

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

Dear Ladies and Gentlemen:

The company set forth on the signature page hereto (the "*Company*") intends to issue the subordinated debentures, which such subordinated debentures do not constitute a new class of equity, set forth on Schedule A hereto (the "*CDCI Senior Subordinated Securities*") to the United States Department of the Treasury (the "*Investor*") in exchange for the subordinated debentures previously acquired by the Investor pursuant to the Company's participation in the Troubled Asset Relief Program Capital Purchase Program set forth on Schedule A (the "*CPP Senior Subordinated Securities*").

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 Except to the extent supplemented or superseded by the terms set forth herein or in the Schedules hereto, the provisions contained in the Exchange Agreement – Standard Terms attached hereto as Exhibit A (the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

Each of the Company and the Investor hereby confirms its agreement with the other party with respect to the issuance by the Company of the CDCI Senior Subordinated Securities and the exchange of the "subordinated debentures" for the CPP Senior Subordinated Securities pursuant to this letter agreement and the Exchange Agreement on the terms specified on Schedule A hereto.


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

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

\* \* \*

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

UNITED STATES DEPARTMENT OF THE  
TREASURY

By:   
Name: Herbert M. Allison, Jr.  
Title: Assistant Secretary for  
Financial Stability

COMPANY:  
UNIVERSITY FINANCIAL CORP.

By: \_\_\_\_\_  
Name: David C. Reiling  
Title: Chief Executive Officer

Date: July 30, 2010

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

UNITED STATES DEPARTMENT OF THE  
TREASURY

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

COMPANY:  
UNIVERSITY FINANCIAL CORP.

By:  \_\_\_\_\_  
Name: David C. Reiling  
Title: Chief Executive Officer

Date: July 30, 2010

**EXHIBIT A**

**EXCHANGE AGREEMENT**

**EXCHANGE AGREEMENT**

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## 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 “Company”);

WHEREAS, the Company 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 Company and the Investor (the “CPP Securities Purchase Agreement”);

WHEREAS, the Company 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 Company 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 Company intends to issue its 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 Company and shall be cancelled pursuant to Section 5.11 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 Company and the Investor. The time and date on which the Closing occurs is referred to in this Agreement as the “Closing Date”.

(b) Subject to the fulfillment or waiver of the conditions to the Closing in this Section 1.2, at the Closing (i) the Company 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 Company.

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

(iv) if applicable, the Company 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 Company 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 Company by a Senior Executive Officer certifying to the effect that the filing of the amendment has been accepted;

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

(vi) (A) the Company shall have effected such changes to its compensation, bonus, incentive and other benefit plans, arrangements and agreements (including golden parachute, severance and employment agreements) (collectively, “Benefit Plans”) with respect to its Senior Executive Officers and any other employee of the Company 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 Company 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 Company 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 Company shall have delivered to the Investor, a written waiver from each of the Company’s Senior Executive Officers and any other employee of the Company 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 Company or its Affiliates that are subject to Section 111 of EESA did not deliver a CPP Waiver, the Company 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 C releasing the Investor and the Company 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 Company 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 Company shall have delivered physical certificated debentures in proper form evidencing the CDCI Senior Subordinated Securities to the Investor or its designee(s) in the form attached hereto as Annex D;

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

(x) the Company and the Company Subsidiaries shall have taken all necessary action to ensure that the Company and the Company 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 Company 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 Company 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 Company shall have delivered to the Investor prior to the Signing Date either (i) a true, complete and correct certified copy of each CDFI Certification Application that each Certified Entity 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 any Certified Entity submitted to the Fund in connection with its certification as a CDFI is not available, a newly completed CDFI Certification Application with respect to such Certified Entity 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 Company 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 Company 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 Company 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 Company 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 Company or its designated agent and the Company will cause delivery of the CDCI Senior Subordinated Securities to the Investor or its designated agent.



## ARTICLE III

### **REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

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

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

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

(b) Capitalization. The Company maintains only one class of equity security. The authorized capital stock of the Company, and the outstanding capital stock of the Company (including securities convertible into, or exercisable or exchangeable for, capital stock of the Company) as of the most recent fiscal month-end preceding the Signing Date (the “Capitalization Date”) is set forth on Schedule B. The outstanding shares of capital stock of the Company have been duly authorized and are validly issued and outstanding, fully paid and nonassessable, and subject to no preemptive rights (and were not issued in violation of any preemptive rights). As of the Signing Date, the Company does not have outstanding any securities or other obligations providing the holder the right to acquire its Common Stock (“Common Stock”) that is not reserved for issuance as specified on Schedule B, and the Company has not made any other commitment to authorize, issue or sell any Common Stock. Since the Capitalization Date, the Company has not issued any Common Stock, other than (i) shares 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) shares disclosed on Schedule B. Each holder of 5% or more of the Common Stock in the Company and such holder’s primary address are set forth on Schedule B. The amount of the (A) “Allowable Tax Distribution”, (B) “Additional Dividends” and (C) 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.** The CDCI Senior Subordinated Securities do not constitute a separate class of equity securities, are subordinate and junior in

right of payment to the Senior Indebtedness to the extent set forth in Article VI hereof, and are senior to the Company's Common Stock (and any other class of equity in the event the Company ceases to be a validly electing S corporation within the meaning of Sections 1361 and 1362 of the Code) whether or not issued or outstanding, with respect to the distribution of assets in the event of any dissolution, liquidation or winding up of the Company.

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

(a) The Company, 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).

(b) Each Certified Entity (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).

(c) The Company (A) is a validly electing S corporation under Sections 1361 and 1362 of the Code (a "S-Corp"), and each Company Subsidiary is a "qualified subchapter S subsidiary" within the meaning of Section 1361(b)(3)(B) of the Code, (B) has not and the Company Subsidiaries and the shareholders of the Company have not taken any action which would invalidate such elections, (C) is either (1) a U.S. bank or U.S. savings association not controlled by a Bank Holding Company or Savings and Loan Holding Company; (2) a top-tier U.S. Bank Holding Company that engages predominately in activities that are permitted for financial holding companies under relevant law; (3) a top-tier U.S. Savings and Loan Holding Company, which engages solely or predominately in activities that are permitted for financial holding companies under relevant law or (4) a U.S. bank or U.S. savings association that is a qualifying S-Corp subsidiary that is controlled by a Bank Holding Company or Savings and Loan Holding Company that itself is a S-Corp and that does not engage solely or predominately in activities that are permitted for financial holding companies under relevant law and (D) has paid all dividends that are (i) Allowable Tax Distributions and (ii) required by any agreement among shareholders.

(d) The Company is not a Bank Holding Company, Savings and Loan Holding Company, bank or savings association 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 Bank Holding Companies and 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 and Loan Holding Companies and savings associations) by a foreign bank or company.

**Section 3.4 Authorization and Enforceability.**

(a) The Company has the corporate 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 Company of

this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company and its stockholders, and no further approval or authorization is required on the part of the Company. This Agreement is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to 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 Company of this Agreement and the consummation of the transactions contemplated hereby, and compliance by the Company 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 Company or any subsidiary of the Company or Certified Entity (if not the Company) (each subsidiary or Certified Entity, a "Company Subsidiary" and collectively, the "Company Subsidiaries") under any of the terms, conditions or provisions of (i) its organizational documents or (ii) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Company or any Company Subsidiary is a party or by which it or any Company Subsidiary may be bound, or to which the Company or any Company Subsidiary or any of the properties or assets of the Company or any Company Subsidiary may be subject, or (B) subject to compliance with the statutes and regulations referred to in the next paragraph, violate any statute, rule or regulation or any judgment, ruling, order, writ, injunction or decree applicable to the Company or any Company Subsidiary or any of their respective properties or assets except, in the case of clauses (A)(ii) and (B), for those occurrences that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect.

(c) Other than filing of the amendment to 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 Company in connection with the consummation by the Company 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 Company Material Adverse Effect.

**Section 3.5 Anti-Takeover Provisions and Rights Plan.** The Board of Directors of the Company (the "Board of Directors") has taken all necessary action to ensure that the transactions contemplated by this Agreement and the consummation of the transactions contemplated hereby, will be exempt from any anti-takeover or similar provisions of the Company's Charter and bylaws, and any other provisions of any applicable "moratorium", "control share", "fair price", "interested stockholder" or other anti-takeover laws and regulations of any jurisdiction.

**Section 3.6 No Company 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 Company Material Adverse Effect, except as disclosed on Schedule C.

**Section 3.7 Company Financial Statements.** The Company Financial Statements present fairly in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as of the dates indicated therein and the consolidated results of their operations for the periods specified therein; and except as stated therein, such financial statements (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 Company and the Company Subsidiaries.

**Section 3.8 No Undisclosed Liabilities.** Neither the Company nor any of the Company Subsidiaries has any liabilities or obligations of any nature (absolute, accrued, contingent or otherwise) which are not properly reflected or reserved against in the Company Financial Statements to the extent required to be so reflected or reserved against in accordance with GAAP, except for (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 Company Material Adverse Effect.

**Section 3.9 Offering of Securities.** Neither the Company nor any person acting on its behalf has taken any action (including any offering of any securities of the Company under circumstances which would require the integration of such offering with the offering of the CDCI Senior Subordinated Securities under the Securities Act and the rules and regulations of the Securities and Exchange Commission (the “SEC”) promulgated thereunder), which might subject the offering, issuance or sale of 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 Company Material Adverse Effect, there is no (A) pending or, to the knowledge of the Company, threatened, claim, action, suit, investigation or proceeding, against the Company or any Company Subsidiary or to which any of their assets are subject nor is the Company or any Company Subsidiary subject to any order, judgment or decree or (B) unresolved violation, criticism or exception by any Governmental Entity with respect to any report or relating to any examinations or inspections of the Company or any Company Subsidiaries.

**Section 3.11 Compliance with Laws.** Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and the Company Subsidiaries have all permits, licenses, franchises, authorizations, orders and approvals of, and have made all filings, applications and registrations with, Governmental Entities that are required in order to permit them to own or lease their properties and assets and to carry on their business as presently conducted and that are material to the business of the Company or such Company Subsidiary. Except as set forth on Schedule E, the Company and the Company Subsidiaries have complied in all respects and are not in default or violation of, and

none of them is, to the knowledge of the Company, under investigation with respect to or, to the knowledge of the Company, have been threatened to be charged with or given notice of any violation of, any applicable domestic (federal, state or local) or foreign law, statute, ordinance, license, rule, regulation, policy or guideline, order, demand, writ, injunction, decree or judgment of any Governmental Entity, other than such noncompliance, defaults or violations that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. Except for statutory or regulatory restrictions of general application or as set forth on Schedule E, no Governmental Entity has placed any restriction on the business or properties of the Company or any Company Subsidiary that would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

**Section 3.12 Employee Benefit Matters.** Except as would not reasonably be expected to have, either individually or in the aggregate, a Company 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 Company or any member of its “Controlled Group” (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the “Code”)) that is sponsored, maintained or contributed to by the Company or any member of its Controlled Group and for which the Company or any member of its Controlled Group would have any liability, whether actual or contingent (each, a “Plan”) has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations, including ERISA and the Code; (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 Company or any member of its Controlled Group previously maintained or contributed to in the six years prior to the Signing Date), (1) no “reportable event” (within the meaning of Section 4043(c) of ERISA), other than a reportable event for which the notice period referred to in Section 4043(c) of ERISA has been waived, has occurred in the three years prior to the Signing Date or is reasonably expected to occur, (2) no “accumulated funding deficiency” (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived, has occurred in the three years prior to the Signing Date or is reasonably expected to occur, (3) the fair market value of the assets under each Plan exceeds the present value of all benefits accrued under such Plan (determined based on the assumptions used to fund such Plan) and (4) neither the Company nor any member of its Controlled Group has incurred in the six years prior to the Signing Date, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the 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 Company Material Adverse Effect, (i) the Company and the Company 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 Company or any of the Company Subsidiaries, nor does the Company 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 Company Material Adverse Effect, the Company and the Company Subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens (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 Company Material Adverse Effect, the Company and the Company Subsidiaries hold all leased real or personal property under valid and enforceable leases with no exceptions that would interfere with the use made or to be made thereof by them.

**Section 3.15 Environmental Liability.** Except as would not, individually or in the aggregate, reasonably be expected to have a Company 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 Company or any Company Subsidiary, any liability relating to the release of hazardous substances as defined under any local, state or federal environmental statute, regulation or ordinance, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, pending or, to the Company's knowledge, threatened against the Company or any Company Subsidiary;

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

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

**Section 3.16 Risk Management Instruments.** Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, all derivative instruments, including, swaps, caps, floors and option agreements, whether entered into for the Company's own account, or for the account of one or more of the Company Subsidiaries or its or their customers, were entered into (i) only in the ordinary course of business, (ii) in accordance with prudent practices and in all material respects with all applicable laws, rules, regulations and regulatory policies and (iii) with counterparties believed to be financially responsible at the time; and each of such instruments constitutes the valid and legally binding obligation of the Company or one of the Company Subsidiaries, enforceable in accordance with its terms, except as may be limited by the Bankruptcy Exceptions. Neither the Company or the Company Subsidiaries, nor, to the knowledge of the Company, any other party thereto, is in breach of any of its obligations

under any such agreement or arrangement other than such breaches that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

**Section 3.17 Agreements with Regulatory Agencies.** Except as set forth on Schedule E, neither the Company nor any Company Subsidiary is subject to any material cease-and-desist or other similar order or enforcement action issued by, or is a party to any material written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any capital directive by, or since December 31, 2006, has adopted any board resolutions at the request of, any Governmental Entity that currently restricts in any material respect the conduct of its business or that in any material manner relates to its capital adequacy, its liquidity and funding policies and practices, its ability to pay dividends, its credit, risk management or compliance policies or procedures, its internal controls, its management or its operations or business (each item in this sentence, a “Regulatory Agreement”), nor has the Company or any Company Subsidiary been advised since December 31, 2006, by any such Governmental Entity that it is considering issuing, initiating, ordering, or requesting any such Regulatory Agreement. The Company and each Company Subsidiary is in compliance in all material respects with each Regulatory Agreement to which it is party or subject, and neither the Company nor any Company Subsidiary has received any notice from any Governmental Entity indicating that either the Company or any Company Subsidiary is not in compliance in all material respects with any such Regulatory Agreement.

**Section 3.18 Insurance.** The Company and the Company Subsidiaries are insured with reputable insurers against such risks and in such amounts as the management of the Company reasonably has determined to be prudent and consistent with industry practice. The Company and the Company Subsidiaries are in material compliance with their insurance policies and are not in default under any of the material terms thereof, each such policy is outstanding and in full force and effect, all premiums and other payments due under any material policy have been paid, and all claims thereunder have been filed in due and timely fashion, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

**Section 3.19 Intellectual Property.** Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (i) the Company and each Company Subsidiary owns or otherwise has the right to use, all intellectual property rights, including all trademarks, trade dress, trade names, service marks, domain names, patents, inventions, trade secrets, know-how, works of authorship and copyrights therein, that are used in the conduct of their existing businesses and all rights relating to the plans, design and specifications of any of its branch facilities (“Proprietary Rights”) free and clear of all liens and any claims of ownership by current or former employees, contractors, designers or others and (ii) neither the Company nor any of the Company Subsidiaries is materially infringing, diluting, misappropriating or violating, nor has the Company or any of the Company Subsidiaries received any written (or, to the knowledge of the Company, oral) communications alleging that any of them has materially infringed, diluted, misappropriated or violated, any of the Proprietary Rights owned by any other person. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, to the Company’s knowledge, no other person is infringing, diluting, misappropriating or violating, nor has the Company or any of the Company Subsidiaries sent any written communications since January 1, 2007 alleging that any

person has infringed, diluted, misappropriated or violated, any of the Proprietary Rights owned by the Company and the Company 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 Company or any Company Subsidiary.

**Section 3.21 Disclosure Schedule.** The Company 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 Company 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 Company. If permitted by such laws, the Company 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 Company 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 Signing Date until the Closing, the Company shall promptly notify the Investor of (i) any fact, event or circumstance of which it



is aware and which would reasonably be expected to cause any representation or warranty of the Company contained in this Agreement to be untrue or inaccurate in any material respect or to cause any covenant or agreement of the Company contained in this Agreement not to be complied with or satisfied in any material respect and (ii) except as Previously Disclosed, any fact, circumstance, event, change, occurrence, condition or development of which the Company is aware and which, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect; *provided, however*, that delivery of any notice pursuant to this Section 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 Company will permit the Investor and its agents, consultants, contractors and advisors (x) acting through the Appropriate Federal Banking Agency, or otherwise to the extent necessary to evaluate, manage, or transfer its investment in the Company, to examine the Company'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 Company and the Company Subsidiaries with the principal officers of the Company, all upon reasonable notice and at such reasonable times and as often as the Investor may reasonably request and (y) to review any information material to the Investor's investment in the Company provided by the Company to its Appropriate Federal Banking Agency. Any investigation pursuant to this Section 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 Company, and nothing herein shall require the Company or any Company 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 Company or any Company Subsidiary is a party or would cause a risk of a loss of privilege to the Company or any Company Subsidiary (*provided* that the Company shall use commercially reasonable efforts to make appropriate substitute disclosure arrangements under circumstances where the restrictions in this clause (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 Company 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 Company, and in any event within 90 days thereafter, a consolidated balance sheet of the Company as of the end of such fiscal year, and consolidated statements of income, retained earnings and cash flows of the Company for such year, in each case prepared in accordance with GAAP and setting forth in each case in comparative form the figures for the previous fiscal year of the Company, and which shall be audited to the extent audited financial statements are available;

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

(C) as soon as available after the Company receives any assessment of the Company'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 Company has utilized the funds the Company 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 Company;

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

(F) at the same time as such items are sent to any shareholders of the Company, copies of any information or documents sent by the Company to its shareholders.

(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 Company furnished or made available to it by the Company or its representatives pursuant to this Agreement (except to the extent that such information can be shown to have been (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 Company 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 Company shall permit, and shall cause each of the Company'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 Company 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, each Certified Entity 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 Company 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 Company delivers the documentation required under Section 4.1(c)(ii)(A) to the Investor, a certificate signed on behalf of the Company by a Senior Executive Officer, in substantially the form attached hereto as Annex F certifying (A)

that the Company and each Certified Entity 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 Company 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 Company 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 each Certified Entity 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 Certified Entity with respect to Development Services; (D) a list of the names and addresses of the individuals which comprise the board of directors of each Certified Entity as of such date and, to the extent any of such individuals was not a member of the board of directors of such Certified Entity 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 such Certified Entity 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 each Certified Entity 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 Company remains in compliance with the covenants set forth in Section 4.1(f) and 4.1(l) and (2) within five (5) business days of receipt, copies of any notices, correspondence or other written communication between each Certified Entity and the Fund, including any form that such Certified Entity 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 Company shall immediately notify the Investor upon the occurrence of any breach of any of the covenants set forth in Section 4.1(d).

(e) Executive Compensation.

(i) Benefit Plans. During the Relevant Period, the Company shall take all necessary action to ensure that the Benefit Plans of the Company 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 Company 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 Company 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 Company 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 Company 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 Company 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 Company 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 Company shall promptly provide such individual with written notice that the amount of such payment must be repaid to the Company 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 Company 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 Company 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 Company.

(v) Amendment to Prior Agreement. The parties agree that, effective as of the date hereof, Section 5.16 of the CPP Securities Purchase Agreement shall be amended in its entirety by replacing such Section 5.16 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) **Bank or Savings and Loan Holding Company Status.** If the Company is a Bank Holding Company or a Savings and Loan Holding Company on the Signing Date, then the Company shall maintain its status as either a Bank Holding Company or Savings and Loan Holding Company, as the case may be, for as long as the Investor owns any CDCI Senior Subordinated Securities. The Company shall redeem all CDCI Senior Subordinated Securities held by the Investor prior to terminating its status as a Bank Holding Company or Savings and Loan Holding Company, as applicable.

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

(h) **Capital Covenant.** From the Signing Date until the date on which all of the CDCI Senior Subordinated Securities have been redeemed in whole, the Company and the Company 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.

(i) **HAMP Modifications.** The Company shall take all necessary action to ensure that (A) from and after the date the Company or any Company 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 Company or such Company 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 Company or any Company Subsidiary owns mortgage loans that are serviced by a non-affiliated mortgage servicer, the Company or such Company Subsidiary shall consent to any MHA modification request made by such mortgage servicer.

(j) **Compliance with Employ American Workers Act.** The Company shall agree to comply, and take all necessary action to ensure that any Company 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.

(k) **Reporting Requirements.** Prior to the date on which all of the CDCI Senior Subordinated Securities have been redeemed in whole, the Company 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 Company 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.

(l) **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 Company 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 Bank Holding Companies and 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 and Loan Holding Companies and savings associations) by a foreign bank or company.

(m) **Listing on Exchange.** If the Company lists its Common Stock on any national securities exchange, the Company shall, if requested by the Investor, promptly use its reasonable best efforts to cause the CDCI Senior Subordinated Securities to be approved for listing on a national securities exchange as promptly as practicable following such request.

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

(a) **Certain Transactions.**

(i) The Company 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 Company), expressly assumes the due and punctual performance and observance of each and every covenant, agreement and condition of this Agreement to be performed and observed by the Company.

(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 Company 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 Company 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 Company, (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 Company or (iii) issue or sell any shares of its capital stock or any securities convertible or exercisable for any such shares, other than issuances or sales in connection with an internal reorganization or consolidation involving wholly-owned subsidiaries of the Company.

(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 Company nor any Company Subsidiary shall, (x) redeem, purchase, repay or acquire any trust preferred securities or other capital instruments of any kind of the Company or any Company Subsidiary, other than redemptions, purchases, repayments or other acquisitions of trust preferred securities or other capital instruments of any kind of the Company or any Company Subsidiary required pursuant to binding contractual agreements entered into prior to October 21, 2009, unless all accrued and unpaid Interest for all past interest periods on the CDCI Senior Subordinated Securities is paid in full and (y) permit any increase to regularly paid common dividends on Common Stock. Notwithstanding the foregoing, an increase in dividends shall be permitted where such increase is solely proportionate to the increase in taxable income of the Company and such increased dividends are distributed to shareholders in order to fund their individual tax payments on such allocable taxable income (a “Tax Distribution”). The Investor and any subsequent investors who purchase the CDCI Senior Subordinated Securities shall have the right to challenge the amount of the proposed Tax Distributions to the extent it believes they exceed the amount necessary for the Company’s shareholders to pay their allocable share of income taxes.

(ii) 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 any of the CDCI Senior Subordinated Securities are outstanding, neither the Company nor any Company Subsidiary shall, without the consent of the Investor, pay any dividends or repurchase any equity securities or trust preferred securities.

(c) Related Party Transactions. Until such time as the Investor ceases to own any debt or equity securities of the Company, including the CDCI Senior Subordinated Securities, the Company and the Company Subsidiaries shall not enter into transactions with Affiliates or related persons (within the meaning of Item 404 under the SEC’s Regulation S-K) unless (A) such transactions are on terms no less favorable to the Company and the Company Subsidiaries than could be obtained from an unaffiliated third party, and (B) have been approved by the audit committee of the Board of Directors or comparable body of independent directors of the Company, 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 Note Held by Investor. Prior to the date on which the Investor no longer owns any of the CDCI Senior Subordinated Securities the Company 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 CDCI Senior Subordinated Securities.** The CDCI Senior Subordinated Securities shall be executed in the name and on behalf of the Company by the manual or facsimile signature of its President, Chief Executive Officer, Chief Financial Officer or one of its Executive Vice Presidents under its corporate 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 Company’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 Deferred Interest and 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 Company, 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) So long as no other Event of Default has occurred and is continuing, the Company shall have the right, from time to time and without causing an Event of Default, to defer payments of interest on the CDCI Senior Subordinated Securities by extending the Interest Period on the CDCI Senior Subordinated Securities at any time and from time to time during the term of the CDCI Senior Subordinated Securities, for up to 20 consecutive quarterly periods (each such extended Interest Period, together with all previous and further consecutive extensions thereof, is referred to herein as an “Interest Deferral Period”). No Interest Deferral Period may end on a date other than an Interest Payment Date or extend beyond the Maturity Date, as the case may be. During any Interest Deferral Period, interest will continue to accrue on the CDCI Senior Subordinated Securities, and interest on such accrued interest (such accrued interest and interest thereon referred to herein as “Deferred Interest”) will accrue at an annual rate equal to the Interest Rate applicable during such Interest Deferral Period, compounded on each Interest Payment Date during such Interest Deferral Period, to the extent permitted by applicable law. No interest or Deferred Interest shall be due and payable during a Interest Deferral Period, except at the end thereof. At the end of any Interest Deferral Period, the Company shall pay all Deferred Interest then accrued and unpaid on the CDCI Senior Subordinated Securities; *provided, however*, that during any Interest Deferral Period, the Company shall be subject to the restrictions set forth in Section 4.2(b). Prior to the termination of any Interest Deferral Period, the Company may further extend such Interest Deferral Period, *provided* that no Interest Deferral Period (including all previous and further consecutive extensions that are part of such Interest Deferral Period) shall exceed 20 consecutive quarterly periods. Upon the termination of any Interest Deferral Period and upon the payment of all Deferred Interest, the Company may commence a new Interest Deferral Period for up to 20 consecutive quarterly periods as if no prior Interest Deferral Period had occurred, subject to the foregoing requirements. The Company must give the Holders notice of its election to begin or extend a Interest Deferral Period at least one business day prior to the Regular Record Date applicable to the next succeeding Interest Payment Date.

(d) Any interest on the CDCI Senior Subordinated Security (other than Deferred Interest pursuant to Section 5.4(c)) that is payable, but is not punctually paid or duly provided for by the Company, 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 Company 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 Company 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 Company 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 to the persons in whose names such CDCI Senior Subordinated Securities are registered on such special record date and thereafter the Company shall have no further payment obligation in respect of the Defaulted Interest.

(e) The Company 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.

(f) 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 COMPANY 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 OBLIGATION IS NOT A SAVINGS ACCOUNT OR DEPOSIT AND IS NOT INSURED OR GUARANTEED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM OR ANY OTHER GOVERNMENTAL AGENCY. THIS OBLIGATION IS SUBORDINATED TO THE CLAIMS OF GENERAL AND SECURED CREDITORS OF THE COMPANY AND IS NOT SECURED.

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 COMPANY 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.

THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF THE AGREEMENT BETWEEN THE COMPANY AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE COMPANY. 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 Company shall issue new certificates or other instruments representing such CDCI Senior Subordinated Securities, which shall not contain the applicable legends in Section 5.5(a) above; *provided* that the Investor surrenders to the Company the previously issued certificates or other instruments.

**Section 5.6 Transfer of CDCI Senior Subordinated Securities.** (a) The Company 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 Company or its agent, and the Company 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 Company or its agent is required to record a transfer of such CDCI Senior Subordinated Security on its CDCI Senior Subordinated Securities Register. The Company 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 Company 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 Company, 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 of exchange pursuant to this Section 5.6(b) shall be valid obligations of the Company, 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 Company 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 Company 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 Company and any agent of the Company 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 Company or any agents of the Company 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 Company 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 Company to be subject to the periodic reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and the Company was not already subject to such requirements. In furtherance of the foregoing, the Company 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 Company 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 Company reasonably available to respond to questions of a proposed transferee in accordance with customary practice, subject in all cases to the proposed transferee agreeing to a customary confidentiality agreement.

**Section 5.7 Replacement of CDCI Senior Subordinated Securities.** Upon receipt of evidence reasonably satisfactory to the Company 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 Company (*provided* that the Investor or any institutional Holder of a CDCI Senior Subordinated Security may instead deliver to the Company an indemnity agreement in form and substance reasonably satisfactory to the Company), or, in the case of any such mutilation, upon surrender and cancellation of the CDCI Senior Subordinated Security, as the case may be, the Company 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 Company 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 Company 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 Company 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 Company is a “Reporting Issuer” within the meaning of Rule 144) or in Section (c)(2) of Rule 144 (if the Company 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 Company shall not be required to take any action described in this Section 5.9(a) that would cause the Company to become subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act if the Company was not subject to such requirements prior to taking such action. Upon the request of any Holder, the Company 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 Company 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 “Indemnitee”), against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals incurred in connection with investigating, defending, settling, compromising or paying any such losses, claims, damages, actions, liabilities, costs and expenses), joint or several, arising out of or based upon any untrue statement or alleged untrue statement of material fact contained in any document or report provided by the Company 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 Indemnitee with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to therein or is insufficient to hold the Indemnitee harmless as contemplated therein, then the Company, in lieu of indemnifying such Indemnitee, shall contribute to the amount paid or payable by such Indemnitee as a result of such losses, claims, damages, actions, liabilities, costs or expenses in such proportion as is appropriate to reflect the relative fault of the Indemnitee, on the one hand, and the Company, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, actions, liabilities, costs or expenses as well as any other relevant equitable considerations. The relative fault of the Company, on the one hand, and of the Indemnitee, on the other hand, shall be determined by reference to, among other factors, whether the untrue statement of a material fact or omission to state a material fact relates to information supplied by the Company or by the Indemnitee and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; the Company and 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 Indemnitee guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from the Company if the Company was not guilty of such fraudulent misrepresentation.

**Section 5.10 Depository Senior Subordinated Securities.** Upon request by the Investor at any time following the Closing Date, the Company shall promptly enter into a depository arrangement, pursuant to customary agreements reasonably satisfactory to the Investor and with a depository reasonably acceptable to the Investor, pursuant to which the 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 Company 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 (including Deferred 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 Company 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 Company 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 Company 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 Company, 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 Company, after which time the Holders of such CDCI Senior Subordinated Securities (or portion thereof so called for redemption) shall look only to the Company 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 Company shall be cancelled and shall not thereafter be reissued by the Company.

## **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, 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 Company 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 Company’s next annual meeting of shareholders (or at a special meeting called for that purpose prior to such next annual meeting) and at each subsequent annual meeting of shareholders until all accrued and unpaid interest for four (4) consecutive Interest Periods, including the latest completed Interest Period, 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 Company to violate any corporate governance requirements of any securities exchange or other trading facility on which securities of the Company 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 shareholders required by law or by the Charter, the vote or consent of the Holders of at least 66 2/3% of the CDCI Senior Subordinated Securities at the time outstanding, voting as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose in accordance 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 Company with another corporation or other 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 Company 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 issuance of any equity securities or other capital instruments authorized by state law of the Company, or any securities convertible into or exchangeable or exercisable for any equity securities or capital instruments, 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 Company.

*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 Company, 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 Company 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 Company shall, at the Company's sole cost and expense, (i) furnish to the Investor all instruments, documents and other agreements required to be furnished by the Company 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 Company or its duly appointed agent to obtain a complete list of Holders. In addition, any Holder shall have the right to request that the Company 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 Company 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 Company 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 Company 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 (i) with respect to CDCI Senior Subordinated Securities issued by a bank or savings association, all claims of the Company's depositors, if applicable, and all amounts then due and payable in respect of Senior Indebtedness, whether outstanding at the date of this Agreement or thereafter incurred or (ii) with respect to CDCI Senior Subordinated Securities issued by a Bank Holding Company or Savings and Loan Holding Company, any Senior Indebtedness of the Company in accordance with applicable regulations governing Bank Holding Companies or Savings and Loan Holding Companies.

(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 Company in the payment of principal, premium, interest or any other payment due on any Senior Indebtedness, no payment shall be made by the Company 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 Company 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 Company 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 Company shall be paid to the holders of such Senior Indebtedness. The Company shall, within ten (10) business days of receipt of such notice, provide Investor with (i) a copy of such notice delivered to the Company and (ii) a certificate signed on behalf of the Company 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 Company or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution, winding-up, liquidation or reorganization of the Company, whether voluntary or involuntary or in insolvency, receivership or other proceedings, the holders of all Senior Indebtedness of the Company 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 Company 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 Company, or distribution of assets of the Company 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 Company, except for the provisions of this Article VI, shall be paid by the Company 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 Company (*pro rata* to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders, as calculated by the Company) 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 Company 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 Company, 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 Company shall provide Investor with a certificate signed on behalf of the Company 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 shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article VII 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 corporation, 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 Company with, or the merger of the Company into, another person or the liquidation or dissolution of the Company 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 Company, 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 Company, its creditors other than holders of Senior Indebtedness of the Company, and the Holders of the CDCI Senior Subordinated Securities, be deemed to be a payment by the Company 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 Company, its creditors other than the holders of Senior Indebtedness of the Company, and the Holders of

the CDCI Senior Subordinated Securities, the obligation of the Company, 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 Company, as the case may be, other than the holders of Senior Indebtedness of the Company, 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 Company, as the case may be, received upon the exercise of any such remedy.

**Section 6.5 Notice by the Company.** (a) The Company shall give prompt written notice to the Holders of the CDCI Senior Subordinated Securities of any fact known to the Company 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 Company 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, bankruptcy, receivership, liquidation, reorganization, dissolution, winding-up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, 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 Company, 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 Company 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 Company, 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 Company, 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 Company 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 Company, 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) Bankruptcy, Receivership or Conservatorship. (i) A court having proper jurisdiction shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appoints a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of the Company or for any substantial part of its property, or orders the winding-up or liquidation of its affairs and such decree, appointment or order shall remain unstayed and in effect for a period of sixty (60) days; or

(ii) The Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of the Company or of any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or

(iii) A court or administrative or governmental agency or body shall enter a decree or order for the appointment of a receiver of the Company or a Major Depository Institution Subsidiary or all or substantially all of its property in any liquidation, insolvency or similar proceeding with respect to the Company or such Major Depository Institution Subsidiary or all or substantially all of its property; or

(iv) The Company or a Major Depository Institution Subsidiary shall consent to the appointment of a receiver 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) Failure to pay Deferred Interest. If any Interest Deferral Period has occurred, the failure by the Company to pay any related Deferred Interest and any interest thereon, on or before the first day immediately following the last day of such Interest Deferral Period.

**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 Company (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 the Company or any other obligor on the CDCI Senior Subordinated Securities (other than the Company) 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 Company or a Major Depository Institution Subsidiary of the Company or such other obligor, or in the case of any other similar judicial proceedings relative to the Company, Major Depository Institution Subsidiary or other obligor upon the CDCI Senior Subordinated Securities, or to the creditors or property of the Company, Major Depository Institution Subsidiary or such other obligor (each, an “Obligor”), 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 the Company, Major Depository Institution Subsidiary or any other obligor on the CDCI Senior Subordinated Securities, or to the creditors or property of the Company or such other 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 Company 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 30<sup>th</sup> calendar day, the parties will consult in good faith to determine whether to extend the term of this Agreement, it being understood that the parties shall be required to consult only until the fifth 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 6.1(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 Company in the event that any Governmental Entity shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, and such order, decree, ruling or other action shall have become final and nonappealable; or

(iii) by the mutual written consent of the Investor and the Company; 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 Company therefrom, shall be effective unless made in writing and signed by an officer or a duly authorized representative of the Company, 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 Company 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 Company. 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 Company at the address and in the manner set forth for notices to the Company in Section 8.6 and (ii) the Investor at the address and in the manner set forth for notices to the Company 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 Company 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: OFSChiefCounselNotices@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 Company or such Company Subsidiaries, as applicable, as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)).

(d) The term “Bank Holding Company” means a company registered as such with the Board of Governors of the Federal Reserve System (the “Federal Reserve”) pursuant to 12 U.S.C. § 1842 and the regulations of the Federal Reserve promulgated thereunder.

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

(f) The term “Certified Entity” means the Company or, if the Company itself has not been certified by the Fund as a CDFI, each Affiliate of the Company that has been certified by the CDFI and is specified on Schedule A of the Letter Agreement.

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

(h) The term “Company Material Adverse Effect” means a material adverse effect on (i) the business, results of operation or financial condition of the Company and its consolidated subsidiaries and each Certified Entity taken as a whole; *provided, however*, that Company 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 Company and its subsidiaries operate, (B) changes or proposed changes after the Signing Date in generally accepted accounting principles in the United States (“GAAP”), or authoritative interpretations thereof, (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 or (D) changes or proposed changes after the Signing Date in the taxation of (I) the Company as a validly electing S corporation within the meaning of Sections 1361 and 1362 of the Code, or (II) any Company Subsidiary as a “qualified subchapter S subsidiary” (“QSub”) within the meaning of Section 1361(b)(3)(B) of the Code, (in the case of each of these clauses (A), (B), (C) and (D), other than changes or occurrences to the extent that such changes or occurrences have or would reasonably be expected to have a materially disproportionate adverse effect on the Company and its consolidated subsidiaries taken as a whole relative to comparable U.S. banking or financial services organizations); or (ii) the ability of the Company to consummate the Exchange and other

transactions contemplated by this Agreement and perform its obligations hereunder or thereunder on a timely basis.

(i) 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.

(j) 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.

(k) The term “Indebtedness” means, whether or not recourse is to all or a portion of the assets of the Company and whether or not contingent, (i) the claims of the Company’s secured and general creditors; (ii) every obligation of the Company for money borrowed; (iii) every obligation of the Company 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 Company, contingent or otherwise, with respect to letters of credit, bankers’ acceptances, security purchase facilities or similar facilities issued for the account of the Company; (v) every obligation of the Company 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 Company; (vii) all indebtedness of the Company 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 Company 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 Company.

(l) The term “Major Depository Institution Subsidiary” means any subsidiary of the Company that (a) is a depository institution and (b) meets the definition of “significant subsidiary” within the meaning of Rule 405 under the Securities Act.

(m) 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.

(n) The term “Savings and Loan Holding Company” means a company registered as such with the Office of Thrift Supervision pursuant to 12 U.S.C. § 1467(a) and the regulations of the Office of Thrift Supervision promulgated thereunder.

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

(p) The term “Senior Indebtedness” means, with respect to the CDCI Senior Subordinated Securities, the principal of (and premium, if any) and interest, if any (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not such claim for post petition interest is allowed in such proceedings), 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 Indebtedness issued to any statutory trust created by the Company for the purpose of issuing trust preferred securities in connection with such issuance of Indebtedness, which shall in all cases be junior to such CDCI Senior Subordinated Securities, (B) any guarantees of the Company in respect of the equity securities or other securities of any financing entity referred to in clause (A) above, or (C) any other subordinated debt of the Company that by its terms ranks *pari passu* or junior to the CDCI Senior Subordinated Securities issued hereunder.

(q) 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.

(r) 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 Company 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.

(s) 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 6.9(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 Company, 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 draftsperson 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 Company’s shareholders 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(k) and 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 Company’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 Company and the Investor (and any Indemnatee) 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 Company 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 Company 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 Company.

**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

[COMPANY]

In connection with that certain letter agreement, dated [\_\_\_\_], 2010 (the "*Agreement*") by and between [COMPANY] (the "*Company*") 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 Company.
2. The representations and warranties of the Company 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 Company has performed in all material respects all obligations required to be performed by it under this Agreement.
3. The Company has effected such changes to its Benefit Plans with respect to its Senior Executive Officers and any other employee of the Company 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 Company 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[ ].

**[COMPANY]**

By:

Name:

Title:

EXHIBIT A

## **ANNEX B**

### **FORM OF OPINION**

(a) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the state of its incorporation. The Company 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 Company has been duly qualified as a foreign corporation 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 Company, enforceable in accordance with their terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity, and will rank Senior to the Common Stock, but subordinated to claims of depositors and to the Company'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 Company has the corporate 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 Company of the Agreement and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of the Company and its shareholders, and no further approval or authorization is required on the part of the Company, 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 Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity.

(g) The execution and delivery by the Company of this Agreement and the performance by the Company of its obligations thereunder (i) do not require any approval by any Governmental Entity to be obtained on the part of the Company, 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 Company or any Company 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 Company and, pursuant to any applicable laws, is issued by any Governmental Entity having jurisdiction over the Company.

(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 consents and approvals that have been made or obtained, no notice to, filing with, exemption or review by, or authorization, consent or approval of, any Governmental Entity is required to be made or obtained by the Company in connection with the consummation by the Company of the Exchange.

(i) The Company 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) Each Certified Entity (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 “Company”) 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 Company 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 Company 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 Company or in which I may participate as they relate to the period the United States holds any equity or debt securities of the Company 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 Company 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 Company 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 Company to fail to be in compliance with the Limitations (such payment or benefit, an



“Excess Payment”), upon notification from the Company, I shall repay such Excess Payment to the Company within 15 business days. In addition, I agree that the Company 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 Company 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 Company 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,

---

Name:

Title:

Date

**FORM OF CDCI SENIOR SUBORDINATED SECURITIES**

[SEE ATTACHED]

**FORM OF CDCI SENIOR SUBORDINATED SECURITIES**

**(FACE OF SECURITY)**

“THIS CDCI 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 COMPANY AND THE UNITED STATES DEPARTMENT OF THE TREASURY AND EXCHANGE AGREEMENT – STANDARD TERMS (THE “AGREEMENT”), EACH OF WHICH ARE INCORPORATED INTO THIS CDCI SENIOR SUBORDINATED SECURITY.

THIS OBLIGATION IS NOT A SAVINGS ACCOUNT OR DEPOSIT AND IS NOT INSURED OR GUARANTEED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM OR ANY OTHER GOVERNMENTAL AGENCY.

THIS OBLIGATION IS SUBORDINATED TO SENIOR INDEBTEDNESS OF THE COMPANY IN ACCORDANCE WITH APPLICABLE HOLDING COMPANY REGULATIONS OF THE APPROPRIATE FEDERAL BANKING AGENCY AND IS NOT SECURED.

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 COMPANY 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.

THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF THE AGREEMENT BETWEEN THE COMPANY AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE COMPANY. 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."

**UNIVERSITY FINANCIAL CORP.**

\$ \_\_\_\_\_

**3.1% CDCI SENIOR SUBORDINATED SECURITY DUE 2040**

University Financial Corp., a Minnesota corporation, (the “Company,” which term includes any permitted successor thereto, for value received, hereby promises to pay to the order of the United States Department of the Treasury or registered assigns, by wire transfer, the principal sum of \$ \_\_\_\_\_ (\_\_\_\_\_ Dollars) on July 30, 2040 (the “Maturity Date”) (or any earlier redemption date or date of acceleration of the Maturity Date) and to pay interest on the outstanding principal amount of this CDCI Senior Subordinated Security Due 2040 (this “CDCI Senior Subordinated Security”) (i) from July 30, 2010, or from the most recent interest payment date to which interest has been paid or duly provided for, quarterly in arrears (subject to deferral as set forth in Section 5.4(c) of the Agreement) on February 15, May 15, August 15 and November 15 of each year (each such date, an “Interest Payment Date”), commencing on November 15, 2010, at the rate of 3.1% per annum, until the eighth anniversary of the date hereof, *provided, however*, that if a CDFI Event shall have occurred and it or any other CDFI Event is continuing at all times, from and after the 180<sup>th</sup> day after the date on which the first CDFI Event occurred until the date on which no CDFI Events are continuing, the Interest Rate shall be 7.7% per annum, and (ii) from and after the eighth anniversary of the date hereof, at a rate of 13.8% per annum (each such interest rate, the applicable “Interest Rate”) until the principal hereof shall have been paid or duly provided for, compounded quarterly, and on any overdue principal and on any overdue installment of interest (without duplication and to the extent that payment of such interest is enforceable under applicable law) at the same rate per annum. The amount of interest payable hereon shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

This CDCI Senior Subordinated Security is one of the CDCI Senior Subordinated Securities referred to in the Letter Agreement and Exchange Agreement – Standard Terms, dated as of July 30, 2010 (as amended, modified or restated from time to time, the “Agreement”), by and among the Company and the United States Department of the Treasury, as the initial Investor (the “Investor”). Capitalized terms used in this CDCI Senior Subordinated Security are defined in the Agreement, unless otherwise expressly stated herein. The CDCI Senior Subordinated Security is entitled to the benefits of the Agreement and is subject to all of the agreements, terms and conditions contained therein, all of which are incorporated herein by this reference. This CDCI Senior Subordinated Security may be redeemed, in whole or in part, in accordance with the terms and conditions set forth in the Agreement.

Interest

The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will be paid to the person in whose name this CDCI Senior Subordinated Security is registered at the close of business on the regular record date for such installment of interest, which date shall be at the close of business on the 1st calendar day

(whether or not a business day) of the month in which each Interest Payment Date occurs (each such date, the “Regular Record Date”). Any such installment of interest (other than Deferred Interest) not punctually paid or duly provided for shall forthwith cease to be payable to the Holders on such Regular Record Date and shall be paid to the person in whose name this CDCI Senior Subordinated Security is registered at the close of business on the date preceding the next Interest Payment Date, on the next Interest Payment Date, along with all other amounts then due and payable. In no event, however, shall interest exceed the maximum rate permitted by applicable law.

If an Interest Payment Date or the Maturity Date falls on a day that is not a “business day” (as defined in the Agreement), the related payment of principal or interest will be paid on the next business day, with the same force and effect as if made on such date, and no interest on such payments will accrue from and after such Interest Payment Date or Maturity Date, as the case may be. Interest payable on the Maturity Date of the CDCI Senior Subordinated Securities will be paid to the registered Holder to whom the principal is payable upon presentation and surrender for cancellation.

#### Method of Payment

The principal of this CDCI Senior Subordinated Security shall be payable upon surrender hereof and interest on this CDCI Senior Subordinated Security shall be payable at the office or agency of the Company or an agent appointed for that purpose in any coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts; provided, however, that payment of interest shall be made by the Company to the Holders of this Senior Subordinated Security entitled thereto as shown on the CDCI Senior Subordinated Securities Register by wire transfer of immediately available funds to any account with a banking institution located in the United States designated by such Holder no later than the related Regular Record Date.

#### Subordination

The indebtedness evidenced by this CDCI Senior Subordinated Security is, to the extent provided in the Agreement, senior to the Common Stock, but subordinate and junior in right of payment to the prior payment in full of senior indebtedness of the Company, in accordance with applicable holding company regulations of the Appropriate Federal Banking Agency, unless such debt obligations are explicitly made *pari passu* or subordinated to the CDCI Senior Subordinated Securities, if applicable. Each Holder of this CDCI Senior Subordinated Security, by accepting the same agrees to and shall be bound by such provisions of the Agreement. Each Holder hereof, by his or her acceptance hereof, hereby waives all notice of the acceptance of the subordination provisions contained herein and in the Agreement by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

The provisions of this CDCI Senior Subordinated Security are continued on the reverse side hereof and such provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly  
executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**UNIVERSITY FINANCIAL CORP.**

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

Attest:

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



## **(REVERSE OF SECURITY)**

This CDCI Senior Subordinated Security is one of the CDCI Senior Subordinated Securities of the Company (herein sometimes referred to as the “CDCI Senior Subordinated Securities”), issued or to be issued under and pursuant to a Letter Agreement and Exchange Agreement – Standard Terms, dated as of July 30, 2010 (as amended, modified or restated from time to time, the “Agreement”), by and between the Company and the United States Department of the Treasury, as the initial Investor (the “Investor”), to which Agreement reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of Company and the Holders of the CDCI Senior Subordinated Securities. This CDCI Senior Subordinated Security is a single series security with a face value in aggregate principal amount as set forth on the front of this CDCI Senior Subordinated Security.

### Defaults and Remedies

If an Event of Default as provided for in Section 7.1 of the Agreement occurs, then the principal of, interest accrued on, and other obligations payable under this CDCI Senior Subordinated Security and the Transaction Documents, will immediately become due and payable. Notwithstanding anything to the contrary herein or in the Agreement, other than Section 7.2 of the Agreement, there is no right of acceleration for any default, including a default in the payment of principal or interest or the performance of any other covenant or obligation by the Company under this CDCI Senior Subordinated Security or the Agreement.

### Amendment and Waiver

No amendment, modification, termination or waiver of any provision of the Agreement, the CDCI Senior Subordinated Securities or any of the other Transaction Documents, or consent to any departure by the Company therefrom, shall be effective unless made in writing and signed by an officer or a duly authorized representative of the Company 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) of the Agreement 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 as a CDFI by the Fund; provided further that 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; or (D) consent to the assignment, delegation or other transfer by the Company of any of its rights and obligations under any Transaction Documents.

Any such consent or waiver by the Holder of this CDCI Senior Subordinated

Security shall be conclusive and binding upon such Holder and upon all future Holders of this CDCI Senior Subordinated Security and of any CDCI Senior Subordinated Security issued in exchange herefor or in place hereof (whether by registration of transfer or otherwise), irrespective of whether or not any notation of such consent or waiver is made upon this CDCI Senior Subordinated Security.

No reference herein to the Agreement and no provision of this CDCI Senior Subordinated Security or of the Agreement shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this CDCI Senior Subordinated Security at the time and place and at the rate and in the money herein prescribed.

#### Limitation on Dividends and Repurchases of Equity Securities

The Company's ability to declare and pay dividends and purchase or acquire shares of Common Stock, other equity securities, trust preferred securities or any CDCI Senior Subordinated Security is limited by the terms of the Agreement. The Company's ability to redeem this CDCI Senior Subordinated Security is limited by the terms of the Agreement.

#### Interest Deferral and Voting Rights

The Company may defer interest paid on the CDCI Senior Subordinated Securities, subject to the terms and conditions in the Agreement. The Holders of this CDCI Senior Subordinated Security will be permitted to vote for two directors in the event interest is deferred for eight quarters (regardless of whether such quarters are consecutive). Deferral of interest in excess of 20 quarters constitutes an "Event of Default" as defined in the Agreement.

#### Denominations; Transfer; Exchange

The CDCI Senior Subordinated Securities are issuable only in registered form without coupons in minimum denominations of \$1,000.00 and integral multiples of \$1,000.00 in excess thereof. As provided in the Agreement, this CDCI Senior Subordinated Security is transferable by the Holder hereof on the CDCI Senior Subordinated Securities Register maintained by the Company or its agent, upon surrender of this CDCI Senior Subordinated Security for registration of transfer at the office or agency of the Company or its agent, accompanied by a written instrument or instruments of transfer in form satisfactory to the Company duly executed by the Holder hereof or his or her attorney duly authorized in writing, and thereupon one or more new CDCI Senior Subordinated Securities of authorized denominations and for the same aggregate principal amount will be issued to the designated transferee or transferees. No service charge will be made for any such registration of transfer, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in relation thereto.

Prior to due presentment for registration of transfer of this CDCI Senior Subordinated Security, the Company and any agent thereof may deem and treat the Holder hereof as the absolute owner hereof (whether or not this CDCI Senior Subordinated Security shall be overdue and notwithstanding any notice of ownership or writing hereon made) for the purpose of receiving payment of or on account of the principal hereof and (subject to the Agreement) interest due hereon and for all other purposes, and none of the Company or any

agent thereof shall be affected by any notice to the contrary.

#### No Recourse Against Others

No recourse shall be had for the payment of the principal of or interest on this CDCI Senior Subordinated Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Agreement or any other Transaction Document, against any incorporator, shareholder, employee, officer or director, as such, past, present or future, as such, of the Company or of any successor thereto, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released.

#### Governing Law

THE AGREEMENT AND THIS CDCI SENIOR SUBORDINATED SECURITY SHALL EACH BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE FEDERAL LAWS 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.

#### Abbreviations

The following abbreviations, when used in the inscription on the face of this CDCI Senior Subordinated Security, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN CON – as tenants in common TEN ENT – as tenants in the entireties

JT TEN – as joint tenants with right of survival

UNIF GIFT MIN ACT – under Uniform Gift to Minors Act and not as tenants

Additional abbreviations may also be used though not in the above list.

## ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby assigns and transfers this CDCI Senior Subordinated Security to:

\_\_\_\_\_  
(Assignee's social security or tax  
identification number)

\_\_\_\_\_  
(Address and zip code of assignee)

and irrevocably appoints \_\_\_\_\_ agent to transfer this CDCI Senior Subordinated Security on the books of the Company. The agent may substitute another to act for him or her.

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

Signature: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this CDCI Senior Subordinated Security)

Signature Guarantee: \_\_\_\_\_

[Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.]

## REGISTRATION RIGHTS

**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 Company 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 Company in effecting any registration pursuant to this Agreement (whether or not any registration or prospectus becomes effective or final) or otherwise complying with its obligations under this Annex E, including all registration, filing and listing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses, expenses incurred in connection with any “road show”, the reasonable fees and disbursements of Holders’ Counsel, and expenses of the Company’s independent accountants in connection with any regular or

special reviews or audits incident to or required by any such registration, but shall not include Selling Expenses.

(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) shares of equity securities and/or options or other rights in respect thereof to be offered to directors, members of management, employees, consultants, customers, lenders or vendors of the Company or Company Subsidiaries or in connection with dividend reinvestment plans.

## **1.2 Registration.**

(a) The Company covenants and agrees that as promptly as practicable after the date that the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (and in any event no later than 30 days thereafter), the Company shall (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 Company shall use reasonable best efforts to cause such Shelf Registration Statement to be declared or become effective and to keep such Shelf Registration Statement continuously effective and in compliance with the Securities Act and usable for resale of such Registrable Securities for a period from the date of its initial effectiveness until such time as there are no Registrable Securities remaining (including by refiling such Shelf Registration Statement (or a new Shelf Registration Statement) if the initial Shelf Registration Statement expires), 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 Company is not eligible to file a registration statement on Form S-3, then the Company shall not be obligated to file a Shelf Registration Statement unless and until requested to do so in writing by the Investor.

(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 Company and the Company 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 Company 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 Company shall not be required to effect a registration (including a resale of Registrable Securities from an effective Shelf Registration Statement) or an underwritten offering pursuant to Section 1.2 of this Annex E: (A) with respect to securities that are not Registrable Securities; or (B) if the Company has notified the Investor and all other Holders that in the good faith judgment of the Board of Directors, it would be materially detrimental to the Company or its securityholders for such registration or underwritten offering to be effected at such time, in which event the Company shall have the right to defer such registration for a period of not more than 45 days after receipt of the request of the Investor or any other Holder; *provided* that such right to delay a registration or underwritten offering shall be exercised by the Company (1) only if the Company has generally exercised (or is concurrently exercising) similar black-out rights against holders of similar securities that have registration rights and (2) not more than three times in any 12-month period and not more than 90 days in the aggregate in any 12-month period.

(d) If during any period when an effective Shelf Registration Statement is not available, the Company proposes to register any of its equity securities, other than a registration pursuant to Section 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 Company 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 Company has received written requests for inclusion therein within ten business days after the date of the Company'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 Company 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 Company 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 Company 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 Company and the other persons distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the underwriter or

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

(f) If either (x) the Company grants “piggyback” registration rights to one or more third parties to include their securities in an underwritten offering under the Shelf Registration Statement pursuant to Section 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 Company, and in either case the managing underwriters advise the Company that in their reasonable opinion the number of securities requested to be included in such offering exceeds the number which can be sold without adversely affecting the marketability of such offering (including an adverse effect on the per security offering price), the Company will include in such offering only such number of securities that in the reasonable opinion of such managing underwriters can be sold without adversely affecting the marketability of the offering (including an adverse effect on the per 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 Company proposes to sell, (B) *then* the Registrable Securities of the Investor and all other Holders who have requested inclusion of Registrable Securities pursuant to Section 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 Company that have been requested to be so included, subject to the terms of this Agreement; *provided, however*, that if the Company has, prior to the Signing Date, entered into an agreement with respect to its securities that is inconsistent with the order of priority contemplated hereby then it shall apply the order of priority in such conflicting agreement to the extent that it would otherwise result in a breach under such agreement.

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

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

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.

(a) 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.

(b) 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.

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

(d) 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.

(e) Give written notice to the Holders:

(A) when any registration statement or Indenture filed pursuant to Section 4.1(k) 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 Company or its legal counsel of any notification with respect to the suspension of the qualification of the applicable Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(E) of the happening of any event that requires the Company to make changes in any effective registration statement or the prospectus related to the registration statement 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 Company contained in any underwriting agreement contemplated by Section 1.4(j) of this Annex E cease to be true and correct.

(f) 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.

(g) 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 Company 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 Company all copies of such prospectus (at the Company's expense) other than permanent file copies then in such Holders' or underwriters' possession. The total number of days that any such suspension may be in effect in any 12-month period shall not exceed 90 days.

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

(i) 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 Company available to participate in "road shows", similar sales events and other marketing activities), (A) make such representations and warranties to the Holders that are selling securityholders and the managing underwriter(s), if any, with respect to the business of the Company and its subsidiaries, and the Shelf Registration Statement, prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, in customary form, substance and scope, and, if true, confirm the same if and when requested, (B) use its reasonable best efforts to furnish the underwriters with opinions of counsel to the Company, addressed to the managing underwriter(s), if any, covering the matters customarily

covered in such opinions requested in underwritten offerings, (C) use its reasonable best efforts to obtain “cold comfort” letters from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any business acquired by the Company for which financial statements and financial data are included in the Shelf Registration Statement) who have certified the financial statements included in such Shelf Registration Statement, addressed to each of the managing underwriter(s), if any, such letters to be in customary form and covering matters of the type customarily covered in “cold comfort” letters, (D) if an underwriting agreement is entered into, the same shall contain indemnification provisions and procedures customary in underwritten offerings (*provided* that the Investor shall not be obligated to provide any indemnity), and (E) deliver such documents and certificates as may be reasonably requested by the Holders of a majority of the Registrable Securities being sold in connection therewith, their counsel and the managing underwriter(s), if any, to evidence the continued validity of the representations and warranties made pursuant to clause (A) above and to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company.

(j) 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 Company, and cause the officers, directors and employees of the Company to supply all information in each case reasonably requested (and of the type customarily provided in connection with due diligence conducted in connection with a registered public offering of securities) by any such representative, managing underwriter(s), attorney or accountant in connection with such Shelf Registration Statement.

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

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

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

**1.5 Suspension of Sales.** Upon receipt of written notice from the Company 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 Company that the use of the prospectus and, if applicable, prospectus supplement or Indenture may be resumed, and, if so directed by the Company, the Investor and/or such Holder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in the Investor and/or such Holder's possession, of the prospectus and, if applicable, prospectus supplement 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.

**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.

**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 Company.

(b) It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 1.4 that Investor and/or the selling Holders and the underwriters, if any, shall furnish to the Company such information regarding themselves, the Registrable Securities held by them and the intended method of disposition of such securities as shall be required to effect the registered offering of their Registrable Securities.

**1.8 Indemnification.**

The Company agrees to indemnify each Holder and, if a Holder is a person other than an individual, such Holder's officers, directors, employees, agents, representatives and Affiliates, and each person, if any, that controls a Holder within the meaning of the Securities Act (each, an "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 Company or authorized by it in writing for use by such Holder (or any amendment or supplement thereto); or any omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided*, that the Company shall not be liable to such 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 Company or authorized by it in writing for use by such Holder (or any amendment or supplement thereto), in reliance upon and in conformity with information regarding such Indemnatee or its plan of distribution or ownership interests which was furnished in writing to the Company 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 Company.

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 Company, 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 Company, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, actions, liabilities, costs or expenses as well as any other relevant equitable considerations. The relative fault of the Company, on the one hand, and of the 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 Company or by the Indemnatee and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; the Company and each Holder agree that it would not be just and equitable if contribution pursuant to this Section 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 Company if the Company was not guilty of such fraudulent misrepresentation.

**1.9 Assignment of Registration Rights.** The rights of the Investor to registration of Registrable Securities pursuant to Section 1.2 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 Company written notice of the name and address of such transferee or assignee and the number and type of Registrable Securities that are being assigned.

**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 Company agrees not to effect (other than pursuant to such registration or pursuant to a Special Registration) any public sale or distribution, or to file any Shelf Registration Statement (other than such registration or a Special Registration) covering any subordinated debentures or equity securities of the Company or any securities convertible into or exchangeable or exercisable for subordinated debentures or equity securities of the Company, during the period not to exceed ten days prior and 60 days

following the effective date of such offering or such longer period up to 90 days as may be requested by the managing underwriter for such underwritten offering. The Company also agrees to cause such of its directors and senior executive officers to execute and deliver customary lock-up agreements in such form and for such time period up to 90 days as may be requested by the managing underwriter.

**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 with respect to any prior registration or Pending Underwritten Offering.

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

**1.13 No Inconsistent Agreements.** The Company shall not, on or after the Signing Date, enter into any agreement with respect to its securities that may impair the rights granted to the Investor and the Holders under this 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 Company has, prior to the Signing Date, entered into any agreement with respect to its securities that is inconsistent with the rights granted to the Investor and the Holders under this 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 Company shall use its reasonable best efforts to amend such agreements to ensure they are consistent with the provisions of this Annex E.

**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 Company and used in connection with such distribution.

## OFFICER'S CERTIFICATE

OF

[COMPANY]

In connection with that certain letter agreement, dated [\_\_\_\_], 2010 (the "Agreement") by and between [COMPANY] (the "Company") 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:

1. I am a duly elected/appointed [\_\_\_\_] of the Company.
2. Each Certified Entity (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.
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 Company 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.

4. The contracts and material agreements entered into by each Certified Entity 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 Certified Entity with respect to Development Services are attached hereto as Exhibit A.
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 each Certified Entity 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 any Certified Entity 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.
6. Each Certified Entity 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.
7. **[Insert if the Company was a Bank Holding Company or a Savings and Loan Holding Company on the Signing Date:** The Company is and has been at all times since the date of the last certification provided to the Investor pursuant to Section 4.1(d)(ii) of the Standard Terms, a **[Insert if the Company is a Bank Holding Company: Bank Holding Company]** **[Insert if the Company is a Savings and Loan Holding Company: Savings and Loan Holding Company].** The Company 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(f)(ii) of the Standard Terms on **[Insert Date]**, controlled (within the meaning of **[Insert for banks and Bank Holding Companies: 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 and Savings and Loan Holding Companies: 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[ ].

**[COMPANY]**

By:

Name:

Title:

EXHIBIT A

NEW CONTRACTS AND MATERIAL AGREEMENTS

EXHIBIT B

BOARD OF DIRECTORS

CERTIFIED ENTITY: [CERTIFIED ENTITY]<sup>1</sup>

NAME	ADDRESS	NARRATIVE <sup>2</sup>

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<sup>1</sup> Include chart for each Certified Entity.

<sup>2</sup> To the extent (x) any of the individuals was not a member of the board of directors of such Certified Entity 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 such Certified Entity 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.

**SCHEDULE A**

**ADDITIONAL TERMS AND CONDITIONS**

**Company Information:**

Name of the Company: University Financial Corp.

Corporate or other organizational form of Company: Corporation

Jurisdiction of Organization of Company: Minnesota

Appropriate Federal Banking Agency of Company: Federal Reserve

Name of Certified Entities: University Financial Corp.

Corporate or other organizational form of each Certified Entity: Corporation

Jurisdiction of Organization of each Certified Entity: Minnesota

Appropriate Federal Banking Agency of each Certified Entity: Federal Reserve

**Notice Information:**

[REDACTED]  
[REDACTED]  
Sunrise Community Banks  
200 University Avenue West  
St. Paul, MN 55103  
[REDACTED]  
[REDACTED]

With Copy to: [REDACTED]  
Lindquist & Vennum P.L.L.P.  
4200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
[REDACTED]  
[REDACTED]

**Terms of the Exchange:**

Aggregate Principal Amount of CDCI Senior Subordinated Securities exchanged in the form of Annex D: \$11,926,000

Denomination Amount of CDCI Senior Subordinated Securities: \$1,000

UST Sequence No. 1267

Number of CDCI Senior Subordinated Securities Exchanged: 11,926

Maturity of CDCI Senior Subordinated Securities: 30 years

Dividend Payment Dates on the CDCI Senior Subordinated Securities: Payable quarterly in arrears on February 15, May 15, August 15 and November 15 of each year.

CPP Senior Subordinated Securities exchanged: 7.7% Senior Subordinated Security Due 2039

Aggregate Principal Amount of CPP Senior Subordinated Securities exchanged: \$11,926,000

Number of CPP Senior Subordinated Securities: 11,926

Date of Letter Agreement pursuant to which CPP Senior Subordinated Securities were purchased: June 19, 2009

Closing:

Location of Closing: Telephonic

Time of Closing: 12:00 p.m. ET

Date of Closing: July 30, 2010

SCHEDULE B

CAPITALIZATION

Capitalization date: June 30, 2010

S-Corp Capital

Common Stock:

Par value: \$1.00

Total Authorized: 100,000

Outstanding: 53,074.14

Reserved for benefit plans and other issuances: None

Remaining authorized but unissued: 46,925.86

Trust Preferred Securities Outstanding: \$19,000,000

Subordinated Debt: \$11,926,000

Amount of Allowable Tax Distribution for 2009: [REDACTED]

Additional Dividends Paid for 2009: [REDACTED]

Total Dividends Paid in 2009: [REDACTED]

Holders of 5% or more of any equity

Primary Address

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

**SCHEDULE C**

**MATERIAL ADVERSE EFFECT**

List any exceptions to the representation and warranty in Section 3.6 of the Exchange Agreement – Standard Terms.

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

**SCHEDULE D**

**LITIGATION**

List any exceptions to the representation and warranty in Section 3.10 of the Exchange Agreement – Standard Terms.

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



**SCHEDULE E**

**COMPLIANCE WITH LAWS**

List any exceptions to the representation and warranty in the second sentence of Section 3.11 of the Exchange Agreement– Standard Terms.

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

List any exceptions to the representation and warranty in the last sentence of Section 3.11 of the Exchange Agreement – Standard Terms.

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

**SCHEDULE F**

**REGULATORY AGREEMENTS**

List any exceptions to the representation and warranty in Section 3.17 of the Exchange Agreement – Standard Terms.

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

**SCHEDULE G**

**AMENDMENT TO CHARTER TO EFFECT SECTION 5.12(b)**

List any exceptions to the representation and warranty in Section 3.23 of the Exchange Agreement – Standard Terms.

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