking Agency and subject to the requirement that all outstanding shares of UST Preferred Stock shall previously have been redeemed, repurchased or otherwise acquired by the Issuer, may redeem, in whole or in part, at any time and from time to time, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption; *provided* that (x) the Issuer (or any successor by Business Combination) has received aggregate gross proceeds of not less than the Minimum Amount (plus the "Minimum Amount" as defined in the relevant certificate of designations for each other outstanding series of preferred stock of such successor that was originally issued to the United States Department of the Treasury (the "Successor Preferred Stock") in connection with the Troubled Asset Relief Program Capital Purchase Program) from one or more Qualified Equity Offerings (including Qualified Equity Offerings of such successor), and (y) the aggregate redemption price of the Designated Preferred Stock (and any Successor Preferred Stock) redeemed pursuant to this paragraph may not exceed the aggregate net cash proceeds received by the Issuer (or any

successor by Business Combination) from such Qualified Equity Offerings (including Qualified Equity Offerings of such successor).

The redemption price for any shares of Designated Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Issuer or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 3 above.

(b) No Sinking Fund. The Designated Preferred Stock will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Designated Preferred Stock will have no right to require redemption or repurchase of any shares of Designated Preferred Stock.

(c) Notice of Redemption. Notice of every redemption of shares of Designated Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Issuer. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Designated Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Designated Preferred Stock. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Designated Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Designated Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(d) Partial Redemption. In case of any redemption of part of the shares of Designated Preferred Stock at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Board of Directors or a duly authorized committee thereof may determine to be fair and equitable. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Designated Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Issuer, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of

Manhattan, The City of New York, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Issuer, after which time the holders of the shares so called for redemption shall look only to the Issuer for payment of the redemption price of such shares.

(f) Status of Redeemed Shares. Shares of Designated Preferred Stock that are redeemed, repurchased or otherwise acquired by the Issuer shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Designated Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Designated Preferred Stock).

Section 6. Conversion. Holders of Designated Preferred Stock shares shall have no right to exchange or convert such shares into any other securities.

Section 7. Voting Rights.

(a) General. The holders of Designated Preferred Stock shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

(b) Preferred Stock Directors. Whenever, at any time or times, dividends payable on the shares of Designated Preferred Stock have not been paid for an aggregate of six quarterly Dividend Periods or more, whether or not consecutive, the authorized number of directors of the Issuer shall automatically be increased by two and the holders of the Designated Preferred Stock shall have the right, with holders of shares of any one or more other classes or series of Voting Parity Stock outstanding at the time, voting together as a class, to elect two directors (hereinafter the "Preferred Directors" and each a "Preferred Director") to fill such newly created directorships at the Issuer's next annual meeting of stockholders (or at a special meeting called for that purpose prior to such next annual meeting) and at each subsequent annual meeting of stockholders until all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been declared and paid in full at which time such right shall terminate with respect to the Designated Preferred Stock, except as herein or by law expressly provided, subject to reversion in the event of each and every subsequent default of the character above mentioned; *provided* that it shall be a qualification for election for any Preferred Director that the election of such Preferred Director shall not cause the Issuer to violate any corporate governance requirements of any securities exchange or other trading facility on which securities of the Issuer may then be listed or traded that listed or traded companies must have a majority of independent directors. Upon any termination of the right of the holders of shares of Designated Preferred Stock and Voting Parity Stock as a class to vote for directors as provided above, the Preferred Directors shall cease to be

qualified as directors, the term of office of all Preferred Directors then in office shall terminate immediately and the authorized number of directors shall be reduced by the number of Preferred Directors elected pursuant hereto. Any Preferred Director may be removed at any time, with or without cause, and any vacancy created thereby may be filled, only by the affirmative vote of the holders a majority of the shares of Designated Preferred Stock at the time outstanding voting separately as a class together with the holders of shares of Voting Parity Stock, to the extent the voting rights of such holders described above are then exercisable. If the office of any Preferred Director becomes vacant for any reason other than removal from office as aforesaid, the remaining Preferred Director may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred.

(c) Class Voting Rights as to Particular Matters. So long as any shares of Designated Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by the Charter, the vote or consent of the holders of at least 66 2/3% of the shares of Designated Preferred Stock at the time outstanding, voting as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization of Senior Stock. Any amendment or alteration of the Certificate of Designations for the Designated Preferred Stock or the Charter to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Issuer ranking senior to Designated Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Issuer;

(ii) Amendment of Designated Preferred Stock. Any amendment, alteration or repeal of any provision of the Certificate of Designations for the Designated Preferred Stock or the Charter (including, unless no vote on such merger or consolidation is required by Section 7(c)(iii) below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) so as to adversely affect the rights, preferences, privileges or voting powers of the Designated Preferred Stock; or

(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Designated Preferred Stock, or of a merger or consolidation of the Issuer with another corporation or other entity, unless in each case (x) the shares of Designated Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Issuer is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of Designated Preferred Stock immediately prior to such consummation, taken as a whole;

*provided, however,* that for all purposes of this Section 7(c), any increase in the amount of the authorized Preferred Stock, including any increase in the authorized amount of Designated Preferred Stock necessary to satisfy preemptive or similar rights granted by the Issuer to other persons prior to the Signing Date, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking equally with and/or junior to Designated Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of the Issuer will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Designated Preferred Stock.

(d) Changes after Provision for Redemption. No vote or consent of the holders of Designated Preferred Stock shall be required pursuant to Section 7(c) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of the Designated Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 5 above.

(e) Procedures for Voting and Consents. The rules and procedures for calling and conducting any meeting of the holders of Designated Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Charter, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which Designated Preferred Stock is listed or traded at the time.

Section 8. Record Holders. To the fullest extent permitted by applicable law, the Issuer and the transfer agent for Designated Preferred Stock may deem and treat the record holder of any share of Designated Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Issuer nor such transfer agent shall be affected by any notice to the contrary.

Section 9. Notices. All notices or communications in respect of Designated Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Charter or Bylaws or by applicable law. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of Designated Preferred Stock in any manner permitted by such facility.

Section 10. No Preemptive Rights. No share of Designated Preferred Stock shall have any rights of preemption whatsoever as to any securities of the Issuer, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted.



Section 11. Replacement Certificates. The Issuer shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Issuer. The Issuer shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Issuer of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be reasonably required by the Issuer.

Section 12. Other Rights. The shares of Designated Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Charter or as provided by applicable law.

**FORM OF WAIVER**

In consideration for the benefits I will receive as a result of my employer's participation in the United States Department of the Treasury's TARP Capital Purchase Program, I hereby voluntarily waive any claim against the United States or any state or territory thereof or my employer or any of its directors, officers, employees and agents for any changes to my compensation or benefits that are required in order to comply with Section 111 of the Emergency Economic Stabilization Act of 2008, as amended ("*EESA*"), and rules, regulations, guidance or other requirements issued thereunder (collectively, the "*EESA Restrictions*").

I acknowledge that the EESA Restrictions may require modification of the employment, compensation, bonus, incentive, severance, retention and other benefit plans, arrangements, policies and agreements (including so-called "golden parachute" agreements), whether or not in writing, that I have with my employer or in which I participate as they relate to the period the United States holds any equity or debt securities of my employer acquired through the TARP Capital Purchase Program and I hereby consent to all such modifications. I further acknowledge and agree that if my employer notifies me in writing that I have received payments in violation of the EESA Restrictions, I shall repay the aggregate amount of such payments to my employer no later than fifteen business days following my receipt of such notice.

This waiver includes all claims I may have under the laws of the United States or any other jurisdiction related to the requirements imposed by the EESA Restrictions (including without limitation, any claim for any compensation or other payments or benefits I would otherwise receive absent the EESA Restrictions, any challenge to the process by which the EESA Restrictions were adopted and any tort or constitutional claim about the effect of the foregoing on my employment relationship) and I hereby agree that I will not at any time initiate, or cause or permit to be initiated on my behalf, any such claim against the United States, my employer or its directors, officers, employees or agents in or before any local, state, federal or other agency, court or body.

In witness whereof, I execute this waiver on my own behalf, thereby communicating my acceptance and acknowledgement to the provisions herein.

Respectfully,

---

Name:

Title:

Date:

FORM OF OPINION

(a) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the state of its incorporation.

(b) The Preferred Shares have been duly and validly authorized, and, when issued and delivered pursuant to the Agreement, the Preferred Shares will be duly and validly issued and fully paid and non-assessable, will not be issued in violation of any preemptive rights, and will rank *pari passu* with or senior to all other series or classes of Preferred Stock issued on the Closing Date with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Company.

(c) The Warrant has been duly authorized and, when executed and delivered as contemplated by the Agreement, will constitute a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity.

(d) The shares of Warrant Preferred Stock issuable upon exercise of the Warrant have been duly authorized and reserved for issuance upon exercise of the Warrant and when so issued in accordance with the terms of the Warrant will be validly issued, fully paid and non-assessable, and will rank *pari passu* with or senior to all other series or classes of Preferred Stock, whether or not issued or outstanding, with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Company.

(e) The Company has the corporate power and authority to execute and deliver the Agreement and the Warrant and to carry out its obligations thereunder (which includes the issuance of the Preferred Shares, Warrant and Warrant Shares).

(f) The execution, delivery and performance by the Company of the Agreement and the Warrant and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of the Company and its stockholders, and no further approval or authorization is required on the part of the Company.

(g) The Agreement is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity; *provided, however*, such counsel need express no opinion with respect to Section 4.5(h) or the severability provisions of the Agreement insofar as Section 4.5(h) is concerned.

ANNEX E

FORM OF WARRANT

[SEE ATTACHED]

**FORM OF WARRANT TO PURCHASE PREFERRED STOCK**

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SECURITIES PURCHASE AGREEMENT BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.

**WARRANT  
to purchase**

**\_\_\_\_\_**  
**Shares of Preferred Stock**

of \_\_\_\_\_

Issue Date: \_\_\_\_\_

1. Definitions. Unless the context otherwise requires, when used herein the following terms shall have the meanings indicated.

“*Board of Directors*” means the board of directors of the Company, including any duly authorized committee thereof.

“*business day*” means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

“*Charter*” means, with respect to any Person, its certificate or articles of incorporation, articles of association, or similar organizational document.

“*Company*” means the Person whose name, corporate or other organizational form and jurisdiction of organization is set forth in Item 1 of Schedule A hereto.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“*Exercise Price*” means the amount set forth in Item 2 of Schedule A hereto.

“*Expiration Time*” has the meaning set forth in Section 3.

“*Issue Date*” means the date set forth in Item 3 of Schedule A hereto.

“*Liquidation Amount*” means the amount set forth in Item 4 of Schedule A hereto.

“*Original Warrantholder*” means the United States Department of the Treasury. Any actions specified to be taken by the Original Warrantholder hereunder may only be taken by such Person and not by any other Warrantholder.

“*Person*” has the meaning given to it in Section 3(a)(9) of the Exchange Act and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act.

“*Preferred Stock*” means the series of perpetual preferred stock set forth in Item 5 of Schedule A hereto.

“*Purchase Agreement*” means the Securities Purchase Agreement – Standard Terms incorporated into the Letter Agreement, dated as of the date set forth in Item 6 of Schedule A hereto, as amended from time to time, between the Company and the United States Department of the Treasury (the “*Letter Agreement*”), including all annexes and schedules thereto.

“*Regulatory Approvals*” with respect to the Warrantholder, means, to the extent applicable and required to permit the Warrantholder to exercise this Warrant for shares of Preferred Stock and to own such Preferred Stock without the Warrantholder being in violation of applicable law, rule or regulation, the receipt of any necessary approvals and authorizations of, filings and registrations with, notifications to, or expiration or termination of any applicable waiting period under, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

“*SEC*” means the U.S. Securities and Exchange Commission.

“*Securities Act*” means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“*Shares*” has the meaning set forth in Section 2.

“*Warrantholder*” has the meaning set forth in Section 2.

“*Warrant*” means this Warrant, issued pursuant to the Purchase Agreement.

2. Number of Shares; Exercise Price. This certifies that, for value received, the United States Department of the Treasury or its permitted assigns (the “*Warrantholder*”) is entitled, upon the terms and subject to the conditions hereinafter set forth, to acquire from the

Company, in whole or in part, after the receipt of all applicable Regulatory Approvals, if any, up to an aggregate of the number of fully paid and nonassessable shares of Preferred Stock set forth in Item 7 of Schedule A hereto (the "Shares"), at a purchase price per share of Preferred Stock equal to the Exercise Price.

3. Exercise of Warrant; Term. Subject to Section 2, to the extent permitted by applicable laws and regulations, the right to purchase the Shares represented by this Warrant is exercisable, in whole or in part by the Warrantholder, at any time or from time to time after the execution and delivery of this Warrant by the Company on the date hereof, but in no event later than 5:00 p.m., New York City time on the tenth anniversary of the Issue Date (the "Expiration Time"), by (A) the surrender of this Warrant and Notice of Exercise annexed hereto, duly completed and executed on behalf of the Warrantholder, at the principal executive office of the Company located at the address set forth in Item 8 of Schedule A hereto (or such other office or agency of the Company in the United States as it may designate by notice in writing to the Warrantholder at the address of the Warrantholder appearing on the books of the Company), and (B) payment of the Exercise Price for the Shares thereby purchased, by having the Company withhold, from the shares of Preferred Stock that would otherwise be delivered to the Warrantholder upon such exercise, shares of Preferred Stock issuable upon exercise of the Warrant with an aggregate Liquidation Amount equal in value to the aggregate Exercise Price as to which this Warrant is so exercised.

If the Warrantholder does not exercise this Warrant in its entirety, the Warrantholder will be entitled to receive from the Company within a reasonable time, and in any event not exceeding three business days, a new warrant in substantially identical form for the purchase of that number of Shares equal to the difference between the number of Shares subject to this Warrant and the number of Shares as to which this Warrant is so exercised. Notwithstanding anything in this Warrant to the contrary, the Warrantholder hereby acknowledges and agrees that its exercise of this Warrant for Shares is subject to the condition that the Warrantholder will have first received any applicable Regulatory Approvals.

4. Issuance of Shares; Authorization. Certificates for Shares issued upon exercise of this Warrant will be issued in such name or names as the Warrantholder may designate and will be delivered to such named Person or Persons within a reasonable time, not to exceed three business days after the date on which this Warrant has been duly exercised in accordance with the terms of this Warrant. The Company hereby represents and warrants that any Shares issued upon the exercise of this Warrant in accordance with the provisions of Section 3 will be duly and validly authorized and issued, fully paid and nonassessable and free from all taxes, liens and charges (other than liens or charges created by the Warrantholder, income and franchise taxes incurred in connection with the exercise of the Warrant or taxes in respect of any transfer occurring contemporaneously therewith). The Company agrees that the Shares so issued will be deemed to have been issued to the Warrantholder as of the close of business on the date on which this Warrant and payment of the Exercise Price are delivered to the Company in accordance with the terms of this Warrant, notwithstanding that the stock transfer books of the Company may then be closed or certificates representing such Shares may not be actually delivered on such date. The Company will at all times reserve and keep available, out of its authorized but unissued preferred stock, solely for the purpose of providing for the exercise of this Warrant, the aggregate number of shares of Preferred Stock then issuable upon exercise of this Warrant at any

time. The Company will use reasonable best efforts to ensure that the Shares may be issued without violation of any applicable law or regulation or of any requirement of any securities exchange on which the Shares are listed or traded.

5. No Rights as Stockholders: Transfer Books. This Warrant does not entitle the Warrantholder to any voting rights or other rights as a stockholder of the Company prior to the date of exercise hereof. The Company will at no time close its transfer books against transfer of this Warrant in any manner which interferes with the timely exercise of this Warrant.

6. Charges, Taxes and Expenses. Issuance of certificates for Shares to the Warrantholder upon the exercise of this Warrant shall be made without charge to the Warrantholder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company.

7. Transfer/Assignment.

(A) Subject to compliance with clause (B) of this Section 7, this Warrant and all rights hereunder are transferable, in whole or in part, upon the books of the Company by the registered holder hereof in person or by duly authorized attorney, and a new warrant shall be made and delivered by the Company, of the same tenor and date as this Warrant but registered in the name of one or more transferees, upon surrender of this Warrant, duly endorsed, to the office or agency of the Company described in Section 3. All expenses (other than stock transfer taxes) and other charges payable in connection with the preparation, execution and delivery of the new warrants pursuant to this Section 7 shall be paid by the Company.

(B) The transfer of the Warrant and the Shares issued upon exercise of the Warrant are subject to the restrictions set forth in Section 4.4 of the Purchase Agreement. If and for so long as required by the Purchase Agreement, this Warrant shall contain the legends as set forth in Section 4.2(a) of the Purchase Agreement.

8. Exchange and Registry of Warrant. This Warrant is exchangeable, upon the surrender hereof by the Warrantholder to the Company, for a new warrant or warrants of like tenor and representing the right to purchase the same aggregate number of Shares. The Company shall maintain a registry showing the name and address of the Warrantholder as the registered holder of this Warrant. This Warrant may be surrendered for exchange or exercise in accordance with its terms, at the office of the Company, and the Company shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

9. Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and in the case of any such loss, theft or destruction, upon receipt of a bond, indemnity or security reasonably satisfactory to the Company, or, in the case of any such mutilation, upon surrender and cancellation of this Warrant, the Company shall make and deliver, in lieu of such lost, stolen, destroyed or mutilated Warrant, a new Warrant of like tenor and representing the right to purchase the same aggregate number of Shares as provided for in such lost, stolen, destroyed or mutilated Warrant.



10. Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a business day, then such action may be taken or such right may be exercised on the next succeeding day that is a business day.

11. Rule 144 Information. The Company covenants that it will use its reasonable best efforts to timely file all reports and other documents required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations promulgated by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the request of any Warrantholder, make publicly available such information as necessary to permit sales pursuant to Rule 144 under the Securities Act), and it will use reasonable best efforts to take such further action as any Warrantholder may reasonably request, in each case to the extent required from time to time to enable such holder to, if permitted by the terms of this Warrant and the Purchase Agreement, sell this Warrant without registration under the Securities Act within the limitation of the exemptions provided by (A) Rule 144 under the Securities Act, as such rule may be amended from time to time, or (B) any successor rule or regulation hereafter adopted by the SEC. Upon the written request of any Warrantholder, the Company will deliver to such Warrantholder a written statement that it has complied with such requirements.

12. Adjustments and Other Rights. For so long as the Original Warrantholder holds this Warrant or any portion thereof, if any event occurs that, in the good faith judgment of the Board of Directors of the Company, would require adjustment of the Exercise Price or number of Shares into which this Warrant is exercisable in order to fairly and adequately protect the purchase rights of the Warrants in accordance with the essential intent and principles of the Purchase Agreement and this Warrant, then the Board of Directors shall make such adjustments in the application of such provisions, in accordance with such essential intent and principles, as shall be reasonably necessary, in the good faith opinion of the Board of Directors, to protect such purchase rights as aforesaid.

Whenever the Exercise Price or the number of Shares into which this Warrant is exercisable shall be adjusted as provided in this Section 12, the Company shall forthwith file at the principal office of the Company a statement showing in reasonable detail the facts requiring such adjustment and the Exercise Price that shall be in effect and the number of Shares into which this Warrant shall be exercisable after such adjustment, and the Company shall also cause a copy of such statement to be sent by mail, first class postage prepaid, to each Warrantholder at the address appearing in the Company's records.

13. No Impairment. The Company will not, by amendment of its Charter or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholder.

14. Governing Law. This Warrant will be governed by and construed in accordance with the federal law of the United States if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of New York applicable to contracts made and

to be performed entirely within such State. Each of the Company and the Warrantholder agrees (a) to submit to the exclusive jurisdiction and venue of the United States District Court for the District of Columbia for any civil action, suit or proceeding arising out of or relating to this Warrant or the transactions contemplated hereby, and (b) that notice may be served upon the Company at the address in Section 17 below and upon the Warrantholder at the address for the Warrantholder set forth in the registry maintained by the Company pursuant to Section 8 hereof. To the extent permitted by applicable law, each of the Company and the Warrantholder hereby unconditionally waives trial by jury in any civil legal action or proceeding relating to the Warrant or the transactions contemplated hereby or thereby.

15. Binding Effect. This Warrant shall be binding upon any successors or assigns of the Company.

16. Amendments. This Warrant may be amended and the observance of any term of this Warrant may be waived only with the written consent of the Company and the Warrantholder.

17. Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a recognized next day courier service. All notices hereunder shall be delivered as set forth in Item 9 of Schedule A hereto, or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

18. Entire Agreement. This Warrant, the forms attached hereto and Schedule A hereto (the terms of which are incorporated by reference herein), and the Letter Agreement (including all documents incorporated therein), contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior and contemporaneous arrangements or undertakings with respect thereto.

*[Remainder of page intentionally left blank]*

[Form of Notice of Exercise]

Date: \_\_\_\_\_

TO: [Company]

RE: Election to Purchase Preferred Stock

The undersigned, pursuant to the provisions set forth in the attached Warrant, hereby agrees to subscribe for and purchase such number of shares of Preferred Stock covered by the Warrant such that after giving effect to an exercise pursuant to Section 3(B) of the Warrant, the undersigned will receive the net number of shares of Preferred Stock set forth below. The undersigned, in accordance with Section 3 of the Warrant, hereby agrees to pay the aggregate Exercise Price for such shares of Preferred Stock in the manner set forth in Section 3(B) of the Warrant.

Number of Shares of Preferred Stock:<sup>1</sup> \_\_\_\_\_

The undersigned agrees that it is exercising the attached Warrant in full and that, upon receipt by the undersigned of the number of shares of Preferred Stock set forth above, such Warrant shall be deemed to be cancelled and surrendered to the Company.

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

1. Number of shares to be received by the undersigned upon exercise of the attached Warrant pursuant to Section 3(B) thereof.

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by a duly authorized officer.

Dated: \_\_\_\_\_

**COMPANY:** \_\_\_\_\_

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

**Attest:**

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

**[Signature Page to Warrant]**

**SCHEDULE A**

Item 1

Name:

Corporate or other organizational form:

Jurisdiction of organization:

Item 2

Exercise Price:<sup>2</sup>

Item 3

Issue Date:

Item 4

Liquidation Amount:

Item 5

Series of Perpetual Preferred Stock:

Item 6

Date of Letter Agreement between the Company and the United States Department of the Treasury:

Item 7

Number of shares of Preferred Stock:<sup>3</sup>

Item 8

Company's address:

Item 9

Notice information:

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<sup>2</sup> \$0.01 per share or such greater amount as the Charter may require as the par value of the Preferred Stock.

<sup>3</sup> The initial number of shares of Preferred Stock for which this Warrant is exercisable shall include the number of shares required to effect the cashless exercise pursuant to Section 3(B) of this Warrant (e.g., such number of shares of Preferred Stock having an aggregate Liquidation Amount equal in value to the aggregate Exercise Price) such that, following exercise of this Warrant and payment of the Exercise Price in accordance with such Section 3(B), the net number of shares of Preferred Stock delivered to the Warrantholder (and rounded to the nearest whole share) would have an aggregate Liquidation Amount equal to 5% of the aggregate amount invested by the United States Department of the Treasury on the investment date.

## SCHEDULE A

ADDITIONAL TERMS AND CONDITIONSCompany Information:

Name of the Company:	Naples Bancorp, Inc.
Corporate or other organizational form:	Corporation
Jurisdiction of Organization:	Florida
Appropriate Federal Banking Agency:	Board of Governors of the Federal Reserve System
Notice Information:	Naples Bancorp, Inc. ████████████████████ 4099 N. Tamiami Trail, Suite 100 Naples, Florida 34103 ████████████████████ ████████████████████

With copies to:

████████████████████  
Promenade II, Suite 3100  
1230 Peachtree Street, NE  
Atlanta, Georgia 30309

Terms of the Purchase:

Series of Preferred Stock Purchased:	Fixed Rate Cumulative Perpetual Preferred Stock, Series A
Per Share Liquidation Preference of Preferred Stock:	\$1,000
Number of Shares of Preferred Stock Purchased:	4,000
Dividend Payment Dates on the Preferred Stock:	February 15, May 15, August 15 and November 15
Series of Warrant Preferred Stock:	Fixed Rate Cumulative Perpetual Preferred Stock, Series B
Number of Warrant Shares:	200.002
Number of Net Warrant Shares (after net settlement):	200
Exercise Price of the Warrant:	\$.01 per share

Purchase Price: \$4,000,000.00

Closing:

Location of Closing: Squire, Sanders & Dempsey L.L.P.  
221 East Fourth Street, Suite 2900  
Cincinnati, Ohio 45202-4095

Time of Closing: 9:00am, prevailing eastern time

Date of Closing: March 27, 2009

**Wire Information for Closing:**

ABA Number: [REDACTED]  
Bank: Bank of Naples  
Account Name: Naples Bancorp, Inc.  
Account Number: [REDACTED]  
Beneficiary: Naples Bancorp, Inc.

**Contact for Confirmation of Wire Information:**

Naples Bancorp, Inc.  
[REDACTED]  
4099 N. Tamiami Trail, Suite 100  
Naples, Florida 34103  
[REDACTED]  
[REDACTED]

095331-0002-10033-NY02.2693487.5

SCHEDULE B

CAPITALIZATION

Capitalization Date: February 28, 2009

Common Stock

Par value:	no par value
Total Authorized:	4,000,000
Outstanding:	[REDACTED]
Subject to warrants, options, convertible securities, etc.:	[REDACTED]
Reserved for benefit plans and other issuances:	0
Remaining authorized but unissued:	[REDACTED]
Shares issued after Capitalization Date (other than pursuant to warrants, options, convertible securities, etc. as set forth above):	0

Preferred Stock

Par value:	no par value
Total Authorized:	100,000
Outstanding (by series):	None
Reserved for issuance:	100,000
Remaining authorized but unissued:	100,000

Holders of 5% or more of any class of capital stock

Primary Address

- |               |            |
|---------------|------------|
| 1. [REDACTED] | [REDACTED] |
| 2. [REDACTED] | [REDACTED] |
| 3. [REDACTED] | [REDACTED] |



4. [REDACTED]

[REDACTED]  
[REDACTED]

5. [REDACTED]

[REDACTED]  
[REDACTED]

**SCHEDULE C**

**LITIGATION**

List any exceptions to the representation and warranty in Section 2.2(l) of the Securities Purchase Agreement – Standard Terms.

If none, please so indicate by checking the box: .

**SCHEDULE D**

**COMPLIANCE WITH LAWS**

List any exceptions to the representation and warranty in the second sentence of Section 2.2(m) of the Securities Purchase Agreement – Standard Terms.

If none, please so indicate by checking the box: .

List any exceptions to the representation and warranty in the last sentence of Section 2.2(m) of the Securities Purchase Agreement – Standard Terms.

If none, please so indicate by checking the box: .

**SCHEDULE E**

**REGULATORY AGREEMENTS**

List any exceptions to the representation and warranty in Section 2.2(s) of the Securities Purchase Agreement – Standard Terms.

If none, please so indicate by checking the box: .

**SCHEDULE F**

**COMPANY FINANCIAL STATEMENTS**

The December 31, 2008 financial statements are not yet completed and will be provided to the Investor promptly when available. The remaining Company Financial Statements that were Previously Disclosed pursuant to Section 2.2(h) of the Securities Purchase Agreement – Standard Terms are attached hereto.

**NAPLES BANCORP, INC. AND SUBSIDIARY**  
Naples, Florida

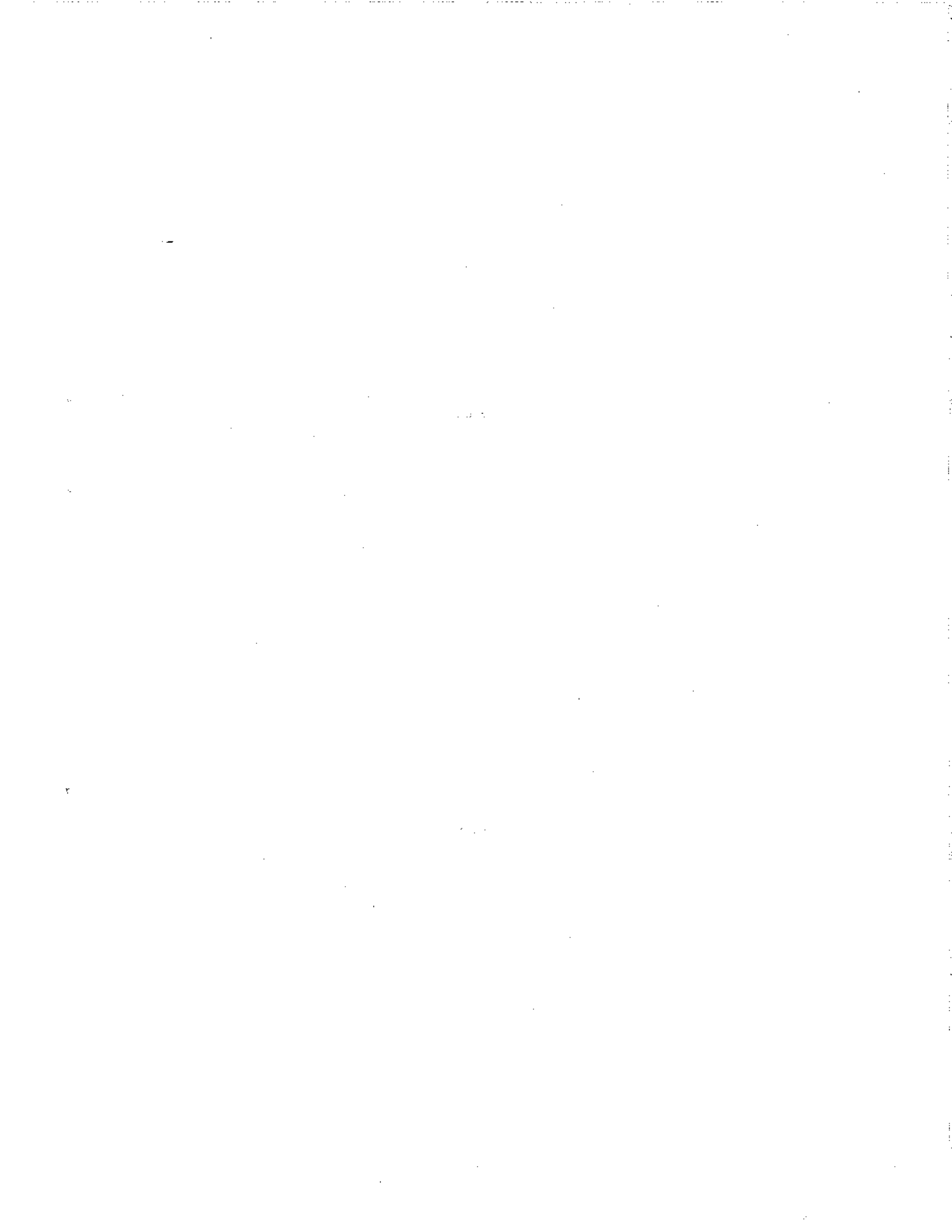
Audited Consolidated Financial Statements  
December 31, 2005 and 2004 and for the Years Then Ended

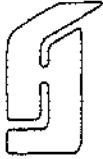
(Together with Independent Auditors' Report)



**HACKER, JOHNSON & SMITH PA**

Certified Public Accountants





**HACKER, JOHNSON & SMITH PA**

Fort Lauderdale  
Orlando  
Tampa

Certified Public Accountants

**Independent Auditors' Report**

Naples Bancorp, Inc.  
Naples, Florida:

We have audited the accompanying consolidated balance sheets of Naples Bancorp, Inc. and Subsidiary (the "Company") at December 31, 2005 and 2004, and the related consolidated statements of earnings, stockholders' equity, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards as established by the Auditing Standards Board (United States) and in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company at December 31, 2005 and 2004, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

*Hacker, Johnson & Smith PA*

HACKER, JOHNSON & SMITH PA  
Tampa, Florida  
February 10, 2006



**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Consolidated Balance Sheets**  
(\$ in thousands)

	At December 31,	
	2005	2004
<b>Assets</b>		
Cash and due from banks	\$ 3,428	2,484
Federal funds sold	9,343	9,586
Total cash and cash equivalents	12,771	12,070
Time deposits	-	99
Securities held to maturity	1,611	1,824
Securities available for sale	4,768	1,760
Loans, net of allowance for loan losses of \$1,052 and \$797	85,916	62,748
Premises and equipment, net	192	229
Federal Home Loan Bank stock, at cost	383	141
Accrued interest receivable	421	247
Other assets	89	83
Total assets	\$ 106,151	79,201
<b>Liabilities and Stockholders' Equity</b>		
<b>Liabilities:</b>		
Noninterest-bearing demand deposits	21,432	15,913
Savings, NOW and money-market deposits	33,218	41,176
Time deposits	36,974	15,006
Total deposits	91,624	72,095
Revolving line of credit	1,000	-
Federal Home Loan Bank advance	5,000	-
Other liabilities	1,548	776
Total liabilities	99,172	72,871
Commitments and contingencies (Notes 4, 9 and 15)		
<b>Stockholders' equity:</b>		
Common stock, no par value; 2,000,000 shares authorized, 644,910 shares issued and outstanding		
Additional paid-in capital	6,424	6,424
Retained Earnings (accumulated deficit)	571	(105)
Accumulated other comprehensive income (loss)	(16)	11
Total stockholders' equity	6,979	6,330
Total liabilities and stockholders' equity	\$ 106,151	79,201

See Accompanying Notes to Consolidated Financial Statements.

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Consolidated Statements of Earnings**  
(\$ in thousands)

	<u>Year Ended December 31,</u>	
	<u>2005</u>	<u>2004</u>
Interest income:		
Loans	\$ 4,789	3,809
Securities	127	118
Other	<u>221</u>	<u>145</u>
Total interest income	<u>5,137</u>	<u>4,072</u>
Interest expense:		
Deposits	1,435	1,118
Revolving line of credit	4	-
Federal Home Loan Bank advance	<u>151</u>	<u>4</u>
Total interest expense	<u>1,590</u>	<u>1,122</u>
Net interest income	3,547	2,950
Provision for loan losses	<u>336</u>	<u>468</u>
Net interest income after provision for loan losses	<u>3,211</u>	<u>2,482</u>
Noninterest income:		
Service charges on deposit accounts	71	76
Mortgage broker fees	21	67
Other	<u>62</u>	<u>43</u>
Total noninterest income	<u>154</u>	<u>186</u>
Noninterest expenses:		
Salaries and employee benefits	1,287	946
Occupancy and equipment	466	478
Professional fees	157	139
Data processing	145	105
Advertising	97	66
Other	<u>337</u>	<u>270</u>
Total noninterest expenses	<u>2,489</u>	<u>2,004</u>
Net earnings	<u>\$ 876</u>	<u>664</u>

See Accompanying Notes to Consolidated Financial Statements.

NAPLES BANCORP, INC. AND SUBSIDIARY

Consolidated Statements of Stockholders' Equity

Years Ended December 31, 2005 and 2004

(\$ in thousands)

	<u>Shares</u>	<u>Additional Paid-In Capital</u>	<u>Retained Earnings (Accumulated Deficit)</u>	<u>Accumulated Other Comprehensive Income (Loss)</u>	<u>Total Stockholders' Equity</u>
Balance at December 31, 2003	644,900	\$ 6,424	(769)	-	<u>5,655</u>
Comprehensive income:					
Sale of common stock	10	-	-	-	-
Net earnings	-	-	664	-	664
Net change in unrealized gain on securities available for sale	-	-	-	11	<u>11</u>
Comprehensive income	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>	<u>675</u>
Balance at December 31, 2004	644,910	6,424	(105)	11	<u>6,330</u>
Cash dividends	-	-	(200)	-	<u>(200)</u>
Comprehensive income:					
Net earnings	-	-	876	-	876
Net change in unrealized gain on securities available for sale	-	-	-	(27)	<u>(27)</u>
Comprehensive income	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>	<u>849</u>
Balance at December 31, 2005	<u>644,910</u>	<u>\$ 6,424</u>	<u>571</u>	<u>(16)</u>	<u>6,979</u>

See Accompanying Notes to Consolidated Financial Statements.

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Consolidated Statements of Cash Flows**  
(\$ in thousands)

	<u>Year Ended December 31,</u>	
	<u>2005</u>	<u>2004</u>
<b>Cash flows from operating activities:</b>		
Net earnings	\$ 876	664
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	76	113
Provision for loan losses	336	468
Net amortization of deferred loan (fees) costs	(8)	77
Increase in accrued interest receivable	(174)	(14)
(Increase) decrease in other assets	(9)	3
Increase in other liabilities	<u>772</u>	<u>410</u>
Net cash provided by operating activities	<u>1,869</u>	<u>1,721</u>
<b>Cash flows from investing activities:</b>		
Purchase of securities available for sale	(3,679)	(2,488)
Maturities, prepayments and calls of securities available for sale	644	739
Purchase of securities held to maturity	-	(1,009)
Maturities, prepayments and calls of securities held to maturity	213	1,187
Net decrease in time deposits	99	695
Net increase in loans	(23,496)	(5,992)
Purchase of Federal Home Loan Bank stock	(242)	(58)
Purchase of premises and equipment	<u>(36)</u>	<u>(39)</u>
Net cash used in investing activities	<u>(26,497)</u>	<u>(6,965)</u>
<b>Cash flows from financing activities:</b>		
Revolving line of credit advance	1,000	-
Proceeds from Federal Home Loan Bank advance	5,000	-
Cash dividends paid	(200)	-
Net increase in deposits	<u>19,529</u>	<u>7,842</u>
Net cash provided by financing activities	<u>25,329</u>	<u>7,842</u>
Net increase in cash and cash equivalents	701	2,598
Cash and cash equivalents at beginning of the year	<u>12,070</u>	<u>9,472</u>
Cash and cash equivalents at end of the year	<u>\$ 12,771</u>	<u>12,070</u>
<b>Supplemental disclosure of cash flow information-</b>		
Cash paid during the year for interest	<u>\$ 1,506</u>	<u>1,119</u>

See Accompanying Notes to Consolidated Financial Statements.

# NAPLES BANCORP, INC. AND SUBSIDIARY

## Notes to Consolidated Financial Statements

December 31, 2005 and 2004 and the Years Then Ended

### (1) Summary of Significant Accounting Policies

**Organization.** Naples Bancorp, Inc. (the "Holding Company") owns 100% of the outstanding common stock of Bank of Naples (the "Bank") (collectively, the "Company"). The Holding Company operates as a one-bank holding company. The Holding Company was formed on June 18, 2004 and on June 30, 2004, the Bank's stockholders approved a plan of corporate reorganization under which the Bank became a wholly-owned subsidiary of the Holding Company. The Bank's stockholders exchanged their common shares for shares of the Holding Company. As a result, all of the previously issued \$5 par value common shares of the Bank were exchanged for 644,900 shares of no par value common shares of the Holding Company. The Holding Company's acquisition of the Bank has been accounted for similar to a pooling of interests and, accordingly, the financial data for all periods presented include the results of the Bank.

The Holding Company's only business activity is the operation of the Bank. The Bank is a state-(Florida) chartered commercial bank. The Bank provides a variety of financial services to individual and corporate customers through its banking office located in Naples, Collier County, Florida. The Bank's deposits are insured up to the applicable limits by the Federal Deposit Insurance Corporation.

**Basis of Presentation.** The accompanying consolidated financial statements include the accounts of the Holding Company and the Bank. All significant intercompany accounts and transactions have been eliminated in consolidation. The accounting and reporting practices of the Company conform to accounting principles generally accepted in the United States of America and to general practices within the banking industry. The following summarizes the more significant of these policies and practices:

**Use of Estimates.** In preparing consolidated financial statements in conformity with accounting principles generally accepted in the United States of America, management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities as of the date of the consolidated balance sheet and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Material estimates that are particularly susceptible to significant change in the near term relate to the determination of the allowance for loan losses.

**Cash and Cash Equivalents.** For purposes of the consolidated statements of cash flows, cash and cash equivalents include cash and balances due from banks and federal funds sold, all of which mature within ninety days.

The Bank is required under Federal Reserve Board regulations to maintain reserves, generally consisting of cash or noninterest-earning accounts, against its transaction accounts. At December 31, 2005 and 2004, balances maintained as reserves were approximately \$813,000 and \$885,000, respectively.

(continued)

## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (1) Summary of Significant Accounting Policies, Continued

**Securities.** Securities may be classified as either trading, held to maturity or available for sale. Trading securities are held principally for resale and recorded at their fair values. Unrealized gains and losses on trading securities are included immediately in earnings. Held-to-maturity securities are those which the Company has the positive intent and ability to hold to maturity and are reported at amortized cost. Available-for-sale securities consist of securities not classified as trading securities nor as held-to-maturity securities. Unrealized holding gains and losses on available-for-sale securities are reported as a net amount in accumulated other comprehensive income (loss). Gains and losses on the sale of available-for-sale securities are determined using the specific-identification method. Premiums and discounts on securities available for sale are recognized in interest income using the interest method over the period to maturity.

**Loans.** Loans that management has the intent and ability to hold for the foreseeable future or until maturity or pay-off are reported at their outstanding principal adjusted for any charge-offs, the allowance for loan losses, and any deferred fees or costs.

Commitment fees and loan origination fees are deferred, and certain direct origination costs are capitalized. Both are recognized as an adjustment of the yield of the related loan.

The accrual of interest on loans is discontinued at the time the loan is ninety days delinquent unless the loan is well collateralized and in process of collection. In all cases, loans are placed on nonaccrual or charged-off at an earlier date if collection of principal or interest is considered doubtful.

All interest accrued but not collected for loans that are placed on nonaccrual or charged-off is reversed against interest income. The interest on these loans is accounted for on the cash-basis or cost-recovery method, until qualifying for return to accrual. Loans are returned to accrual status when all the principal and interest amounts contractually due are brought current and future payments are reasonably assured.

**Allowance for Loan Losses.** The allowance for loan losses is established as losses are estimated to have occurred through a provision for loan losses charged to earnings. Loan losses are charged against the allowance when management believes the uncollectibility of a loan balance is confirmed. Subsequent recoveries, if any, are credited to the allowance.

The allowance for loan losses is evaluated on a regular basis by management and is based upon management's periodic review of the collectibility of the loans in light of historical experience, the nature and volume of the loan portfolio, adverse situations that may affect the borrower's ability to repay, estimated value of any underlying collateral and prevailing economic conditions. This evaluation is inherently subjective as it requires estimates that are susceptible to significant revision as more information becomes available.

(continued)

## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (1) Summary of Significant Accounting Policies, Continued

**Allowance for Loan Losses, Continued.** A loan is considered impaired when, based on current information and events, it is probable that the Company will be unable to collect the scheduled payments of principal or interest when due. Factors considered by management in determining impairment include payment status, collateral value, and the probability of collecting scheduled principal and interest payments when due. Loans that experience insignificant payment delays and payment shortfalls generally are not classified as impaired. Management determines the significance of payment delays and payment shortfalls on a case-by-case basis, taking into consideration all of the circumstances surrounding the loan and the borrower, including the length of the delay, the reasons for the delay, the borrower's prior payment record, and the amount of the shortfall in relation to the principal and interest owed. Impairment is measured on a loan by loan basis for commercial and commercial real estate loans by either the present value of expected future cash flows discounted at the loan's effective interest rate, the loan's obtainable market price, or the fair value of the collateral if the loan is collateral dependent.

Large groups of smaller balance homogeneous loans are collectively evaluated for impairment. Accordingly, the Company does not separately identify individual consumer and residential loans for impairment disclosures.

**Premises and Equipment.** Leasehold improvements, furniture, fixtures and equipment and software are stated at cost, less accumulated depreciation and amortization. Depreciation and amortization expense are computed using the straight-line method over the shorter of the lease term or the estimated useful life of each type of asset.

**Fair Values of Financial Instruments.** The fair value of a financial instrument is the current amount that would be exchanged between willing parties, other than in a forced liquidation. Fair value is best determined based upon quoted market prices. However, in many instances, there are no quoted market prices for the Company's various financial instruments. In cases where quoted market prices are not available, fair values are based on estimates using present value or other valuation techniques. Those techniques are significantly affected by the assumptions used, including the discount rate and estimates of future cash flows. Accordingly, the aggregate fair value amounts presented may not necessarily represent the underlying fair value of the Company. The following methods and assumptions were used by the Company in estimating fair values of financial instruments:

**Cash and Cash Equivalents.** The carrying amounts of cash and cash equivalents approximate their fair value.

**Securities.** Fair values for securities are based on quoted market prices, where available. If quoted market prices are not available, fair values are based on quoted market prices of comparable instruments.

**Federal Home Loan Bank Stock.** Fair value for Federal Home Loan Bank stock is based on its redemption value of \$100 per share.

(continued)

## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (1) Summary of Significant Accounting Policies, Continued

##### *Fair Values of Financial Instruments, Continued.*

**Loans.** For variable-rate loans that re-price frequently and have no significant change in credit risk, fair values are based on carrying values. Fair values for certain fixed-rate mortgage (e.g. one-to-four family residential), commercial real estate and commercial loans are estimated using discounted cash flow analyses, using interest rates currently being offered for loans with similar terms to borrowers of similar credit quality.

**Accrued Interest.** The carrying amounts of accrued interest receivable approximate their fair value.

**Deposits.** The fair values disclosed for demand deposits, savings, money-market and NOW accounts are, by definition, equal to the amount payable on demand at the reporting date (that is, their carrying amounts). Fair values for time deposits are estimated using a discounted cash flow calculation that applies interest rates currently being offered on time deposits to a schedule of aggregated expected monthly maturities of time deposits.

**Federal Home Loan Bank Advance.** Fair values are estimated using a discounted cash flow analysis using current interest rates for similar borrowing arrangements.

**Revolving Line of Credit.** The carrying amount of the revolving line of credit approximates fair value.

**Off-Balance-Sheet Financial Instruments.** Fair values for off-balance-sheet lending commitments are based on fees currently charged to enter into similar agreements, taking into account the remaining terms of the agreements and the counterparties' credit standing.

**Transfer of Financial Assets.** Transfers of financial assets are accounted for as sales, when control over the assets has been surrendered. Control over transferred assets is deemed to be surrendered when (1) the assets have been isolated from the Company, (2) the transferee obtains the right (free of conditions that constrain it from taking advantage of that right) to pledge or exchange the transferred assets, and (3) the Company does not maintain control over the transferred assets through an agreement to repurchase them before their maturity.

**Income Taxes.** The Holding Company's stockholders have elected for it to be treated as an S-Corporation and have elected for the Bank to be treated as a qualified Subchapter S subsidiary. For federal and state income tax purposes all items of income and expense flow through to its stockholders. Therefore no provision for income taxes has been reflected in these consolidated financial statements.

**Off-Balance-Sheet Instruments.** In the ordinary course of business the Company has entered into off-balance-sheet financial instruments consisting of standby letters of credit and available lines of credit. Such financial instruments are recorded in the consolidated financial statements when they are funded.

**Advertising.** The Company expenses all media advertising as incurred.

(continued)



## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (1) Summary of Significant Accounting Policies, Continued

**Stock Compensation Plan.** Statement of Financial Accounting Standards (SFAS) No. 123, *Accounting for Stock-Based Compensation*, as amended by SFAS No. 148, *Accounting for Stock-Based Compensation Transition and Disclosure* (collectively, "SFAS No. 123") encourages all entities to adopt a fair value based method of accounting for employee stock compensation plans, whereby compensation cost is measured at the grant date based on the value of the award and is recognized over the service period, which is usually the vesting period. However, it also allows an entity to continue to measure compensation cost for those plans using the intrinsic value based method of accounting prescribed by Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* ("APB No. 25"), whereby compensation cost is the excess, if any, of the quoted market price of the stock at the grant date (or other measurement date) over the amount an employee must pay to acquire the stock. The Company has elected to continue with the accounting methodology in APB No. 25. No stock-based employee compensation cost is reflected in net earnings, as all stock options granted had an exercise price equal to the market value of the underlying common stock on the date of grant. The effect on net earnings as if the Company had applied the fair value recognition provisions of SFAS No. 123 to stock-based employee compensation was not significant.

**Recent Accounting Pronouncements.** In December 2003, the American Institute of Certified Public Accountants ("AICPA") issued Statement of Position ("SOP") 03-3, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer*. This SOP requires acquired impaired loans for which it is probable that the investor will be unable to collect all contractually required payments receivable to be recorded at the present value of amounts expected to be received. The SOP also prohibits carrying over or creation of valuation allowances in the initial accounting for these loans. The SOP was effective for loans acquired in fiscal years beginning after December 15, 2004. The adoption of this SOP did not impact the Company's consolidated financial position or results of operations.

In May 2005, the FASB issued SFAS 154, *Accounting Changes and Error Corrections*, which replaces APB Opinion No. 20, *Accounting Changes*, and SFAS 3, *Reporting Accounting Changes in Interim Financial Statements An Amendment of APB Opinion No. 28*. SFAS 154 changes the requirements for the accounting and reporting of a change in accounting principle. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005.

In December 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 123 (Revised), *Share-Based Payment* ("SFAS No. 123(R)"). This Statement replaces SFAS No. 123, *Accounting for Stock-Based Compensation* ("SFAS No. 123"), and supersedes APB No. 25. SFAS No. 123(R) clarifies and expands SFAS No. 123's guidance in several areas, including measuring fair value, classifying an award as equity or as a liability, accounting for nonsubstantive vesting provisions, and attributing compensation cost to reporting periods. Under the provisions of SFAS No. 123(R), the alternative to use APB No. 25's intrinsic value method of accounting that was provided in SFAS No. 123, as originally issued, is eliminated. Effective January 1, 2006, the Company will begin expensing the fair value of any stock options granted after January 1, 2006.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(1) Summary of Significant Accounting Policies, Continued**

**Comprehensive Income.** Accounting principles generally require that recognized revenue, expenses, gains and losses be included in net earnings. Although certain changes in assets and liabilities, such as unrealized gains and losses on available-for-sale securities, are reported as a separate component of the equity section of the consolidated balance sheet, such items along with net earnings, are components of comprehensive income.

**Reclassifications.** Certain amounts in the 2004 consolidated financial statements have been reclassified to conform with the 2005 presentation.

**(2) Securities**

Securities have been classified according to management's intention. The carrying amount of securities and their approximate fair values are as follows (in thousands):

	<u>Amortized Cost</u>	<u>Unrealized Gains</u>	<u>Unrealized Losses</u>	<u>Fair Value</u>
<i>Securities Available for Sale:</i>				
<i>At December 31, 2005:</i>				
U.S. Government Agency securities	\$ 500	-	(8)	492
Mortgage-backed securities	<u>4,284</u>	<u>1</u>	<u>(9)</u>	<u>4,276</u>
	<u>\$ 4,784</u>	<u>1</u>	<u>(17)</u>	<u>4,768</u>
<i>At December 31, 2004:</i>				
Mortgage-backed securities	<u>\$ 1,749</u>	<u>11</u>	<u>-</u>	<u>1,760</u>
<i>Securities Held to Maturity:</i>				
<i>At December 31, 2005:</i>				
U.S. Government Agency securities	1,000	-	(18)	982
Mortgage-backed securities	<u>611</u>	<u>-</u>	<u>(23)</u>	<u>588</u>
	<u>\$ 1,611</u>	<u>-</u>	<u>(41)</u>	<u>1,570</u>
<i>At December 31, 2004:</i>				
U.S. Government Agency securities	999	-	(9)	990
Mortgage-backed securities	<u>825</u>	<u>-</u>	<u>(14)</u>	<u>811</u>
	<u>\$ 1,824</u>	<u>-</u>	<u>(23)</u>	<u>1,801</u>

(continued)

NAPLES BANCORP, INC. AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(2) Securities, Continued

The scheduled maturities at December 31, 2005 are as follows (in thousands):

	<u>Available for Sale</u>		<u>Held to Maturity</u>	
	<u>Amortized Cost</u>	<u>Fair Value</u>	<u>Amortized Cost</u>	<u>Fair Value</u>
Due less than one year	\$ -	-	1,000	982
Due from one to five years	500	492	-	-
Mortgage-backed securities	<u>4,284</u>	<u>4,276</u>	<u>611</u>	<u>588</u>
	<u>\$ 4,784</u>	<u>4,768</u>	<u>1,611</u>	<u>1,570</u>

Securities with a carrying value of \$114,944 and \$115,000 at December 31, 2005 and 2004, respectively, were pledged as collateral for public deposits and for other purposes as required or permitted by law. There were no sales of securities during the years ended December 31, 2005 or 2004.

Securities with gross unrealized losses at December 31, 2005, aggregated by investment category and length of time that individual securities have been in a continuous loss position, is as follows (in thousands):

	<u>Less Than Twelve Months</u>		<u>Over Twelve Months</u>	
	<u>Gross Unrealized Losses</u>	<u>Fair Value</u>	<u>Gross Unrealized Losses</u>	<u>Fair Value</u>
<i>Securities Available for Sale:</i>				
U.S. government and federal agencies	\$ (8)	3,179	-	-
Mortgage-backed securities	(9)	-	-	-
Total securities available for sale	<u>\$(17)</u>	<u>3,179</u>	<u>-</u>	<u>-</u>
<i>Securities Held to Maturity:</i>				
U.S. government and federal agencies	-	-	(18)	982
Mortgage-backed securities	-	-	(23)	<u>588</u>
Total securities held to maturity	<u>\$ -</u>	<u>-</u>	<u>(41)</u>	<u>1,570</u>

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(2) Securities, Continued**

Management evaluates securities for other-than-temporary impairment at least on a quarterly basis, and more frequently when economic or market concerns warrant such evaluation. Consideration is given to (1) the length of time and the extent to which the fair value has been less than cost, (2) the financial condition and near-term prospects of the issuer, and (3) the intent and ability of the Company to retain its investment in the issuer for a period of time sufficient to allow for any anticipated recovery in fair value.

The unrealized losses on investment securities held to maturity were caused by interest rate changes. It is expected that the securities would not be settled at a price less than the par value of the investments. Because the decline in fair value is attributable to changes in interest rates and not credit quality, and because the Company has the ability and intent to hold these investments until a market price recovery or maturity, these investments are not considered other-than-temporarily impaired.

**(3) Loans**

The components of loans are as follows (in thousands):

	<u>At December 31,</u>	
	<u>2005</u>	<u>2004</u>
Commercial	\$ 9,821	10,765
Commercial real estate	45,223	24,993
Residential real estate	25,888	24,597
Consumer	<u>5,966</u>	<u>3,108</u>
<b>Total loans</b>	<b>86,898</b>	<b>63,463</b>
Add (deduct):		
Net deferred loan costs	70	82
Allowance for loan losses	<u>(1,052)</u>	<u>(797)</u>
<b>Loans, net</b>	<b>\$ <u>85,916</u></b>	<b><u>62,748</u></b>

An analysis of the change in the allowance for loan losses follows (in thousands):

	<u>Year Ended December 31,</u>	
	<u>2005</u>	<u>2004</u>
Beginning balance	\$ 797	697
Provision for loan losses	336	468
Charge-offs	(86)	(368)
Recoveries	<u>5</u>	<u>-</u>
<b>Ending balance</b>	<b>\$ <u>1,052</u></b>	<b><u>797</u></b>

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(3) Loans, Continued**

Information relating to loans identified as impaired during the years ended December 31, 2005 and 2004 is as follows (in thousands):

	<u>At or For Year Ended</u> <u>December 31,</u>	
	<u>2005</u>	<u>2004</u>
Gross loan with related allowance for losses recorded	\$ -	198
Less allowance on this loan	\$ -	99
Net investment in impaired loan	\$ -	99
Average net investment in impaired loans	\$ 49	197
Interest income recognized on impaired loans	\$ -	3
Interest income received on impaired loans	\$ -	3

Nonaccrual and accruing past due loans were as follows (in thousands):

	<u>At December 31,</u>	
	<u>2005</u>	<u>2004</u>
Nonaccrual loans	\$ -	-
Past due ninety days or more, but still accruing	-	92
	\$ -	92

**(4) Premises and Equipment**

A summary of premises and equipment follows (in thousands):

	<u>At December 31,</u>	
	<u>2005</u>	<u>2004</u>
Leasehold improvements	\$ 97	91
Furniture, fixtures and equipment	528	484
Software	155	155
Total, at cost	780	730
Less accumulated depreciation and amortization	(588)	(501)
Premises and equipment, net	\$ 192	229

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(4) Premises and Equipment, Continued**

The Company leases its main office facility from an entity owned by certain stockholders of the Company. The lease has an initial term of ten years and contains two five year renewal options. The lease provides for annual increases based on changes in the consumer price index, pro rata share of real estate taxes, common area maintenance and requires the Company to maintain certain insurance coverages. The Company obtained an appraisal in connection with obtaining the lease to support the fair market value of the lease payments. Rent expense during the years ended December 31, 2005 and 2004 was approximately \$310,000 and \$306,000, respectively. At December 31, 2005, the future minimum lease payments are approximately as follows (in thousands):

<u>Year Ending</u>	<u>Amount</u>
2006	\$ 322
2007	330
2008	337
2009	345
2010	353
Thereafter	<u>361</u>
	<u>\$ 2,048</u>

**(5) Deposits**

The aggregate amount of time deposits with a minimum denomination of \$100,000, was approximately \$25,875,000 and \$8,233,000 at December 31, 2005 and 2004, respectively.

A schedule of maturities of time deposits at December 31, 2005 follows (in thousands):

<u>Year Ending</u>	<u>Amount</u>
2006	\$ 30,766
2007	<u>6,208</u>
	<u>\$ 36,974</u>

**(6) Federal Home Loan Bank Advance**

The maturity and interest rate on the Federal Home Loan Bank ("FHLB") advance were as follows (in thousands):

<u>Maturing in Year Ending December 31,</u>	<u>Interest Rate</u>	<u>At December 31,</u>	
		<u>2005</u>	<u>2004</u>
2007	4.53%	\$ <u>5,000</u>	<u>-</u>

The collateral agreement with FHLB includes a blanket floating lien requiring the Company to maintain certain first mortgage loans as pledged collateral. At December 31, 2005, this advance was also collateralized by FHLB stock.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(7) Revolving Line of Credit**

The Company has a \$3 million revolving line of credit with Wells Fargo Bank, N.A. with a balance outstanding of \$1 million at December 31, 2005. The line of credit bears interest at 1.25% above the Fed Funds rate and is collateralized by all of the Bank's common stock.

**(8) Stock Options**

One employee of the Company has been granted options to purchase shares of the Company's common stock under an individual agreement. All options granted have a term of ten years and vest over three years. A summary of stock option transactions follows (\$ in thousands, except per share amounts):

	Individual Agreements		
	Range of Per Share Option Price	Weighted- Average Per Share Price	Aggregate Option Price
	<u>Number of Shares</u>		
Outstanding at December 31, 2003 and 2004	-	\$ -	-
Options granted	<u>32,246</u>	15.50	<u>500</u>
Outstanding at December 31, 2005	<u>32,246</u>	<u>\$ 15.50</u>	<u>500</u>

The weighted-average remaining contractual life of the outstanding stock options at December 31, 2005 was 9.9 years.

The options are exercisable as follows:

<u>Year Ending December 31,</u>	<u>Number of Shares</u>	<u>Exercise Price</u>
2006	6,449	\$ 15.50
2007	9,674	15.50
2008	<u>16,123</u>	15.50
	<u>32,246</u>	<u>\$ 15.50</u>

**(9) Off Balance Sheet Financial Instruments**

The Company is a party to financial instruments with off-balance-sheet risk in the normal course of business to meet the financing needs of its customers. These financial instruments are standby letters of credit and unused lines of credit and may involve, to varying degrees, elements of credit and interest-rate risk in excess of the amount recognized in the consolidated balance sheet. The contract amounts of these instruments reflect the extent of involvement the Company has in these financial instruments.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(9) Off Balance Sheet Financial Instrument, Continued**

The Company's exposure to credit loss in the event of nonperformance by the other party to the financial instrument for commitments to extend credit is represented by the contractual amount of those instruments. The Company uses the same credit policies in making commitments as it does for on-balance-sheet instruments.

Unused lines of credit are agreements to lend to a customer as long as there is no violation of any condition established in the contract. Unused lines of credit generally have fixed expiration dates or other termination clauses and may require payment of a fee. Because some of the unused lines of credit are expected to expire without being drawn upon, the total commitment amounts do not necessarily represent future cash requirements. The Company evaluates each customer's credit worthiness on a case-by-case basis. The amount of collateral obtained, if deemed necessary by the Company, upon extension of credit, is based on management's credit evaluation of the counterparty.

Standby letters of credit are conditional commitments issued by the Company to guarantee the performance of a customer to a third party. The credit risk is essentially the same as that involved in extending loans to customers. Essentially all letters of credit have expiration dates within one year. The Company generally holds collateral supporting these commitments.

Available lines of credit typically result in loans with a market interest rate. A summary of the contractual amounts of the Company's financial instruments with off balance sheet risk at December 31, 2005 follows (in thousands):

	<u>Contract Amount</u>	<u>Carrying Amount</u>	<u>Estimated Fair Value</u>
Available lines of credit	\$ <u>14,601</u>	<u>-</u>	<u>-</u>
Standby letters of credit	\$ <u>249</u>	<u>-</u>	<u>-</u>

**(10) Credit Risk**

The Company grants the majority of its loans to borrowers throughout the Naples, Florida area. Although, the Company has a diversified loan portfolio, a significant portion of its borrowers' ability to honor their contract is dependent on the economy in the Naples, Florida area.

**(11) Related Party Transactions and Economic Dependence**

In the ordinary course of business, the Company makes loans to officers and directors of the Company and entities in which they hold a financial interest. The Company also accepts deposits from related parties. These are summarized as follows (in thousands):

	<u>Year Ended December 31,</u>	
	<u>2005</u>	<u>2004</u>
Balance at beginning of year	\$ 1,573	1,484
Additions	300	126
Repayments	<u>(166)</u>	<u>(37)</u>
Balance at end of year	\$ <u>1,707</u>	<u>1,573</u>
Deposits from such related parties at year end	\$ <u>10,025</u>	<u>9,234</u>

(continued)



**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(12) Regulatory Matters**

The Bank is subject to various regulatory capital requirements administered by the regulatory banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory and possibly additional discretionary actions by regulators that, if undertaken, could have a direct material effect on the Company's and the Bank's financial statements. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, the Bank must meet specific capital guidelines that involve quantitative measures of their assets, liabilities, and certain off-balance-sheet items as calculated under regulatory accounting practices. The capital amounts and classification are also subject to qualitative judgements by the regulators about components, risk weightings, and other factors.

Quantitative measures established by regulation to ensure capital adequacy require the Bank to maintain minimum amounts and percentages (set forth in the following table) of total and Tier 1 capital (as defined in the regulations) to risk-weighted assets (as defined) and of Tier 1 capital (as defined) to average assets (as defined). Management believes, as of December 31, 2005 and 2004, the Bank met all capital adequacy requirements to which they are subject.

As of December 31, 2005, the most recent notification from the regulatory authorities categorized the Bank as well capitalized under the regulatory framework for prompt corrective action. To be categorized as well capitalized, an institution must maintain minimum total risk-based, Tier I risk-based, and Tier I leverage percentages as set forth in the following tables. There are no conditions or events since that notification that management believes have changed the Bank's category. The Bank's actual capital amounts and percentages are also presented in the table (dollars in thousands).

	Actual		For Capital Adequacy Purposes		Minimum To Be Well Capitalized Under Prompt Corrective Action Provisions	
	Amount	%	Amount	%	Amount	%
<i>As of December 31, 2005:</i>						
Total capital to Risk-Weighted assets	\$ 9,000	10.47%	\$ 6,878	8.00%	\$ 8,597	10.00%
Tier I Capital to Risk-Weighted Assets	7,948	9.24	3,439	4.00	5,158	6.00
Tier I Capital to Total Assets	7,948	8.30	3,831	4.00	4,789	5.00
<i>As of December 31, 2004:</i>						
Total capital to Risk-Weighted assets	7,034	12.29	4,579	8.00	5,723	10.00
Tier I Capital to Risk-Weighted Assets	6,317	11.03	2,291	4.00	3,436	6.00
Tier I Capital to Total Assets	6,317	7.81	3,235	4.00	4,044	5.00

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(13) Dividend Restrictions**

The Bank is limited in the amount of cash dividends that may be paid to the Holding Company. The amount of cash dividends that may be paid is based on the Bank's net earnings of the current year combined with the Bank's retained earnings of the preceding two years, as defined by state banking regulations. However, for any dividend declaration, the Bank must consider additional factors such as the amount of current period net earnings, liquidity, asset quality, capital adequacy and economic conditions. It is likely that these factors would further limit the amount of dividends which the Bank could declare. In addition, bank regulators have the authority to prohibit banks from paying dividends if they deem such payment to be an unsafe or unsound practice.

**(14) Profit Sharing Plan**

The Company established a section 401(k) profit sharing plan for all employees meeting certain eligibility requirements. The Company matches up to 4% of each participant contribution. The Company's expense in connection with the plan totaled \$25,000 and \$15,000 during the years ended December 31, 2005 and 2004, respectively.

**(15) Contingencies**

Various legal claims also arise from time to time in the normal course of business which, in the opinion of management, will not have a material effect on the Company's consolidated financial statements.

**(16) Financial Instruments**

The estimated fair values of the Company's financial instruments were as follows (in thousands):

	At December 31,	
	2005	
	Carrying Amount	Fair Value
Financial assets:		
Cash and cash equivalents	\$ 12,771	12,771
Securities available for sale	4,768	4,768
Securities held to maturity	1,611	1,570
Loans, net	85,916	85,236
Accrued interest receivable	421	421
Federal Home Loan Bank stock	383	383
Financial liabilities:		
Deposits	91,624	91,689
Revolving line of credit	1,000	1,000
Federal Home Loan Bank advance	5,000	4,970

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(17) Holding Company Financial Information**

The Holding Company's financial information as of December 31, 2005 and 2004, and for the years then ended follows (in thousands):

**Condensed Balance Sheets**

	<u>At December 31,</u>	
	<u>2005</u>	<u>2004</u>
<b>Assets</b>		
Cash	\$ 47	2
Investment in subsidiary	<u>7,932</u>	<u>6,328</u>
Total assets	<u>\$ 7,979</u>	<u>6,330</u>
<b>Liabilities and Stockholders' Equity</b>		
Revolving line of credit	1,000	-
Stockholders' equity	<u>6,979</u>	<u>6,330</u>
Total liabilities and stockholders' equity	<u>\$ 7,979</u>	<u>6,330</u>

**Condensed Statements of Earnings**

	<u>Year Ended December 31,</u>	
	<u>2005</u>	<u>2004</u>
Earnings of subsidiary	\$ 881	672
Other expense	<u>(5)</u>	<u>(8)</u>
Net earnings	<u>\$ 876</u>	<u>664</u>

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**  
**Notes to Consolidated Financial Statements, Continued**

**(17) Holding Company Financial Information, Continued**

**Condensed Statements of Cash Flows**

	<u>Year Ended December 31,</u>	
	<u>2005</u>	<u>2004</u>
Cash flows from operating activities:		
Net earnings	\$ 876	664
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Equity in undistributed earnings of subsidiary	(881)	(672)
Dividend from subsidiary	<u>200</u>	<u>10</u>
Net cash provided by operating activities	<u>195</u>	<u>2</u>
Cash flows from investing activity-		
Investment in subsidiary	<u>(950)</u>	<u>-</u>
Cash flows from financing activities:		
Revolving line of credit advance	1,000	-
Cash dividends	<u>(200)</u>	<u>-</u>
Net cash provided by financing activities	<u>800</u>	<u>-</u>
Increase in cash	45	2
Cash at beginning of the year	<u>2</u>	<u>-</u>
Cash at end of year	\$ <u>47</u>	<u>2</u>

1

2

3

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7

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**NAPLES BANCORP, INC. AND SUBSIDIARY**  
Naples, Florida

**Audited Consolidated Financial Statements**

**December 31, 2006 and 2005 and for the Years Then Ended**

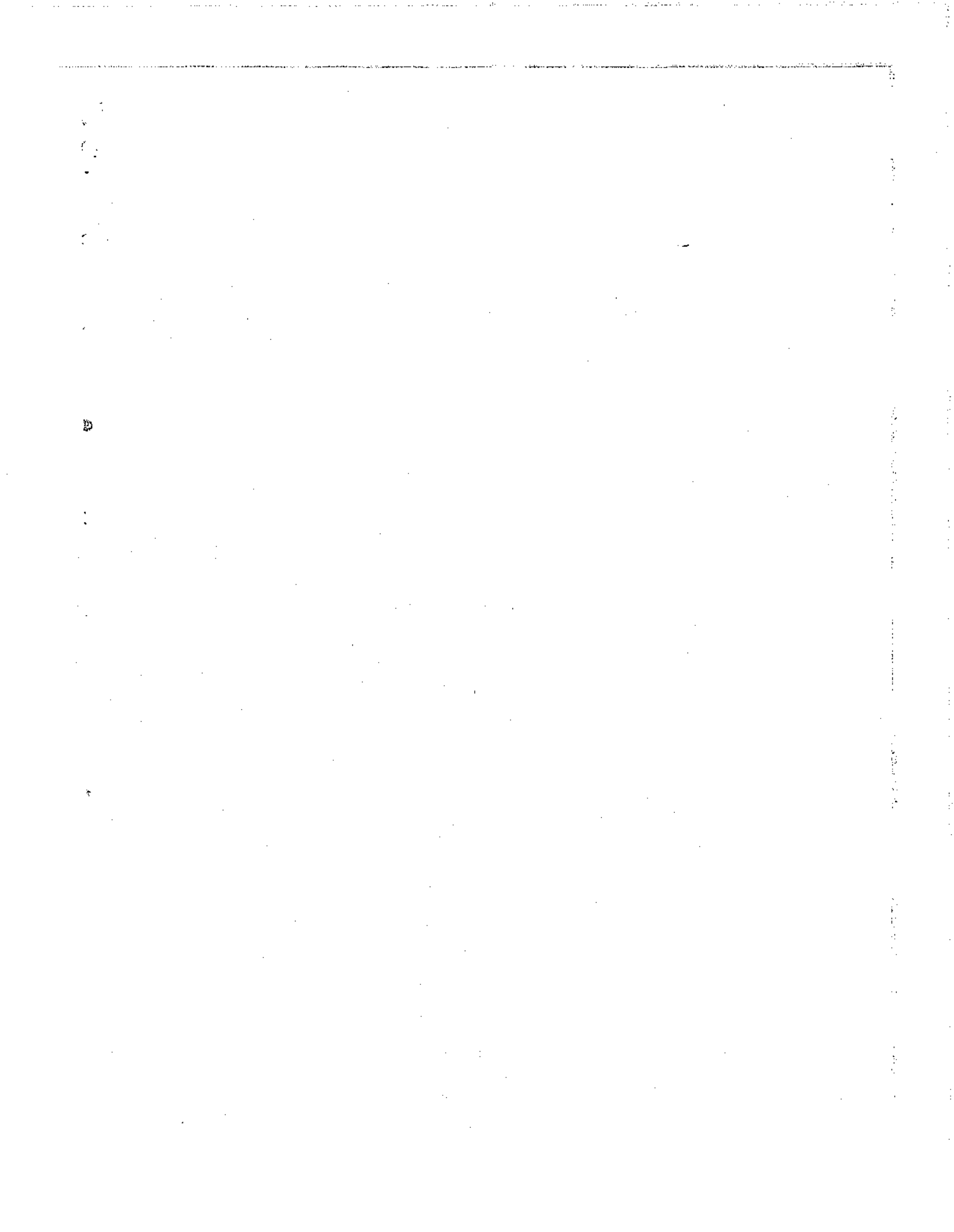
**(Together with Independent Auditors' Report)**



**HACKER, JOHNSON & SMITH PA**

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Certified Public Accountants





**HACKER, JOHNSON & SMITH PA**

Fort Lauderdale  
Orlando  
Tampa

Certified Public Accountants

### Independent Auditors' Report

Naples Bancorp, Inc.  
Naples, Florida:

We have audited the accompanying consolidated balance sheets of Naples Bancorp, Inc. and Subsidiary (the "Company") at December 31, 2006 and 2005, and the related consolidated statements of earnings, stockholders' equity, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards as established by the Auditing Standards Board (United States) and in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company at December 31, 2006 and 2005, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

*Hacker, Johnson & Smith PA*

HACKER, JOHNSON & SMITH PA  
Tampa, Florida  
March 9, 2007



**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Consolidated Balance Sheets**  
(S in thousands)

	<u>At December 31,</u>	
	<u>2006</u>	<u>2005</u>
<b>Assets</b>		
Cash and due from banks	\$ 18,179	3,428
Federal funds sold	<u>-</u>	<u>9,343</u>
Total cash and cash equivalents	18,179	12,771
Securities available for sale	3,906	4,768
Securities held to maturity	1,822	1,611
Loans, net of allowance for loan losses of \$1,793 and \$1,052	135,010	85,916
Premises and equipment, net	306	192
Federal Home Loan Bank stock, at cost	437	383
Accrued interest receivable	758	421
Other assets	<u>130</u>	<u>89</u>
Total assets	<u>\$ 160,548</u>	<u>106,151</u>
<b>Liabilities and Stockholders' Equity</b>		
<b>Liabilities:</b>		
Noninterest-bearing demand deposits	12,270	21,432
Savings, NOW and money-market deposits	74,896	33,218
Time deposits	<u>55,123</u>	<u>36,974</u>
Total deposits	142,289	91,624
Revolving line of credit	1,650	1,000
Federal Home Loan Bank advance	5,000	5,000
Other liabilities	<u>568</u>	<u>1,548</u>
Total liabilities	<u>149,507</u>	<u>99,172</u>
Commitments and contingencies (Notes 4, 9 and 15)		
<b>Stockholders' equity:</b>		
Common stock, no par value; 2,000,000 shares authorized, 739,160 and 644,910 shares issued and outstanding		
Additional paid-in capital	8,457	6,424
Retained earnings	2,614	571
Accumulated other comprehensive loss	<u>(30)</u>	<u>(16)</u>
Total stockholders' equity	<u>11,041</u>	<u>6,979</u>
Total liabilities and stockholders' equity	<u>\$ 160,548</u>	<u>106,151</u>

See Accompanying Notes to Consolidated Financial Statements.

NAPLES BANCORP, INC. AND SUBSIDIARY

Consolidated Statements of Earnings  
(S in thousands)

	<u>Year Ended December 31,</u>	
	<u>2006</u>	<u>2005</u>
Interest income:		
Loans	\$ 9,432	4,789
Securities	327	127
Other	<u>240</u>	<u>221</u>
Total interest income	<u>9,999</u>	<u>5,137</u>
Interest expense:		
Deposits	4,226	1,435
Revolving line of credit	134	4
Federal Home Loan Bank advance	<u>-</u>	<u>151</u>
Total interest expense	<u>4,360</u>	<u>1,590</u>
Net interest income	5,639	3,547
Provision for loan losses	<u>740</u>	<u>336</u>
Net interest income after provision for loan losses	<u>4,899</u>	<u>3,211</u>
Noninterest income:		
Service charges on deposit accounts	64	71
Mortgage broker fees	33	21
Other	<u>55</u>	<u>62</u>
Total noninterest income	<u>152</u>	<u>154</u>
Noninterest expenses:		
Salaries and employee benefits	1,612	1,287
Occupancy and equipment	478	466
Professional fees	127	157
Data processing	187	145
Advertising	200	97
Other	<u>404</u>	<u>337</u>
Total noninterest expenses	<u>3,008</u>	<u>2,489</u>
Net earnings	<u>\$ 2,043</u>	<u>876</u>

See Accompanying Notes to Consolidated Financial Statements.

**NAPLES BANCORP, INC. AND SUBSIDIARY**  
**Consolidated Statements of Stockholders' Equity**  
**Years Ended December 31, 2006 and 2005**  
(\$ in thousands)

	<u>Shares</u>	<u>Additional Paid-In Capital</u>	<u>Retained Earnings (Accumulated Deficit)</u>	<u>Accumulated Other Comprehensive Income (Loss)</u>	<u>Total Stockholders' Equity</u>
Balance at December 31, 2004	644,910	\$ 6,424	(105)	11	<u>6,330</u>
Cash dividends	-	-	(200)	-	<u>(200)</u>
Comprehensive income:					
Net earnings	-	-	876	-	876
Net change in unrealized gain on securities available for sale	-	-	-	(27)	<u>(27)</u>
Comprehensive income	—	—	—	—	<u>849</u>
Balance at December 31, 2005	644,910	6,424	571	(16)	<u>6,979</u>
Stock compensation	-	30	-	-	<u>30</u>
Proceeds from exercise of common Stock options	1,250	19	-	-	<u>19</u>
Sale of common stock, net of offering costs of \$16	93,000	1,984	-	-	<u>1,984</u>
Comprehensive income:					
Net earnings	-	-	2,043	-	2,043
Net change in unrealized loss on securities available for sale	-	-	-	(14)	<u>(14)</u>
Comprehensive income	—	—	—	—	<u>2,029</u>
Balance at December 31, 2006	<u>739,160</u>	<u>\$ 8,457</u>	<u>2,614</u>	<u>(30)</u>	<u>11,041</u>

See Accompanying Notes to Consolidated Financial Statements.

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Consolidated Statements of Cash Flows**  
(**\$ in thousands**)

	<u>Year Ended December 31,</u>	
	<u>2006</u>	<u>2005</u>
Cash flows from operating activities:		
Net earnings	\$ 2,043	876
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	65	76
Provision for loan losses	740	336
Stock compensation	30	-
Net amortization of deferred loan costs (fees)	90	(8)
Increase in accrued interest receivable	(337)	(174)
Increase in other assets	(41)	(9)
Increase in other liabilities	(980)	772
Net cash provided by operating activities	<u>1,610</u>	<u>1,869</u>
Cash flows from investing activities:		
Purchase of securities available for sale	-	(3,679)
Maturities, prepayments and calls of securities available for sale	848	644
Purchase of securities held to maturity	(3,804)	-
Maturities, prepayments and calls of securities held to maturity	3,593	213
Net decrease in time deposits	-	99
Net increase in loans	(49,924)	(23,496)
Purchase of Federal Home Loan Bank stock	(54)	(242)
Purchase of premises and equipment	(179)	(36)
Net cash used in investing activities	<u>(49,520)</u>	<u>(26,497)</u>
Cash flows from financing activities:		
Revolving line of credit advance	650	1,000
Proceeds from Federal Home Loan Bank advance	-	5,000
Cash dividends paid	-	(200)
Net increase in deposits	50,665	19,529
Proceeds from issuance of common stock, net	1,984	-
Proceeds from the exercise of stock options	19	-
Net cash provided by financing activities	<u>53,318</u>	<u>25,329</u>
Net increase in cash and cash equivalents	5,408	701
Cash and cash equivalents at beginning of the year	<u>12,771</u>	<u>12,070</u>
Cash and cash equivalents at end of the year	<u>\$ 18,179</u>	<u>12,771</u>
Supplemental disclosure of cash flow information:		
Cash paid during the year for interest	<u>\$ 4,284</u>	<u>1,506</u>
Net change in unrealized gain (loss) on securities available for sale	<u>\$ (14)</u>	<u>(27)</u>

See Accompanying Notes to Consolidated Financial Statements.

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements**

**December 31, 2006 and 2005 and the Years Then Ended**

**(1) Summary of Significant Accounting Policies**

**Organization.** Naples Bancorp, Inc. (the "Holding Company") owns 100% of the outstanding common stock of Bank of Naples (the "Bank") (collectively, the "Company"). The Holding Company operates as a one-bank holding company.

The Holding Company's only business activity is the operation of the Bank. The Bank is a state-(Florida) chartered commercial bank. The Bank provides a variety of financial services to individual and corporate customers through its banking office located in Naples, Collier County, Florida. The Bank's deposits are insured up to the applicable limits by the Federal Deposit Insurance Corporation.

**Basis of Presentation.** The accompanying consolidated financial statements include the accounts of the Holding Company and the Bank. All significant intercompany accounts and transactions have been eliminated in consolidation. The accounting and reporting practices of the Company conform to accounting principles generally accepted in the United States of America and to general practices within the banking industry. The following summarizes the more significant of these policies and practices:

**Use of Estimates.** In preparing consolidated financial statements in conformity with accounting principles generally accepted in the United States of America, management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities as of the date of the consolidated balance sheet and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Material estimates that are particularly susceptible to significant change in the near term relate to the determination of the allowance for loan losses.

**Cash and Cash Equivalents.** For purposes of the consolidated statements of cash flows, cash and cash equivalents include cash and balances due from banks and federal funds sold, all of which mature within ninety days.

The Bank is required under Federal Reserve Board regulations to maintain reserves, generally consisting of cash or noninterest-earning accounts, against its transaction accounts. At December 31, 2006 and 2005, balances maintained as reserves were approximately \$1,821,000 and \$813,000, respectively.

(continued)

NAPLES BANCORP, INC. AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(1) Summary of Significant Accounting Policies, Continued

**Securities.** Securities may be classified as either trading, held to maturity or available for sale.

Trading securities are held principally for resale and recorded at their fair values. Unrealized gains and losses on trading securities are included immediately in earnings. Held-to-maturity securities are those which the Company has the positive intent and ability to hold to maturity and are reported at amortized cost. Available-for-sale securities consist of securities not classified as trading securities nor as held-to-maturity securities. Unrealized holding gains and losses on available-for-sale securities are reported as a net amount in accumulated other comprehensive income (loss). Gains and losses on the sale of available-for-sale securities are determined using the specific-identification method. Premiums and discounts on securities available for sale are recognized in interest income using the interest method over the period to maturity.

**Loans.** Loans that management has the intent and ability to hold for the foreseeable future or until maturity or pay-off are reported at their outstanding principal adjusted for any charge-offs, the allowance for loan losses, and any deferred fees or costs.

Commitment fees and loan origination fees are deferred, and certain direct origination costs are capitalized. Both are recognized as an adjustment of the yield of the related loan.

The accrual of interest on loans is discontinued at the time the loan is ninety days delinquent unless the loan is well collateralized and in process of collection. In all cases, loans are placed on nonaccrual or charged-off at an earlier date if collection of principal or interest is considered doubtful.

All interest accrued but not collected for loans that are placed on nonaccrual or charged-off is reversed against interest income. The interest on these loans is accounted for on the cash-basis or cost-recovery method, until qualifying for return to accrual. Loans are returned to accrual status when all the principal and interest amounts contractually due are brought current and future payments are reasonably assured.

**Allowance for Loan Losses.** The allowance for loan losses is established as losses are estimated to have occurred through a provision for loan losses charged to earnings. Loan losses are charged against the allowance when management believes the uncollectibility of a loan balance is confirmed. Subsequent recoveries, if any, are credited to the allowance.

The allowance for loan losses is evaluated on a regular basis by management and is based upon management's periodic review of the collectibility of the loans in light of historical experience, the nature and volume of the loan portfolio, adverse situations that may affect the borrower's ability to repay, estimated value of any underlying collateral and prevailing economic conditions. This evaluation is inherently subjective as it requires estimates that are susceptible to significant revision as more information becomes available.

(continued)

## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (1) Summary of Significant Accounting Policies, Continued

**Allowance for Loan Losses, Continued.** A loan is considered impaired when, based on current information and events, it is probable that the Company will be unable to collect the scheduled payments of principal or interest when due. Factors considered by management in determining impairment include payment status, collateral value, and the probability of collecting scheduled principal and interest payments when due. Loans that experience insignificant payment delays and payment shortfalls generally are not classified as impaired. Management determines the significance of payment delays and payment shortfalls on a case-by-case basis, taking into consideration all of the circumstances surrounding the loan and the borrower, including the length of the delay, the reasons for the delay, the borrower's prior payment record, and the amount of the shortfall in relation to the principal and interest owed. Impairment is measured on a loan by loan basis for commercial and commercial real estate loans by either the present value of expected future cash flows discounted at the loan's effective interest rate, the loan's obtainable market price, or the fair value of the collateral if the loan is collateral dependent.

Large groups of smaller balance homogeneous loans are collectively evaluated for impairment. Accordingly, the Company does not separately identify individual consumer and residential loans for impairment disclosures.

**Premises and Equipment.** Leasehold improvements, furniture, fixtures and equipment and software are stated at cost, less accumulated depreciation and amortization. Depreciation and amortization expense are computed using the straight-line method over the shorter of the lease term or the estimated useful life of each type of asset.

**Fair Values of Financial Instruments.** The fair value of a financial instrument is the current amount that would be exchanged between willing parties, other than in a forced liquidation. Fair value is best determined based upon quoted market prices. However, in many instances, there are no quoted market prices for the Company's various financial instruments. In cases where quoted market prices are not available, fair values are based on estimates using present value or other valuation techniques. Those techniques are significantly affected by the assumptions used, including the discount rate and estimates of future cash flows. Accordingly, the aggregate fair value amounts presented may not necessarily represent the underlying fair value of the Company. The following methods and assumptions were used by the Company in estimating fair values of financial instruments:

**Cash and Cash Equivalents.** The carrying amounts of cash and cash equivalents approximate their fair value.

**Securities.** Fair values for securities are based on quoted market prices, where available. If quoted market prices are not available, fair values are based on quoted market prices of comparable instruments.

**Federal Home Loan Bank Stock.** Fair value for Federal Home Loan Bank stock is based on its redemption value of \$100 per share.

(continued)

## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (1) Summary of Significant Accounting Policies, Continued

##### *Fair Values of Financial Instruments, Continued.*

**Loans.** For variable-rate loans that re-price frequently and have no significant change in credit risk, fair values are based on carrying values. Fair values for certain fixed-rate residential real estate, commercial real estate and commercial loans are estimated using discounted cash flow analyses, using interest rates currently being offered for loans with similar terms to borrowers of similar credit quality.

**Accrued Interest.** The carrying amounts of accrued interest receivable approximate their fair value.

**Deposits.** The fair values disclosed for demand deposits, savings, NOW and money-market accounts are, by definition, equal to the amount payable on demand at the reporting date (that is, their carrying amounts). Fair values for time deposits are estimated using a discounted cash flow calculation that applies interest rates currently being offered on time deposits to a schedule of aggregated expected monthly maturities of time deposits.

**Federal Home Loan Bank Advance.** Fair values are estimated using a discounted cash flow analysis using current interest rates for similar borrowing arrangements.

**Revolving Line of Credit.** The carrying amount of the revolving line of credit approximates fair value.

**Off-Balance-Sheet Financial Instruments.** Fair values for off-balance-sheet lending commitments are based on fees currently charged to enter into similar agreements, taking into account the remaining terms of the agreements and the counterparties' credit standing.

**Transfer of Financial Assets.** Transfers of financial assets are accounted for as sales, when control over the assets has been surrendered. Control over transferred assets is deemed to be surrendered when (1) the assets have been isolated from the Company, (2) the transferee obtains the right (free of conditions that constrain it from taking advantage of that right) to pledge or exchange the transferred assets, and (3) the Company does not maintain control over the transferred assets through an agreement to repurchase them before their maturity.

**Income Taxes.** The Holding Company's stockholders have elected for it to be treated as an S-Corporation and have elected for the Bank to be treated as a qualified Subchapter S subsidiary. For federal and state income tax purposes all items of income and expense flow through to its stockholders. Therefore no provision for income taxes has been reflected in these consolidated financial statements.

**Off-Balance-Sheet Instruments.** In the ordinary course of business the Company has entered into off-balance-sheet financial instruments consisting of available lines of credit and standby letters of credit. Such financial instruments are recorded in the consolidated financial statements when they are funded.

(continued)



## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (1) Summary of Significant Accounting Policies, Continued

**Advertising.** The Company expenses all media advertising as incurred.

**Stock Compensation Plan.** Prior to January 1, 2006, the Bank's stock option plan was accounted for under the recognition and measurement provisions of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees*, and related Interpretations, as permitted by Financial Accounting Standards Board (FASB) Statement No. 123, *Accounting for Stock-Based Compensation* (as amended by Statement of Financial Accounting Standards (SFAS) No. 148, *Accounting for Stock-Based Compensation Transition and Disclosure*) (collectively SFAS 123). No stock-based employee compensation cost was recognized in the Bank's statements of earnings through December 31, 2005, as all options granted under the plan had an exercise price equal to the market value of the underlying common stock on the date of grant. Effective January 1, 2006, the Bank adopted the fair value recognition provisions of FASB Statement No. 123(R), *Share-Based Payment* (SFAS 123(R)), and will begin expensing the fair value of any stock options granted after January 1, 2006. The Company recognizes stock-based compensation expense in salaries and employee benefits in the accompanying consolidated statements of earnings on a straight-line basis over the vesting period. The impact of implementing SFAS 123(R) on the 2006 financial statements was not material.

**Recent Accounting Pronouncements.** In February 2006, the FASB issued SFAS No. 155, *Accounting for Certain Hybrid Instruments*, which permits, but does not require, fair value accounting for any hybrid financial instrument that contains an embedded derivative that would otherwise require bifurcation in accordance with SFAS 133. The statement also subjects beneficial interests issued by securitization vehicles to the requirements of SFAS 133. The statement was effective as of January 1, 2007 and had no impact on the Company.

In March 2006, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 156, *Accounting for Servicing of Financial Assets, an amendment of FASB Statement No. 133 and 140* (SFAS 156), which permits, but does not require, an entity to account for one or more classes of servicing rights (i.e., mortgage servicing rights) at fair value, with the changes in fair value recorded in the consolidated statement of earnings. This statement was effective January 1, 2007 and had no impact on the Company.

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* (SFAS 157). SFAS 157 defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles (GAAP) and enhances disclosures about fair value measurements. SFAS 157 retains the exchange price notion and clarifies that the exchange price is the price that would be received for an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants on the measurement date. SFAS 157 is effective for the Company's financial statements for the year beginning on January 1, 2008, with earlier adoption permitted. The adoption of SFAS No. 157 is not expected to impact the Company's consolidated results of operations and financial condition.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(1) Summary of Significant Accounting Policies, Continued**

**Comprehensive Income.** Accounting principles generally require that recognized revenue, expenses, gains and losses be included in net earnings. Although certain changes in assets and liabilities, such as unrealized gains and losses on available-for-sale securities, are reported as a separate component of the equity section of the consolidated balance sheet, such items along with net earnings, are components of comprehensive income.

**Reclassifications.** Certain amounts in the 2005 consolidated financial statements have been reclassified to conform with the 2006 presentation.

**(2) Securities**

Securities have been classified according to management's intention. The carrying amount of securities and their approximate fair values are as follows (in thousands):

	<u>Amortized Cost</u>	<u>Unrealized Gains</u>	<u>Unrealized Losses</u>	<u>Fair Value</u>
<i>Securities Available for Sale:</i>				
<i>At December 31, 2006:</i>				
U.S. Government Agency securities	\$ 500	-	(8)	492
Mortgage-backed securities	<u>3,436</u>	<u>5</u>	<u>(27)</u>	<u>3,414</u>
	<u>\$ 3,936</u>	<u>5</u>	<u>(35)</u>	<u>3,906</u>
<i>At December 31, 2005:</i>				
U.S. Government Agency securities	500	-	(8)	492
Mortgage-backed securities	<u>4,284</u>	<u>1</u>	<u>(9)</u>	<u>4,276</u>
	<u>\$ 4,784</u>	<u>1</u>	<u>(17)</u>	<u>4,768</u>

(continued)

NAPLES BANCORP, INC. AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(2) Securities, Continued

	<u>Amortized Cost</u>	<u>Unrealized Gain</u>	<u>Unrealized Losses</u>	<u>Fair Value</u>
<i>Securities Held to Maturity:</i>				
<i>At December 31, 2006-</i>				
Mortgage-backed securities	\$ <u>1,822</u>	-	(20)	<u>1,802</u>
<i>At December 31, 2005:</i>				
U.S. Government Agency securities	1,000	-	(18)	982
Mortgage-backed securities	<u>611</u>	-	(23)	<u>588</u>
	<u>\$ 1,611</u>	-	(41)	<u>1,570</u>

The scheduled maturities at December 31, 2006 are as follows (in thousands):

	<u>Available for Sale</u>		<u>Held to Maturity</u>	
	<u>Amortized Cost</u>	<u>Fair Value</u>	<u>Amortized Cost</u>	<u>Fair Value</u>
Due from one to five years	\$ 500	492	-	-
Mortgage-backed securities	<u>3,436</u>	<u>3,414</u>	<u>1,822</u>	<u>1,802</u>
	<u>\$ 3,936</u>	<u>3,906</u>	<u>1,822</u>	<u>1,802</u>

Securities with a carrying value of \$492,000 and \$115,000 at December 31, 2006 and 2005, respectively, were pledged as collateral for public deposits and for other purposes as required or permitted by law. There were no sales of securities during the years ended December 31, 2006 or 2005.

Securities with gross unrealized losses at December 31, 2006, aggregated by investment category and length of time that individual securities have been in a continuous loss position, is as follows (in thousands):

	<u>Less Than Twelve Months</u>		<u>Over Twelve Months</u>	
	<u>Gross Unrealized Losses</u>	<u>Fair Value</u>	<u>Gross Unrealized Losses</u>	<u>Fair Value</u>
<i>Securities Available for Sale:</i>				
U.S. government and federal agencies	\$ -	-	(8)	492
Mortgage-backed securities	-	-	(27)	<u>3,035</u>
Total securities available for sale	<u>\$ -</u>	<u>-</u>	<u>(35)</u>	<u>3,527</u>

(continued)

NAPLES BANCORP, INC. AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(2) Securities, Continued

	<u>Less Than Twelve Months</u>		<u>Over Twelve Months</u>	
	<u>Gross Unrealized Losses</u>	<u>Fair Value</u>	<u>Gross Unrealized Losses</u>	<u>Fair Value</u>
<i>Securities Held to Maturity:</i>				
U.S. government and federal agencies	\$ -	-	-	-
Mortgage-backed securities	(6)	<u>1,319</u>	(14)	<u>483</u>
Total securities held to maturity	<u>\$(6)</u>	<u>1,319</u>	<u>(14)</u>	<u>483</u>

Management evaluates securities for other-than-temporary impairment at least on a quarterly basis, and more frequently when economic or market concerns warrant such evaluation. Consideration is given to (1) the length of time and the extent to which the fair value has been less than cost, (2) the financial condition and near-term prospects of the issuer, and (3) the intent and ability of the Company to retain its investment in the issuer for a period of time sufficient to allow for any anticipated recovery in fair value.

The unrealized losses on investment securities were caused by interest rate changes. It is expected that the securities would not be settled at a price less than the par value of the investments. Because the decline in fair value is attributable to changes in interest rates and not credit quality, and because the Company has the ability and intent to hold these investments until a market price recovery or maturity, these investments are not considered other-than-temporarily impaired.

(3) Loans

The components of loans are as follows (in thousands):

	<u>At December 31,</u>	
	<u>2006</u>	<u>2005</u>
Commercial	\$ 14,301	9,821
Commercial real estate	75,195	45,223
Residential real estate	39,804	25,888
Consumer	<u>7,451</u>	<u>5,966</u>
Total loans	136,751	86,898
Add (deduct):		
Net deferred loan costs	52	70
Allowance for loan losses	<u>(1,793)</u>	<u>(1,052)</u>
Loans, net	<u>\$ 135,010</u>	<u>85,916</u>

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(3) Loans, Continued**

An analysis of the change in the allowance for loan losses follows (in thousands):

	<u>Year Ended December 31,</u>	
	<u>2006</u>	<u>2005</u>
Beginning balance	\$ 1,052	797
Provision for loan losses	740	336
Charge-offs	-	(86)
Recoveries	<u>1</u>	<u>5</u>
Ending balance	<u>\$ 1,793</u>	<u>1,052</u>

Information relating to loans identified as impaired during the years ended December 31, 2006 and 2005 is as follows (in thousands):

	<u>At or For Year Ended</u>	
	<u>December 31,</u>	
	<u>2006</u>	<u>2005</u>
Gross loan with related allowance for losses recorded	\$ <u>-</u>	<u>-</u>
Less allowance on this loan	\$ <u>-</u>	<u>-</u>
Net investment in impaired loan	\$ <u>-</u>	<u>-</u>
Average net investment in impaired loans	\$ <u>-</u>	<u>42</u>
Interest income recognized on impaired loans	\$ <u>-</u>	<u>-</u>
Interest income received on impaired loans	\$ <u>-</u>	<u>-</u>

There were no loans on nonaccrual status or loans past due ninety days or more and still accruing interest at December 31, 2006 or 2005.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(4) Premises and Equipment**

A summary of premises and equipment follows (in thousands):

	<u>At December 31,</u>	
	<u>2006</u>	<u>2005</u>
Leasehold improvements	\$ 227	97
Furniture, fixtures and equipment	577	528
Software	<u>155</u>	<u>155</u>
 Total, at cost	 959	 780
 Less accumulated depreciation and amortization	 (653)	 (588)
 Premises and equipment, net	 <u>\$ 306</u>	 <u>192</u>

The Company leases its main office facility from an entity owned by certain stockholders of the Company. The lease has an initial term of ten years and contains two five year renewal options. The lease provides for annual increases based on changes in the consumer price index, pro rata share of real estate taxes, common area maintenance and requires the Company to maintain certain insurance coverages. The Company obtained an appraisal in connection with obtaining the lease to support the fair market value of the lease payments. During 2006, the Company entered into a operating lease agreement with an initial term of four years for a future branch office. The lease contains three five year renewal options. The Company expects to incur approximately \$200,000 of improvement costs in connection with these facilities in 2007. Rent expense during the years ended December 31, 2006 and 2005 was approximately \$330,000 and \$310,000, respectively. At December 31, 2006, the future minimum lease payments are approximately as follows (in thousands):

<u>Year Ending</u>	<u>Amount</u>
2007	\$ 384
2008	400
2009	409
2010	417
2011	426
Thereafter	<u>16</u>
	 <u>\$ 2,052</u>

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(5) Deposits**

The aggregate amount of time deposits with a minimum denomination of \$100,000, was approximately \$45,735,000 and \$25,875,000 at December 31, 2006 and 2005, respectively.

A schedule of maturities of time deposits at December 31, 2006 follows (in thousands):

<u>Year Ending</u>	<u>Amount</u>
2007	\$ 53,479
2008	<u>1,644</u>
	\$ <u>55,123</u>

**(6) Federal Home Loan Bank Advance**

The maturity and interest rate on the Federal Home Loan Bank ("FHLB") advance were as follows (in thousands):

<u>Maturing In Year Ending December 31,</u>	<u>Interest Rate</u>	<u>At December 31,</u>	
		<u>2006</u>	<u>2005</u>
2007	4.53%	\$ <u>5,000</u>	<u>5,000</u>

The collateral agreement with FHLB includes a blanket floating lien requiring the Company to maintain certain first mortgage loans as pledged collateral. At December 31, 2006 and 2005, this advance was also collateralized by FHLB stock.

**(7) Revolving Line of Credit**

The Company has a \$4 million revolving line of credit with Wells Fargo Bank, N.A. with a balance outstanding of \$1.65 million and \$1.0 million at December 31, 2006 and 2005, respectively. The line of credit bears interest at 1.25% above the federal funds rate and is collateralized by all of the Bank's common stock.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(8) Stock Options**

The Company has a stock option plan whereby it may grant both incentive stock options and nonqualified stock options to its employees, officers and directors the option to purchase up to 100,000 shares of common stock. All options granted have a term of ten years and vest over three and five years. At December 31, 2006, 46,004 shares are available for grant. A summary of stock option transactions follows:

	Number of <u>Shares</u>	Weighted- Average Exercise <u>Price</u>	Weighted- Average Remaining Contractual <u>Term</u>
Options outstanding at December 31, 2004	-	\$ -	
Options granted	<u>32,246</u>	15.50	
Options outstanding at December 31, 2005	32,246	15.50	
Options granted	23,000	18.89	
Options forfeited	(3,750)	15.50	
Options exercised	<u>1,250</u>	15.50	
Options outstanding at December 31, 2006	<u>52,746</u>	\$ <u>16.98</u>	<u>9.15 years</u>
Options exercisable at December 31, 2006	<u>7,449</u>	\$ <u>15.50</u>	<u>9.04 years</u>

The fair value of each option granted for the period ended December 31, 2006 is estimated on the date of grant using the Black-Scholes option-pricing model with the following assumptions:

	<u>Year Ended December 31, 2006</u>
Weighted-average risk-free interest rate	5.95%
Dividend yield	-
Expected stock volatility	3%
Expected life in years	6 to 6.5 years
Per share weighted-average grant-date fair value of options issued during the period	\$ <u>7.71</u>

The total fair value of shares vested and recognized as compensation expense was \$30,000 during the year ended December 31, 2006. At December 31, 2006 there was approximately \$118,000 of total unrecognized compensation expense related to nonvested share-based compensation arrangement granted under the plan. The total intrinsic value of options exercised during the year ended December 31, 2006 was \$7,500.

(continued)



## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (8) Stock Options, Continued

As part of its adoption of SFAS 123(R), the Company examined its historical pattern of option exercises in an effort to determine if there were any pattern based on certain employee populations. From this analysis, the Company could not identify any patterns in the exercise of options. As such, the Company used the guidance in Staff Accounting Bulletin No. 107 to determine the estimated life of options issued subsequent to the adoption of SFAS 123(R). Based on this guidance, the estimated term was deemed to be the midpoint of the vesting term and the contractual term ((vesting term and original contractual term)/2). Expected volatility is based on historical volatility of similar peer banks' common stock. The risk-free rate for periods within the contracted life of the option is based on the U.S. Treasury yield curve in effect at the time of grant.

#### (9) Off Balance Sheet Financial Instruments

The Company is a party to financial instruments with off-balance-sheet risk in the normal course of business to meet the financing needs of its customers. These financial instruments are available lines of credit and standby letters of credit and may involve, to varying degrees, elements of credit and interest-rate risk in excess of the amount recognized in the consolidated balance sheet. The contract amounts of these instruments reflect the extent of involvement the Company has in these financial instruments.

The Company's exposure to credit loss in the event of nonperformance by the other party to the financial instrument for commitments to extend credit is represented by the contractual amount of those instruments. The Company uses the same credit policies in making commitments as it does for on-balance-sheet instruments.

Available lines of credit are agreements to lend to a customer as long as there is no violation of any condition established in the contract. Available lines of credit generally have fixed expiration dates or other termination clauses and may require payment of a fee. Because some of the available lines of credit are expected to expire without being drawn upon, the total commitment amounts do not necessarily represent future cash requirements. The Company evaluates each customer's credit worthiness on a case-by-case basis. The amount of collateral obtained, if deemed necessary by the Company, upon extension of credit, is based on management's credit evaluation of the counterparty.

Standby letters of credit are conditional commitments issued by the Company to guarantee the performance of a customer to a third party. The credit risk is essentially the same as that involved in extending loans to customers. Essentially all letters of credit have expiration dates within one year. The Company generally holds collateral supporting these commitments.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(9) Off Balance Sheet Financial Instruments, Continued**

Available lines of credit typically result in loans with a market interest rate. A summary of the contractual amounts of the Company's financial instruments with off balance sheet risk at December 31, 2006 follows (in thousands):

	<u>Contract Amount</u>
Available lines of credit	\$ <u>15,999</u>
Standby letters of credit	\$ <u>732</u>

**(10) Credit Risk**

The Company grants the majority of its loans to borrowers throughout the Naples, Florida area. Although, the Company has a diversified loan portfolio, a significant portion of its borrowers' ability to honor their contract is dependent on the economy in the Naples, Florida area.

**(11) Related Party Transactions and Economic Dependence**

In the ordinary course of business, the Company makes loans to officers and directors of the Company and entities in which they hold a financial interest. The Company also accepts deposits from related parties. These are summarized as follows (in thousands):

	<u>Year Ended December 31,</u>	
	<u>2006</u>	<u>2005</u>
Balance at beginning of year	\$ 1,707	1,573
Additions	6,135	300
Repayments	<u>(957)</u>	<u>(166)</u>
Balance at end of year	\$ <u>6,885</u>	<u>1,707</u>
Deposits from such related parties at year end	\$ <u>9,221</u>	<u>10,025</u>

**(12) Regulatory Matters**

The Bank is subject to various regulatory capital requirements administered by the regulatory banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory and possibly additional discretionary actions by regulators that, if undertaken, could have a direct material effect on the Company's and the Bank's financial statements. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, the Bank must meet specific capital guidelines that involve quantitative measures of their assets, liabilities, and certain off-balance-sheet items as calculated under regulatory accounting practices. The capital amounts and classification are also subject to qualitative judgments by the regulators about components, risk weightings, and other factors.

(continued)

NAPLES BANCORP, INC. AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(12) Regulatory Matters, Continued

Quantitative measures established by regulation to ensure capital adequacy require the Bank to maintain minimum amounts and percentages (set forth in the following table) of total and Tier 1 capital (as defined in the regulations) to risk-weighted assets (as defined) and of Tier 1 capital (as defined) to average assets (as defined). Management believes, as of December 31, 2006, the Bank met all capital adequacy requirements to which they are subject.

As of December 31, 2006, the most recent notification from the regulatory authorities categorized the Bank as well capitalized under the regulatory framework for prompt corrective action. To be categorized as well capitalized, an institution must maintain minimum total risk-based, Tier I risk-based, and Tier I leverage percentages as set forth in the following tables. There are no conditions or events since that notification that management believes have changed the Bank's category. The Bank's actual capital amounts and percentages are also presented in the table (dollars in thousands).

	Actual		For Capital Adequacy Purposes		Minimum To Be Well Capitalized Under Prompt Corrective Action Provisions	
	Amount	%	Amount	%	Amount	%
<i>As of December 31, 2006:</i>						
Total Capital to Risk-Weighted Assets	\$ 14,267	10.71%	\$ 10,658	8.00%	\$ 13,323	10.00%
Tier I Capital to Risk-Weighted Assets	12,609	9.46	5,329	4.00	7,994	6.00
Tier I Capital to Total Assets	12,609	8.38	6,015	4.00	7,519	5.00
<i>As of December 31, 2005:</i>						
Total Capital to Risk-Weighted Assets	9,000	10.47	6,878	8.00	8,597	10.00
Tier I Capital to Risk-Weighted Assets	7,948	9.24	3,439	4.00	5,158	6.00
Tier I Capital to Total Assets	7,948	8.30	3,831	4.00	4,789	5.00

(13) Dividend Restrictions

The Bank is limited in the amount of cash dividends that may be paid to the Holding Company. The amount of cash dividends that may be paid is based on the Bank's net earnings of the current year combined with the Bank's retained earnings of the preceding two years, as defined by state banking regulations. However, for any dividend declaration, the Bank must consider additional factors such as the amount of current period net earnings, liquidity, asset quality, capital adequacy and economic conditions. It is likely that these factors would further limit the amount of dividends which the Bank could declare. In addition, bank regulators have the authority to prohibit banks from paying dividends if they deem such payment to be an unsafe or unsound practice.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(14) Profit Sharing Plan**

The Company established a section 401(k) profit sharing plan for all employees meeting certain eligibility requirements. The Company matches up to 5% of each participant contribution. The Company's expense in connection with the plan totaled \$49,000 and \$25,000 during the years ended December 31, 2006 and 2005, respectively.

**(15) Contingencies**

Various legal claims also arise from time to time in the normal course of business which, in the opinion of management, will not have a material effect on the Company's consolidated financial statements.

**(16) Financial Instruments**

The estimated fair values of the Company's financial instruments were as follows (in thousands):

	<u>At December 31,</u>			
	<u>2006</u>		<u>2005</u>	
	<u>Carrying</u>	<u>Fair</u>	<u>Carrying</u>	<u>Fair</u>
	<u>Amount</u>	<u>Value</u>	<u>Amount</u>	<u>Value</u>
<b>Financial assets:</b>				
Cash and cash equivalents	\$ 18,179	18,179	12,771	12,771
Securities available for sale	3,906	3,906	4,768	4,768
Securities held to maturity	1,822	1,802	1,611	1,570
Loans, net	135,010	135,171	85,916	85,236
Accrued interest receivable	758	758	421	421
Federal Home Loan Bank stock	437	437	383	383
<b>Financial liabilities:</b>				
Deposits	142,289	142,683	91,624	91,689
Revolving line of credit	1,650	1,650	1,000	1,000
Federal Home Loan Bank advance	5,000	4,987	5,000	4,970

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(17) Holding Company Financial Information**

The Holding Company's financial information as of December 31, 2006 and 2005, and for the years then ended follows (in thousands):

**Condensed Balance Sheets**

	<u>At December 31,</u>	
	<u>2006</u>	<u>2005</u>
<b>Assets</b>		
Cash	\$ 113	47
Investment in subsidiary	<u>12,578</u>	<u>7,932</u>
Total assets	<u>\$ 12,691</u>	<u>7,979</u>
<b>Liabilities and Stockholders' Equity</b>		
Revolving line of credit	1,650	1,000
Stockholders' equity	<u>11,041</u>	<u>6,979</u>
Total liabilities and stockholders' equity	<u>\$ 12,691</u>	<u>7,979</u>

**Condensed Statements of Earnings**

	<u>Year Ended December 31,</u>	
	<u>2006</u>	<u>2005</u>
Earnings of subsidiary	\$ 2,181	881
Other expense	<u>(138)</u>	<u>(5)</u>
Net earnings	<u>\$ 2,043</u>	<u>876</u>

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(17) Holding Company Financial Information, Continued**

**Condensed Statements of Cash Flows**

	<b>Year Ended December 31,</b>	
	<b>2006</b>	<b>2005</b>
<b>Cash flows from operating activities:</b>		
Net earnings	\$ 2,043	876
Adjustments to reconcile net earnings to net cash (used in) provided by operating activities:		
Equity in undistributed earnings of subsidiary	(2,181)	(881)
Dividend from subsidiary	<u>          -</u>	<u>      200</u>
Net cash (used in) provided by operating activities	<u>      (138)</u>	<u>      195</u>
<b>Cash flows from investing activity-</b>		
Investment in subsidiary	(2,449)	(950)
<b>Cash flows from financing activities:</b>		
Revolving line of credit advance	650	1,000
Cash dividends	-	(200)
Proceeds from issuance of common stock	1,984	-
Proceeds from exercise of stock options	<u>      19</u>	<u>          -</u>
Net cash provided by financing activities	<u>      2,653</u>	<u>      800</u>
<b>Increase in cash</b>	<b>66</b>	<b>45</b>
<b>Cash at beginning of the year</b>	<u>      47</u>	<u>      2</u>
<b>Cash at end of year</b>	<b>\$ <u>113</u></b>	<b><u>47</u></b>

**NAPLES BANCORP, INC. AND SUBSIDIARY**  
Naples, Florida

**Audited Consolidated Financial Statements**  
**December 31, 2007 and 2006 and for the Years Then Ended**

**(Together with Independent Auditors' Report)**



**HACKER, JOHNSON & SMITH PA**

Fort Lauderdale  
Fort Myers  
Orlando  
Tampa

Certified Public Accountants

**Independent Auditors' Report**

Naples Bancorp, Inc.  
Naples, Florida:

We have audited the accompanying consolidated balance sheets of Naples Bancorp, Inc. and Subsidiary (the "Company") at December 31, 2007 and 2006, and the related statements of earnings, stockholders' equity, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company at December 31, 2007 and 2006, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

*Hacker, Johnson & Smith PA*

HACKER, JOHNSON & SMITH PA  
Fort Myers, Florida  
March 18, 2008



**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Consolidated Balance Sheets**  
(\$ in thousands)

	At December 31,	
	2007	2006
<b>Assets</b>		
Cash and due from banks	\$ 3,866	18,179
Federal funds sold	7,412	-
Total cash and cash equivalents	11,278	18,179
Securities available for sale	3,835	3,906
Securities held to maturity	1,523	1,822
Loans, net of allowance for loan losses of \$1,460 and \$1,793	136,233	135,010
Premises and equipment, net	703	306
Foreclosed assets, net	160	-
Federal Home Loan Bank stock, at cost	1,009	437
Accrued interest receivable	813	758
Other assets	91	130
Total assets	\$ 155,645	160,548
<b>Liabilities and Stockholders' Equity</b>		
<b>Liabilities:</b>		
Noninterest-bearing demand deposits	12,283	12,270
Savings, NOW and money-market deposits	75,236	74,896
Time deposits	35,950	55,123
Total deposits	123,469	142,289
Revolving line of credit	1,715	1,650
Federal Home Loan Bank advances	16,000	5,000
Other liabilities	1,472	568
Total liabilities	142,656	149,507
Commitments and contingencies (Notes 4, 9 and 15)		
<b>Stockholders' equity:</b>		
Common stock, no par value; 2,000,000 shares authorized, 739,160 shares issued and outstanding		
Additional paid-in capital	8,476	8,457
Retained earnings	4,490	2,614
Accumulated other comprehensive income (loss)	23	(30)
Total stockholders' equity	12,989	11,041
Total liabilities and stockholders' equity	\$ 155,645	160,548

See Accompanying Notes to Consolidated Financial Statements.

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Consolidated Statements of Earnings**  
(\$ in thousands)

	<u>Year Ended December 31,</u>	
	<u>2007</u>	<u>2006</u>
Interest income:		
Loans	\$ 11,272	9,432
Securities	260	327
Federal funds sold	565	192
Other	<u>77</u>	<u>48</u>
Total interest income	<u>12,174</u>	<u>9,999</u>
Interest expense:		
Deposits	5,766	3,658
Borrowings	<u>343</u>	<u>702</u>
Total interest expense	<u>6,109</u>	<u>4,360</u>
Net interest income	6,065	5,639
Provision for loan losses	<u>905</u>	<u>740</u>
Net interest income after provision for loan losses	<u>5,160</u>	<u>4,899</u>
Noninterest income:		
Service charges on deposit accounts	92	64
Other	<u>56</u>	<u>88</u>
Total noninterest income	<u>148</u>	<u>152</u>
Noninterest expenses:		
Salaries and employee benefits	1,797	1,612
Occupancy and equipment	614	529
Professional fees	252	127
Data processing	227	187
Advertising	189	200
Other	<u>353</u>	<u>353</u>
Total noninterest expenses	<u>3,432</u>	<u>3,008</u>
Net earnings	<u>\$ 1,876</u>	<u>2,043</u>

See Accompanying Notes to Consolidated Financial Statements.

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Consolidated Statements of Stockholders' Equity**

**Years Ended December 31, 2007 and 2006**

(\$ in thousands)

	<u>Shares</u>	<u>Additional Paid-In Capital</u>	<u>Retained Earnings (Accumulated Deficit)</u>	<u>Accumulated Other Compre- hensive Income (Loss)</u>	<u>Total Stockholders' Equity</u>
Balance at December 31, 2005	644,910	\$ 6,424	571	(16)	<u>6,979</u>
Stock compensation	-	30	-	-	<u>30</u>
Proceeds from exercise of common stock options	1,250	19	-	-	<u>19</u>
Sale of common stock, net of offering costs of \$16	93,000	1,984	-	-	<u>1,984</u>
Comprehensive income:					
Net earnings	-	-	2,043	-	2,043
Net change in unrealized loss on securities available for sale	-	-	-	(14)	<u>(14)</u>
Comprehensive income	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>2,029</u>
Balance at December 31, 2006	739,160	8,457	2,614	(30)	<u>11,041</u>
Stock compensation	-	19	-	-	<u>19</u>
Comprehensive income:					
Net earnings	-	-	1,876	-	1,876
Net change in unrealized loss on securities available for sale	-	-	-	53	<u>53</u>
Comprehensive income	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>1,929</u>
Balance at December 31, 2007	<u>739,160</u>	<u>\$ 8,476</u>	<u>4,490</u>	<u>23</u>	<u>12,989</u>

See Accompanying Notes to Consolidated Financial Statements.

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Consolidated Statements of Cash Flows**  
(\$ in thousands)

	<u>Year Ended December 31,</u>	
	<u>2007</u>	<u>2006</u>
Cash flows from operating activities:		
Net earnings	\$ 1,876	2,043
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	87	65
Provision for loan losses	905	740
Loss on sale of securities available for sale	3	-
Stock compensation	19	30
Net amortization of deferred loan fees	(96)	(90)
Increase in accrued interest receivable	(55)	(337)
Decrease (increase) in other assets	39	(41)
Increase (decrease) in other liabilities	<u>904</u>	<u>(980)</u>
Net cash provided by operating activities	<u>3,682</u>	<u>1,430</u>
Cash flows from investing activities:		
Purchase of securities available for sale	(714)	-
Maturities, sales, prepayments and calls of securities available for sale	835	848
Purchase of securities held to maturity	-	(3,804)
Maturities, prepayments and calls of securities held to maturity	299	3,593
Net increase in loans	(2,192)	(49,744)
Purchase of Federal Home Loan Bank stock	(572)	(54)
Purchase of premises and equipment, net	<u>(484)</u>	<u>(179)</u>
Net cash used in investing activities	<u>(2,828)</u>	<u>(49,340)</u>
Cash flows from financing activities:		
Proceeds from Federal Home Loan Bank advances	11,000	-
Revolving line of credit advance	65	650
Net (decrease) increase in deposits	(18,820)	50,665
Proceeds from issuance of common stock, net	-	1,984
Proceeds from the exercise of stock options	<u>-</u>	<u>19</u>
Net cash (used in) provided by financing activities	<u>(7,755)</u>	<u>53,318</u>
Net (decrease) increase in cash and cash equivalents	(6,901)	5,408
Cash and cash equivalents at beginning of the year	<u>18,179</u>	<u>12,771</u>
Cash and cash equivalents at end of the year	<u>\$ 11,278</u>	<u>18,179</u>
Supplemental disclosure of cash flow information:		
Cash paid during the year for interest	<u>\$ 6,114</u>	<u>4,284</u>
Net change in unrealized gain (loss) on securities available for sale	<u>\$ 53</u>	<u>(14)</u>
Loan reclassified to foreclosed assets	<u>\$ 160</u>	<u>-</u>

See Accompanying Notes to Consolidated Financial Statements.

## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements

December 31, 2007 and 2006 and the Years Then Ended

**(1) Summary of Significant Accounting Policies**

**Organization.** Naples Bancorp, Inc. (the "Holding Company") owns 100% of the outstanding common stock of Bank of Naples (the "Bank") (collectively, the "Company"). The Holding Company operates as a one-bank holding company.

The Holding Company's only business activity is the operation of the Bank. The Bank is a state-(Florida) chartered commercial bank. The Bank provides a variety of financial services to individual and corporate customers through its two banking offices located in Naples, Collier County, and Bonita Springs, Lee County, Florida. The Bank's deposits are insured up to the applicable limits by the Federal Deposit Insurance Corporation.

**Basis of Presentation.** The accompanying consolidated financial statements include the accounts of the Holding Company and the Bank. All significant intercompany accounts and transactions have been eliminated in consolidation. The accounting and reporting practices of the Company conform to accounting principles generally accepted in the United States of America and to general practices within the banking industry. The following summarizes the more significant of these policies and practices:

**Use of Estimates.** In preparing consolidated financial statements in conformity with accounting principles generally accepted in the United States of America, management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities as of the date of the consolidated balance sheet and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Material estimates that are particularly susceptible to significant change in the near term relate to the determination of the allowance for loan losses.

**Cash and Cash Equivalents.** For purposes of the consolidated statements of cash flows, cash and cash equivalents include cash and balances due from banks and federal funds sold, all of which mature within ninety days.

The Bank is required under Federal Reserve Board regulations to maintain reserves, generally consisting of cash or noninterest-earning accounts, against its transaction accounts. At December 31, 2007 and 2006, balances maintained as reserves were approximately \$1,461,000 and \$1,821,000, respectively.

(continued)

## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (1) Summary of Significant Accounting Policies, Continued

**Securities.** Securities may be classified as either trading, held to maturity or available for sale. Trading securities are held principally for resale and recorded at their fair values. Unrealized gains and losses on trading securities are included immediately in earnings. Held-to-maturity securities are those which the Company has the positive intent and ability to hold to maturity and are reported at amortized cost. Available-for-sale securities consist of securities not classified as trading securities nor as held-to-maturity securities. Unrealized holding gains and losses on available-for-sale securities are reported as a net amount in accumulated other comprehensive income (loss). Gains and losses on the sale of available-for-sale securities are determined using the specific-identification method. Premiums and discounts on securities available for sale are recognized in interest income using the interest method over the period to maturity.

**Loans.** Loans that management has the intent and ability to hold for the foreseeable future or until maturity or pay-off are reported at their outstanding principal adjusted for any charge-offs, the allowance for loan losses, and any deferred fees or costs.

Commitment fees and loan origination fees are deferred, and certain direct origination costs are capitalized. Both are recognized as an adjustment of the yield of the related loan.

The accrual of interest on loans is discontinued at the time the loan is ninety days delinquent unless the loan is well collateralized and in process of collection. In all cases, loans are placed on nonaccrual or charged-off at an earlier date if collection of principal or interest is considered doubtful.

All interest accrued but not collected for loans that are placed on nonaccrual or charged-off is reversed against interest income. The interest on these loans is accounted for on the cash-basis or cost-recovery method, until qualifying for return to accrual. Loans are returned to accrual status when all the principal and interest amounts contractually due are brought current and future payments are reasonably assured.

**Allowance for Loan Losses.** The allowance for loan losses is established as losses are estimated to have occurred through a provision for loan losses charged to earnings. Loan losses are charged against the allowance when management believes the uncollectibility of a loan balance is confirmed. Subsequent recoveries, if any, are credited to the allowance.

The allowance for loan losses is evaluated on a regular basis by management and is based upon management's periodic review of the collectibility of the loans in light of historical experience, the nature and volume of the loan portfolio, adverse situations that may affect the borrower's ability to repay, estimated value of any underlying collateral and prevailing economic conditions. This evaluation is inherently subjective as it requires estimates that are susceptible to significant revision as more information becomes available.

(continued)

## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (1) Summary of Significant Accounting Policies, Continued

**Allowance for Loan Losses, Continued.** The allowance consists of specific and general components. The specific component relates to loans that are impaired. For such loans that are also classified as impaired, an allowance is established when the discounted cash flows (or collateral value or observable market price) of the impaired loan is lower than the carrying value of that loan. The general component covers all other loans and is based on historical loss experience adjusted for qualitative factors.

A loan is considered impaired when, based on current information and events, it is probable that the Company will be unable to collect the scheduled payments of principal or interest when due. Factors considered by management in determining impairment include payment status, collateral value, and the probability of collecting scheduled principal and interest payments when due. Loans that experience insignificant payment delays and payment shortfalls generally are not classified as impaired. Management determines the significance of payment delays and payment shortfalls on a case-by-case basis, taking into consideration all of the circumstances surrounding the loan and the borrower, including the length of the delay, the reasons for the delay, the borrower's prior payment record, and the amount of the shortfall in relation to the principal and interest owed. Impairment is measured on a loan by loan basis for commercial and commercial real estate loans by either the present value of expected future cash flows discounted at the loan's effective interest rate, the loan's obtainable market price, or the fair value of the collateral if the loan is collateral dependent.

Large groups of smaller balance homogeneous loans are collectively evaluated for impairment. Accordingly, the Company does not separately identify individual consumer and residential loans for impairment disclosures.

**Premises and Equipment.** Leasehold improvements, furniture, fixtures and equipment and software are stated at cost, less accumulated depreciation and amortization. Depreciation and amortization expense are computed using the straight-line method over the shorter of the lease term or the estimated useful life of each type of asset.

**Foreclosed Assets.** Assets acquired in the settlement of loans are initially recorded at the lower of cost (principal balance of the former loan plus costs of obtaining title and possession) or estimated fair value at the date of acquisition. Subsequently, such assets acquired are carried at the lower of cost or fair value less estimated costs to sell. Costs relating to development and improvement of foreclosed assets are capitalized, whereas costs relating to holding the foreclosed assets are charged to earnings.

(continued)

## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (1) Summary of Significant Accounting Policies, Continued

**Fair Values of Financial Instruments.** The fair value of a financial instrument is the current amount that would be exchanged between willing parties, other than in a forced liquidation. Fair value is best determined based upon quoted market prices. However, in many instances, there are no quoted market prices for the Company's various financial instruments. In cases where quoted market prices are not available, fair values are based on estimates using present value or other valuation techniques. Those techniques are significantly affected by the assumptions used, including the discount rate and estimates of future cash flows. Accordingly, the aggregate fair value amounts presented may not necessarily represent the underlying fair value of the Company. The following methods and assumptions were used by the Company in estimating fair values of financial instruments:

**Cash and Cash Equivalents.** The carrying amounts of cash and cash equivalents approximate their fair value.

**Securities.** Fair values for securities are based on quoted market prices, where available. If quoted market prices are not available, fair values are based on quoted market prices of comparable instruments.

**Federal Home Loan Bank Stock.** Fair value for Federal Home Loan Bank stock is based on its redemption value of \$100 per share.

**Loans.** For variable-rate loans that re-price frequently and have no significant change in credit risk, fair values are based on carrying values. Fair values for certain fixed-rate residential real estate, commercial real estate and commercial loans are estimated using discounted cash flow analyses, using interest rates currently being offered for loans with similar terms to borrowers of similar credit quality.

**Accrued Interest.** The carrying amounts of accrued interest receivable approximate their fair value.

**Deposits.** The fair values disclosed for demand deposits, savings, NOW and money-market accounts are, by definition, equal to the amount payable on demand at the reporting date (that is, their carrying amounts). Fair values for time deposits are estimated using a discounted cash flow calculation that applies interest rates currently being offered on time deposits to a schedule of aggregated expected monthly maturities of time deposits.

**Federal Home Loan Bank Advances.** Fair values are estimated using a discounted cash flow analysis using current interest rates for similar borrowing arrangements.

**Revolving Line of Credit.** The carrying amount of the revolving line of credit approximates fair value.

(continued)



## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (1) Summary of Significant Accounting Policies, Continued

##### *Fair Values of Financial Instruments, Continued.*

**Off-Balance-Sheet Financial Instruments.** Fair values for off-balance-sheet lending commitments are based on fees currently charged to enter into similar agreements, taking into account the remaining terms of the agreements and the counterparties' credit standing.

**Transfer of Financial Assets.** Transfers of financial assets are accounted for as sales, when control over the assets has been surrendered. Control over transferred assets is deemed to be surrendered when (1) the assets have been isolated from the Company, (2) the transferee obtains the right (free of conditions that constrain it from taking advantage of that right) to pledge or exchange the transferred assets, and (3) the Company does not maintain control over the transferred assets through an agreement to repurchase them before their maturity.

**Income Taxes.** The Holding Company's stockholders have elected for it to be treated as an S-Corporation and have elected for the Bank to be treated as a qualified Subchapter S subsidiary. For federal and state income tax purposes all items of income and expense flow through to its stockholders. Therefore no provision for income taxes has been reflected in these consolidated financial statements.

**Off-Balance-Sheet Instruments.** In the ordinary course of business the Company has entered into off-balance-sheet financial instruments consisting of available lines of credit and standby letters of credit. Such financial instruments are recorded in the consolidated financial statements when they are funded.

**Advertising.** The Company expenses all media advertising as incurred.

**Stock Compensation Plan.** Effective January 1, 2006, the Company adopted the fair value recognition provisions of FASB Statement No. 123(R), *Share-Based Payment* ("SFAS 123(R)"). The Company recognizes stock-based compensation expense in salaries and employee benefits in the accompanying consolidated statements of earnings on a straight-line basis over the vesting period.

**Recent Accounting Pronouncements.** In September 2006, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 157, *Fair Value Measurements* ("SFAS 157"). SFAS 157 defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles, and expands disclosures about fair value measurements. This statement is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. Management is in the process of evaluating the impact of SFAS 157 and does not anticipate it will have a material impact on the Company's consolidated financial condition or results of operations.

(continued)

## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (1) Summary of Significant Accounting Policies, Continued

*Recent Accounting Pronouncements, Continued.* In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS 159"). SFAS 159 provides the Company with an option to report selected financial assets and liabilities at fair value. This statement is effective as of the beginning of a Company's first fiscal year beginning after November 15, 2007. Management is in the process of evaluating the impact of SFAS 159 and does not anticipate it will have a material effect on the Company's consolidated financial condition or results of operations.

In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations* ("SFAS 141(R)"). SFAS 141(R) is effective for fiscal years beginning after December 15, 2008 and early implementation is not permitted. SFAS 141(R) requires the acquiring entity in a business combination to recognize all (and only) the assets acquired and liabilities assumed in the transaction; establishes the acquisition date fair value as the measurement objective for all assets acquired and liabilities assumed; and requires the acquirer to disclose to investors and other users all of the information they need to evaluate and understand the nature and financial effect of the business combination. Acquisition related costs including finder's fees, advisory, legal, accounting valuation and other professional and consulting fees are required to be expensed as incurred. Management is in the process of evaluating the impact of SFAS 141(R) and does not anticipate it will have a material impact on the Company's consolidated financial condition or results of operations.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements* ("SFAS 160"). SFAS 160 requires the Company to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This Statement shall be effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Earlier adoption is prohibited. Management is in the process of evaluating the impact of SFAS 160 and does not anticipate it will have a material effect on the Company's consolidated financial condition or results of operations.

(continued)

## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (1) Summary of Significant Accounting Policies, Continued

**Recent Accounting Pronouncements, Continued.** In September 2006, the Emerging Issues Task Force ("EITF") reached a consensus on EITF Issue No. 06-4, *Accounting for Deferred Compensation and Postretirement Benefit Aspects of Endorsement Split-Dollar Life Insurance Arrangements* ("EITF No. 06-04"). The guidance clarifies the accounting for endorsement split-dollar life insurance arrangements that provide a benefit to an employee that is not limited to the employee's active service period and concluded that an employer should recognize a liability for future benefits based on the substantive agreement with the employee since the postretirement benefit obligation is not effectively settled through the purchase of the endorsement split-dollar life insurance policy. Also, in March 2007, the EITF reached a consensus on EITF Issue No. 06-10, *Accounting for Deferred Compensation and Postretirement Benefit Aspects of Collateral Assignment Split-Dollar Life Insurance Arrangements* ("EITF No. 06-10"). This Issue clarifies the accounting for collateral split-dollar life insurance arrangements that provide a benefit to an employee that extends into postretirement periods and clarifies the accounting for assets related to collateral split-dollar insurance assignment arrangements. This Issue requires that an employer recognize a liability for future benefits based on the substantive agreement with the employee and concluded that the asset recorded should also be measured based on the nature and substance of the collateral assignment split-dollar life insurance arrangement. EITF No. 06-4 and EITF No. 06-10 are effective for fiscal years beginning after December 15, 2007, with earlier adoption permitted and any resulting adjustment will be recorded as a change in accounting principle through a cumulative effect adjustment to equity. Management is in the process of evaluating the impact of EITF No. 06-4 and EITF No. 06-10 and does not anticipate it will have a material impact on the Company's consolidated financial condition or results of operations.

**Comprehensive Income.** Accounting principles generally require that recognized revenue, expenses, gains and losses be included in net earnings. Although certain changes in assets and liabilities, such as unrealized gains and losses on available-for-sale securities, are reported as a separate component of the equity section of the consolidated balance sheet, such items along with net earnings, are components of comprehensive income.

**Reclassifications.** Certain amounts in the 2006 consolidated financial statements have been reclassified to conform with the 2007 presentation.

(continued)

NAPLES BANCORP, INC. AND SUBSIDIARY

Notes to Consolidated Financial Statements, Continued

(2) Securities

Securities have been classified according to management's intention. The carrying amount of securities and their approximate fair values are as follows (in thousands):

	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
<i>Securities Available for Sale:</i>				
<i>At December 31, 2007:</i>				
U.S. Government Agency securities	\$ 500	-	-	500
Mortgage-backed securities	<u>3,311</u>	<u>25</u>	<u>(1)</u>	<u>3,335</u>
	<u>\$ 3,811</u>	<u>25</u>	<u>(1)</u>	<u>3,835</u>
<i>At December 31, 2006:</i>				
U.S. Government Agency securities	500	-	(8)	492
Mortgage-backed securities	<u>3,436</u>	<u>5</u>	<u>(27)</u>	<u>3,414</u>
	<u>\$ 3,936</u>	<u>5</u>	<u>(35)</u>	<u>3,906</u>
<i>Securities Held to Maturity:</i>				
<i>At December 31, 2007-</i>				
Mortgage-backed securities	\$ <u>1,523</u>	17	(5)	<u>1,535</u>
<i>At December 31, 2006-</i>				
Mortgage-backed securities	\$ <u>1,822</u>	-	(20)	<u>1,802</u>

The scheduled maturities at December 31, 2007 are as follows (in thousands):

	<u>Available for Sale</u>		<u>Held to Maturity</u>	
	Amortized Cost	Fair Value	Amortized Cost	Fair Value
Due from one to five years	\$ 500	500	-	-
Mortgage-backed securities	<u>3,311</u>	<u>3,335</u>	<u>1,523</u>	<u>1,535</u>
	<u>\$ 3,811</u>	<u>3,835</u>	<u>1,523</u>	<u>1,535</u>

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(2) Securities, Continued**

Securities with a carrying value of \$500,000 and \$492,000 at December 31, 2007 and 2006, respectively, were pledged as collateral for public deposits and for other purposes as required or permitted by law. There were no sales of securities during the year ended December 31, 2006. During 2007 one security was sold for aggregate proceeds of \$225,000 and a loss of \$3,000 was recognized.

Securities with gross unrealized losses at December 31, 2007, aggregated by investment category and length of time that individual securities have been in a continuous loss position, is as follows (in thousands):

	<u>Over Twelve Months</u>	
	<u>Gross</u>	
	<u>Unrealized</u>	<u>Fair</u>
	<u>Losses</u>	<u>Value</u>
<i>Securities Available for Sale-</i>		
Mortgage-backed securities	\$(1)	576
<i>Securities Held to Maturity-</i>		
Mortgage-backed securities	\$(5)	251

Management evaluates securities for other-than-temporary impairment at least on a quarterly basis, and more frequently when economic or market concerns warrant such evaluation. Consideration is given to (1) the length of time and the extent to which the fair value has been less than cost, (2) the financial condition and near-term prospects of the issuer, and (3) the intent and ability of the Company to retain its investment in the issuer for a period of time sufficient to allow for any anticipated recovery in fair value.

The unrealized losses on investment securities were caused by interest rate changes. It is expected that the securities would not be settled at a price less than the par value of the investments. Because the decline in fair value is attributable to changes in interest rates and not credit quality, and because the Company has the ability and intent to hold these investments until a market price recovery or maturity, these investments are not considered other-than-temporarily impaired.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(3) Loans**

The components of loans are as follows (in thousands):

	<u>At December 31.</u>	
	<u>2007</u>	<u>2006</u>
Commercial	\$ 15,704	14,301
Commercial real estate	76,109	75,195
Residential real estate	39,564	39,804
Consumer	<u>6,277</u>	<u>7,451</u>
 Total loans	 137,654	 136,751
Add (deduct):		
Net deferred loan costs	39	52
Allowance for loan losses	<u>(1,460)</u>	<u>(1,793)</u>
 Loans, net	 <u>\$ 136,233</u>	 <u>135,010</u>

An analysis of the change in the allowance for loan losses follows (in thousands):

	<u>Year Ended December 31.</u>	
	<u>2007</u>	<u>2006</u>
Beginning balance	\$ 1,793	1,052
Provision for loan losses	905	740
Charge-offs	(1,265)	-
Recoveries	<u>27</u>	<u>1</u>
 Ending balance	 <u>\$ 1,460</u>	 <u>1,793</u>

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(3) Loans, Continued**

Information relating to loans identified as impaired during the years ended December 31, 2007 and 2006 is as follows (in thousands):

	At or For Year Ended December 31,	
	2007	2006
Gross loan with related allowance for losses recorded	\$ <u>2,771</u>	-
Less allowances on these loans	\$ <u>12</u>	-
Net investment in impaired loans	\$ <u>2,759</u>	-
Average net investment in impaired loans	\$ <u>428</u>	-
Interest income recognized on impaired loans	\$ <u>-</u>	-
Interest income received on impaired loans	\$ <u>-</u>	-

Nonaccrual and past due loans were as follows (in thousands):

	At December 31,	
	2007	2006
Nonaccrual loans	\$ 4,133	-
Past due ninety days or more but still accruing	<u>-</u>	<u>-</u>
	\$ <u>4,133</u>	<u>-</u>

**(4) Premises and Equipment**

A summary of premises and equipment follows (in thousands):

	At December 31,	
	2007	2006
Leasehold improvements	\$ 553	227
Furniture, fixtures and equipment	714	577
Software	<u>200</u>	<u>155</u>
Total, at cost	1,467	959
Less accumulated depreciation and amortization	<u>(764)</u>	<u>(653)</u>
Premises and equipment, net	\$ <u>703</u>	<u>306</u>

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(4) Premises and Equipment, Continued**

The Company leases its main office facility from an entity owned by certain stockholders of the Company. The lease has an initial term of ten years and contains two five year renewal options. The lease provides for annual increases based on changes in the consumer price index, pro rata share of real estate taxes, common area maintenance and requires the Company to maintain certain insurance coverages. The Company obtained an appraisal in connection with obtaining the lease to support the fair market value of the lease payments. In addition, the Company leases a branch office facility under an operating lease agreement with an initial term of four years. The lease contains three five year renewal options. Rent expense during the years ended December 31, 2007 and 2006 was approximately \$408,000 and \$330,000, respectively. At December 31, 2007, the future minimum lease payments are approximately as follows (in thousands):

<u>Year Ending</u>	<u>Amount</u>
2008	\$ 415
2009	428
2010	441
2011	422
2012	<u>13</u>
	\$ <u>1,719</u>

**(5) Deposits**

The aggregate amount of time deposits with a minimum denomination of \$100,000, was approximately \$22,763,000 and \$45,735,000 at December 31, 2007 and 2006, respectively.

A schedule of maturities of time deposits at December 31, 2007 follows (in thousands):

<u>Year Ending</u>	<u>Amount</u>
2008	\$ 30,830
2009	2,498
2010	2,054
2011	314
2012	<u>254</u>
	\$ <u>35,950</u>

(continued)



**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(6) Federal Home Loan Bank Advance**

The maturity and interest rate on the Federal Home Loan Bank ("FHLB") advance were as follows (in thousands):

<u>Maturing in Year Ending December 31,</u>	<u>Interest Rate</u>	<u>At December 31,</u>	
		<u>2007</u>	<u>2006</u>
2008	4.56%	\$ 6,000	-
2008	4.53%	-	5,000
2012	3.29% <sup>(2)</sup>	5,000	-
2017	2.85% <sup>(1)</sup>	<u>5,000</u>	<u>-</u>
		<u>\$ 16,000</u>	<u>5,000</u>

(1) Convertible to a variable rate on or after March 18, 2008.

(2) Convertible to a variable rate on or after February 21, 2008.

The collateral agreement with FHLB includes a blanket floating lien requiring the Company to maintain certain first mortgage loans as pledged collateral. At December 31, 2007 and 2006, this advance was also collateralized by FHLB stock.

**(7) Revolving Line of Credit**

The Company has a \$4 million revolving line of credit with Wells Fargo Bank, N.A. with a balance outstanding of \$1,715,000 and \$1,650,000 at December 31, 2007 and 2006, respectively. The line of credit bears interest at 1.25% above the federal funds rate and is collateralized by all of the Bank's common stock.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(8) Stock Options**

The Company has a stock option plan whereby it may grant both incentive stock options and nonqualified stock options to its employees, officers and directors the option to purchase up to 100,000 shares of common stock. All options granted have a term of ten years and vest over three and five years. At December 31, 2007, 54,504 shares are available for grant. A summary of stock option transactions follows:

	Number of Shares	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Term
Options outstanding at December 31, 2005	32,246	\$ 15.50	
Options granted	23,000	18.89	
Options forfeited	(3,750)	15.50	
Options exercised	<u>1,250</u>	15.50	
Options outstanding at December 31, 2006	52,746	16.98	
Options granted	2,500	21.50	
Options forfeited	<u>(11,000)</u>	18.77	
Options outstanding at December 31, 2007	<u>44,246</u>	\$ <u>16.79</u>	<u>8.17 years</u>
Options exercisable at December 31, 2007	<u>14,298</u>	\$ <u>16.09</u>	<u>8.06 years</u>

The fair value of each option granted is estimated on the date of grant using the Black-Scholes option-pricing model with the following assumptions:

	<u>Year Ended December 31,</u>	
	<u>2007</u>	<u>2006</u>
Weighted-average risk-free interest rate	4.25%	5.95%
Dividend yield	-	-
Expected stock volatility	3%	3%
Expected life in years	6.5 years	6 to 6.5 years
Per share weighted-average grant-date fair value of options issued during the year	\$ <u>5.10</u>	<u>7.71</u>

(continued)

## NAPLES BANCORP, INC. AND SUBSIDIARY

### Notes to Consolidated Financial Statements, Continued

#### (8) Stock Options, Continued

The total fair value of shares vested and recognized as compensation expense was \$19,000 and \$30,000 during the years ended December 31, 2007 and 2006, respectively. At December 31, 2007 there was approximately \$40,000 of total unrecognized compensation expense related to nonvested share-based compensation arrangement granted under the plan. The cost is expected to be recognized over a weighted-average period of 45 months. The total intrinsic value of options exercised during the year ended December 31, 2006 was \$7,500. There were no options exercised during the year ended December 31, 2007.

As part of its adoption of SFAS 123(R), the Company examined its historical pattern of option exercises in an effort to determine if there were any pattern based on certain employee populations. From this analysis, the Company could not identify any patterns in the exercise of options. As such, the Company used the guidance in Staff Accounting Bulletin No. 107 to determine the estimated life of options issued subsequent to the adoption of SFAS 123(R). Based on this guidance, the estimated term was deemed to be the midpoint of the vesting term and the contractual term ((vesting term and original contractual term)/2). Expected volatility is based on historical volatility of similar peer banks' common stock. The risk-free rate for periods within the contracted life of the option is based on the U.S. Treasury yield curve in effect at the time of grant. The dividend yield assumption is based on the Company's historical and expected dividend payments.

#### (9) Off Balance Sheet Financial Instruments

The Company is a party to financial instruments with off-balance-sheet risk in the normal course of business to meet the financing needs of its customers. These financial instruments are available lines of credit and standby letters of credit and may involve, to varying degrees, elements of credit and interest-rate risk in excess of the amount recognized in the consolidated balance sheet. The contract amounts of these instruments reflect the extent of involvement the Company has in these financial instruments.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(9) Off Balance Sheet Financial Instruments, Continued**

The Company's exposure to credit loss in the event of nonperformance by the other party to the financial instrument for commitments to extend credit is represented by the contractual amount of those instruments. The Company uses the same credit policies in making commitments as it does for on-balance-sheet instruments.

Available lines of credit are agreements to lend to a customer as long as there is no violation of any condition established in the contract. Available lines of credit generally have fixed expiration dates or other termination clauses and may require payment of a fee. Because some of the available lines of credit are expected to expire without being drawn upon, the total commitment amounts do not necessarily represent future cash requirements. The Company evaluates each customer's credit worthiness on a case-by-case basis. The amount of collateral obtained, if deemed necessary by the Company, upon extension of credit, is based on management's credit evaluation of the counterparty.

Standby letters of credit are conditional commitments issued by the Company to guarantee the performance of a customer to a third party. The credit risk is essentially the same as that involved in extending loans to customers. Essentially all letters of credit have expiration dates within one year. The Company generally holds collateral supporting these commitments.

Available lines of credit typically result in loans with a market interest rate. A summary of the contractual amounts of the Company's financial instruments with off balance sheet risk at December 31, 2007 follows (in thousands):

	<b>Contract Amount</b>
Available lines of credit	\$ <u>11,800</u>
Standby letters of credit	\$ <u>415</u>

**(10) Credit Risk**

The Company grants the majority of its loans to borrowers throughout the Naples, Florida area. Although, the Company has a diversified loan portfolio, a significant portion of its borrowers' ability to honor their contract is dependent on the economy in the Naples, Florida area.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(11) Related Party Transactions and Economic Dependence**

In the ordinary course of business, the Company makes loans to officers and directors of the Company and entities in which they hold a financial interest. The Company also accepts deposits from related parties. These are summarized as follows (in thousands):

	<u>Year Ended December 31,</u>	
	<u>2007</u>	<u>2006</u>
Balance at beginning of year	\$ 6,885	1,707
Additions	-	6,135
Repayments	<u>(1,572)</u>	<u>(957)</u>
Balance at end of year	\$ <u>5,313</u>	<u>6,885</u>
Deposits from such related parties at year end	\$ <u>10,209</u>	<u>9,221</u>

**(12) Regulatory Matters**

The Bank is subject to various regulatory capital requirements administered by the regulatory banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory and possibly additional discretionary actions by regulators that, if undertaken, could have a direct material effect on the Company's and the Bank's financial statements. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, the Bank must meet specific capital guidelines that involve quantitative measures of their assets, liabilities, and certain off-balance-sheet items as calculated under regulatory accounting practices. The capital amounts and classification are also subject to qualitative judgments by the regulators about components, risk weightings, and other factors.

Quantitative measures established by regulation to ensure capital adequacy require the Bank to maintain minimum amounts and percentages (set forth in the following table) of total and Tier 1 capital (as defined in the regulations) to risk-weighted assets (as defined) and of Tier 1 capital (as defined) to average assets (as defined). Management believes, as of December 31, 2007, the Bank met all capital adequacy requirements to which they are subject.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(12) Regulatory Matters, Continued**

As of December 31, 2007, the most recent notification from the regulatory authorities categorized the Bank as well capitalized under the regulatory framework for prompt corrective action. To be categorized as well capitalized, an institution must maintain minimum total risk-based, Tier I risk-based, and Tier I leverage percentages as set forth in the following tables. There are no conditions or events since that notification that management believes have changed the Bank's category. The Bank's actual capital amounts and percentages are also presented in the table (dollars in thousands).

	<u>Actual</u>		<u>For Capital Adequacy Purposes</u>		<u>Minimum To Be Well Capitalized Under Prompt Corrective Action Provisions</u>	
	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>
<i>As of December 31, 2007:</i>						
Total Capital to Risk-Weighted Assets	\$ 16,110	12.29%	\$ 10,483	8.00%	\$ 13,104	10.00%
Tier I Capital to Risk-Weighted Assets	14,650	11.18	5,241	4.00	7,862	6.00
Tier I Capital to Total Assets	14,650	9.38	6,247	4.00	7,809	5.00
<i>As of December 31, 2006:</i>						
Total Capital to Risk-Weighted Assets	14,267	10.71	10,658	8.00	13,323	10.00
Tier I Capital to Risk-Weighted Assets	12,609	9.46	5,329	4.00	7,994	6.00
Tier I Capital to Total Assets	12,609	8.38	6,015	4.00	7,519	5.00

On November 14, 2007, the Bank's directors entered into a Memorandum of Understanding ("MOU") and the Federal Deposit Insurance Corporation whereby the Bank has agreed to correct certain compliance issues identified by a compliance examination. At December 31, 2007, management believes the Bank is in compliance with the requirements of the MOU.

**(13) Dividend Restrictions**

The Bank is limited in the amount of cash dividends that may be paid to the Holding Company. The amount of cash dividends that may be paid is based on the Bank's net earnings of the current year combined with the Bank's retained earnings of the preceding two years, as defined by state banking regulations. However, for any dividend declaration, the Bank must consider additional factors such as the amount of current period net earnings, liquidity, asset quality, capital adequacy and economic conditions. It is likely that these factors would further limit the amount of dividends which the Bank could declare. In addition, bank regulators have the authority to prohibit banks from paying dividends if they deem such payment to be an unsafe or unsound practice.

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(14) Profit Sharing Plan**

The Company established a section 401(k) profit sharing plan for all employees meeting certain eligibility requirements. The Company matches up to 5% of each participant contribution. The Company's expense in connection with the plan totaled \$45,000 and \$49,000 during the years ended December 31, 2007 and 2006, respectively.

**(15) Contingencies**

Various legal claims also arise from time to time in the normal course of business which, in the opinion of management, will not have a material effect on the Company's consolidated financial statements.

**(16) Financial Instruments**

The estimated fair values of the Company's financial instruments were as follows (in thousands):

	<u>At December 31,</u>			
	<u>2007</u>		<u>2006</u>	
	<u>Carrying Amount</u>	<u>Fair Value</u>	<u>Carrying Amount</u>	<u>Fair Value</u>
<b>Financial assets:</b>				
Cash and cash equivalents	\$ 11,278	11,278	18,179	18,179
Securities available for sale	3,835	3,835	3,906	3,906
Securities held to maturity	1,523	1,535	1,822	1,802
Loans, net	136,233	137,842	135,010	135,171
Accrued interest receivable	813	813	758	758
Federal Home Loan Bank stock	1,009	1,009	437	437
<b>Financial liabilities:</b>				
Deposits	123,469	123,471	142,289	142,683
Revolving line of credit	1,715	1,715	1,650	1,650
Federal Home Loan Bank advances	16,000	15,783	5,000	4,987

(continued)

**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(17) Holding Company Financial Information**

The Holding Company's financial information as of December 31, 2007 and 2006 and for the years then ended follows (in thousands):

**Condensed Balance Sheets**

	<u>At December 31,</u>	
	<u>2007</u>	<u>2006</u>
<b>Assets</b>		
Cash	\$ 30	113
Investment in subsidiary	<u>14,674</u>	<u>12,578</u>
Total assets	\$ <u>14,704</u>	<u>12,691</u>
<b>Liabilities and Stockholders' Equity</b>		
Revolving line of credit	1,715	1,650
Stockholders' equity	<u>12,989</u>	<u>11,041</u>
Total liabilities and stockholders' equity	\$ <u>14,704</u>	<u>12,691</u>

**Condensed Statements of Earnings**

	<u>Year Ended December 31,</u>	
	<u>2007</u>	<u>2006</u>
Earnings of subsidiary	\$ 2,023	2,181
Other expense	<u>(147)</u>	<u>(138)</u>
Net earnings	\$ <u>1,876</u>	<u>2,043</u>

(continued)



**NAPLES BANCORP, INC. AND SUBSIDIARY**

**Notes to Consolidated Financial Statements, Continued**

**(17) Holding Company Financial Information, Continued**

**Condensed Statements of Cash Flows**

	<b>Year Ended December 31,</b>	
	<b>2007</b>	<b>2006</b>
Cash flows from operating activities:		
Net earnings	\$ 1,876	2,043
Adjustments to reconcile net earnings to net cash used in operating activities:		
Equity in undistributed earnings of subsidiary	(2,024)	(2,181)
Net cash used in operating activities	<u>(148)</u>	<u>(138)</u>
Cash flows from investing activity-		
Investment in subsidiary	-	(2,449)
Cash flows from financing activities:		
Revolving line of credit advance	65	650
Proceeds from issuance of common stock	-	1,984
Proceeds from exercise of stock options	<u>-</u>	<u>19</u>
Net cash provided by financing activities	<u>65</u>	<u>2,653</u>
(Decrease) increase in cash	(83)	66
Cash at beginning of the year	<u>113</u>	<u>47</u>
Cash at end of year	\$ <u>30</u>	<u>113</u>

**Bank of Naples**  
**STATEMENT OF CONDITION**  
**September 30, 2008**

	Sep 2008	Aug 2008	July 2008	Sep 2007	MTD Change	Yr/yr % Chg
<b>ASSETS</b>						
Commercial Real Estate Loans	78,475,362	76,828,146	76,454,386	76,436,012	1,647,216	2.67%
Commercial Loans	16,041,967	16,218,726	15,926,897	12,413,661	(176,759)	29.23%
Residential Real Estate Loans	26,433,065	27,072,588	26,960,453	27,501,911	(639,523)	-3.89%
Home Equity Loans	14,116,361	14,210,924	13,863,963	12,534,217	(94,564)	12.62%
Consumer Loans	6,694,338	6,869,234	6,930,265	6,689,183	(174,896)	0.08%
Overdrafts	42,067	33,618	13,234	27,357	8,449	53.77%
<b>Gross Loans</b>	<b>141,803,160</b>	<b>141,233,236</b>	<b>140,149,198</b>	<b>135,602,341</b>	<b>569,923</b>	<b>4.57%</b>
Reserve For Loan Loss	(2,219,874)	(2,214,557)	(1,559,502)	(1,667,554)	(5,318)	33.12%
<b>Net Loans</b>	<b>139,583,285</b>	<b>139,018,680</b>	<b>138,589,696</b>	<b>133,934,787</b>	<b>564,606</b>	<b>4.22%</b>
Treasury Securities	0	0	0	0	0	0.00%
US Government Agencies	0	0	0	500,000	0	-100.00%
MBS Securities	3,975,303	4,065,565	4,129,535	4,447,697	(90,263)	-10.62%
CMOS	2,046,567	2,056,864	2,065,791	76,838	(10,297)	2563.48%
State & Municipals	0	0	0	0	0	0.00%
Corporate Bonds	0	0	0	0	0	0.00%
Unrealized Gain/Loss Fasn115	(67,460)	(96,974)	(116,649)	(39,591)	29,514	70.39%
FHLB Stock	1,562,700	1,355,700	955,200	289,000	207,000	440.73%
Federal Funds Sold	4,495,000	672,000	3,780,601	31,801,000	3,823,000	-85.87%
<b>Total Investments</b>	<b>12,012,109</b>	<b>8,053,155</b>	<b>10,814,478</b>	<b>37,074,943</b>	<b>3,958,954</b>	<b>-67.60%</b>
<b>Total Earning Assets</b>	<b>151,595,395</b>	<b>147,071,835</b>	<b>149,404,174</b>	<b>171,009,730</b>	<b>4,523,560</b>	<b>-11.35%</b>
Cash & Cash Items	369,124	377,529	309,659	316,337	(8,405)	16.69%
Due From Banks	3,176,012	3,638,231	3,692,727	4,673,805	(462,220)	-32.05%
<b>Total Cash</b>	<b>3,545,135</b>	<b>4,015,760</b>	<b>4,002,386</b>	<b>4,990,142</b>	<b>(470,625)</b>	<b>-28.96%</b>
Leasehold Improvements	434,122	438,716	443,309	461,188	(4,593)	-5.87%
Furniture & Equipment	179,953	186,425	190,446	187,778	(6,471)	-4.17%
Construction in Progress	0	0	0	0	0	0.00%
<b>Total Fixed Assets</b>	<b>614,076</b>	<b>625,140</b>	<b>633,755</b>	<b>648,966</b>	<b>(11,064)</b>	<b>-5.38%</b>
Accrued Interest Receivable	664,872	761,435	718,740	817,587	(96,563)	-18.68%
Prepaid Expenses	154,383	134,909	154,534	143,236	19,473	7.78%
Other Assets	497,232	497,037	417,966	10,595	195	4593.22%
<b>Total Assets</b>	<b>157,071,093</b>	<b>153,106,117</b>	<b>155,331,555</b>	<b>177,620,256</b>	<b>3,964,976</b>	<b>-11.57%</b>

**Bank of Naples**  
**STATEMENT OF CONDITION**  
**September 30, 2008**

	Sep 2008	Aug 2008	July 2008	Sep 2007	MTD Change	Yr/yr % Chg
<b>LIABILITIES</b>						
Demand Deposits	11,444,289	10,844,219	9,767,011	10,872,987	600,071	5.25%
Now Accounts	23,789,301	25,732,493	29,174,021	46,382,825	(1,943,192)	-48.71%
Savings & Money Market Accounts	26,805,344	29,858,530	34,215,298	58,652,607	(3,053,186)	-54.30%
Total Demand Deposits	62,038,934	66,435,242	73,156,330	115,908,419	(4,396,308)	-46.48%
Certificates of Deposit	50,690,031	47,157,562	51,772,121	46,405,480	3,532,469	9.23%
Total Time Deposits	50,690,031	47,157,562	51,772,121	46,405,480	3,532,469	9.23%
Total Deposits	112,728,965	113,592,804	124,928,451	162,313,899	(863,839)	-30.55%
Repurchase Agreements	1,219,941	834,633	0	0	385,308	0.00%
Fed Funds Purchased	0	0	0	0	0	0.00%
FHLB Borrowings	28,500,000	23,900,000	15,000,000	0	4,600,000	0.00%
Accr Int Payable Deposits	176,377	188,008	208,844	271,063	(11,631)	-34.93%
Accr Expenses Payable	51,017	219,641	199,200	144,177	(168,624)	-64.62%
Accounts Payable	11,694	21,330	9,579	3,474	(9,636)	236.63%
Total Liabilities	142,687,994	138,756,416	140,346,074	162,732,613	3,931,579	-12.32%
<b>Equity Capital</b>						
Capital Stock	3,224,500	3,224,500	3,224,500	3,224,500	0	0.00%
Capital Surplus	5,905,150	5,355,150	5,355,150	5,355,150	550,000	10.27%
Stock Options	60,190	60,190	60,190	30,000	0	100.63%
Total Common Stock And Surplus	9,189,840	8,639,840	8,639,840	8,609,650	550,000	6.74%
Undivided Profits	6,021,941	6,021,941	6,021,941	3,998,792	0	50.59%
Unrealized Gain/Loss Fash115	(67,460)	(96,974)	(116,649)	(39,591)	29,514	70.39%
Profit/Loss This Year	(761,223)	(215,106)	440,348	2,318,792	(546,117)	-132.83%
Total Equity	14,383,099	14,349,702	14,985,481	14,887,643	33,397	-3.39%
Total Liabilities & Equity	157,071,093	153,106,117	155,331,555	177,620,256	3,964,976	-11.57%