

**EXHIBIT A**  
(CDFI Mutual Depository Institutions  
Senior Securities)

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**EXCHANGE AGREEMENT**

**STANDARD TERMS**

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## TABLE OF CONTENTS

### Page

#### ARTICLE I

#### THE CLOSING; THE EXCHANGE OF CDCI SENIOR SUBORDINATED SECURITIES FOR CPP SENIOR SUBORDINATED SECURITIES

Section 1.1	The CDCI Senior Subordinated Securities .....	2
Section 1.2	The Closing.....	2

#### ARTICLE II

#### EXCHANGE

Section 2.1	Exchange.....	5
Section 2.2	Exchange Documentation .....	5

#### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE BANK

Section 3.1	Existence and Power .....	5
Section 3.2	CDCI Senior Subordinated Securities .....	6
Section 3.3	Community Development Financial Institution Status; Domestic Ownership .....	6
Section 3.4	Authorization and Enforceability.....	7
Section 3.5	Charter; Bylaws; Agreements Among Interest Holders; Anti-takeover Provisions and Rights Plan .....	7
Section 3.6	No Bank Material Adverse Effect.....	8
Section 3.7	Bank Financial Statements.....	8
Section 3.8	No Undisclosed Liabilities.....	8
Section 3.9	Offering of Securities.....	8
Section 3.10	Litigation and Other Proceedings .....	8
Section 3.11	Compliance with Laws .....	8
Section 3.12	Employee Benefit Matters .....	9
Section 3.13	Taxes .....	10
Section 3.14	Properties and Leases.....	10
Section 3.15	Environmental Liability .....	10
Section 3.16	Risk Management Instruments .....	10
Section 3.17	Agreements with Regulatory Agencies .....	11
Section 3.18	Insurance .....	11
Section 3.19	Intellectual Property.....	11
Section 3.20	Brokers and Finders .....	12

Section 3.21	Disclosure Schedule.....	12
Section 3.22	CPP Senior Subordinated Securities.....	12
Section 3.23	Amendment to Charter and Other Documents to Effect Section 5. 12(b).....	12

## ARTICLE IV

### COVENANTS

Section 4.1	Affirmative Covenants.....	12
Section 4.2	Negative Covenants .....	19

## ARTICLE V

### ADDITIONAL AGREEMENTS

Section 5.1	Purchase for Investment.....	21
Section 5.2	Form of CDCI Senior Subordinated Security .....	21
Section 5.3	Execution of CDCI Senior Subordinated Securities.....	22
Section 5.4	Computation of Interest .....	22
Section 5.5	Legends .....	23
Section 5.6	Transfer of CDCI Senior Subordinated Securities.....	25
Section 5.7	Replacement of CDCI Senior Subordinated Securities .....	27
Section 5.8	Cancellation .....	27
Section 5.9	Rule 144; Rule 144A, 4(1½) Transactions .....	27
Section 5.10	Depository Securities .....	28
Section 5.11	Redemption .....	28
Section 5.12	Voting Rights .....	30
Section 5.13	Expenses and Further Assurances.....	32
Section 5.14	Communications to Holders .....	33

## ARTICLE VI

### SUBORDINATION OF THE CDCI SENIOR SUBORDINATED SECURITIES

Section 6.1	Agreement to Subordinate .....	33
Section 6.2	Default on Senior Indebtedness .....	33
Section 6.3	Liquidation; Dissolution .....	34
Section 6.4	Subrogation.....	35
Section 6.5	Notice by the Bank.....	36
Section 6.6	Subordination May Not Be Impaired.....	36

## ARTICLE VII

### REMEDIES OF THE HOLDERS UPON EVENT OF DEFAULT

Section 7.1	Event of Default.....	37
-------------	-----------------------	----

Section 7.2	Acceleration and Other Remedies .....	37
Section 7.3	Suits for Enforcement .....	37
Section 7.4	Holders May File Proofs of Claim.....	38
Section 7.5	Waiver of Past Defaults .....	38

## ARTICLE VIII

### MISCELLANEOUS

Section 8.1	Termination.....	38
Section 8.2	Survival .....	39
Section 8.3	Amendment.....	39
Section 8.4	Waiver of Conditions .....	40
Section 8.5	Governing Law; Submission to Jurisdiction, etc .....	40
Section 8.6	Notices .....	40
Section 8.7	Definitions.....	41
Section 8.8	Interpretation.....	44
Section 8.9	Assignment .....	45
Section 8.10	Severability .....	45
Section 8.11	No Third-Party Beneficiaries.....	45
Section 8.12	Entire Agreement, etc .....	45
Section 8.13	Tax Treatment of CDCI Senior Subordinated Securities .....	45
Section 8.14	Specific Performance .....	46

### LIST OF ANNEXES

ANNEX A: FORM OF OFFICER’S CERTIFICATE

ANNEX B: FORM OF OPINION

ANNEX C: FORM OF WAIVER

ANNEX D: FORM OF CDFI SENIOR SUBORDINATED SECURITY

ANNEX E: REGISTRATION RIGHTS

ANNEX F: FORM OF OFFICER’S CERTIFICATE (CDFI REQUIREMENTS)

## Defined Terms

Additional Dividends	Section 4.2(b)
Affiliate	Section 8.7(b)
Agreement	Recitals
Appropriate Federal Banking Agency	Section 8.7(c)
Bank	Recitals
Bank Financial Statements	Section 8.7(d)
Bank Material Adverse Effect	Section 8.7(e)
Bankruptcy Exceptions	Section 3.4(a)
Bank Subsidiaries	Section 3.2(b)
Benefit Plans	Section 1.2(c)(vi)
Board of Directors	Section 3.5
Business Combination	Section 8.7(f)
Capitalization Date	Section 3.1(b)
Capital Interests	Section 3.1(b)
CDCI	Recitals
CDCI Senior Subordinated Securities	Recitals
CDCI Senior Subordinated Securities Director	Section 5.12(b)
CDCI Senior Subordinated Securities Register	Section 5.6
CDFI	Section 3.3
CDFI Application	Section 1.2(c)(xii)
CDFI Application Update	Section 1.2(c)(xii)
Certified Entity	Section 4.1(d)(iv)
Charter	Section 1.2(c)(iv)
Closing	Section 1.2(a)
Closing Date	Section 1.2(a)
Code	Section 3.12
Compensation Regulations	Section 1.2(c)(vi)
Controlled Group	Section 3.12
CPP	Recitals
CPP/CDCI Securities	Section 3.22
CPP Securities	Section 8.12(b)
CPP Securities Purchase Agreement	Recitals
CPP Senior Subordinated Securities	Recitals
CPP Signing Date	Recitals
CPP Waiver	Section 1.2(c)(vii)
Defaulted Interest	Section 5.4(c)
Designated Matters	Section 8.7(g)
Disclosure Schedule	Section 8.7(h)
Disclosure Update	Section 1.2(xi)
EAWA	Section 8.7(i)
EESA	Section 1.2(c)(vi)
ERISA	Section 3.12
Event of Default	Section 7.1
Exchange	Recitals

Exchange Act	Section 5.6(f)
Fund	Section 1.2(c)(xii)
GAAP	Section 8.7(e)
Governmental Entities	Section 1.2(c)(i)
Holder	Section 5.9(a)
Indebtedness	Section 8.7(j)
Indemnatee	Section 5.9(b)
Indenture	Section 5.1
Indenture Act	Section 5.1
Information	Section 4.1(c)(iii)
Interest Holders	Section 3.4(a)
Interest Payment Date	Face of CDCI Senior Subordinated Security
Interest Period	Section 5.4(b)
Interest Rate	Face of CDCI Senior Subordinated Security
Investor	Recitals
Letter Agreement	Recitals
Majority Holders	Section 5.12(b)
Maturity Date	Face of CDCI Senior Subordinated Security
MHA	Section 4.1(g)
Members	Section 8.7(k)
Obligor	Section 7.4
Plan	Section 3.12
Previously Disclosed	Section 8.7(l)
Proprietary Rights	Section 3.19
Redemption Date	Section 5.11
Regular Record Date	Face of CDCI Senior Subordinated Security
Regulatory Agreement	Section 3.17
Relevant Period	Section 1.2(c)(vi)
Schedules	Recitals
SEC	Section 3.9
Section 4.1(e) Employee	Section 4.1(e)
Securities Act	Section 3.1(a)
Senior Executive Officers	Section 8.7(m)
Senior Indebtedness	Section 8.7(n)
Signing Date	Section 1.2(c)(xi)
State Restrictions	Section 8.7(o)
subsidiary	Section 8.7(a)
Tax	Section 8.7(p)
Transaction Documents	Section 8.7(q)
Transfer	Section 5.6(f)

## EXCHANGE AGREEMENT – STANDARD TERMS

### Recitals:

WHEREAS, the United States Department of the Treasury (the “Investor”) has purchased senior subordinated debentures or has acquired senior subordinated debentures through the exercise of warrants or the exchange of other securities (collectively, “CPP Senior Subordinated Securities”) from eligible financial institutions which elected to participate in the Troubled Asset Relief Program Capital Purchase Program (“CPP”);

WHEREAS, the Investor may from time to time agree to exchange the CPP Senior Subordinated Securities it received from eligible financial institutions that participated in CPP for newly issued debentures (“CDCI Senior Subordinated Securities”) from such eligible financial institutions to the extent they elect to participate in the Community Development Capital Initiative (“CDCI”);

WHEREAS, an eligible financial institution electing to participate in the CDCI and exchange CPP Senior Subordinated Securities for CDCI Senior Subordinated Securities shall enter into a letter agreement (the “Letter Agreement”) with the Investor which incorporates this Exchange Agreement – Standard Terms (the eligible financial institution identified in the Letter Agreement, the “Bank”);

WHEREAS, the Bank issued the CPP Senior Subordinated Securities (or the warrants exercised to acquire the CPP Senior Subordinated Securities or the securities exchanged for the CPP Senior Subordinated Securities) pursuant to that certain Securities Purchase Agreement – Standard Terms incorporated into a letter agreement, dated as of the date set forth on Schedule A to the Letter Agreement (the “CPP Signing Date”), as amended from time to time, between the Bank and the Investor (the “CPP Securities Purchase Agreement”);

WHEREAS, the Bank agrees to support the availability of credit and financial services to underserved populations and communities in the United States to promote the expansion of small businesses and the creation of jobs in such populations and communities;

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

WHEREAS, the Bank intends to issue the CDCI Senior Subordinated Securities in the principal amount set forth on Schedule A to the Letter Agreement to the Investor in exchange for (the “Exchange”) the CPP Senior Subordinated Securities in the principal amount set forth on Schedule A to the Letter Agreement; and

WHEREAS, the Exchange will be governed by this Exchange Agreement – Standard Terms and the Letter Agreement, including the schedules thereto (the “Schedules”), specifying additional terms of the Exchange. This Exchange 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 Exchange 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**

### **THE CLOSING; THE EXCHANGE OF CDCI SENIOR SUBORDINATED SECURITIES FOR CPP SENIOR SUBORDINATED SECURITIES**

Section 1.1 **The CDCI Senior Subordinated Securities.** The CDCI Senior Subordinated Securities are being issued to the Investor in the Exchange pursuant to Article II hereof. The CPP Senior Subordinated Securities exchanged for the CDCI Senior Subordinated Securities pursuant to Article II hereof are being reacquired by the Bank and shall be cancelled pursuant to Section 5.10 of the CPP Securities Purchase Agreement.

Section 1.2 **The Closing.** (a) On the terms and subject to the conditions set forth in this Agreement, the closing of the Exchange (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 Bank 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 (i) the Bank will deliver the CDCI Senior Subordinated Securities to the Investor, as evidenced by one or more certificates dated the Closing Date and registered in the name of the Investor or its designee(s) and (ii) the Investor will deliver the certificate representing the CPP Senior Subordinated Securities to the Bank.

(c) The obligation of the Investor to consummate the Exchange 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) any approvals or authorizations of all United States and other governmental, regulatory or judicial authorities (collectively, “Governmental Entities”) required for the consummation of the Exchange 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 (B) no provision of any applicable United States or other law and no judgment, injunction, order or decree of any Governmental Entity shall prohibit consummation of the Exchange as contemplated by this Agreement;

(ii) (A) the representations and warranties of the Bank set forth in Article III of this Agreement shall be true and correct in all 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 respects as of such other date) and (B) the Bank shall have performed in all respects all obligations required to be performed by it under this Agreement at or prior to the Closing;

(iii) the Bank shall have delivered to the Investor a certificate signed on behalf of the Bank by a Senior Executive Officer certifying to the effect that the conditions set forth in Section 1.2(c)(ii) have been satisfied, in substantially the form attached hereto as Annex A;

(iv) if applicable, the Bank shall have duly adopted and filed with the Secretary of State of its jurisdiction of organization or other applicable Governmental Entity an amendment to its certificate or articles of incorporation, articles of association, or similar organizational document ("Charter") and its bylaws as in effect on the Closing Date and the Bank shall have delivered to the Investor a copy of the filed amendment with appropriate evidence from the Secretary of State or other applicable Governmental Entity that the filing has been accepted, or if a filed copy is unavailable, a certificate signed on behalf of the Bank by a Senior Executive Officer certifying to the effect that the filing of the amendment has been accepted;

(v) the Bank shall have delivered to the Investor, a certificate signed on behalf of the Bank by a Senior Executive Officer certifying to the effect that the Charter and bylaws of the Bank delivered to the Investor pursuant to the CPP Securities Purchase Agreement remain true, complete and correct, in substantially the form attached hereto as Annex A; to the extent that the Charter and bylaws of the Bank delivered to the Investor pursuant to the CPP Securities Purchase Agreement are no longer true, correct and complete, prior to the Closing Date, the Bank shall deliver to Investor true, complete and correct certified copies of any amendments or supplements to the Charter or bylaws of the Bank or the documentation necessary to make the Charter or bylaws of the Bank delivered to the Investor true, correct and complete as of the Closing Date;

(vi) (A) the Bank 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 any other employee of the Bank or its Affiliates subject to Section 111 of the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009, or otherwise from time to time ("EESA"), as implemented by any guidance, rule or regulation thereunder, as the same shall be in effect from time to time (collectively, the "Compensation Regulations") (and to the extent necessary for such changes to be legally enforceable, each of its Senior Executive Officers and other employees shall have duly consented in writing to such changes), as may be necessary, during the period in which any obligation of the Bank arising from financial assistance under the Troubled Asset Relief Program remains outstanding (such period, as it may be further described in the Compensation Regulations, the "Relevant Period"), in order to comply with Section 111 of EESA or the Compensation Regulations and (B) the Investor shall have received a certificate signed on behalf of the Bank by a Senior Executive Officer certifying to the effect that the

condition set forth in Section 1.2(c)(vi)(A) has been satisfied, in substantially the form attached hereto as Annex A;

(vii) the Bank shall have delivered to the Investor, a written waiver from each of the Bank's Senior Executive Officers and any other employee of the Bank required to have delivered a waiver to Investor pursuant to Section 1.2(d)(v) of the CPP Securities Purchase Agreement (each, a "CPP Waiver") and, to the extent that any Senior Executive Officer or any other employee of the Bank or its Affiliates that are subject to Section 111 of EESA did not deliver a CPP Waiver, the Bank shall cause each such Senior Executive Officer or other employee to have delivered to the Investor a written waiver in the form attached hereto as Annex D releasing the Investor and the Bank from any claims that such Senior Executive Officer or other employee may otherwise have as a result of the modification of, or the agreement of the Bank hereunder to modify, the terms of any Benefit Plans with respect to its Senior Executive Officers or other employees to eliminate any provisions of such Benefit Plans that would not be in compliance with the requirements of Section 111 of EESA as implemented by the Compensation Regulations;

(viii) the Bank shall have delivered certificates in proper form or, with the prior consent of the Investor, evidence in book-entry form, evidencing the CDCI Senior Subordinated Securities to the Investor or its designee(s);

(ix) the Bank shall have delivered to the Investor written opinions from counsel to the Bank (which may be internal counsel), addressed to the Investor and dated as of the Closing Date, in substantially the form attached hereto as Annex B;

(x) the Bank and the Bank Subsidiaries shall have taken all necessary action to ensure that the Bank and the Bank Subsidiaries and their executive officers, respectively, are in compliance with (i) all guidelines put forth by the Investor with respect to transparency, reporting and monitoring and (ii) the provisions of EESA and any federal law respecting EESA, including the Employ American Workers Act (Section 1611 of Division A, Title XVI of the American Recovery and Reinvestment Act of 2009), Public Law No. 111-5, effective as of February 17, 2009, and all rules, regulations and guidance issued thereunder;

(xi) the Bank shall have delivered to the Investor a copy of the Disclosure Schedule on or prior to the date of the Letter Agreement (the "Signing Date") and, to the extent that any information set forth on the Disclosure Schedule needs to be updated or supplemented to make it true, complete and correct as of the Closing Date, (i) the Bank shall have delivered to the Investor an update to the Disclosure Schedule (the "Disclosure Update"), setting forth any information necessary to make the Disclosure Schedule true, correct and complete as of the Closing Date and (ii) the Investor, in its sole discretion, shall have approved the Disclosure Update, *provided, however*, that the delivery and acceptance of the Disclosure Update shall not limit or affect any rights of or remedies available to the Investor;

(xii) the Bank shall have delivered to the Investor prior to the Signing Date either (i) a true, complete and correct certified copy of the CDFI Certification Application

that the Bank submitted to the Community Development Financial Institution Fund (the “Fund”) in connection with its certification as a CDFI along with any updates to the CDFI Certification Application necessary to make it true, complete and correct as of the Signing Date or (ii) to the extent a copy of the CDFI Certification Application that the Bank submitted to the Fund in connection with its certification as a CDFI is not available, a newly completed CDFI Certification Application true, complete and correct as of the Signing Date (the CDFI Certification Application delivered to the Investor pursuant to this Section 1.2(c)(xii), the “CDFI Application”), and, to the extent any information set forth in the CDFI Application is not true, complete and correct as of the Closing Date, the Bank shall have delivered to the Investor an update to the CDFI Application (the “CDFI Application Update”), setting forth any information necessary to make the information set forth in the CDFI Application true, correct and complete as of the Closing Date;and

(xiii) CPP Senior Subordinated Securities. The Bank shall have paid to Investor all accrued and unpaid interest then due on the CPP Senior Subordinated Securities.

## ARTICLE II

### EXCHANGE

Section 2.1 **Exchange**. On the terms and subject to the conditions set forth in this Agreement, the Bank agrees to issue the CDCI Senior Subordinated Securities to the Investor in exchange for CPP Senior Subordinated Securities, and the Investor agrees to deliver to the Bank the CPP Senior Subordinated Securities in exchange for the CDCI Senior Subordinated Securities.

Section 2.2 **Exchange Documentation**. Settlement of the Exchange will take place on the Closing Date, at which time the Investor will cause delivery of the CPP Senior Subordinated Securities to the Bank or its designated agent and the Bank will cause delivery of the CDCI Senior Subordinated Securities to the Investor or its designated agent.

## ARTICLE III

### **REPRESENTATIONS AND WARRANTIES OF THE BANK**

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

#### Section 3.1 **Existence and Power**.

(a) Organization, Authority and Significant Subsidiaries. The Bank has been duly formed and is validly existing and in good standing under the laws of its jurisdiction of organization, with the necessary power and authority to own, operate and lease its properties and to conduct its business in all material respects as it is being currently conducted, and except as has not, individually or in the aggregate, had and would not reasonably be expected to have a Bank Material Adverse Effect, has been duly qualified as a foreign entity 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 Bank 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 Bank, 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 and as of the Closing Date.

(b) Capitalization. The authorized and outstanding mutual capital certificates, other capital instruments authorized by law, non-withdrawable accounts and other mutual interests issued by the Bank, including rights of Members arising from their membership but excluding the rights of Members in respect of deposit liabilities of the Bank (collectively, the “Capital Interests”) and any authorized or outstanding securities convertible into, or exercisable or exchangeable for, Capital Interests, as of the most recent fiscal month-end preceding the Signing Date (the “Capitalization Date”) are set forth on Schedule B. The outstanding Capital Interests in the Bank 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 Bank does not have outstanding any securities or other obligations providing the holder the right to acquire its Capital Interests that are not reserved for issuance as specified on Schedule B, and the Bank has not made any other commitment to authorize, issue or sell any Capital Interests that is not specified on Schedule B. Since the Capitalization Date, the Bank has not issued any Capital Interests, other than (i) Capital Interests issued upon the exercise of 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) as disclosed on Schedule B. Each holder of 5% or more of the Capital Interests in the Bank and such holder’s primary address are set forth on Schedule B. The amount of the (A) Additional Dividends and (B) total dividends declared and paid in each case for the year ended December 31, 2009 are set forth on Schedule B.

Section 3.2 **CDCI Senior Subordinated Securities.** This Agreement has been duly authorized, executed and delivered and is, and the CDCI Senior Subordinated Securities, when executed and delivered, will be, the legal, valid and binding obligations of the Bank, each enforceable in accordance with their respective terms, except to the extent that the enforceability thereof may be limited by Bankruptcy Exceptions.

Section 3.3 **Community Development Financial Institution Status; Domestic Ownership.**

(i) The Bank, collectively with all of its “Affiliates” (within the meaning of 12 C.F.R. 1805.104) satisfies the requirements of 12 C.F.R. 1805.200(b).

(ii) The Bank (A) is a regulated community development financial institution (a “CDFI”) currently certified by the Fund of the United States Department of the Treasury pursuant to 12 C.F.R. 1805.201(a) as having satisfied the eligibility requirements of the Fund’s Community Development Financial Institutions Program and (B) satisfies the eligibility requirements for a CDFI set forth in 12 C.F.R. 1805.201 (b)(1) – (6).

Section 3.4 **Authorization and Enforceability.** (a) The Bank has the power and authority to execute and deliver this Agreement and, to carry out its obligations hereunder (which includes the issuance of the CDCI Senior Subordinated Securities). The execution, delivery and performance by the Bank of this Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Bank and its Members and other non-Member holders of Capital Interests (collectively, “Interest Holders”), and no further approval or authorization is required on the part of the Bank. This Agreement is a valid and binding obligation of the Bank enforceable against the Bank in accordance with its terms, subject to any limitations 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”).

(b) The execution, delivery and performance by the Bank of this Agreement and the consummation of the transactions contemplated hereby, and compliance by the Bank with the provisions hereof, 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 Bank or any subsidiary of the Bank (each subsidiary, a “Bank Subsidiary” and collectively, the “Bank 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 Bank or any Bank Subsidiary is a party or by which it or any Bank Subsidiary may be bound, or to which the Bank or any Bank Subsidiary or any of the properties or assets of the Bank or any Bank 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 Bank or any Bank 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 Bank Material Adverse Effect.

(c) Other than filing of the Charter or other filings 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, if applicable, 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 Bank in connection with the consummation by the Bank of the Exchange 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 Bank Material Adverse Effect.

Section 3.5 **Charter; Bylaws; Agreements Among Interest Holders; Anti-takeover Provisions and Rights Plan.** The Board of Directors of the Bank (the “Board of Directors”) has taken all necessary action to ensure that the transactions contemplated by this Agreement and the consummation of the transactions contemplated hereby, (i) are not prohibited by the Bank’s Charter and bylaws or other organizational documents, or any operating agreement

or agreement among the Interest Holders of the Bank, and has obtained all consents required by its Charter, bylaws or other organizational documents or by such operating agreement or agreements among Interest Holders of the Bank, or has amended the Charter and bylaws, as is necessary, in order to consummate the transactions contemplated by this Agreement and (ii) will be exempt from any anti-takeover or similar provisions of the Bank's Charter and bylaws, and any other provisions of any applicable anti-takeover laws and regulations of any jurisdiction.

Section 3.6 **No Bank Material Adverse Effect.** Since the CPP Signing Date, 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 Bank Material Adverse Effect, except as disclosed on Schedule C.

Section 3.7 **Bank Financial Statements.** The Bank Financial Statements present fairly in all material respects the consolidated financial position of the Bank 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 (i) were prepared in conformity with GAAP applied on a consistent basis (except as may be noted therein) and (ii) have been prepared from, and are in accordance with, the books and records of the Bank and the Bank Subsidiaries.

Section 3.8 **No Undisclosed Liabilities.** Neither the Bank nor any of the Bank Subsidiaries has any liabilities or obligations of any nature (absolute, accrued, contingent or otherwise) which are not properly reflected or reserved against in the Bank Financial Statements to the extent required to be so reflected or reserved against in accordance with GAAP, except for (i) liabilities that have arisen since the last fiscal year end in the ordinary and usual course of business and consistent with past practice and (ii) liabilities that, individually or in the aggregate, have not had and would not reasonably be expected to have a Bank Material Adverse Effect.

Section 3.9 **Offering of Securities.** Neither the Bank nor any person acting on its behalf has taken any action (including any offering of any securities of the Bank under circumstances which would require the integration of such offering with the offering of the CDCI Senior Subordinated Securities under the Securities Act and the rules and regulations of the Securities and Exchange Commission ("SEC") promulgated thereunder), which might subject the offering, issuance or acquisition of the CDCI Senior Subordinated Securities to the Investor pursuant to this Agreement to the registration requirements of the Securities Act.

Section 3.10 **Litigation and Other Proceedings.** Except (i) as set forth on Schedule D or (ii) as would not, individually or in the aggregate, reasonably be expected to have a Bank Material Adverse Effect, there is no (A) pending or, to the knowledge of the Bank, threatened, claim, action, suit, investigation or proceeding, against the Bank or any Bank Subsidiary or to which any of their assets are subject nor is the Bank or any Bank 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 Bank or any Bank Subsidiaries.

Section 3.11 **Compliance with Laws.** Except as would not, individually or in the aggregate, reasonably be expected to have a Bank Material Adverse Effect, the Bank and the

Bank 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 Bank or such Bank Subsidiary. Except as set forth on Schedule E, the Bank and the Bank Subsidiaries have complied in all respects and are not in default or violation of, and none of them is, to the knowledge of the Bank, under investigation with respect to or, to the knowledge of the Bank, 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 Bank Material Adverse Effect. Except for statutory or regulatory restrictions of general application or as set forth on Schedule E, no Governmental Entity has placed any restriction on the business or properties of the Bank or any Bank Subsidiary that would, individually or in the aggregate, reasonably be expected to have a Bank Material Adverse Effect.

Section 3.12 **Employee Benefit Matters.** Except as would not reasonably be expected to have, either individually or in the aggregate, a Bank Material Adverse Effect: (i) 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 Bank 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 Bank or any member of its Controlled Group and for which the Bank 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; (ii) with respect to each Plan subject to Title IV of ERISA (including, for purposes of this clause (ii), any plan subject to Title IV of ERISA that the Bank 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 Bank 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 Pension Benefit Guaranty Corporation 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 (iii) 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.

Section 3.13 **Taxes.** Except as would not, individually or in the aggregate, reasonably be expected to have a Bank Material Adverse Effect, (i) the Bank and the Bank Subsidiaries have filed all federal, state, local and foreign income and franchise Tax returns (together with any schedules and attached thereto) required to be filed through the Signing Date, subject to permitted extensions, and have paid all Taxes due thereon, (ii) all such Tax returns (together with any schedules and attached thereto) are true, complete and correct in all material respects and were prepared in compliance with all applicable laws and (iii) no Tax deficiency has been determined adversely to the Bank or any of the Bank Subsidiaries, nor does the Bank have any knowledge of any Tax deficiencies.

Section 3.14 **Properties and Leases.** Except as would not, individually or in the aggregate, reasonably be expected to have a Bank Material Adverse Effect, the Bank and the Bank 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 (including, without limitation, liens for Taxes), 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 Bank Material Adverse Effect, the Bank and the Bank 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.

Section 3.15 **Environmental Liability.** Except as would not, individually or in the aggregate, reasonably be expected to have a Bank Material Adverse Effect:

(a) 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 Bank or any Bank 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 Bank's knowledge, threatened against the Bank or any Bank Subsidiary;

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

(c) neither the Bank nor any Bank 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.

Section 3.16 **Risk Management Instruments.** Except as would not, individually or in the aggregate, reasonably be expected to have a Bank Material Adverse Effect, all derivative instruments, including, swaps, caps, floors and option agreements, whether entered into for the Bank's own account, or for the account of one or more of the Bank 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 Bank or one of the Bank Subsidiaries, enforceable in accordance with its terms, except as may be limited by the Bankruptcy Exceptions. Neither the Bank or the Bank Subsidiaries, nor, to the knowledge of the Bank, 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 Bank Material Adverse Effect.

Section 3.17 **Agreements with Regulatory Agencies.** Except as set forth on Schedule F, neither the Bank nor any Bank 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 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 Bank or any Bank 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 Bank and each Bank Subsidiary is in compliance in all material respects with each Regulatory Agreement to which it is party or subject, and neither the Bank nor any Bank Subsidiary has received any notice from any Governmental Entity indicating that either the Bank or any Bank Subsidiary is not in compliance in all material respects with any such Regulatory Agreement.

Section 3.18 **Insurance.** The Bank and the Bank Subsidiaries are insured with reputable insurers against such risks and in such amounts as the management of the Bank reasonably has determined to be prudent and consistent with industry practice. The Bank and the Bank 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 Bank Material Adverse Effect.

Section 3.19 **Intellectual Property.** Except as would not, individually or in the aggregate, reasonably be expected to have a Bank Material Adverse Effect, (i) the Bank and each Bank 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 Bank nor any of the Bank Subsidiaries is materially infringing, diluting, misappropriating or violating, nor has the Bank or any of the Bank Subsidiaries received any written (or, to the knowledge of the Bank, 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 Bank Material

Adverse Effect, to the Bank's knowledge, no other person is infringing, diluting, misappropriating or violating, nor has the Bank or any of the Bank Subsidiaries sent any written communications since January 1, 2007 alleging that any person has infringed, diluted, misappropriated or violated, any of the Proprietary Rights owned by the Bank and the Bank Subsidiaries.

Section 3.20 **Brokers and Finders.** The Investor has no liability for any amounts that any broker, finder or investment banker is entitled to for any financial advisory, brokerage, finder's or other fee or commission in connection with this Agreement or the transactions contemplated hereby based upon arrangements made by or on behalf of the Bank or any Bank Subsidiary.

Section 3.21 **Disclosure Schedule.** The Bank has delivered the Disclosure Schedule and, if applicable, the Disclosure Update to the Investor and the information contained in the Disclosure Schedule, as modified by the information contained in the Disclosure Update, if applicable, is true, complete and correct.

Section 3.22 **CPP Senior Subordinated Securities.** The Bank has (i) not breached any representation, warranty or covenant set forth in any of the documents governing any subordinated debentures or other securities issued in connection with its participation in the CPP or the CDCI (the "CPP/CDCI Securities") or its sale to Investor and (ii) paid to Investor all accrued and unpaid dividends and/or interest then due on the CPP/CDCI Securities.

Section 3.23 **Amendment to Charter and Other Documents to Effect Section 5.12(b).** Except as set forth on Schedule G, the election, appointment, nomination or designation of CDCI Senior Subordinated Securities Directors by the Holders in accordance with, and upon the conditions set forth in, Section 5.12(b) is permitted by the laws of the jurisdiction of organization of the Bank. If permitted by such laws, the Bank has taken all action necessary to permit the Holders to elect, appoint, nominate or designate the CDCI Senior Subordinated Securities Directors, as applicable, in accordance with, and upon the events set forth in, Section 5.12(b), including amending its Charter and any other applicable organizational documents, agreements or arrangements as necessary.

## **ARTICLE IV**

### **COVENANTS**

Section 4.1 **Affirmative Covenants.** The Bank hereby covenants and agrees with Investor that:

(a) **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 Exchange 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.

(b) **Certain Notifications Until Closing.** From the date hereof until the Closing, the Bank 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 Bank contained in this Agreement to be untrue or inaccurate in any material respect or to cause any covenant or agreement of the Bank 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 Bank is aware and which, individually or in the aggregate, has had or would reasonably be expected to have a Bank Material Adverse Effect; *provided, however*, that delivery of any notice pursuant to this Section 4.1(b) shall not limit or affect any rights of or remedies available to the Investor.

(c) **Access, Information and Confidentiality.**

(i) From the Signing Date until the date when the Investor owns an amount of CDCI Senior Subordinated Securities having an aggregate face value of less than 10% of the aggregate face value of the CDCI Senior Subordinated Securities as of the Closing Date, the Bank 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 Bank, to examine the Bank's books, Tax returns (including all schedules and attached thereto) and other information reasonably requested by Investor relating to Taxes and make copies thereof and to discuss the affairs, finances and accounts of the Bank and the Bank Subsidiaries with the principal officers of the Bank, 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 Bank provided by the Bank to its Appropriate Federal Banking Agency. Any investigation pursuant to this Section 4.1(c) shall be conducted during normal business hours and in such manner as not to interfere unreasonably with the conduct of the business of the Bank, and nothing herein shall require the Bank or any Bank Subsidiary to disclose any information to the Investor to the extent (A) prohibited by applicable law or regulation or (B) that such disclosure would reasonably be expected to cause a violation of any agreement to which the Bank or any Bank Subsidiary is a party or would cause a risk of a loss of privilege to the Bank or any Bank Subsidiary (*provided* that the Bank shall use commercially reasonable efforts to make appropriate substitute disclosure arrangements under circumstances where the restrictions in this clause (i) apply).

(ii) From the Signing Date until the date on which all of the CDCI Senior Subordinated Securities have been redeemed in whole, the Bank will deliver, or will cause to be delivered, to the Investor:

(A) as soon as available after the end of each fiscal year of the Bank, and in any event within 90 days thereafter, a consolidated balance sheet of the Bank as of the end of such fiscal year, and consolidated statements of income, retained earnings and cash flows of the Bank 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 Bank, and which shall be audited to the extent audited financial statements are available;

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

(C) as soon as available after the Bank receives any assessment of the Bank's internal controls, a copy of such assessment;

(D) annually on a date specified by the Investor, a completed survey, in a form specified by the Investor, providing, among other things, a description of how the Bank has utilized the funds the Bank received in connection with the sale of the CPP Senior Subordinated Securities and the effects of such funds on the operations and status of the Bank;

(E) as soon as such items become effective, any amendments to the Charter, bylaws or other organizational documents of the Bank; and

(F) at the same time as such items are sent to all Members of the Bank, copies of any information or documents, excluding any general solicitations or advertisements for services and products, sent by the Bank to its Members.

(iii) The Investor will use reasonable best efforts to hold, and will use reasonable best efforts to cause its agents, consultants, contractors and advisors, and United States executive branch officials and employees, to hold, in confidence all non-public records, books, contracts, instruments, computer data and other data and information (collectively, "Information") concerning the Bank furnished or made available to it by the Bank or its representatives pursuant to this Agreement (except to the extent that such information can be shown to have been (A) previously known by such party on a non-confidential basis, (B) in the public domain through no fault of such party or (C) 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. The Investor understands that the Information may contain commercially sensitive confidential information entitled to an exception from a Freedom of Information Act request.

(iv) The Investor's information rights pursuant to Section 4.1(c)(ii)(A), (B), (C), (E) and (F) and the Investor's right to receive certifications from the Bank pursuant to Section 4.1(d)(ii) may be assigned by the Investor to a transferee or assignee of the CDCI Senior Subordinated Securities with a face value of no less than an amount equal to 2% of the initial face value of the CDCI Senior Subordinated Securities.

(v) From the Signing Date until the date when the Investor no longer owns any CDCI Senior Subordinated Securities, the Bank shall permit, and shall cause each of the Bank's Subsidiaries to permit (A) the Investor and its agents, consultants, contractors and advisors, (B) the Special Inspector General of the Troubled Asset Relief Program, and (C) the Comptroller General of the United States access to personnel and any books,

papers, records or other data, in each case, to the extent relevant to ascertaining compliance with the financing terms and conditions; *provided* that prior to disclosing any information pursuant to clause (B) or (C), the Special Inspector General of the Troubled Asset Relief Program and the Comptroller General of the United States shall have agreed, with respect to documents obtained under this Agreement in furtherance of its function, to follow applicable law and regulation (and the applicable customary policies and procedures) regarding the dissemination of confidential materials, including redacting confidential information from the public version of its reports and soliciting the input from the Bank as to information that should be afforded confidentiality, as appropriate.

(vi) Nothing in this Section shall be construed to limit the authority that the Special Inspector General of the Troubled Asset Relief Program, the Comptroller General of the United States or any other applicable regulatory authority has under law.

(d) **CDFI Requirements.**

(i) From the Signing Date until the date on which all of the CDCI Senior Subordinated Securities have been redeemed in whole, the Bank shall (A) be certified by the Fund as a CDFI; (B) together with its Affiliates collectively meet the eligibility requirements of 12 C.F.R. 1805.200(b); (C) have a primary mission of promoting community development, as may be determined by Investor from time to time, based on criteria set forth in 12 C.F.R. 1805.201(b)(1); (D) provide Financial Products, Development Services, and/or other similar financing as a predominant business activity in arm's-length transactions; (E) serve a Target Market by serving one or more Investment Areas and/or Targeted Populations as may be determined by Investor from time to time, substantially in the manner set forth in 12 C.F.R. 1805.201(b)(3); (F) provide Development Services in conjunction with its Financial Products, directly, through an Affiliate or through a contract with a third-party provider; (G) maintain accountability to residents of the applicable Investment Area(s) or Targeted Population(s) through representation on its governing Board of Directors or otherwise; and (H) remain a non-governmental entity which is not an agency or instrumentality of the United States of America, or any State or political subdivision thereof, as described in 12 C.F.R. 1805.201(b)(6) and within the meaning of any supplemental regulations or interpretations of 12 C.F.R. 1805.201(b)(6) or such supplemental regulations published by the Fund. Notwithstanding any other provision hereof, as used in this Section 4.1(d), the terms "Affiliates"; "Financial Products"; "Development Services"; "Target Market"; "Investment Areas"; and "Targeted Populations" have the meanings ascribed to such terms in 12 C.F.R. 1805.104.

(ii) From the Signing Date until the date on which all of the CDCI Senior Subordinated Securities have been redeemed in whole, the Bank shall deliver to Investor (1) (x) on the date that is 180 days after the Closing Date and (y) annually on the same date on which the Bank delivers the documentation required under Section 4.1(c)(ii)(A) to the Investor, a certificate signed on behalf of the Bank by a Senior Executive Officer, in substantially the form attached hereto as Annex F certifying (A) that the Bank remains in compliance with the covenants set forth in Section 4.1(d)(i); (B) that the information in the CDFI Application, as modified by any updates to the CDFI Application provided by

the Bank to the Investor on or prior to the date of such certificate, with respect to the covenants set forth in Section 4.1(d)(i)(B) and Section 4.1(d)(i)(D) remains true, correct and complete as of such date or, to the extent any information set forth in the CDFI Application, as modified by any updates to the CDFI Application provided by the Bank to the Investor on or prior to the date of such certificate, with respect to such covenants needs to be updated or supplanted to make it true, complete and correct as of such date, that an updated narrative to the CDFI Application setting forth any information necessary to make the information set forth in the CDFI Application is true, complete and correct as of such date; (C) either (a) that the contracts and material agreements entered into by the Bank with respect to Development Services previously disclosed to the Investor remain in effect or (b) that attached are any new contracts and material agreements entered into by the Bank with respect to Development Services; (D) a list of the names and addresses of the individuals which comprise the Board of Directors as of such date and, to the extent any of such individuals was not a member of the Board of Directors as of the last certification to the Investor, a narrative describing such individual's relationship to the applicable Investment Area(s) and Targeted Population(s) or, if the Bank maintains accountability to residents of the applicable Investment Area(s) or Target Population(s) through means other than representation on its governing Board of Directors and such means have changed since the date of the last certification to the Investor, a narrative describing such change; (E) that the Bank is not an agency of the United States of America, or any State or political subdivision thereof, as described in 12 C.F.R. 1805.201(b)(6) and within the meaning of any supplemental regulations or interpretations of 12 C.F.R. 1805.201(b)(6) or such supplemental regulations published by the Fund and (F) that the Bank remains in compliance with the covenant set forth in Section 4.1(k) and (2) within five (5) business days of receipt, copies of any notices, correspondence or other written communication between the Bank and the Fund, including any form that the Bank is required to provide to the Fund due to the occurrence of a "Material Event" within the meaning of the Fund's CDFI Certification Procedures.

(iii) The Bank shall immediately notify the Investor upon the occurrence of any breach of any of the covenants set forth in Section 4.1(d).

(iv) If at any time the Bank is no longer certified as a CDFI, but one or more Affiliates thereof are certified as CDFIs (such affiliates, the "Certified Entities"), the Bank shall (A) immediately notify the Investor of such status (B) cause the Certified Entities to comply with the covenants set forth in Section 4.1(d)(i), (C) on an annual basis pursuant to Section 4.1(d)(ii), deliver to Investor, the certificates and documentation required by clauses (1), (2) and (3) in Section 4.1(d)(ii)(x)(B), with respect to the Certified Entities and (D) execute and deliver to Investor such amendments or documents or perform such other acts as the Investor may deem necessary, in its sole discretion, for the Bank and the Certified Entities to comply with the terms and conditions of this Agreement.

(e) **Executive Compensation.**

(i) **Benefit Plans.** During the Relevant Period, the Bank shall take all necessary action to ensure that the Benefit Plans of the Bank and its Affiliates comply in

all respects with, and shall take all other actions necessary to comply with, Section 111 of EESA, as implemented by the Compensation Regulations, and neither the Bank nor any of its Affiliates shall adopt any new Benefit Plan (x) that does not comply therewith or (y) that does not expressly state and require that such Benefit Plan and any compensation thereunder shall be subject to any relevant Compensation Regulations adopted, issued or released on or after the date any such Benefit Plan is adopted. To the extent that EESA and/or the Compensation Regulations are amended or otherwise change during the Relevant Period in a manner that requires changes to then-existing Benefit Plans, or that requires other actions, the Bank and its Affiliates shall effect such changes to its or their Benefit Plans, and take such other actions, as promptly as practicable after it has actual knowledge of such amendments or changes in order to be in compliance with this Section 4.1(e) (and shall be deemed to be in compliance for a reasonable period to effect such changes). In addition, the Bank and its Affiliates shall take all necessary action, other than to the extent prohibited by applicable law or regulation applicable outside of the United States, to ensure that the consummation of the transactions contemplated by this Agreement will not accelerate the vesting, payment or distribution of any equity-based awards, deferred cash awards or any nonqualified deferred compensation payable by the Bank or any of its Affiliates.

(ii) Additional Waivers. After the Closing Date, in connection with the hiring or promotion of a Section 4.1(e) Employee and/or the promulgation of applicable Compensation Regulations or otherwise, to the extent any Section 4.1(e) Employee shall not have executed a waiver in a form satisfactory to the Investor with respect to the application to such Section 4.1(e) Employee of the Compensation Regulations, the Bank shall use its best efforts to (x) obtain from such Section 4.1(e) Employee a waiver in substantially the form attached hereto as Annex C and (y) deliver such waiver to the Investor as promptly as possible, in each case, within sixty days of such Section 4.1(e) Employee becoming subject to the requirements of this Section. “Section 4.1(e) Employee” means (A) each Senior Executive Officer and (B) any other employee of the Bank or any of its Affiliates determined at any time to be subject to Section 111 of EESA as implemented by the Compensation Regulations.

(iii) Clawback. In the event that any Section 4.1(e) Employee receives a payment in contravention of the provisions of this Section 4.1(e), the Bank shall promptly provide such individual with written notice that the amount of such payment must be repaid to the Bank in full within fifteen business days following receipt of such notice or such earlier time as may be required by the Compensation Regulations and shall promptly inform the Investor (i) upon discovering that a payment in contravention of this Section 4.1(e) has been made and (ii) following the repayment to the Bank of such amount and shall take such other actions as may be necessary to comply with the Compensation Regulations.

(iv) Limitation on Deductions. During the Relevant Period, the Bank agrees that it shall not claim a deduction for remuneration for federal income tax purposes in excess of \$500,000 for each Senior Executive Officer that would not be deductible if Section 162(m)(5) of the Code applied to the Bank.

(v) **Amendment to Prior Agreement.** The parties agree that, effective as of the date hereof, Section 5.15 of the CPP Securities Purchase Agreement shall be amended in its entirety by replacing such Section 5.15 with the provisions set forth in this Section 4.1(e) and any terms included in this Section 4.1(e) that are not otherwise defined in the CPP Securities Purchase Agreement shall have the meanings ascribed to such terms in this Agreement.

(f) **Capital Covenant.** From the Signing Date, until the date on which all of the CDCI Senior Subordinated Securities have been redeemed in whole, the Bank and the Bank Subsidiaries shall maintain such capital as may be necessary to meet the minimum capital requirements of the Appropriate Federal Banking Agency, as in effect from time to time.

(g) **HAMP Modifications.** The Bank shall take all necessary action to ensure that (A) from and after the date the Bank or any Bank Subsidiary that services residential mortgage loans has 100 or more residential mortgage loans not owned or guaranteed by Fannie Mae or Freddie Mac which have been past due for 60 or more days, the Bank or such Bank Subsidiary shall, to the extent such programs are open for participation, (1) participate in the United States Department of the Treasury's Making Home Affordable ("MHA") program, including MHA's Second Lien Modification Program and (2) immediately execute a Commitment to Purchase Financial Instrument and Servicer Participation Agreement (in such form as may be set forth on the MHA website at [www.hmpadmin.com](http://www.hmpadmin.com) from time to time) with Fannie Mae (acting as the United States Department of the Treasury's fiscal agent) and (B) if the Bank or any Bank Subsidiary owns mortgage loans that are serviced by a non-affiliated mortgage servicer, the Bank or such Bank Subsidiary shall consent to any MHA modification request made by such mortgage servicer.

(h) **Compliance with Employ American Workers Act.** The Bank shall agree to comply, and take all necessary action to ensure that any Bank Subsidiary complies, in all respects with the provisions of EESA and any federal law respecting EESA, including the Employ American Workers Act (Section 1611 of Division A, Title XVI of the American Recovery and Reinvestment Act of 2009), Public Law No. 111-5, effective as of February 17, 2009, as implemented by any rules, regulation or guidance thereunder, as such may be amended or supplemented from time to time, and any applicable guidance of the United States Department of the Treasury with respect thereto.

(i) **Reporting Requirements.** Prior to the date on which all of the CDCI Senior Subordinated Securities have been redeemed in whole, the Bank covenants and agrees that, at all times on or after the Closing Date, (i) to the extent it is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, it shall comply with the terms and conditions set forth in Annex E or (ii) as soon as practicable after the date that the Bank becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, it shall comply with the terms and conditions set forth in Annex E.

(j) **Predominantly Financial.** For as long as the Investor owns any CDCI Senior Subordinated Securities, the Bank, 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.

(k) **Control by Foreign Bank or Company.** Prior to the date on which all of the CDCI Senior Subordinated Securities have been redeemed in whole, the Bank shall not be controlled (within the meaning of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(2)) and 12 C.F.R. 225(a)(i) in the case of banks and the Home Owners' Loan Act of 1933 (12 U.S.C. 1467a (a)(2)) and 12 C.F.R. 583.7 in the case of savings associations) by a foreign bank or company.

Section 4.2 **Negative Covenants.** The Bank hereby covenants and agrees with the Investor that:

(a) **Certain Transactions.**

(i) The Bank shall 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 Bank), 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 Bank.

(ii) Without the prior written consent of the Investor, until such time as the Investor shall cease to own any debt or equity securities of the Bank acquired pursuant to this Agreement or the CPP Securities Purchase Agreement (including, for the avoidance of doubt, the CPP Senior Subordinated Securities or the CDCI Senior Subordinated Securities), the Bank shall not permit any of its "significant subsidiaries" (as such term is defined in Rule 12b-2 promulgated under the Exchange Act) to (i) engage in any merger, consolidation, statutory share exchange or similar transaction following the consummation of which such significant subsidiary is not wholly-owned by the Bank, (ii) dissolve or sell all or substantially all of its assets or property other than in connection with an internal reorganization or consolidation involving wholly-owned subsidiaries of the Bank or (iii) issue or sell any securities convertible or exercisable for any such securities, other than issuances or sales in connection with an internal reorganization or consolidation involving wholly-owned subsidiaries of the Bank.

(b) **Restriction on Dividends and Repurchases.**

(i) Prior to the date on which all of the CDCI Senior Subordinated Securities have been redeemed in whole, neither the Bank nor any Bank Subsidiary shall, (x) redeem, purchase, repay or acquire any equity or debt capital instruments of any kind of the Bank or any Bank Subsidiary, other than redemptions, purchases, repayments or other acquisitions of Capital Interests or other securities of any kind of the Bank or any Bank Subsidiary required pursuant to binding contractual agreements entered into prior to

October 21, 2009, and (y) declare or pay any extraordinary or special dividends, unless all accrued and unpaid Interest for all past interest periods on the CDCI Senior Subordinated Securities is paid in full.

(ii) The Bank may pay, on an annual basis consistent with past practice, dividends on Capital Interests in the amount of the “Additional Dividends” as set forth in Schedule B.

(iii) Prior to the date on which all of the CDCI Senior Subordinated Securities have been redeemed in whole, the Bank shall not (i) pay any increase in the Additional Dividends paid on any annual basis, (ii) pay any extraordinary dividends on deposit accounts (dividends in excess of the stated rate or that are in excess of the amount resulting from the stated method of calculating the rate on such an account), and (iii) pay any Additional Dividend on any Capital Interests or other equity securities of any kind of any Bank Subsidiary, *provided* that, no increase in dividends shall be made as a result of any dividend paid in mutual capital certificates, or other capital instruments authorized under applicable law, any stock split or similar transaction.

(iv) Notwithstanding anything contained in Section 4.2(b) prior to the date on which all of the CDCI Senior Subordinated Securities have been redeemed in whole, neither the Bank nor any Bank Subsidiary shall, redeem, purchase, repay or acquire any Capital Interests or other equity securities of any kind of any Bank Subsidiary, other than (i) the exchange or conversion of Capital Interests for or into other Capital Interests in the Bank, 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 Capital Interests, (ii) redemptions of securities held by the Bank or any wholly owned Bank Subsidiary or (iii) redemptions, purchases, repayments or other acquisitions of Capital Interests or other securities of any kind of the Bank or any Bank Subsidiary required pursuant to binding contractual agreements entered into prior to October 21, 2009.

(v) Notwithstanding anything contained in this Section 4.2(b), from and after the eighth (8<sup>th</sup>) anniversary of the Closing Date and for so long as the CDCI Senior Subordinated Securities are outstanding, neither the Bank nor any Bank Subsidiary shall, without the consent of the Investor, pay any dividends or repurchase any Capital Interests or other securities of any kind of the Bank or any Bank Subsidiary authorized under applicable law.

(vi) Until such time as the Investor ceases to own any CDCI Senior Subordinated Securities, the Bank shall not repurchase any CDCI Senior Subordinated Securities from any holder thereof, whether by means of open market purchase, negotiated transaction, or otherwise, unless it offers to repurchase a ratable portion of the CDCI Senior Subordinated Securities then held by the Investor on the same terms and conditions.

(c) Related Party Transactions Until such time as the Investor ceases to own any debt or equity securities of the Bank, including the CDCI Senior Subordinated Securities, the

Bank and the Bank 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 (A) such transactions are on terms no less favorable to the Bank and the Bank Subsidiaries than could be obtained from an unaffiliated third party, and (B) have been approved by the audit committee of the Board of Directors or comparable body of independent directors of the Bank, or if there are no independent directors, the Board of Directors, *provided* that the Board of Directors shall maintain written documentation which supports its determination that the transaction meets the requirements of clause (A) of this Section 4.2(c).

(d) Restriction on Repurchase of CDCI Senior Subordinated Securities Held by Investor. Prior to the date on which the Investor no longer owns any of the CDCI Senior Subordinated Securities the Bank shall not repurchase, redeem, call or otherwise reacquire any CDCI Senior Subordinated Securities from any holder thereof, whether by means of open market purchase, negotiated transaction, or otherwise, unless it offers to repurchase, redeem, call or otherwise reacquire a ratable portion of the CDCI Senior Subordinated Securities, as the case may be, then held by the Investor on the same terms and conditions.

## ARTICLE V

### ADDITIONAL AGREEMENTS

Section 5.1 Purchase for Investment. The Investor acknowledges that the CDCI Senior Subordinated Securities have not been registered under the Securities Act, or under any state securities laws. The Investor acknowledges that the CDCI Senior Subordinated Securities are not being sold pursuant to an indenture (an "Indenture") qualified under the Trust Indenture Act of 1939, as amended (the "Indenture Act"). The Investor (a) is acquiring the CDCI Senior Subordinated Securities pursuant to an exemption from registration under the Securities Act and an exemption from qualification of an indenture under the Indenture Act, and is acquiring the CDCI Senior Subordinated Securities 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 CDCI Senior Subordinated Securities, 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 Exchange and of making an informed investment decision.

Section 5.2 Form of CDCI Senior Subordinated Security. The CDCI Senior Subordinated Security shall be substantially in the form of Annex D hereto, the terms of which are incorporated in and made a part of this Agreement. The CDCI Senior Subordinated Securities shall be issued, and may be transferred, only in denominations having an aggregate principal amount of not less than \$1,000 and integral multiples of \$1,000 in excess thereof. The CDCI Senior Subordinated Securities shall be in registered form without coupons and shall be numbered, lettered or otherwise distinguished in such manner or in accordance with such plans as the officers executing the same may determine as evidenced by the execution thereof.

Section 5.3 **Execution of CDCI Senior Subordinated Securities.** The CDCI Senior Subordinated Securities shall be executed in the name and on behalf of the Bank by the manual or facsimile signature of its President, Chief Executive Officer, Chief Financial Officer or one of its Executive Vice Presidents under its seal (if legally required) which may be affixed thereto or printed, engraved or otherwise reproduced thereon, by facsimile or otherwise, and which need not be attested, unless otherwise required by the Bank's Charter or bylaws or applicable law. Every CDCI Senior Subordinated Security shall be dated the date of its execution and delivery.

Section 5.4 **Computation of Interest.** (a) The amount of interest payable for any Interest Period (as defined below) will be computed as provided in the CDCI Senior Subordinated Securities.

(b) Each CDCI Senior Subordinated Security will bear interest at the Interest Rate (i) in the case of the initial Interest Period, for the period from, and including, the date of original issuance of such CDCI Senior Subordinated Security to, but excluding, the initial Interest Payment Date and (ii) thereafter, for the period from, and including, the first day following the end of the preceding Interest Period to, but excluding, the applicable Interest Payment Date or, in the case of the last Interest Period, the Maturity Date (each such period, an "Interest Period"), on the principal thereof, on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest (including Defaulted Interest), payable on each Interest Payment Date or the Maturity Date, as the case may be. Interest on any CDCI Senior Subordinated Security that is payable, and is punctually paid or duly provided for by the Bank, on any Interest Payment Date shall be paid to the person in whose name such CDCI Senior Subordinated Security is registered at the close of business on the Regular Record Date for such interest installment.

(c) Any interest on the CDCI Senior Subordinated Security that is payable, but is not punctually paid or duly provided for by the Bank, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date, and such Defaulted Interest shall be paid by the Bank to the persons in whose names such CDCI Senior Subordinated Securities are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner: the Bank shall notify the Holder in writing of the amount of Defaulted Interest proposed to be paid on each such CDCI Senior Subordinated Security and the date of the proposed payment. Thereupon the Board of Directors shall fix a special record date for the payment of such Defaulted Interest, which shall not be more than 15 nor less than 10 days prior to the date of the proposed payment. The Bank shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first class postage prepaid, to each Holder of a CDCI Senior Subordinated Security at his, her or its address as it appears in the CDCI Senior Subordinated Securities Register, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the person in whose name such CDCI Senior Subordinated Security is registered at the close of business on such special record date and thereafter the Bank shall have no further payment obligation in respect of the Defaulted Interest.

(d) The Bank may make payment of any Defaulted Interest on the CDCI Senior Subordinated Securities in any other lawful manner not inconsistent with the requirements of any securities exchange on which such CDCI Senior Subordinated Securities may be listed, and upon such notice as may be required by such exchange.

(e) Subject to the foregoing provisions of this Section 5.4, each CDCI Senior Subordinated Security delivered under this Agreement upon registration of transfer of or in exchange for or in lieu of any other CDCI Senior Subordinated Security shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other CDCI Senior Subordinated Security.

Section 5.5 **Legends.** (a) The Investor agrees that all certificates or other instruments representing the CDCI Senior Subordinated Securities will bear a legend substantially to the following effect:

“THIS SENIOR SUBORDINATED SECURITY WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN MINIMUM DENOMINATIONS OF \$1,000 AND MULTIPLES OF \$1,000 IN EXCESS THEREOF. ANY ATTEMPTED TRANSFER OF SUCH SECURITIES IN A DENOMINATION OF LESS THAN \$1,000 AND MULTIPLES OF \$1,000 IN EXCESS THEREOF SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PAYMENTS ON SUCH SECURITIES, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH SECURITIES.

THIS SECURITY IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE LETTER AGREEMENT BY AND BETWEEN THE BANK AND THE UNITED STATES DEPARTMENT OF THE TREASURY AND EXCHANGE AGREEMENT – STANDARD TERMS (THE “AGREEMENT”), EACH OF WHICH ARE INCORPORATED INTO THIS SENIOR SUBORDINATED SECURITY.

**THIS SECURITY IS *NOT* A SAVINGS ACCOUNT OR DEPOSIT AND IT IS NOT INSURED BY THE UNITED STATES, ANY AGENCY OR FUND OF THE UNITED STATES OR THE FEDERAL DEPOSIT INSURANCE CORPORATION.**

THIS OBLIGATION IS SUBORDINATED AND JUNIOR IN RIGHT OF PAYMENT, AS TO PRINCIPAL, INTEREST AND PREMIUM, TO ALL CLAIMS AGAINST THE BANK HAVING

THE SAME PRIORITY AS SAVINGS ACCOUNT HOLDERS OR OTHER DEPOSITORS, OR ANY HIGHER PRIORITY, INCLUDING GENERAL AND SECURED CREDITORS OF THE BANK. THIS OBLIGATION IS NOT SECURED BY THE BANK'S ASSETS OR THE ASSETS OF ANY OF ITS AFFILIATES. THIS OBLIGATION IS NOT ELIGIBLE AS COLLATERAL FOR ANY LOAN BY THE BANK.

PURSUANT TO 12 U.S.C. 1831o(h), THE BANK MAY NOT MAKE ANY PAYMENT OF PRINCIPAL OR INTEREST ON THIS OBLIGATION BEGINNING 60 DAYS AFTER BECOMING CRITICALLY UNDERCAPITALIZED, UNLESS THE FEDERAL DEPOSIT INSURANCE CORPORATION HAS MADE AN EXCEPTION PURSUANT TO 12 U.S.C. 1831o(h)(2)(B).

THE TERMS UNDER WHICH THE BANK MAY PREPAY THIS SENIOR SUBORDINATED SECURITY ARE SET FORTH IN THE AGREEMENT.

THIS SECURITY HAS 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 THIS SECURITY 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 THIS SECURITY 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 BANK 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 THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

[NOTWITHSTANDING THE FOREGOING, AN INDENTURE MEETING THE REQUIREMENTS OF 12 C.F.R. 563.81(c)(4)(i) MUST BE IN PLACE BEFORE THIS SECURITY IS TRANSFERRED TO ANY PERSON WHO IS NOT AN “ACCREDITED INVESTOR” (AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT). – *to be included for OTS-regulated institutions only, per 12 C.F.R. 563.81(c)(4)(ii)*]

THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF THE AGREEMENT BETWEEN THE BANK AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE BANK. THIS SECURITY 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 the event that any CDCI Senior Subordinated Securities (A) (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), and (B) (i) become subject to an Indenture qualified under the Indenture Act or (ii) are exempt from qualification under the Indenture Act, the Bank shall issue new certificates or other instruments representing such CDCI Senior Subordinated Securities, which shall not contain the applicable legends in Sections 5.5(a) above; *provided* that the Investor surrenders to the Bank the previously issued certificates or other instruments.

Section 5.6 **Transfer of CDCI Senior Subordinated Securities.** (a) The Bank or its duly appointed agent shall maintain a register (the “CDCI Senior Subordinated Securities Register”) for the CDCI Senior Subordinated Securities in which it shall register the issuance and transfer of the CDCI Senior Subordinated Securities. All transfers of the CDCI Senior Subordinated Securities shall be recorded on the CDCI Senior Subordinated Securities Register maintained by the Bank or its agent, and the Bank shall be entitled to regard the registered Holder of such CDCI Senior Subordinated Security as the actual owner of the CDCI Senior Subordinated Security so registered until the Bank or its agent is required to record a transfer of such CDCI Senior Subordinated Security on its CDCI Senior Subordinated Securities

Register. The Bank or its agent shall, subject to applicable securities laws, be required to record any such transfer when it receives the CDCI Senior Subordinated Security to be transferred duly and properly endorsed by the registered Holder or by its attorney duly authorized in writing.

(b) The Bank shall at any time, upon written request of the Holder of a CDCI Senior Subordinated Security and surrender of the CDCI Senior Subordinated Security for such purpose, at the expense of the Bank, issue new CDCI Senior Subordinated Securities in exchange therefor in such denominations of at least \$1,000, as shall be specified by the Holder of such CDCI Senior Subordinated Security, in an aggregate principal amount equal to the then unpaid principal amount of the CDCI Senior Subordinated Securities surrendered and substantially in the form of Annex D, with appropriate insertions and variations, and bearing interest from the date to which interest has been paid on the CDCI Senior Subordinated Security surrendered. All CDCI Senior Subordinated Securities issued upon any registration of transfer or exchange pursuant to this Section 5.6(b) shall be valid obligations of the Bank, evidencing the same debt, and entitled to the same benefits under this Agreement, as the CDCI Senior Subordinated Securities surrendered upon such registration of transfer or exchange.

(c) All CDCI Senior Subordinated Securities presented for registration of transfer or for exchange or payment shall be duly endorsed by, or be accompanied by, a written instrument or instruments of transfer in a form satisfactory to the Bank duly executed by the Holder or such Holder's attorney duly authorized in writing.

(d) No service charge shall be incurred for any exchange or registration of transfer of CDCI Senior Subordinated Securities, but the Bank may require payment of a sum sufficient to cover any Tax, fee or other governmental charge that may be imposed in connection therewith.

(e) Prior to due presentment for the registration of a transfer of any CDCI Senior Subordinated Security, the Bank and any agent of the Bank may deem and treat the person in whose name such CDCI Senior Subordinated Security is registered as the absolute owner and Holder of such CDCI Senior Subordinated Security for the purpose of receiving payment of principal of and interest on such CDCI Senior Subordinated Security and none of the Bank or any agents of the Bank shall be affected by notice to the contrary.

(f) Subject to compliance with applicable securities laws, the Holder shall be permitted to transfer, sell, assign or otherwise dispose of ("Transfer") all or a portion of the CDCI Senior Subordinated Securities at any time, and the Bank shall take all steps as may be reasonably requested by the Investor to facilitate the Transfer of the CDCI Senior Subordinated Securities; *provided* that the Investor and its transferees shall use their commercially reasonable efforts not to effect any Transfer of any CDCI Senior Subordinated Securities if such transfer would require the Bank to be subject to the periodic reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and the Bank was not already subject to such requirements. In furtherance of the foregoing, the Bank shall provide reasonable cooperation to facilitate any Transfers of the CDCI Senior Subordinated Securities, including, as is reasonable under the circumstances, by furnishing such information concerning the Bank and its business as a proposed transferee may reasonably request (including such information as is required by Section 4.1(c)(iv)) and making management of the Bank 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.

Section 5.7 **Replacement of CDCI Senior Subordinated Securities.** Upon receipt of evidence reasonably satisfactory to the Bank of the loss, theft, destruction or mutilation of any CDCI Senior Subordinated Security, and, in the case of any such loss, theft or destruction, upon delivery of a bond of indemnity reasonably satisfactory to the Bank (*provided* that the Investor or any institutional Holder of a CDCI Senior Subordinated Security may instead deliver to the Bank an indemnity agreement in form and substance reasonably satisfactory to the Bank), or, in the case of any such mutilation, upon surrender and cancellation of the CDCI Senior Subordinated Security, as the case may be, the Bank will issue a new CDCI Senior Subordinated Security of like tenor, in lieu of such lost, stolen, destroyed or mutilated CDCI Senior Subordinated Security.

Section 5.8 **Cancellation.** All CDCI Senior Subordinated Securities surrendered for the purpose of payment, exchange or registration of transfer, shall be surrendered to the Bank and promptly canceled by it, and no CDCI Senior Subordinated Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Bank shall destroy all canceled CDCI Senior Subordinated Securities.

Section 5.9 **Rule 144; Rule 144A, 4(1½) Transactions.** (a) At all times after the Signing Date, the Bank covenants that (1) it will, upon the request of the Investor or any subsequent holders of the CDCI Senior Subordinated Securities (“Holders”), use its reasonable best efforts to (x), to the extent any Holder is relying on Rule 144 under the Securities Act to sell any of the CDCI Senior Subordinated Securities, make “current public information” available, as provided in Section (c)(1) of Rule 144 (if the Bank is a “Reporting Issuer” within the meaning of Rule 144) or in Section (c)(2) of Rule 144 (if the Bank is a “Non-Reporting Issuer” within the meaning of Rule 144), in either case for such time period as necessary to permit sales pursuant to Rule 144, (y), to the extent any Holder is relying on the so-called “Section 4(1½)” exemption to sell any of its CDCI Senior Subordinated Securities, prepare and provide to such Holder such information, including the preparation of private offering memoranda or circulars or financial information, as the Holder may reasonably request to enable the sale of the CDCI Senior Subordinated Securities pursuant to such exemption, or (z) to the extent any Holder is relying on Rule 144A under the Securities Act to sell any of its CDCI Senior Subordinated Securities, prepare and provide to such Holder the information required pursuant to Rule 144A(d)(4), and (2) it will take such further action as any Holder may reasonably request from time to time to enable such Holder to sell CDCI Senior Subordinated Securities without registration under the Securities Act within the limitations of the exemptions provided by (i) the provisions of the Securities Act or any interpretations thereof or related thereto by the SEC, including transactions based on the so-called “Section 4(1½)” and other similar transactions, (ii) Rule 144 or 144A under the Securities Act, as such Rules may be amended from time to time, or (iii) any similar rule or regulation hereafter adopted by the SEC; *provided* that the Bank shall not be required to take any action described in this Section 5.9(a) that would cause the Bank to become subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act if the Bank was not subject to such requirements prior to taking such action. Upon the request of any Holder, the Bank will deliver to such Holder a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

(b) The Bank agrees to indemnify Investor, Investor's officers, directors, employees, agents, representatives and Affiliates, and each person, if any, that controls Investor within the meaning of the Securities Act (each, an "Indemnatee"), 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 document or report provided by the Bank pursuant to this Section 5.9 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.

(c) If the indemnification provided for in Section 5.9(b) is unavailable to an Indemnatee with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to therein or is insufficient to hold the Indemnatee harmless as contemplated therein, then the Bank, in lieu of indemnifying such Indemnatee, shall contribute to the amount paid or payable by such Indemnatee 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 Indemnatee, on the one hand, and the Bank, 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 Bank, on the one hand, and of the Indemnatee, 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 Bank or by the Indemnatee and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; the Bank and Investor agree that it would not be just and equitable if contribution pursuant to this Section 5.9(c) 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 5.9(b). No Indemnatee guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from the Bank if the Bank was not guilty of such fraudulent misrepresentation.

Section 5.10 **Depository Securities.** Upon request by the Investor at any time following the Closing Date, the Bank 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 CDCI Senior Subordinated Securities may be deposited.

Section 5.11 **Redemption.** (a) The CDCI Senior Subordinated Securities at the time outstanding may be redeemed by the Bank at its option, subject to the approval of the Appropriate Federal Banking Agency, in whole or in part and subject to Section 5.11(e), at any time and from time to time, out of funds legally available therefor, upon notice given as provided in Section 5.11(d) below, on any Interest Payment Date (the "Redemption Date") at a redemption price equal to the sum of (i) 100% of the principal amount thereof being called for redemption (*provided* that, if less than all of the outstanding CDCI Senior Subordinated Securities are then being redeemed, such amount shall not be less than 25% of the aggregate face value of the CDCI Senior Subordinated Securities as of the Closing Date) and (ii) any accrued and unpaid interest.

(b) The redemption price for any CDCI Senior Subordinated Securities shall be payable on the Redemption Date to the Holder of such CDCI Senior Subordinated Securities against surrender thereof to the Bank or its agent. Interest shall be paid at the then applicable Interest Rate from the date of the last Interest Payment Date up to but not including the Redemption Date.

(c) No Sinking Fund. The CDCI Senior Subordinated Securities will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of CDCI Senior Subordinated Securities will have no right to require redemption or repurchase of any of the CDCI Senior Subordinated Securities.

(d) Notice of Redemption. Notice of redemption of the CDCI Senior Subordinated Securities shall be given by first class mail, postage prepaid, addressed to the Holders of record of the CDCI Senior Subordinated Securities to be redeemed at their respective last addresses appearing on the CDCI Senior Subordinated Securities Register. Such mailing shall be at least 30 days and not more than 60 days before the Redemption Date. 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 CDCI Senior Subordinated Securities designated for redemption shall not affect the validity of the proceedings for the redemption of any other CDCI Senior Subordinated Securities. Notwithstanding the foregoing, if CDCI Senior Subordinated Securities 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 CDCI Senior Subordinated Securities 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 amount of CDCI Senior Subordinated Securities to be redeemed by such Holder; (3) the redemption price; and (4) the place or places where such CDCI Senior Subordinated Securities are to be surrendered for payment of the redemption price.

(e) Partial Redemption. The Bank may redeem less than all of the outstanding CDCI Senior Subordinated Securities, *provided* that the amount called for redemption at any time is not less than 25% of the amount of the outstanding principal amount of the CDCI Senior Subordinated Securities. 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 CDCI Senior Subordinated Securities shall be redeemed from time to time. If less than the full aggregate principal amount of any CDCI Senior Subordinated Security is redeemed, the Bank shall issue a new CDCI Senior Subordinated Security in the unredeemed aggregate principal amount thereof without charge to the Holder thereof. CDCI Senior Subordinated Securities may be redeemed in part only on a pro rata basis and only in minimum denominations of \$1,000 and integral multiples thereof.

(f) 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 Bank, in trust for the pro rata benefit of the Holders of the CDCI Senior Subordinated Securities 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 CDCI Senior Subordinated Security so called for redemption has not been surrendered for cancellation, on and after the Redemption Date interest shall cease to accrue on the aggregate principal amount of such CDCI Senior Subordinated Securities so called for redemption, the aggregate principal amount of such CDCI Senior Subordinated Securities so called for redemption shall no longer be deemed outstanding and shall cease to bear interest from and after the Redemption Date. All rights with respect to such CDCI Senior Subordinated Securities (or the portion thereof so called for redemption) shall forthwith on such Redemption Date cease and terminate, except only the right of the Holders thereof to receive the redemption price 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 applicable law, be released to the Bank, after which time the Holders of such CDCI Senior Subordinated Securities (or portion thereof so called for redemption) shall look only to the Bank for payment of the redemption price of such CDCI Senior Subordinated Securities.

(g) Status of Redeemed Securities. CDCI Senior Subordinated Securities that are redeemed, repurchased or otherwise acquired by the Bank shall be cancelled and shall not thereafter be reissued by the Bank.

#### Section 5.12 Voting Rights.

(a) General. The Holders of CDCI Senior Subordinated Securities shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

(b) CDCI Senior Subordinated Securities Directors. Subject to the provisions of Section 3.23 and any applicable State Restrictions, whenever, at any time or times, interest payable on the CDCI Senior Subordinated Securities has not been paid in full for an aggregate of eight (8) quarterly Interest Periods or more, whether or not consecutive, the authorized number of directors of the Bank shall automatically be increased by two and the Holders of the CDCI Senior Subordinated Securities shall have the right, voting as a class, to elect or appoint two directors to fill such newly created directorships or, if applicable law does not permit the Holders to elect or appoint such directors, to designate or nominate two individuals for election or appointment to fill such directorships (such directors, hereinafter, the “CDCI Senior Subordinated Securities Directors” and each, a “CDCI Senior Subordinated Securities Director”) at the Bank’s next annual meeting of Members (or at a special meeting called for that purpose prior to such next annual meeting) and at each subsequent annual meeting of Members until all accrued and unpaid interest for four (4) consecutive Interest Periods, including the latest completed Interest Period (including, if applicable as provided in Section 5.4 above, interest on such amount), on all outstanding CDCI Senior Subordinated Securities has been paid in full at which time such right shall terminate with respect to the CDCI Senior Subordinated Securities, except as herein or by law expressly provided, subject to revesting 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 CDCI Senior Subordinated Securities Director that the election of such CDCI Senior Subordinated Securities Director shall not cause the Bank to violate any corporate governance requirements of any securities exchange or other trading facility on which securities of the Bank 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 CDCI Senior Subordinated Securities as a class to vote for directors as provided above, the CDCI Senior Subordinated Securities Directors shall cease to be qualified as directors, the term of office of all CDCI Senior Subordinated Securities Directors then in office shall terminate immediately and the authorized number of directors shall be reduced by the number of CDCI Senior Subordinated Securities Directors elected pursuant hereto. Any CDCI Senior Subordinated Securities 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 holding more than fifty percent (50%) of the aggregate outstanding principal amount of the CDCI Senior Subordinated Securities (the “Majority Holders”) at the time voting separately as a class, to the extent the voting rights of such Holders described above are then exercisable. If the office of any CDCI Senior Subordinated Securities Director becomes vacant for any reason other than removal from office as aforesaid, the remaining CDCI Senior Subordinated Securities 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 CDCI Senior Subordinated Securities are outstanding, in addition to any other vote or consent of Interest Holders required by law or by the Charter, but subject to any applicable State Restrictions, the vote or consent of the Holders of at least 66 2/3% of the CDCI Senior Subordinated Securities at the time outstanding, given in person or by proxy, either in writing without a meeting or by vote at any meeting of the Holders of CDCI Senior Subordinated Securities called for the purpose in accordance with Section 5.12(e), shall be necessary for effecting or validating:

(i) Amendment of CDCI Senior Subordinated Securities. Any amendment, alteration or repeal of any provision of this Agreement or of the form of the CDCI Senior Subordinated Securities or the Charter (including, unless no vote on such merger or consolidation is required by Section 5.12(c)(ii) 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 CDCI Senior Subordinated Securities;

(ii) Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding exchange or reclassification involving the CDCI Senior Subordinated Securities, or of a merger or consolidation of the Bank with another entity, unless in each case (x) the CDCI Senior Subordinated Securities remain outstanding or, in the case of any such merger or consolidation with respect to which the Bank is not the surviving or resulting entity, are converted into or exchanged for securities of the surviving or resulting entity or its ultimate parent, and (y) such remaining CDCI Senior Subordinated Securities outstanding or such 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 CDCI Senior Subordinated Securities immediately prior to such consummation, taken as a whole; or

(iii) Creation of Senior Capital Instruments. Any authorization or issuance of any equity securities, mutual capital certificates or other capital instruments (other than the rights of Members in respect of deposit liabilities of Bank) of the Bank, or any securities convertible into or exchangeable or exercisable for any equity securities, mutual capital certificates or other capital instruments authorized by State law (other than the rights of Members in respect of deposit liabilities of the Bank) ranking senior to the CDCI Senior Subordinated Securities with respect to the payment of interest (whether or not such interest compounds) or principal and the distribution of assets upon liquidation, dissolution or winding up of the Bank.

*provided, however,* that for all purposes of this Section 5.12(c), any increase in the amount of the CDCI Senior Subordinated Securities, or the creation and issuance of any other Indebtedness of the Bank, or any securities convertible into or exchangeable or exercisable for any CDCI Senior Subordinated Securities, ranking senior to, equally with and/or subordinate to the CDCI Senior Subordinated Securities with respect to the payment of interest (whether or not such interest compounds) and the distribution of assets upon liquidation, dissolution or winding up of the Bank 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 CDCI Senior Subordinated Securities.

(d) Changes after Provision for Redemption. No vote or consent of the Holders of CDCI Senior Subordinated Securities shall be required pursuant to Section 5.12(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 CDCI Senior Subordinated Securities 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 5.11 above.

(e) Procedures for Voting and Consents. The rules and procedures for calling and conducting any meeting of the Holders of CDCI Senior Subordinated Securities (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/or 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 the CDCI Senior Subordinated Securities are listed or traded at the time.

Section 5.13 Expenses and Further Assurances. (a) Unless otherwise provided in this Agreement, 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, including fees and expenses of its own financial or other consultants, investment bankers, accountants and counsel.

(b) The Bank shall, at the Bank's sole cost and expense, (i) furnish to the Investor all instruments, documents and other agreements required to be furnished by the Bank pursuant to the terms of this Agreement, including, without limitation, any documents required to

be delivered pursuant to Section 5.9 above, or which are reasonably requested by the Investor in connection therewith; (ii) execute and deliver to the Investor such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the CDCI Senior Subordinated Securities purchased by the Investor, as Investor may reasonably require; and (iii) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement, as the Investor shall reasonably require from time to time.

Section 5.14 **Communications to Holders.** Any Holder shall have the right, upon five (5) business days prior written notice to the Bank or its duly appointed agent to obtain a complete list of Holders. In addition, any Holder shall have the right to request that the Bank or its duly appointed agent send a notice on behalf of such Holder to all other Holders at the addresses set forth on the CDCI Senior Subordinated Securities Register or, to the extent the Bank has entered into a depositary arrangement, by means of any procedures applicable to such depositary arrangement.

## ARTICLE VI

### **SUBORDINATION OF THE CDCI SENIOR SUBORDINATED SECURITIES**

Section 6.1 **Agreement to Subordinate.** (a) The Bank covenants and agrees, and each Holder of CDCI Senior Subordinated Securities issued hereunder likewise covenants and agrees, that the CDCI Senior Subordinated Securities shall be issued subject to the provisions of this Article VI; and each Holder of a CDCI Senior Subordinated Security, whether upon original issue or upon transfer or assignment thereof, accepts and agrees to be bound by such provisions.

(b) The payment by the Bank of the principal of and interest on all CDCI Senior Subordinated Securities issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right of payment to the prior payment in full of all amounts then due and payable in respect of Senior Indebtedness, whether outstanding at the date of this Agreement or thereafter incurred.

(c) No provision of this Article VI shall prevent the occurrence of any Event of Default (or any event which, after notice or the lapse of time or both would become, an Event of Default) with respect to the CDCI Senior Subordinated Securities hereunder.

Section 6.2 **Default on Senior Indebtedness.** (a) In the event and during the continuation of any default by the Bank in the payment of principal, premium, interest or any other payment due on any Senior Indebtedness, no payment shall be made by the Bank with respect to the principal or interest on the CDCI Senior Subordinated Securities or any other amounts which may be due on the CDCI Senior Subordinated Securities pursuant to the terms hereof or thereof.

(b) In the event of the acceleration of the maturity of the Senior Indebtedness, then no payment shall be made by the Bank with respect to the principal or interest on the CDCI

Senior Subordinated Securities or any other amounts which may be due on the CDCI Senior Subordinated Securities pursuant to the terms hereof or thereof until the holders of all Senior Indebtedness outstanding at the time of such acceleration shall receive payment, in full, of all amounts due on or in respect of such Senior Indebtedness (including any amounts due upon acceleration).

(c) In the event that, notwithstanding the foregoing, any payment is received by any Holder of a CDCI Senior Subordinated Security, when such payment is prohibited by the preceding paragraphs of this Section 6.2, such payment shall be held in trust for the benefit of, and shall be paid over or delivered by the Holder of the CDCI Senior Subordinated Securities to the holders of Senior Indebtedness or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Indebtedness may have been issued, as their respective interests may appear, but only to the extent of the amounts in respect of such Senior Indebtedness and to the extent that the holders of the Senior Indebtedness (or their representative or representatives or a trustee) notify the Bank in writing within 90 days of such payment of the amounts then due and owing on such Senior Indebtedness, and only the amounts specified in such notice to the Bank shall be paid to the holders of such Senior Indebtedness. The Bank shall, within ten (10) business days of receipt of such notice, provide Investor with (i) a copy of such notice delivered to the Bank and (ii) a certificate signed on behalf of the Bank by a Senior Executive Officer certifying that the information set forth in such notice is true and correct and confirming that the Holder of the CDCI Senior Subordinated Securities should pay or deliver the amounts specified in such notice in the manner specified therein.

Section 6.3 **Liquidation; Dissolution.** (a) Upon any payment by the Bank or distribution of assets of the Bank of any kind or character, whether in cash, property or securities, to creditors upon any dissolution, winding-up, liquidation or reorganization of the Bank, whether voluntary or involuntary or in insolvency, receivership or other proceedings, the holders of all Senior Indebtedness of the Bank will first be entitled to receive payment in full of amounts due on or in respect of such Senior Indebtedness, before any payment is made by the Bank on account of the principal of or interest on the CDCI Senior Subordinated Securities or any other amounts which may be due on the CDCI Senior Subordinated Securities pursuant to the terms hereof or thereof); and upon any such dissolution, winding-up, liquidation or reorganization, any payment by the Bank, or distribution of assets of the Bank of any kind or character, whether in cash, property or securities, which the Holder of the CDCI Senior Subordinated Securities would be entitled to receive from the Bank, except for the provisions of this Article VI, shall be paid by the Bank or by any receiver, liquidating trustee, agent or other person making such payment or distribution, or by the Holder of the CDCI Senior Subordinated Securities under this Agreement if received by them or it, directly to the holders of Senior Indebtedness of the Bank (pro rata to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders, as calculated by the Bank) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay all such amounts of Senior Indebtedness in full, in money or money's worth, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Indebtedness, before any payment or distribution is made to the Holder of the CDCI Senior Subordinated Securities.



(b) In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Bank of any kind or character prohibited by Section 6.3(a), whether in cash, property or securities, shall be received by any Holder of the CDCI Senior Subordinated Securities, before the amounts of all Senior Indebtedness is paid in full, or provision is made for such payment in money in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered by any Holder of a CDCI Senior Subordinated Security, to the holders of such Senior Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have been issued, as their respective interests may appear, as calculated by the Bank, for application to the payment of all amounts of Senior Indebtedness remaining unpaid to the extent necessary to pay all amounts due on or in respect of such Senior Indebtedness in full in money in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Senior Indebtedness. In such event, the Bank shall provide Investor with a certificate signed on behalf of the Bank by a Senior Executive Officer confirming that the Holder of the CDCI Senior Subordinated Securities should pay or deliver such amounts to the holders of such Senior Indebtedness.

(c) For purposes of this Article VI, the words “cash, property or securities” shall not be deemed to include Capital Interests in the Bank as reorganized or readjusted, or securities of the Bank or any other entity provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article VI with respect to the CDCI Senior Subordinated Securities to the payment of Senior Indebtedness that may at the time be outstanding, *provided* that (i) such Senior Indebtedness is assumed by the new entity, if any, resulting from any such reorganization or readjustment, and (ii) the rights of the holders of such Senior Indebtedness are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Bank with, or the merger of the Bank into, another person or the liquidation or dissolution of the Bank following the sale, conveyance, transfer or lease of its property as an entirety, or substantially as an entirety, to another person upon the terms and conditions provided for in Section 4.2(a) of this Agreement shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 6.3 if such other person shall, as a part of such consolidation, merger, sale, conveyance, transfer or lease, comply with the conditions stated in Section 4.2(a) of this Agreement.

Section 6.4 **Subrogation.** (a) Subject to the payment in full of all of Senior Indebtedness, the rights of the Holders of the CDCI Senior Subordinated Securities shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distributions of cash, property or securities of the Bank, as the case may be, applicable to such Senior Indebtedness until the principal of and interest on the CDCI Senior Subordinated Securities shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of such Senior Indebtedness of any cash, property or securities to which the Holders of the CDCI Senior Subordinated Securities would be entitled except for the provisions of this Article VI, and no payment pursuant to the provisions of this Article VI to or for the benefit of the holders of such Senior Indebtedness by the Holders of the CDCI Senior Subordinated Securities shall, as between the Bank, its creditors other than holders of Senior Indebtedness of the Bank, and the Holders of the CDCI Senior Subordinated Securities, be

deemed to be a payment by the Bank to or on account of such Senior Indebtedness. It is understood that the provisions of this Article VI are intended solely for the purposes of defining the relative rights of the Holders of the CDCI Senior Subordinated Securities, on the one hand, and the holders of such Senior Indebtedness on the other hand.

(b) Nothing contained in this Article VI or elsewhere in this Agreement or in the CDCI Senior Subordinated Securities is intended to or shall impair, as between the Bank, its creditors other than the holders of Senior Indebtedness of the Bank, and the Holders of the CDCI Senior Subordinated Securities, the obligation of the Bank, which is absolute and unconditional, to pay to the Holders of the CDCI Senior Subordinated Securities the principal of and interest on the CDCI Senior Subordinated Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the CDCI Senior Subordinated Securities and creditors of the Bank, as the case may be, other than the holders of Senior Indebtedness of the Bank, as the case may be, nor shall anything herein or therein prevent the Holder of any CDCI Senior Subordinated Securities from exercising all remedies otherwise permitted by applicable law upon default under this Agreement, subject to the rights, if any, under this Article VI of the holders of such Senior Indebtedness in respect of cash, property or securities of the Bank, as the case may be, received upon the exercise of any such remedy.

Section 6.5 **Notice by the Bank.** (a) The Bank shall give prompt written notice to the Holders of the CDCI Senior Subordinated Securities of any fact known to the Bank that would prohibit the making of any payment of monies in respect of the CDCI Senior Subordinated Securities pursuant to the provisions of this Article VI.

(b) Upon any payment or distribution of assets of the Bank referred to in this Article VI, the Holders of the CDCI Senior Subordinated Securities shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, receivership, liquidation, reorganization, dissolution, winding-up or similar case or proceeding is pending, or a certificate of the liquidating trustee, custodian, receiver, assignee for the benefit of creditors, agent or other person making such payment or distribution, delivered to the Holders of the CDCI Senior Subordinated Securities, for the purpose of ascertaining the persons entitled to participate in such payment or distribution, the holders of Senior Indebtedness and other indebtedness of the Bank, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article VI.

Section 6.6 **Subordination May Not Be Impaired.** (a) No right of any present or future holder of any Senior Indebtedness of the Bank to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Bank, as the case may be, or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Bank, as the case may be, with the terms, provisions and covenants of this Agreement, regardless of any knowledge thereof that any such holder may have or otherwise be charged with.

(b) Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness of the Bank may, at any time and from time to time, without the

consent of or notice to the Holders of the CDCI Senior Subordinated Securities, without incurring responsibility to the Holders of the CDCI Senior Subordinated Securities and without impairing or releasing the subordination provided in this Article VI or the obligations hereunder of the Holders of the CDCI Senior Subordinated Securities to the holders of such Senior Indebtedness, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, such Senior Indebtedness, or otherwise amend or supplement in any manner such Senior Indebtedness or any instrument evidencing the same or any agreement under which such Senior Indebtedness is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing such Senior Indebtedness; (iii) release any person liable in any manner for the collection of such Senior Indebtedness; and (iv) exercise or refrain from exercising any rights against the Bank, as the case may be, and any other person.

## ARTICLE VII

### **REMEDIES OF THE HOLDERS UPON EVENT OF DEFAULT**

Section 7.1 **Event of Default.** “Event of Default” shall mean the occurrence or existence of any one or more of the following:

(a) **Receivership or Conservatorship.** (i) There shall be appointed a receiver, conservator, liquidator, assignee, custodian, trustee, sequestrator or other similar official of the Bank or for any substantial part of its property, and such appointment shall remain unstayed and in effect for a period of sixty (60) days; or

(ii) The Bank shall consent to the appointment of a receiver, conservator, liquidator, assignee, custodian, trustee, sequestrator or other similar official for it or all or substantially all of its property in any liquidation, insolvency or similar proceeding with respect to it or all or substantially all of its property; or

(b) **Dissolution.** Any order, judgment or decree is entered against the Bank decreeing the dissolution or split up of the Bank and such order remains undischarged or unstayed for a period in excess of thirty (30) days.

Section 7.2 **Acceleration and Other Remedies.** When any Event of Default has occurred and is continuing, then the CDCI Senior Subordinated Securities, including both principal and interest, and all fees, charges and other obligations payable hereunder and under the Transaction Documents, shall immediately become due and payable without presentment, demand, protest or notice of any kind. In addition, the Holders may exercise any and all remedies available to it under the Transaction Documents or applicable law.

Section 7.3 **Suits for Enforcement.** In case any one or more Events of Default shall have occurred and be continuing, unless such Events of Default shall have been waived in the manner provided in Section 7.5 hereof, the Majority Holders, subject to the terms of Article VI hereof, may proceed to protect and enforce their rights under this Article VII by suit in equity or action at law. It is agreed that in the event of such action, or any action between the Holders of the CDCI Senior Subordinated Securities and the Bank (including its officers and

agents) in connection with a breach or enforcement of this Agreement, the Holders of the CDCI Senior Subordinated Securities shall be entitled to receive all reasonable fees, costs and expenses incurred, including without limitation such reasonable fees and expenses of attorneys (whether or not litigation is commenced) and reasonable fees, costs and expenses of appeals.

Section 7.4 **Holders May File Proofs of Claim.** In case there shall be pending proceedings for the bankruptcy or for the reorganization of any obligor on the CDCI Senior Subordinated Securities (other than the Bank) under Title 11, United States Code, or any other applicable law, or in case a receiver, conservator or trustee shall have been appointed for the Bank or such other obligor (each, an “Obligor”) or a Significant Subsidiary, or in the case of any other similar judicial proceedings relative to an Obligor or a Significant Subsidiary, or to the creditors or property of an Obligor or a Significant Subsidiary, any Holder, irrespective of whether the principal of the CDCI Senior Subordinated Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether any such Holder shall have made any demand pursuant to the provisions of this Section 7.4, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and interest owing and unpaid in respect of the CDCI Senior Subordinated Securities held by any such Holder and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of any such Holder allowed in such judicial proceedings relative to an Obligor or a Significant Subsidiary, or to the creditors or property of an Obligor, unless prohibited by applicable law and regulations, to vote in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency proceedings or person performing similar functions in comparable proceedings, and to collect and receive any moneys or other property payable or deliverable to any such Holder on any such claims.

Section 7.5 **Waiver of Past Defaults.** The Holders of not less than a majority in aggregate principal amount of the outstanding CDCI Senior Subordinated Securities may on behalf of the Holders of all the CDCI Senior Subordinated Securities waive any past default hereunder with respect such CDCI Senior Subordinated Securities and its consequences. Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Agreement; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

## ARTICLE VIII

### **MISCELLANEOUS**

Section 8.1 **Termination.** This Agreement shall terminate upon the earliest to occur of:

(a) termination at any time prior to the Closing:

(i) by either the Investor or the Bank if the Closing shall not have occurred by the 30th calendar day following the Signing Date; *provided, however*, that in the event the Closing has not occurred by such 30th 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 calendar day after such 30th 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 8.1(a)(i) 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

(ii) by either the Investor or the Bank 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

(iii) by the mutual written consent of the Investor and the Bank; or

(b) the date on which all of the CDCI Senior Subordinated Securities have been redeemed in whole; or

(c) the date on which the Investor has transferred all of the CDCI Senior Subordinated Securities to third parties which are not Affiliates of the Investor; or

(d) if the Closing shall not have occurred by September 30, 2010, on such date.

In the event of termination of this Agreement as provided in this Section 8.1, 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.

Section 8.2 **Survival.** (a) This Agreement and all representations, warranties, covenants and agreements made herein shall survive the Closing without limitation.

(b) The covenants set forth in Article IV and Annex E and the agreements set forth in Articles VI and VII shall, to the extent such covenants do not explicitly terminate at such time as the Investor no longer owns any CDCI Senior Subordinated Securities, survive the termination of this Agreement pursuant to Section 8.1(c) hereof without limitation until the date on which all of the CDCI Senior Subordinated Securities have been redeemed in whole.

Section 8.3 **Amendment.** Except as otherwise provided herein, no amendment, modification, termination or waiver of any provision of this Agreement, the CDCI Senior Subordinated Securities or any of the other Transaction Documents, or consent to any departure by the Bank therefrom, shall be effective unless made in writing and signed by an officer or a duly authorized representative of the Bank, and in the case of the CDCI Senior Subordinated Securities, the Majority Holders; *provided* that for so long as the CDCI Senior Subordinated Securities are outstanding, the Investor may at any time and from time to time unilaterally amend Section 4.1(d) to the extent the Investor deems necessary, in its sole discretion, to comply with, or conform to, any changes after the Signing Date in any federal statutes, any rules and regulations promulgated thereunder and any other publications or interpretative releases of the Fund governing CDFIs, including, without limitation, any changes

in the criteria for certification of an entity as a CDFI by the Fund; *provided, further*, that, notwithstanding anything else in this Section 8.3, no amendment, modification, termination or waiver with respect to the CDCI Senior Subordinated Securities shall, unless in writing and signed by all Holders, do any of the following: (A) change the principal of or the rate of interest on any CDCI Senior Subordinated Security; (B) extend any date fixed for any payment of principal or interest; (C) change the definition of the terms “Holders” or “Majority Holders” or the percentage of Holders which shall be required for Holders to take any action hereunder; (D) amend or waive this Section 8.3 or the definitions of the terms used in this Section 8.3 insofar as the definitions affect the substance of this Section 8.3; or (E) consent to the assignment, delegation or other transfer by the Bank of any of its rights and obligations under any Transaction Documents. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 8.3 shall be binding upon each Holder of the CDCI Senior Subordinated Securities at the time outstanding, each future Holder of the CDCI Senior Subordinated Securities and the Bank. 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.

Section 8.4 **Waiver of Conditions.** The conditions to each party’s obligation to consummate the Exchange 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.

Section 8.5 **Governing Law; Submission to Jurisdiction, etc.** This Agreement and any claim, controversy or dispute arising under or related to this Agreement, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties shall be enforced, governed, and construed in all respects (whether in contract or in tort) 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 Exchange contemplated hereby and (b) that notice may be served upon (i) the Bank at the address and in the manner set forth for notices to the Bank in Section 8.6 and (ii) the Investor at the address and in the manner set forth for notices to the Bank in Section 8.6, but otherwise 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 EXCHANGE CONTEMPLATED HEREBY.

Section 8.6 **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 hereunder shall be delivered as set forth below or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

If to the Bank as set forth in Schedule A.

If to the Investor:

United States Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220  
Attention: Chief Counsel, Office of Financial Stability  
Facsimile: (202) 927-9225  
E-mail: CDCINotice@do.treas.gov

with a copy to:

E-mail: OFSCchiefCounselNotices@do.treas.gov

Section 8.7 **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 term “Appropriate Federal Banking Agency” means the “appropriate Federal banking agency” with respect to the Bank or such Bank Subsidiaries, as applicable, as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)).

(d) The term “Bank Financial Statements” means the consolidated financial statements of the Bank and its consolidated subsidiaries for each of the last three completed fiscal years of the Bank (which shall be audited to the extent audited financial statements are available) and each completed quarterly period since the last completed fiscal year, required to be delivered to Investor pursuant to the CPP Securities Purchase Agreement.

(e) The term “Bank Material Adverse Effect” means a material adverse effect on (i) the business, results of operation or financial condition of the Bank and its consolidated

subsidiaries taken as a whole; *provided, however*, that Bank Material Adverse Effect shall not be deemed to include the effects of (A) changes after 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 Bank and its subsidiaries operate, (B) changes or proposed changes after the Signing Date in generally accepted accounting principles in the United States (“GAAP”), 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 Bank and its consolidated subsidiaries taken as a whole relative to comparable U.S. banking or financial services organizations); or (ii) the ability of the Bank to consummate the Exchange and other transactions contemplated by this Agreement and perform its obligations hereunder or thereunder on a timely basis.

(f) The term “Business Combination” means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Bank’s Members.

(g) The term “Designated Matters” means (i) the election and removal of directors, (ii) the approval of any Business Combination, (iii) the approval of a sale of all or substantially all of the assets or property of the Bank, (iv) the approval of a dissolution of the Bank, (v) the approval of any issuance of any securities of the Bank on which holders of Common Stock are entitled to vote, (vi) the approval of any amendment to the Charter or bylaws of the Bank on which holders of Common Stock are entitled to vote, (vii) any matters which require member approval under any applicable national stock exchange rules and (viii) the approval of any other matters reasonably incidental to the matters set forth in subclauses (i) through (vii) as determined by the Investor.

(h) The term “Disclosure Schedule” means collectively, those certain schedules delivered to the Investor on or prior to (i) the CPP Signing Date, with respect to the “Disclosure Schedule” delivered in connection with the CPP Securities Purchase Agreement and (ii) the Signing Date with respect to the schedules required to be delivered under this Agreement, 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 of the CPP Securities Purchase Agreement or Article III hereof.

(i) The term “EAWA” means the Employ American Workers Act (Section 1611 of Division A, Title XVI of the American Recovery and Reinvestment Act of 2009), Public Law No. 111-5, effective as of February 17, 2009, as may be amended and in effect from time to time.

(j) The term “Indebtedness” means, whether or not recourse is to all or a portion of the assets of the Bank and whether or not contingent, (i) the claims of the Bank’s



secured and general creditors; (ii) every obligation of the Bank for money borrowed; (iii) every obligation of the Bank evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses; (iv) every reimbursement obligation of the Bank, contingent or otherwise, with respect to letters of credit, bankers' acceptances, security purchase facilities or similar facilities issued for the account of the Bank; (v) every obligation of the Bank issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or accrued liabilities arising in the ordinary course of business); (vi) every capital lease obligation of the Bank; (vii) all indebtedness of the Bank for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity forward contracts, options and swaps and similar arrangements; (viii) every obligation of the type referred to in clauses (i) through (vii) of another person and all dividends of another person the payment of which, in either case, the Bank has guaranteed or is responsible or liable for directly or indirectly, as obligor or otherwise, and (ix) every obligation of the type referred to in clauses (i) through (vii) of another person and all dividends of another person the payment of which, in either case, is secured by a lien on any property or assets of the Bank.

(k) The term “Members” means persons having ownership rights in the Bank by virtue of their ownership of a deposit at the Bank.

(l) The term “Previously Disclosed” means information set forth on the Disclosure Schedule or the Disclosure Update, as applicable; *provided, however*, that disclosure in any section of such Disclosure Schedule or Disclosure Update, as applicable, 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; *provided, further*, that the existence of Previously Disclosed information, pursuant to a Disclosure Update, shall neither obligate the Investor to consummate the Exchange nor limit or affect any rights of or remedies available to the Investor.

(m) The term “Senior Executive Officers” means the Bank’s “senior executive officers” as defined in Section 111 of the EESA and the Compensation Regulations.

(n) The term “Senior Indebtedness” means, with respect to the CDCI Senior Subordinated Securities, (i) all deposit liabilities of the Bank, (ii) the principal of (and premium, if any) and interest, if any (including interest accruing on or after the appointment of a receiver or conservator relating to the Bank, whether or not such claim for post appointment interest is allowed), on all Indebtedness, whether outstanding on the date of execution of this Agreement, or hereafter created, assumed or incurred, and any deferrals, renewals or extensions of such Indebtedness, *provided, however*, that Senior Indebtedness shall not include (A) any other subordinated debt of the Bank that by its terms ranks *pari passu* or junior to the CDCI Senior Subordinated Securities issued hereunder or (B) any obligation to holders of Capital Interests or shares of equity in the Bank (if and upon conversion of the Bank to a stock-based entity) arising as a result of their status as holders of such Capital Interests or shares of equity.

(o) The term “State Restrictions” means, if the Bank is organized under the laws of any state, any restrictions imposed by the laws of such state on voting rights of holders of

the CDCI Senior Subordinated Securities that cannot be modified, waived or otherwise removed by the appropriate Governmental Entity of such state.

(p) The term “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, penalty or addition imposed by any Governmental Entity.

(q) The term “Transaction Documents” means this Agreement, the CDCI Senior Subordinated Securities, and all other instruments, documents and agreements executed by or on behalf of the Bank and delivered concurrently herewith or at any time hereafter to or for the benefit of any holder of any CDCI Senior Subordinated Security in connection with the transactions contemplated by this Agreement, all as amended, supplemented or modified from time to time.

(r) To the extent any securities issued pursuant to this Agreement or the transactions contemplated hereby are registered in the name of a designee of the Investor pursuant to Section 1.2 or 8.9(c) or transferred to an Affiliate of the Investor, all references herein to the Investor holding or owning any debt or equity securities of the Bank, CDCI Senior Subordinated Securities shall be deemed to refer to the Investor, together with such designees and/or Affiliates, holding or owning any debt or equity securities, CDCI Senior Subordinated Securities (and any like variations thereof), as applicable.

Section 8.8 **Interpretation.** When a reference is made in this Agreement to “Recitals,” “Articles,” “Sections,” “Annexes” or “Schedules” such reference shall be to a Recital, Article or Section of, or Annex or Schedule to, this Agreement, 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 draftsman shall be applied in connection with the interpretation or enforcement of this Agreement, as this Agreement is entered into 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 or the District of Columbia generally are authorized or required by law or other governmental actions to close.

Section 8.9 **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 Bank's Members 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, (b) an assignment of certain rights as provided in Sections 4.1(c) or 4.1(i) or Annex E or (c) an assignment by the Investor of this Agreement to an Affiliate of the Investor; *provided* that if the Investor assigns this Agreement to an Affiliate, the Investor shall be relieved of its obligations under this Agreement but (i) all rights, remedies and obligations of the Investor hereunder shall continue and be enforceable by such Affiliate, (ii) the Bank's obligations and liabilities hereunder shall continue to be outstanding and (iii) all references to the Investor herein shall be deemed to be references to such Affiliate.

Section 8.10 **Severability.** If any provision of this Agreement, 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.

Section 8.11 **No Third-Party Beneficiaries.** Other than as expressly provided herein, nothing contained in this Agreement, expressed or implied, is intended to confer upon any person or entity other than the Bank and the Investor (and any Indemnitee) any benefit, right or remedies.

Section 8.12 **Entire Agreement, etc.** (a) This Agreement (including the Annexes and Schedules hereto) constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, between the parties, with respect to the subject matter hereof.

(b) For the avoidance of doubt, for so long as the Investor holds any outstanding CPP Senior Subordinated Securities or warrants issued by the Bank to the Investor pursuant to the CPP Securities Purchase Agreement or any securities issuable upon the exercise thereof or exchanged therefor (collectively, the "CPP Securities"), the CPP Securities Purchase Agreement and the CPP Securities shall remain in full force and effect, other than as specifically modified herein.

Section 8.13 **Tax Treatment of CDCI Senior Subordinated Securities.** The Investor and the Bank agree that, for all tax purposes, the CDCI Senior Subordinated Securities will be treated as debt instruments and not as stock or equity of the Bank.

Section 8.14 **Specific Performance.** The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in

accordance with their specific terms. It is accordingly agreed that the parties shall be entitled (without the necessity of posting a bond) to specific performance of the terms hereof, this being in addition to any other remedies to which they are entitled at law or equity.

***[Remainder of Page Intentionally Left Blank]***

ANNEX A

FORM OF OFFICER'S CERTIFICATE

OFFICER'S CERTIFICATE

OF

[BANK]

In connection with that certain letter agreement, dated [\_\_\_\_], 2010 (the "*Agreement*") by and between [BANK] (the "*Bank*") and the United States Department of the Treasury which incorporates that certain Exchange Agreement –Standard Terms referred to therein (the "Standard Terms"), the undersigned does hereby certify as follows:

1. I am a duly elected/appointed [\_\_\_\_] of the Bank.
2. The representations and warranties of the Bank set forth in Article III of the Standard Terms are true and correct in all respects as though as of the date hereof (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 respects as of such other date) and the Bank has performed in all material respects all obligations required to be performed by it under this Agreement.
3. The Bank has effected such changes to its Benefit Plans with respect to its Senior Executive Officers and any other employee of the Bank or its Affiliates subject to Section 111 of EESA, as implemented by any Compensation Regulations (and to the extent necessary for such changes to be legally enforceable, each of its Senior Executive Officers and other employees has duly consented in writing to such changes), as may be necessary, during the Relevant Period, in order to comply with Section 111 of EESA or the Compensation Regulations.
4. The Charter and bylaws of the Bank delivered to the Investor pursuant to the CPP Securities Purchase Agreement are true, complete and correct as of the date hereof.

The foregoing certifications are made and delivered as of [\_\_\_\_] pursuant to Section 1.2 of the Standard Terms.

Capitalized terms used and not otherwise defined herein shall have the meanings assigned to them in the Standard Terms.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Officer's Certificate has been duly executed and delivered as of the [ ] day of [ ], 20[ ].

[BANK]

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

## ANNEX B

### FORM OF OPINION

(a) The Bank has been duly formed and is validly existing as an organization mutual in nature of the type described in Schedule A and in good standing under the laws of the jurisdiction of its organization. The Bank has all necessary power and authority to own, operate and lease its properties and to carry on its business as it is being conducted.

(b) The Bank has been duly qualified as a foreign entity for the transaction of business and is in good standing under the laws of [\_\_\_\_], [\_\_\_\_] and [\_\_\_\_].

(c) The CDCI Senior Subordinated Securities have been duly and validly authorized, and, when executed and delivered pursuant to the Agreement, the CDCI Senior Subordinated Securities will be the legal, valid and binding obligations of the Bank, enforceable in accordance with their terms, except as the same may be limited by applicable receivership, 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, and will rank Senior to obligations to holders of Capital Interests arising as a result of their status as holders of such Capital Interests, but subordinate to deposit liabilities of the Bank and to the Bank's other debt obligations to its general and secured creditors, unless such debt obligations are explicitly made *pari passu* or subordinated to the CDCI Senior Subordinated Securities, in accordance with applicable regulations of the Appropriate Federal Banking Agency.

(d) The Bank has the power and authority to execute and deliver the Agreement and to carry out its obligations thereunder (which includes the issuance of the CDCI Senior Subordinated Securities).

(e) The execution, delivery and performance by the Bank of the Agreement and the consummation of the transactions contemplated thereby have been duly authorized by all necessary entity action on the part of the Bank and its Interest Holders, and no further approval or authorization is required on the part of the Bank, including, without limitation, by any rule or requirement of any national stock exchange.

(f) The Agreement is a legal, valid and binding obligation of the Bank enforceable against the Bank in accordance with its terms, except as the same may be limited by applicable receivership, 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.

(g) The execution and delivery by the Bank of this Agreement and the performance by the Bank of its obligations thereunder (i) do not require any approval by any Governmental Entity to be obtained on the part of the Bank, except those that have been obtained, (ii) do not violate or conflict with any provision of the Charter, (iii) do not 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 Bank or any Bank Subsidiary under any of the terms, conditions or provisions of its organizational documents or under any agreement, contract, indenture, lease, mortgage, power of attorney, evidence of indebtedness, letter of credit, license, instrument, obligation, purchase or sales order, or other commitment, whether oral or written, to which it is a party or by which it or any of its properties is bound or (iv) do not conflict with, breach or result in a violation of, or default under any judgment, decree or order known to us that is applicable to the Bank and, pursuant to any applicable laws, is issued by any Governmental Entity having jurisdiction over the Bank.

(h) Other than the filing of the amendment to the Charter 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 Bank in connection with the consummation by the Bank of the Exchange.

(i) The Bank is not nor, after giving effect to the issuance of the CDCI Senior Subordinated Securities pursuant to the Agreement, would be on the date hereof an “investment company” or an entity “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended.

(j) The Bank (A) is a regulated community development financial institution (a “CDFI”) currently certified by the Community Development Financial Institution Fund (the “Fund”) of the United States Department of the Treasury pursuant to 12 C.F.R. 1805.201(a) and (B) satisfies all of the eligibility requirements of the Fund’s Community Development Financial Institutions Program for a CDFI.



## ANNEX C

### FORM OF WAIVER

In consideration for the benefits I will receive as a result of the participation of [ ] (together with its subsidiaries and affiliates, the “Bank”) in the United States Department of the Treasury’s (the “Treasury”) Capital Purchase Program, Community Development Capital Initiative and/or any other economic stabilization program implemented by the Treasury under the Emergency Economic Stabilization Act of 2008 (as amended, supplemented, or otherwise modified, the “EESA”) (any such program, including the Capital Purchase Program and the Community Development Capital Initiative, a “Program”), I hereby voluntarily waive any claim against the United States (and each of its departments and agencies) or the Bank or any of its directors, officers, employees and agents for any changes to my compensation or benefits that are required to comply with the executive compensation and corporate governance requirements of Section 111 of the EESA, as implemented by any guidance or regulations issued and/or to be issued thereunder, including without limitation the provisions for the Capital Purchase Program, as implemented by any guidance or regulation thereunder, including the rules set forth in 31 C.F.R. Part 30, or any other guidance or regulations under the EESA and the applicable requirements of the Exchange Agreement by and among the Bank and the Treasury dated as of \_\_\_\_\_, 2010, as amended (such requirements, the “Limitations”).

I acknowledge that the Limitations may require modification or termination 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 may have with the Bank or in which I may participate as they relate to the period the United States holds any equity or debt securities of the Bank acquired through a Program or for any other period applicable under such Program or Limitations, as the case may be, and I hereby consent to all such modifications.

This waiver includes all claims I may have under the laws of the United States or any other jurisdiction (whether or not in existence as of the date hereof) related to the requirements imposed by the Limitations, including without limitation a claim for any compensation or other payments or benefits I would otherwise receive, any challenge to the process by which the Limitations are or were adopted and any tort or constitutional claim about the effect of these Limitations 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, the Bank or its directors, officers, employees or agents in or before any local, state, federal or other agency, court or body.

I agree that, in the event and to the extent that the Compensation Committee of the Board of Directors of the Bank or similar governing body (the “Committee”) reasonably determines that any compensatory payment and benefit provided to me, including any bonus or incentive compensation based on materially inaccurate financial statements or performance criteria, would cause the Bank to fail to be in compliance with the Limitations (such payment or benefit, an “Excess Payment”), upon notification from the Bank, I shall repay such Excess Payment to the

Bank within 15 business days. In addition, I agree that the Bank shall have the right to postpone any such payment or benefit for a reasonable period of time to enable the Committee to determine whether such payment or benefit would constitute an Excess Payment.

I understand that any determination by the Committee as to whether or not, including the manner in which, a payment or benefit needs to be modified, terminated or repaid in order for the Bank to be in compliance with Section 111 of the EESA and/or the Limitations shall be a final and conclusive determination of the Committee which shall be binding upon me. I further understand that the Bank is relying on this letter from me in connection with its participation in a Program.

IN WITNESS WHEREOF, I execute this waiver on my own behalf, thereby communicating my acceptance and acknowledgement to the provisions herein.

Respectfully,

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

Name:

Title:

Date:

**ANNEX D**

**FORM OF CDCI SENIOR SUBORDINATED SECURITIES**

[SEE ATTACHED]

## ANNEX E

### REGISTRATION RIGHTS

Section 1.1 **Definitions.** Terms not defined in this Annex shall have the meaning ascribed to such terms in the Agreement. As used in this Annex E, the following terms shall have the following respective meanings:

(a) “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 1.9 hereof.

(b) “Holders’ Counsel” means one counsel for the selling Holders chosen by Holders holding a majority interest in the Registrable Securities being registered.

(c) “Pending Underwritten Offering” means, with respect to any Holder forfeiting its rights pursuant to Section 1.11 of this Annex E, any underwritten offering of Registrable Securities in which such Holder has advised the Bank of its intent to register its Registrable Securities either pursuant to Section 1.2(b) or 1.2(d) of this Annex E prior to the date of such Holder’s forfeiture.

(d) “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.

(e) “Registrable Securities” means (A) all CDCI Senior Subordinated Securities, and (B) any securities issued or issuable directly or indirectly with respect to the securities referred to in the foregoing clause (A) by way of conversion, exercise or exchange thereof, or in connection with a combination, 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) they shall have ceased to be outstanding or (3) they have been sold in any 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.

(f) “Registration Expenses” mean all expenses incurred by the Bank 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 Annex E, including all registration, filing and listing fees, printing expenses, fees and disbursements of counsel for the Bank, 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 Bank’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.

(g) “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.

(h) “Selling Expenses” mean all discounts, selling commissions and security 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).

(i) “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) 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 Bank or Bank Subsidiaries or in connection with dividend reinvestment plans.

Section 1.2 Registration. (a) The Bank covenants and agrees that as promptly as practicable after the date that the Bank 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 Bank shall (A) 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 Bank 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), and (B) prepare an Indenture covering the Registrable Securities meeting the requirements of the Indenture Act and use its reasonable best efforts to cause such Indenture to be qualified under the Indenture Act. Notwithstanding the foregoing, if the Bank is not eligible to file a registration statement on Form S-3, then the Bank shall not be obligated to file a Shelf Registration Statement unless and until requested to do so in writing by the Investor.

(b) Any registration pursuant to Section 1.2(a) of this Annex E 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 Bank and the Bank shall take all reasonable steps to facilitate such distribution, including the actions required pursuant to Section 1.2(d) of this Annex E; *provided* that the Bank shall not be required to facilitate an underwritten offering of Registrable Securities unless (i) the expected gross proceeds from such offering exceed \$200,000 or (ii) such underwritten offering includes all of the outstanding Registrable Securities held by such Holder. The lead underwriters

in any such distribution shall be selected by the Holders of a majority of the Registrable Securities to be distributed.

(c) The Bank 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 1.2 of this Annex E: (A) with respect to securities that are not Registrable Securities; or (B) if the Bank 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 Bank or its securityholders for such registration or underwritten offering to be effected at such time, in which event the Bank 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 Bank (1) only if the Bank 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.

(d) If during any period when an effective Shelf Registration Statement is not available, the Bank proposes to register any of its equity securities, other than a registration pursuant to Section 1.2(a) of this Annex E 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 Bank will (A) 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 Bank has received written requests for inclusion therein within ten business days after the date of the Bank's notice and (B) if requested by the Investor or a Holder, prepare an Indenture meeting the requirements of the Indenture Act and use its reasonable best efforts to cause such Indenture to be qualified under the Indenture Act (such registration and qualification, 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 Bank and the managing underwriter, if any, on or before the fifth (5th) business day prior to the planned effective date of such Piggyback Registration. The Bank may terminate or withdraw any registration or qualification under this Section 1.2(d) of this Annex E prior to the effectiveness of such registration or qualification, whether or not Investor or any other Holders have elected to include Registrable Securities in such registration or qualification.

(e) If the registration referred to in Section 1.2(d) of this Annex E is proposed to be underwritten, the Bank will so advise Investor and all other Holders as a part of the written notice given pursuant to Section 1.2(d) of this Annex E. In such event, the right of Investor and all other Holders to registration pursuant to Section 1.2 of this Annex E 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 Bank 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 Bank; *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 Bank, the managing underwriters and the Investor (if the Investor is participating in the underwriting).

(f) If either (x) the Bank 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 1.2(b) of this Annex E or (y) a Piggyback Registration under Section 1.2(d) of this Annex E relates to an underwritten offering on behalf of the Bank, and in either case the managing underwriters advise the Bank 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 security offering price), the Bank 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 security 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 1.2(d) of this Annex E, the securities the Bank 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 1.2(b) or Section 1.2(d) of this Annex E, as applicable, pro rata on the basis of the aggregate number of such securities owned by each such person and (C) *lastly*, any other securities of the Bank that have been requested to be so included, subject to the terms of this Agreement; *provided, however*, that if the Bank 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.

Section 1.3 **Expenses of Registration**. All Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by the Bank. 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.

Section 1.4 **Obligations of the Bank**. 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 Bank shall, as expeditiously as reasonably practicable:

(a) Prepare and file with the SEC: (A) 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 1.4 of this Annex E, keep such registration statement effective and keep such prospectus supplement current until the securities described therein are no longer Registrable Securities; and (B) an Indenture for qualification under the Indenture Act.

(b) Prepare and file with the SEC such amendments and supplements: (A) 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; and (B) to the Indenture, with respect to the disposition of all securities covered by such registration statement and Indenture.

(c) 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, the Indenture 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.

(d) 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 Bank 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.

(e) 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.

(f) Give written notice to the Holders:

(A) when any registration statement or Indenture filed pursuant to Section 4.1(i) of the Agreement 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 the Indenture 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 Bank 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 Bank to make changes in any effective registration statement or the prospectus related to the registration statement or to the Indenture 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 Bank contained in any underwriting agreement contemplated by Section 1.4(j) of this Annex E cease to be true and correct.

(g) 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 1.4(f)(C) of this Annex E at the earliest practicable time.

(h) Upon the occurrence of any event contemplated by Section 1.4(e) or 1.4(f)(E) of this Annex E, promptly prepare a post-effective amendment to such registration statement or a supplement to the related prospectus or the Indenture or file any other required document so that, as thereafter delivered to the Holders and any underwriters, the prospectus or the Indenture 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 Bank notifies the Holders in accordance with Section 1.4(f)(E) of this Annex E to suspend the use of the prospectus until the requisite changes to the prospectus or the Indenture 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 Bank all copies of such prospectus (at the Bank'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.

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

(j) If an underwritten offering is requested pursuant to Section 1.2(b) of this Annex E, 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 Bank 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 securityholders and the managing underwriter(s), if any, with respect to the business of the Bank 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 Bank, 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 Bank (and, if necessary, any other independent certified public accountants of any business acquired by the Bank 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 (A) above and to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Bank.

(k) Make available for inspection by a representative of selling Holders, 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 governance documents and properties of the Bank, and cause the officers, directors and employees of the Bank 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.

(l) 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 Bank are then listed or, if no similar securities issued by the Bank 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.

(m) 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 Bank has received such request.

(n) Timely provide to its securityholders earning statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

Section 1.5 **Suspension of Sales.** Upon receipt of written notice from the Bank that a registration statement, prospectus or prospectus supplement, or Indenture 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, or Indenture, 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 Indenture, or until the Investor and/or such Holder is advised in writing by the Bank that the use of the prospectus and, if applicable, prospectus supplement or Indenture may be resumed, and, if so directed by the Bank, the Investor and/or such Holder shall deliver to the Bank (at the Bank'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 or Indenture 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.

Section 1.6 **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.

Section 1.7 **Furnishing Information.** (a) 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 Bank.

(b) It shall be a condition precedent to the obligations of the Bank to take any action pursuant to Section 1.4 of this **Annex E** that Investor and/or the selling Holders and the underwriters, if any, shall furnish to the Bank 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.

Section 1.8 **Indemnification.** The Bank 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 "**Indemnatee**"), 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) or contained in any Indenture, prepared by the Bank 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 Bank shall not be liable to such Indemnatee 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) or contained in any Indenture, prepared by the

Bank 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 Indemnatee or its plan of distribution or ownership interests which was furnished in writing to the Bank by such Indemnatee 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 any Indenture or (B) offers or sales effected by or on behalf of such Indemnatee “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 Bank.

If the indemnification provided for in Section 1.8(i) of this Annex E is unavailable to an Indemnatee with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to therein or is insufficient to hold the Indemnatee harmless as contemplated therein, then the Bank, in lieu of indemnifying such Indemnatee, shall contribute to the amount paid or payable by such Indemnatee 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 Indemnatee, on the one hand, and the Bank, 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 Bank, on the one hand, and of the Indemnatee, 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 Bank or by the Indemnatee and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; the Bank and each Holder agree that it would not be just and equitable if contribution pursuant to this Section 1.8(ii) of this Annex E 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 1.8(i) of this Annex E. No Indemnatee guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from the Bank if the Bank was not guilty of such fraudulent misrepresentation.

Section 1.9 **Assignment of Registration Rights.** The rights of the Investor to registration of Registrable Securities pursuant to Section 1.2 of this Annex E may be assigned by the Investor to a transferee or assignee of Registrable Securities; *provided, however*, the transferor shall, within ten days after such transfer, furnish to the Bank written notice of the name and address of such transferee or assignee and the number and type of Registrable Securities that are being assigned.

Section 1.10 **Clear Market.** With respect to any underwritten offering of Registrable Securities by the Investor or other Holders pursuant to this Annex E, the Bank 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 subordinated debentures or equity securities of the Bank or any securities convertible into or exchangeable or exercisable for subordinated debentures or equity securities of the Bank, 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 Bank 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.

Section 1.11 **Forfeiture of Rights**. At any time, any holder of Registrable Securities (including any Holder) may elect to forfeit its rights set forth in this Annex E from that date forward; *provided* that a Holder forfeiting such rights shall nonetheless be entitled to participate under Section 1.2(d) – (f) of this Annex E 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 1.7 of this Annex E with respect to any prior registration or Pending Underwritten Offering.

Section 1.12 **Specific Performance**. The parties hereto acknowledge that there would be no adequate remedy at law if the Bank fails to perform any of its obligations under this Annex E 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 Bank under this Annex E in accordance with the terms and conditions of this Annex E.

Section 1.13 **No Inconsistent Agreements**. The Bank 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 Annex E 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 Annex E. In the event the Bank 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 Annex E (including agreements that are inconsistent with the order of priority contemplated by Section 1.2(f) of this Annex E ) or that may otherwise conflict with the provisions hereof, the Bank shall use its reasonable best efforts to amend such agreements to ensure they are consistent with the provisions of this Annex E.

Section 1.14 **Certain Offerings by the Investor**. 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 Bank and used in connection with such distribution.

## OFFICER'S CERTIFICATE

OF

[BANK]

In connection with that certain letter agreement, dated [\_\_\_\_], 2010 (the "Agreement") by and between [BANK] (the "Bank") and the United States Department of the Treasury ("Investor") which incorporates that certain Exchange Agreement –Standard Terms referred to therein (the "Standard Terms"), the undersigned does hereby certify as follows:

Section 1.1 I am a duly elected/appointed [\_\_\_\_\_] of the Bank.

Section 1.2 The Bank (as defined in the Standard Terms) (A) is certified by the Community Development Financial Institution Fund (the "Fund") of the United States Department of the Treasury as a regulated community development financial institution (a "CDFI"); (B) together with its Affiliates collectively meets the eligibility requirements of 12 C.F.R. 1805.200(b); (C) has a primary mission of promoting community development, as may be determined by Investor from time to time, based on criteria set forth in 12 C.F.R. 1805.201(b)(1); (D) provides Financial Products, Development Services, and/or other similar financing as a predominant business activity in arm's-length transactions; (E) serves a Target Market by serving one or more Investment Areas and/or Targeted Populations in the manner set forth in 12 C.F.R. 1805.201(b)(3); (F) provides Development Services in conjunction with its Financial Products, directly, through an Affiliate or through a contract with a third-party provider; (G) maintains accountability to residents of the applicable Investment Area(s) or Targeted Population(s) through representation on its governing Board of Directors or otherwise; and (H) remains a non-governmental entity which is not an agency or instrumentality of the United States of America, or any State or political subdivision thereof, as described in 12 C.F.R. 1805.201(b)(6) and within the meaning of any supplemental regulations or interpretations of 12 C.F.R. 1805.201(b)(6) or such supplemental regulations published by the Fund. As used herein, the terms "Affiliates", "*Financial Products*"; "*Development Services*"; "*Target Market*"; "*Investment Areas*"; and "*Targeted Populations*" have the meanings ascribed to such terms in 12 C.F.R. 1805.104.

Section 1.3 The information set forth in the CDFI Certification Application delivered to the Investor pursuant to Section 1.2(c)(xii) of the Standard Terms (the "CDFI Application"), as modified by any updates to the CDFI Application provided on [*Insert Date(s)*] by the Bank to the Investor on or prior to the date hereof, with respect to the covenants set forth in Section 4.1(d)(i)(B) and Section 4.1(d)(i)(D) of the Standard Terms remains true, correct and complete as of the date hereof.

Section 1.4 The contracts and material agreements entered into by the Bank with respect to Development Services previously disclosed to the Investor remain in effect and

copies of any new contracts and material agreements entered into by the Bank with respect to Development Services are attached hereto as Exhibit A.

Section 1.5 Attached hereto as Exhibit B is (A) a list of the names and addresses of the individuals which comprise the board of directors of the Bank as of the date hereof, (B) to the extent any member of the board of directors listed on Exhibit B was not a member of the board of directors as of the last certification provided to the Investor pursuant to Section 4.1(d)(ii) of the Standard Terms, a narrative describing such individual's relationship to the applicable Investment Area(s) and Targeted Population(s) and (C) to the extent the Bank maintains accountability to residents of the applicable Investment Area(s) or Target Population(s) through means other than representation on its governing board of directors and such means have changed since the date of the last certification provided to the Investor pursuant to Section 4.1(d)(ii) of the Standard Terms on **[Insert Date]**, a narrative describing such change.

Section 1.6 The Bank is not an agency of the United States of America, or any State or political subdivision thereof, as described in 12 C.F.R. 1805.201(b)(6) and within the meaning of any supplemental regulations or interpretations of 12 C.F.R. 1805.201(b)(6) or such supplemental regulations published by the Fund.

Section 1.7 The Bank is not, and has not been at any time since the date of the last certification provided to the Investor pursuant to Section 4.1(d)(ii) of the Standard Terms on **[Insert Date]**, controlled (within the meaning of **[Insert for banks:** the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(2)) and 12 C.F.R. 225(a)(i)]**[Insert for savings associations:** the Home Owners' Loan Act of 1933 (12 U.S.C. 1467a (a)(2)) and 12 C.F.R. 583.7]) by a foreign bank or company.

The foregoing certifications are made and delivered as of [\_\_\_\_\_] pursuant to Section 4.1(d)(ii) of the Standard Terms.

Capitalized terms used and not otherwise defined herein shall have the meanings assigned to them in the Standard Terms.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, this Officer's Certificate has been duly executed and delivered as of the [ ] day of [ ], 20[ ].

**[BANK]**

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

EXHIBIT A

NEW CONTRACTS AND MATERIAL AGREEMENTS

EXHIBIT B  
BOARD OF DIRECTORS

NAME	ADDRESS	NARRATIVE <sup>1</sup>

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<sup>1</sup> To the extent (x) any of the individuals was not a member of the board of directors of the Bank as of the last certification to the Investor, include a narrative describing such individual's relationship to the applicable Investment Area(s) and Targeted Population(s) or, (y) if the Bank maintains accountability to residents of the applicable Investment Area(s) or Target Population(s) through means other than representation on its governing board of directors and such means have changed since the date of the last certification to the Investor, a narrative describing such change.