

**EXHIBIT A**  
(ECIP Mutual Institutions/Subchapter S Corporations  
Subordinated Debt)

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**SECURITIES PURCHASE AGREEMENT**

**STANDARD TERMS**

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## SECURITIES PURCHASE AGREEMENT – STANDARD TERMS

### Recitals:

WHEREAS, the United States Department of the Treasury (the “*Investor*” or the “*Treasury*”) may from time to time agree to purchase subordinated debentures from Eligible Financial Institutions that elect to participate in the Emergency Capital Investment Program (“*ECIP*”);

WHEREAS, an Eligible Financial Institution electing to participate in ECIP and issue securities to the Investor shall enter into a letter agreement (the “*Letter Agreement*”) with the Investor that incorporates this Securities Purchase Agreement – Standard Terms (the Eligible Financial Institution identified in the Letter Agreement, the “*Recipient*”);

WHEREAS, the Recipient intends to issue in a private placement subordinated debentures (each, a “*Subordinated Security*” and together, the “*Subordinated Debt*”), in an amount as set forth on Schedule A to the Letter Agreement and the Investor intends to purchase (the “*Purchase*”) from the Recipient the Subordinated Debt;

WHEREAS, the Recipient (i) provides, among other things, loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers, in Target Communities; and (ii) intends to participate in the ECIP to increase its Qualified Lending in Target Communities that may be disproportionately impacted by the economic effects of the COVID-19 pandemic, as set forth in the Investment and Lending Plan submitted to the Investor as part of the Recipient’s ECIP Application; and

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

Section 1.1 Definitions. Except as otherwise specified herein or as the context may otherwise require, the following terms have the respective meanings set forth below for all purposes of this Agreement.

“*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.

“*Appropriate Federal Banking Agency*” means the “appropriate Federal banking agency” for the Recipient as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)), or any successor provision.

“*Appropriate State Banking Agency*” means, if the Recipient is a state-chartered bank or savings association, the Recipient’s state bank supervisor (as defined in Section 3(r) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(r)).

“*Bank Holding Company*” means a company registered as a bank holding company with the Federal Reserve pursuant to 12 U.S.C. § 1842.

“*Bankruptcy Exceptions*” has the meaning set forth in Section 3.1(c)(i).

“*Baseline*” means the “Baseline Qualified Lending” set forth on the Initial Supplemental Report, subject to adjustment as provided in the applicable Quarterly Supplemental Report.

“*Board of Directors*” has the meaning set forth in Section 2.3(e).

“*Business Combination*” has the meaning set forth in Section 8.7.

“*business day*” has the meaning set forth in Section 1.2.

“*Call Reports*” means Reports of Condition and Income.

“*Capitalization Date*” means the most recent fiscal month-end preceding the Signing Date.

“*CDFI*” means a regulated community development financial institution currently certified by the CDFI Fund pursuant to 12 C.F.R. § 1805.201(a) as having satisfied the eligibility requirements of the Community Development Financial Institutions Program and that satisfies the eligibility requirements for a community development financial institution set forth in 12 C.F.R. § 1805.201(b)(1) – (6).

“*CDFI Fund*” means the Community Development Financial Institution Fund of the United States Department of the Treasury.

“*Charter*” has the meaning set forth in Section 2.3(d).

“*Closing*” has the meaning set forth in Section 2.2(a).

“*Closing Date*” has the meaning set forth in Section 2.2(a).

“*Code*” has the meaning set forth in Section 3.1(n).

“*Community Development Banking Act*” means the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. § 4701 *et seq.*)

“*Contagion Event*” means the outbreak or continued presence of contagious disease, epidemic or pandemic (including SARS-CoV-2 or COVID-19, or any evolutions or mutations of thereof, or any other viruses (including influenza)), and the governmental responses thereto.

“*Contagion Event Measures*” means any quarantine, “shelter in place”, “stay at home”, workforce reduction, social distancing, shut down, closure, sequester or other directives, guidelines or recommendations promulgated by any Governmental Entity, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to a Contagion Event.

“*Controlled Group*” has the meaning set forth in [Section 3.1\(n\)](#).

“*Defaulted Interest*” has the meaning set forth in [Section 6.4\(c\)](#).

“*Deferred Interest*” has the meaning set forth in [Section 6.14\(b\)](#).

“*Disclosure Schedule*” means the schedule to the Letter Agreement delivered to the Investor on or prior to the Signing Date, 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 3.1](#).

“*Disclosure Update*” has the meaning set forth in [Section 2.3\(j\)](#).

“*ECIP Application*” has the meaning set forth in the definition of Eligible Financial Institution.

“*ECIP Interim Final Rule*” means the interim final rule promulgated by the Investor setting forth restrictions on executive compensation, share buybacks and dividends applicable to participants in ECIP, originally codified at 31 C.F.R. Part 35.

“*ECIP Period*” has the meaning set forth in the ECIP Interim Final Rule.

“*Eligible Financial Institution*” means a financial institution that is, as of the date of submitting an application to participate in ECIP (the “*ECIP Application*”), and as of the Signing Date (1)(i) a CDFI or (ii) a MDI; and (2)(i) an insured depository institution not controlled by a Bank Holding Company or Savings and Loan Holding Company that is also an Eligible Financial Institution, (ii) a Bank Holding Company; (iii) a Savings and Loan Holding Company, or (iv) any credit union the member accounts of which are insured by the National Credit Union Share Insurance Fund.

“*Eligible Nonprofit*” has the meaning set forth in [Section 6.6\(f\)](#).

“*Employee Benefit Plan*” has the meaning set forth in [Section 3.1\(n\)](#).

“*Equity*” means: (i) in the case of mutual institutions, mutual capital certificates, other capital instruments authorized by law, non-withdrawable accounts and other mutual interests issued by the Recipient, including rights of Members arising from their membership but excluding the rights of Members in respect of deposit liabilities of the Recipient, or (ii) in the case of S Corps, the common or capital stock of the Recipient.

“*Equityholders*” has the meaning set forth in Section 3.1(e)(i).

“*ERISA*” has the meaning set forth in Section 3.1(n).

“*Event of Default*” has the meaning set forth in Section 5.1.

“*Exchange Act*” means the Securities Exchange Act of 1934 (15 U.S.C. § 78a *et seq.*).

“*Executive Officer*” means any of the Recipient’s “executive officers” as defined in 12 C.F.R. § 215.2(e)(1) (regardless of whether or not such regulation is applicable to the Recipient).

“*Existing Parity Subordinated Debt*” means subordinated debt of the Recipient outstanding on the Signing Date that ranks equally with the Subordinated Debt and is identified on Schedule A.

“*Federal Reserve*” means the Board of Governors of the Federal Reserve System.

“*GAAP*” has the meaning set forth in the definition of Material Adverse Effect.

“*Governmental Entities*” or “*Governmental Entity*” has the meaning set forth in Section 2.3(a).

“*Holder*” or “*Holder*s” means a holder of the Subordinated Debt.

“*IDI Subsidiary*” means any Recipient Subsidiary that is an insured depository institution.

“*Indebtedness*” ~~shall mean~~means, whether or not recourse is to all or a portion of the assets of the Recipient and whether or not contingent, (i) the claims of the Recipient’s secured and general creditors; (ii) every obligation of the Recipient for money borrowed; (iii) every obligation of the Recipient 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 Recipient, contingent or otherwise, with respect to letters of credit, bankers’ acceptances, security purchase facilities or similar facilities issued for the account of the Recipient; (v) every obligation of the Recipient issued or assumed as the deferred purchase price of property or services; (vi) every capital lease obligation of the Recipient; (vii) all indebtedness of the Recipient for claims in respect of securities contracts, 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 Recipient 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 Recipient.

“*Indemnitee*” has the meaning set forth in Section 6.9(c).

“*Indenture*” has the meaning set forth in Section 6.1.

“*Indenture Act*” has the meaning set forth in Section 6.1.

“*Initial Supplemental Report*” has the meaning set forth in Section 2.3(l).

“*Insured CDFP*” means an insured community development financial institution, as defined in 12 U.S.C. § 4702(13).

“*Interest Deferral Period*” means the period during which an installment of interest is deferred in accordance with Section 6.14(a).

“*Interest Period*” means the period from and including ~~any~~ Interest Payment Date to, but excluding, the next Interest Payment Date; *provided, however*, the initial Interest Period shall be the period from and including the Second Anniversary to the next succeeding Interest Payment Date. Interest Payment Dates and Interest Periods will not be adjusted for business days.

“*Investment and Lending Plan*” means an investment and lending plan of the Recipient that meets the criteria set forth in Section 104A(d)(4) of the Community Development Banking Act.

“*knowledge of the Recipient*” or “*Recipient’s knowledge*” means the actual knowledge after reasonable and due inquiry of the “*officers*” (as defined in Rule 3b-2 under the Exchange Act) of the Recipient.

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

“*Majority Holders*” has the meaning set forth in Section 6.11(b)(vi).

“*Material Adverse Effect*” means a material adverse effect on (i) the business, results of operation or financial condition of the Recipient and its consolidated subsidiaries taken as a whole; *provided, however*, that Material Adverse Effect shall not be deemed to include the effects of (A) changes after the date of the Letter Agreement (the “*Signing Date*”) in general business, economic or market conditions (including changes generally in prevailing interest rates, credit availability and liquidity, currency exchange rates and price levels or trading volumes in the United States or foreign securities or credit markets), or any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism, in each case generally affecting the industries in which the Recipient and its subsidiaries operate (including any such changes resulting from a Contagion Event), (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 (including any law in respect of Taxes, and laws newly enacted for, relating to or arising out of efforts to implement Contagion Event Measures and address the spread of any Contagion Event) or (D), if the Recipient is an S Corp, changes or proposed changes after the Signing Date in the taxation of (I) the Recipient as a validly electing S corporation within the meaning of Sections 1361 and 1362 of the Code, or (II) any Recipient 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, if applicable, (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 Recipient and its consolidated subsidiaries taken as a whole relative to comparable U.S. banking or financial services organizations); or (ii) the ability of the Recipient to consummate the Purchase and other transactions contemplated by this Agreement and perform its obligations hereunder or thereunder on a timely basis.

“MDP” means a minority depository institution, (i) as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. § 1463 *et seq.*); or (ii) considered to be a minority depository institution by the Appropriate Federal Banking Agency or the National Credit Union Administration; or (iii) as listed in the Federal Deposit Insurance Corporation’s Minority Depository Institutions List published for the third quarter of 2020.

“Members” means, in the case of mutual institutions, persons having ownership rights in the Recipient by virtue of their ownership of a deposit at the Recipient.

“Offer Price” has the meaning set forth in Section 6.6(f)(ii).

“Offered Securities” has the meaning set forth in Section 6.6(f)(ii).

“officers” has the meaning set forth in the definition of knowledge of the Recipient or Recipient’s knowledge.

“Original Issue Date” means the date on which the Subordinated Debt is issued by the Recipient to the Investor.

“Part 16” has the meaning set forth in Section 3.1(k).

“Plan” has the meaning set forth in Section 3.1(n).

“Previously Disclosed” means information set forth in 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 inclusion of information in a Disclosure Update, shall not be deemed to correct an existing breach or misrepresentation and, therefore, shall not obligate the Investor to consummate the Purchase or limit or affect any rights of or remedies available to the Investor.

“*Proprietary Rights*” has the meaning set forth in [Section 3.1\(u\)](#).

“*Purchase Price*” has the meaning set forth in [Section 2.1](#).

“*QSub*” has the meaning set forth in the definition of Material Adverse Effect.

“*Qualified Lending*” has the meaning set forth in the definition of Qualified Lending in the applicable Supplemental Report.

“*Quarterly Supplemental Report*” has the meaning set forth in [Section 4.1\(h\)\(i\)](#).

“*Recipient Financial Statements*” has the meaning set forth in [Section 2.3\(k\)](#).

“*Recipient Reports*” has the meaning set forth in [Section 3.1\(i\)\(i\)](#).

“*Recipient Subsidiary*” or “*Recipient Subsidiaries*” has the meaning set forth in [Section 3.1\(e\)\(ii\)](#).

“*Redemption Date*” has the meaning set forth in [Section 6.10\(a\)](#).

“*Regulatory Agreement*” has the meaning set forth in [Section 3.1\(s\)](#).

“*Regulatory Trigger Event*” means, for so long as the Subordinated Debt is outstanding the good faith determination by the Recipient that as a result of (i) any amendment to, or change in, the laws, rules or regulations of the United States (including, for the avoidance of doubt, any agency or instrumentality of the United States, including the Appropriate Federal Banking Agency) or any political subdivision of or in the United States that is enacted or becomes effective after the initial issuance of the Subordinated Debt, or (ii) any official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws, rules or regulations or policies with respect thereto that is announced after the initial issuance of Subordinated Debt, there is more than an insubstantial risk that the Recipient will not be entitled to treat the Subordinated Debt then outstanding as “Tier 2 capital” (or its equivalent) for purposes of the capital adequacy rules or regulations of the Appropriate Federal Banking Agency as then in effect and applicable, to at least the same extent as on the Signing Date.

“*Related Party*” has the meaning set forth in [Section 3.1\(x\)](#).

“*Reporting Issuer*” has the meaning set forth in [Section 6.9\(a\)](#).

“*Response Notice*” has the meaning set forth in [Section 6.6\(f\)\(ii\)](#).

“*Review Period*” has the meaning set forth in [Section 6.6\(f\)\(ii\)](#).

“*ROFR Notice*” has the meaning set forth in [Section 6.6\(f\)\(ii\)](#).

“*S Corp*” has the meaning set forth in [Section 3.1\(d\)\(v\)](#).

“*Savings and Loan Holding Company*” means a company registered as a savings and loan holding company with the Federal Reserve pursuant to 12 U.S.C. § 1467(a).

“*Schedules*” has the meaning set forth in the Recitals.

“*SEC*” has the meaning set forth in Section 3.1(k).

“*Securities Act*” has the meaning set forth in Section 3.1(a).

“*Senior Executive Officer*” has the meaning set forth in the ECIP Interim Final Rule.

“*Senior Indebtedness*” means, with respect to the Subordinated Debt, (i) all Indebtedness, including all principal thereof, premium, if any, thereon and interest, if any, thereon (including interest accruing on or after the appointment of a receiver or conservator relating to the Recipient, or on or after the filing of any petition in bankruptcy or for reorganization relating to the Recipient, whether or not such claim for post-appointment or post-petition interest is allowed), whether outstanding on the Signing Date, or thereafter created, assumed or incurred, and any deferrals, renewals or extensions of such Indebtedness, and (ii) if the Recipient is an insured depository institution, all deposit liabilities of the Recipient; *provided, however* that Senior Indebtedness shall not include (A) Existing Parity Subordinated Debt, (B) any Indebtedness issued to any statutory trust created by the Recipient for the purpose of issuing trust preferred securities in connection with such issuance of Indebtedness, which shall in all cases be junior to the Subordinated Debt, (C) any guarantees of the Recipient in respect of the equity securities or other securities of any financing entity referred to in clause (B) above, or (D) any other subordinated debt of the Recipient that by its terms ranks *pari passu* with or junior to the Subordinated Debt issued hereunder.

“*Significant Subsidiary*” has the meaning set forth in Section 3.1(a).

“*Signing Date*” has the meaning set forth in the definition of Material Adverse Effect.

“*Subordinated Director*” has the meaning set forth in Section 6.11(b).

“*Subordinated Observer*” has the meaning set forth in Section 6.11(a).

“*Subordinated Securities Register*” has the meaning set forth in Section 6.6(a).

“*subsidiary*” has the meaning set forth in 12 U.S.C. § 1813(w)(4), except that a Recipient that is a corporation shall not be considered to be a subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls less than ~~25~~twenty-five percent (25%) of any class of the voting shares of such corporation, and does not otherwise control in any manner the election of a majority of the directors of the corporation.

“*Supplemental Reports*” means, collectively, the Initial Supplemental Report and the Quarterly Supplemental Reports.

“*Target Communities*” means the categories of communities set forth under the “Categories of Target Communities” heading in the “Rate Reduction Incentive Guidelines” published by the Treasury.

“*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.

“*Transaction Documents*” means this Agreement, the Letter Agreement, the debentures representing the Subordinated Debt, and all other instruments, documents and agreements executed by or on behalf of the Recipient and delivered concurrently herewith or at any time hereafter to or for the benefit of any Holders in connection with the transactions contemplated by this Agreement, all as amended, supplemented or modified from time to time.

“*Transfer*” has the meaning set forth in [Section 6.6\(f\)](#).

Section 1.2 Interpretation. When a reference is made in this Agreement to “Recitals”, “Articles”, “Sections”, or “Annexes” such reference shall be to a Recital, Article or Section of, or Annex to, this Securities Purchase Agreement – Standard Terms, a reference to “Schedules” shall be to a Schedule to this Securities Purchase Agreement and a reference to “Disclosure Schedules” shall be to the Disclosure Schedule to the Letter Agreement, in each case, unless otherwise indicated. The terms defined in the singular have a comparable meaning when used in the plural, and vice versa. References to “herein”, “hereof”, “hereunder” and the like refer to this Agreement as a whole and not to any particular section or provision, unless the context requires otherwise. The table of contents and headings contained in this Agreement are for reference purposes only and are not part of this Agreement. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed followed by the words “without limitation”. No rule of construction against the draftsman shall be applied in connection with the interpretation or enforcement of this Agreement, as this Agreement is entered into between sophisticated parties having access to 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, in the case of interim final rules, include such rules as may be finalized, revised or succeeded by a final rule) 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 1.3 Disclosure Restrictions. No representation, warranty, covenant or other agreement or provision contained in this Agreement shall be deemed to contemplate or require the disclosure of “confidential supervisory information” or other similar information, the disclosure of which is restricted pursuant to laws and regulations to which the Recipient is subject.



## ARTICLE II

### PURCHASE; CLOSING

Section 2.1 Purchase. On the terms and subject to the conditions set forth in this Agreement, the Recipient agrees to sell, and the Investor agrees to purchase, at the Closing (as hereinafter defined), the Subordinated Debt in the form attached hereto as Annex A, appropriately completed in conformity herewith and duly and validly issued, authorized and executed by the Recipient, in the aggregate principal amount set forth on Schedule A for the purchase price set forth on Schedule A (the “*Purchase Price*”). The Subordinated Debt, including the principal and interest, shall be unsecured and subordinate and junior in right of payment to Senior Indebtedness to the extent set forth in Article VII hereof.

Section 2.2 Closing. (a) On the terms and subject to the conditions set forth in this Agreement, the closing of the Purchase (the “*Closing*”) will take place by electronic exchange of documents at 8:00 am, New York City time, on the date set forth in Schedule A or as soon as practicable thereafter, or at such other time and date as shall be agreed between the Recipient 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 Closing in Section 2.3, at the Closing the Recipient will deliver, by registered mail or by courier or express delivery service (with confirmation of delivery, and tracking information, where possible) to the address provided in Schedule A, the Subordinated Debt as evidenced by one or more debentures dated as of the Closing Date and bearing appropriate legends as hereinafter provided, in exchange for payment in full of the Purchase Price by wire transfer of immediately available United States funds to a bank account designated by the Recipient on Schedule A.

Section 2.3 Closing Conditions. The obligation of the Investor to consummate the Purchase is subject to the fulfillment (or waiver by the Investor) at or prior to the Closing of each of the following conditions:

(a) (i) any approvals or authorizations of all United States and other governmental, regulatory or judicial authorities (each, a “*Governmental Entity*”, and collectively, “*Governmental Entities*”) required for the consummation of the Purchase shall have been obtained or made in form and substance reasonably satisfactory to each party and shall be in full force and effect and all waiting periods required by United States and other applicable law, if any, shall have expired and (ii) no provision of any applicable United States or other law and no judgment, injunction, order or decree of any Governmental Entity shall prohibit the purchase and sale of the Subordinated Debt as contemplated by this Agreement;

(b) (i) the representations and warranties of the Recipient set forth in Section 3.1 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 (ii) the Recipient shall have performed in all respects all obligations required to be performed by it under this Agreement at or prior to the Closing;

(c) the Recipient shall have delivered to the Investor a certificate signed on behalf of the Recipient by a Senior Executive Officer, in substantially the form attached hereto as Annex B;

(d) if applicable, the Recipient 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, organization certificate or similar organizational document (“*Charter*”) and its bylaws as in effect on the Closing Date;

(e) the Recipient shall have delivered to the Investor true, complete and correct certified copies of the Charter and bylaws of the Recipient and the resolutions of the Board of Directors of the Recipient (the “*Board of Directors*”) authorizing the execution and delivery of this Agreement and the performance of its obligations hereunder, including the issuance of the Subordinated Debt;

(f) the Recipient shall have delivered to the Investor a good standing or equivalent certificate from the Secretary of State of its jurisdiction of organization or other applicable Governmental Entity, dated as of a recent date, with respect to the existence, organization and, if applicable, good standing of the Recipient;

(g) the Recipient shall have delivered to the Investor a certificate addressing the incumbency of each officer of the Recipient who signs the Letter Agreement, the certificate referred to in Section 2.3(c) and the debentures representing the Subordinated Debt (*provided* that if any such officer ceases to serve in such officer’s position following the Signing Date, then the Recipient shall deliver a duly updated incumbency certificate reflecting the incumbency of the respective officers as of the Closing);

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

(i) the Recipient shall have delivered to the Investor, or the designee identified in writing (which may be via e-mail) by the Investor prior to the Closing Date, physical certificated debentures in proper form evidencing the Subordinated Debt to the Investor in the form attached hereto as Annex A;

(j) the Recipient shall have delivered to the Investor a copy of the Disclosure Schedule on or prior to 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 Recipient 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 be deemed to obligate the Investor to consummate the Purchase nor limit or affect any rights of or remedies available to the Investor;

(k) the Recipient shall have delivered to the Investor on or prior to the Signing Date each of the consolidated financial statements of the Recipient and its consolidated subsidiaries for each of the last three (3) completed fiscal years of the Recipient (which shall be audited to the

extent audited financial statements are available prior to the Signing Date) and each completed quarterly period since the last completed fiscal year (collectively, the “*Recipient Financial Statements*”); ~~and~~

(l) at least ten (10) business days prior to the Closing Date, the Recipient shall have delivered to the Investor (i) a report, in a form substantially similar to that posted on Investor’s ECIP website, setting forth its calculation of Qualified Lending for the annual period ending on September 30, 2020 (the “*Initial Supplemental Report*”) and (ii) a certification signed by the Recipient’s principal executive officer or principal financial officer (each as defined in the ECIP Interim Final Rule), certifying to the Investor that the information provided in the Initial Supplemental Report is accurate; and

(m) at least ten (10) business days prior to the Closing Date, the Recipient shall have delivered to the Investor and the Appropriate Federal Banking Agency, an Investment and Lending Plan describing to the satisfaction of the Investor: (i) how the Recipient’s business strategy and operating goals will address the community development needs in communities that may be disproportionately impacted by the economic effects of COVID-19, which includes the needs of small businesses, consumers, nonprofit organizations and other projects in Target Communities (ii) a plan to provide community outreach and communication; and (iii) how the Recipient plans to expand or maintain significant lending or investment activity in low- or moderate-income and minority communities, especially those that may be disproportionately impacted by COVID-19, to historically disadvantaged borrowers, and to minorities that have significant unmet capital or financial services needs.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of the Recipient. Except as Previously Disclosed, the Recipient represents and warrants to the Investor that as of the Signing Date and as of the Closing Date (or such other date specified herein):

(a) Organization, Authority and Significant Subsidiaries. The Recipient has been duly organized and is validly existing and, if applicable, 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 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 Material Adverse Effect, has been duly qualified as a foreign corporation for the transaction of business and, if applicable, is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification; each subsidiary of the Recipient that would be considered a “significant subsidiary” within the meaning of Rule 1-02(w) of Regulation S-X (a “*Significant Subsidiary*”) under the Securities Act of 1933 (the “*Securities Act*”), has been duly organized and is validly existing and, if applicable, in good standing under the laws of its jurisdiction of organization. The Charter and bylaws of the Recipient, 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.

(i) If the Recipient is a mutual institution: The authorized and outstanding Equity instruments of the Recipient and any authorized or outstanding securities convertible into, or exercisable or exchangeable for, Equity, as of the Capitalization Date are set forth on Schedule B. The outstanding Equity in the Recipient has 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). On the Signing Date, the Recipient does not have outstanding any securities or other obligations providing the holder the right to acquire its Equity that are not reserved for issuance as specified on Schedule B, and the Recipient has not made any other commitment to authorize, issue or sell any Equity that is not specified on Schedule B. Since the Capitalization Date, the Recipient has not issued any Equity, other than (i) Equity issued upon the exercise of options or delivered under other equity-based awards or other convertible securities or warrants which were issued and outstanding on the Capitalization Date and disclosed on Schedule B and (ii) as disclosed on Schedule B. Each holder of five percent (5%) or more of the Equity of the Recipient and such holder's primary address are set forth on Schedule B.

(ii) If the Recipient is an S Corp: The Recipient maintains only one class of equity security. The authorized capital stock of the Recipient, and the outstanding capital stock of the Recipient (including securities convertible into, or exercisable or exchangeable for, capital stock of the Recipient) as of the Capitalization Date is set forth on Schedule B. The outstanding shares of capital stock of the Recipient 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). On the Signing Date, the Recipient does not have outstanding any securities or other obligations providing the holder the right to acquire its Equity that is not reserved for issuance as specified on Schedule B, and the Recipient has not made any other commitment to authorize, issue or sell any Equity. Since the Capitalization Date, the Recipient has not issued any Equity, other than 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. Each holder of five percent (5%) or more of the Equity in the Recipient and such holder's primary address are set forth on Schedule B.

(c) Subordinated Debt; Enforceability.

(i) This Agreement has been duly authorized, executed and delivered and is, and the Subordinated Debt, when ~~issued~~, executed and delivered, will be, legal, valid and binding obligations of the Recipient, each enforceable in accordance with ~~their~~ its respective terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, receivership, conservatorship, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity ("*Bankruptcy Exceptions*"). The aggregate principal amount of the Subordinated Debt does not exceed the maximum specified in the Letter Agreement.

(ii) The Subordinated Debt does not constitute a separate class of equity securities, is subordinate and junior in right of payment to the Senior Indebtedness to the extent set forth in Article VII hereof, and are senior to the Recipient's Equity (and, if the Recipient is an S Corp, any other class of equity in the event the Recipient 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 Recipient.

(d) Entity Status; Eligible Financial Institution Status; ECIP Application Matters.

(i) The Recipient satisfies the definition of "Eligible Financial Institution" and is in compliance with Section 104A of the Community Development Banking Act, and all rules and regulations issued by the Investor thereunder, including the ECIP Interim Final Rule.

(ii) The (A) information provided by the Recipient in the ECIP Application is true, correct and complete in all material respects and (B) projections included in the Investment and Lending Plan submitted as part of the ECIP Application were reasonable on the date the ECIP Application was submitted to the Investor, ~~and continue to be reasonable as of the date hereof.~~

~~(iii) The Recipient has not made any material changes, nor are any material changes anticipated to be made, to the Investment and Lending Plan the Recipient submitted in connection with its ECIP Application.~~

~~(iv)(iii)~~ Neither the Recipient nor any Recipient Subsidiary is a "covered entity" as defined in Section 104A(h)(2)(ii) of the Community Development Banking Act.

~~(v)(iv)~~ The Recipient is not ineligible to participate in ECIP under Section 104A(i), or any other provision, of the Community Development Banking Act.

~~(vi)(v)~~ If the Recipient is an S Corp, the Recipient (A) is a validly electing S corporation under Sections 1361 and 1362 of the Code (an "*S Corp*"), and each Recipient Subsidiary is a "qualified subchapter S subsidiary" within the meaning of Section 1361(b)(3)(B) of the Code, (B) has not and the Recipient Subsidiaries and the stockholders of the Recipient 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) distributed to stockholders in order

to fund their individual tax payments on allocable taxable income and (ii) required by any agreement among stockholders.

(e) Authorization, No Conflict.

(i) The Recipient 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 Subordinated Debt) and, when issued, under the Subordinated Debt. The execution, delivery and performance by the Recipient of this Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of the Recipient and the holders of its Equity (including non-Member holders in the case of mutual institutions) (collectively, “*Equityholders*”), and no further approval or authorization is required on the part of the Recipient. The resolutions of the Board of Directors authorizing the execution and delivery of this Agreement and the performance of the Recipient’s obligations hereunder, including the issuance of the Subordinated Debt, a copy of which [havehas](#) 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.

(ii) The execution, delivery and performance by the Recipient of this Agreement and the consummation of the transactions contemplated hereby and compliance by the Recipient 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 Recipient or any subsidiary of the Recipient (each subsidiary, a “*Recipient Subsidiary*” and, collectively, the “*Recipient Subsidiaries*”) under any of the terms, conditions or provisions of (x) its organizational documents or (y) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Recipient or any Recipient Subsidiary is a party or by which it or any Recipient Subsidiary may be bound, or to which the Recipient or any Recipient Subsidiary or any of the properties or assets of the Recipient or any Recipient 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 Recipient or any Recipient Subsidiary or any of their respective properties or assets except, in the case of clauses (A)(y) and (B), for those occurrences that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect.

(iii) Other than such filings and approvals as are required to be made or obtained under any state “blue sky” laws and such as have been made or obtained, no notice to, filing with, exemption or review by, or authorization, consent or approval of, any Governmental Entity is required to be made or obtained by the Recipient in connection with the consummation by the Recipient of the Purchase except for any such notices, filings, exemptions, reviews, authorizations, consents and approvals the failure of which to

make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(f) Charter; Bylaws; Agreements Among Equityholders; Anti-Takeover Provisions and Rights Plan. 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 Recipient's Charter and bylaws, and any other provisions of any applicable "moratorium", "control share", "fair price", "interested stockholder" or other anti-takeover laws and regulations of any jurisdiction.

(g) No Material Adverse Effect. Since the last day of the last completed fiscal period for which financial statements are included in the Recipient Financial Statements, 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 Material Adverse Effect, except as disclosed on Schedule C.

(h) Recipient Financial Statements. The Recipient Financial Statements present fairly in all material respects the consolidated financial position of the Recipient 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 Recipient and the Recipient Subsidiaries.

(i) Reports.

(i) Since December 31, 2019, the Recipient and each Recipient Subsidiary has filed all reports, registrations, documents, filings, statements and submissions, together with any amendments thereto, that it was required to file with any Governmental Entity (the foregoing, collectively, the "*Recipient Reports*") and has paid all fees and assessments due and payable in connection therewith, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. As of their respective dates of filing, the Recipient Reports complied in all material respects with all statutes and applicable rules and regulations of the applicable Governmental Entities.

(ii) The records, systems, controls, data and information of the Recipient and the Recipient Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of the Recipient or the Recipient Subsidiaries or their accountants (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a material adverse effect on the system of internal accounting controls described below in this Section 3.1(i)(ii). The Recipient (A) has implemented and maintains adequate disclosure controls and procedures to ensure that material information relating to the Recipient, including the consolidated Recipient Subsidiaries, is made known to the chief executive officer and the chief financial officer of

the Recipient by others within those entities, and (B) has disclosed, based on its most recent evaluation prior to the Signing Date, to the Recipient’s outside auditors and the audit committee of the Board of Directors (x) any significant deficiencies and material weaknesses in the design or operation of internal controls that are reasonably likely to adversely affect the Recipient’s ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in the Recipient’s internal controls over financial reporting.

(j) No Undisclosed Liabilities. Neither the Recipient nor any of the Recipient Subsidiaries has any liabilities or obligations of any nature (absolute, accrued, contingent or otherwise) which are not properly reflected or reserved against in the Recipient 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 Material Adverse Effect.

(k) Offering of Securities. Neither the Recipient nor any person acting on its behalf has taken any action (including any offering of any securities of the Recipient under circumstances which would require the integration of such offering with the offering of any of the Subordinated Debt under the Securities Act, and the rules and regulations of the Securities and Exchange Commission (the “SEC”) promulgated thereunder), which might subject the offering, issuance or sale of any of the Subordinated Debt to Investor pursuant to this Agreement to the registration requirements of the Securities Act, or, if the Recipient is a national bank or federal savings association, the registration requirements of Part 16—Securities Offering Disclosure Rules of the Office of the Comptroller of the Currency (12 C.F.R. Part 16) (“Part 16”). The offering of the Subordinated Debt is exempt from registration under the Securities Act pursuant to Section 3(a)(2), 3(a)(5) or 4(a)(2) of the Securities Act.

(l) 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 Material Adverse Effect, there is no (A) pending or, to the knowledge of the Recipient, threatened, claim, action, suit, investigation or proceeding, against the Recipient or any Recipient Subsidiary or to which any of their assets are subject nor is the Recipient or any Recipient 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 Recipient or any Recipient Subsidiaries. There is no claim, action, suit, investigation or proceeding pending or, to the Recipient’s knowledge, threatened against any institution-affiliated party (as defined in 12 U.S.C. § 1813(u)) of the Recipient or any of the IDI Subsidiaries that, if determined or resolved in a manner adverse to such institution-affiliated party, could result in such institution-affiliated party being prohibited from participation in the conduct of the affairs of any financial institution or holding company of any financial institution and, to the Recipient’s knowledge, there are no facts or circumstances that could reasonably be expected to provide a basis for any such claim, action, suit, investigation or proceeding.

(m) Compliance with Laws. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Recipient and the Recipient



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 Recipient or such Recipient Subsidiary. The Recipient has all permits, licenses, franchises, authorizations, orders and approvals of, and has made all filings, applications and registrations with, Governmental Entities and third parties that are required in order to permit the Recipient to pay interest on the Subordinated Debt on the Interest Payment Dates set forth in the form of Subordinated Security, except such as may be required to be obtained or made after the Closing Date under federal or state laws or regulations relating to capital adequacy, including, as applicable, pursuant to 12 C.F.R. Part 3, 12 C.F.R. Part 6, 12 C.F.R. Part 208, 12 C.F.R. [Part](#)§ 217 and 12 C.F.R. Part 324. Except as set forth on [Schedule E](#), the Recipient and the Recipient Subsidiaries have complied in all respects and are not in default or violation of, and none of them is, to the knowledge of the Recipient, under investigation with respect to or, to the knowledge of the Recipient, 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 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 Recipient or any Recipient Subsidiary that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(n) [Employee Benefit Matters](#). Except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect: (i) each “employee benefit plan” (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”)) providing benefits to any current or former employee, officer or director of the Recipient 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 (the “*Code*”)) that is sponsored, maintained or contributed to by the Recipient or any member of its Controlled Group and for which the Recipient 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 Recipient or any member of its Controlled Group previously maintained or contributed to in the six [\(6\)](#) 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 Recipient nor any member of its Controlled Group has incurred in the six [\(6\)](#) 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) with respect to 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.

(o) Taxes. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) the Recipient and the Recipient 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 Recipient or any of the Recipient Subsidiaries, nor does the Recipient have any knowledge of any Tax deficiencies.

(p) Properties and Leases. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Recipient and the Recipient 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 Material Adverse Effect, the Recipient and the Recipient Subsidiaries hold all leased real or personal property under valid and enforceable leases with no exceptions that would interfere with the use made or to be made thereof by them.

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

(i) there is no legal, administrative, or other proceeding, claim or action of any nature seeking to impose, or that would reasonably be expected to result in the imposition of, on the Recipient or any Recipient 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 Recipient’s knowledge, threatened against the Recipient or any Recipient Subsidiary;

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

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

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

(s) Agreements with Regulatory Agencies. For the avoidance of doubt, this Section 3.1(s) shall not be deemed to contemplate or require any representation or disclosure including on Schedule F that would involve "confidential supervisory information" or other similar information the disclosure of which is restricted pursuant to laws and regulations to which the Recipient is subject. Except as set forth on Schedule F, neither the Recipient nor any Recipient Subsidiary is subject to any material cease-and-desist or other similar order or enforcement or supervisory 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, 2017, 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 Recipient or any Recipient Subsidiary been advised since December 31, 2017, by any such Governmental Entity that it is considering issuing, initiating, ordering, or requesting any such Regulatory Agreement. The Recipient and each Recipient Subsidiary is in compliance in all material respects with each Regulatory Agreement to which it is party or subject, and neither the Recipient nor any Recipient Subsidiary has received any notice from any Governmental Entity indicating that either the Recipient or any Recipient Subsidiary is not in compliance in all material respects with any such Regulatory Agreement.

(t) Insurance. The Recipient and the Recipient Subsidiaries are insured with reputable insurers against such risks and in such amounts as the management of the Recipient reasonably has determined to be prudent and consistent with industry practice. The Recipient and the Recipient 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 Material Adverse Effect.

(u) Intellectual Property. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) the Recipient and each Recipient

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 Recipient nor any of the Recipient Subsidiaries is materially infringing, diluting, misappropriating or violating, nor has the Recipient or any of the Recipient Subsidiaries received any written (or, to the knowledge of the Recipient, 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 Material Adverse Effect, to the Recipient’s knowledge, no other person is infringing, diluting, misappropriating or violating, nor has the Recipient or any or the Recipient Subsidiaries sent any written communications since December 31, 2019, alleging that any person has infringed, diluted, misappropriated or violated, any of the Proprietary Rights owned by the Recipient and the Recipient Subsidiaries.

(v) 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 Recipient or any Recipient Subsidiary.

(w) Disclosure Schedule. The Recipient 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.

(x) Related Party Transactions. Neither the Recipient nor any Recipient Subsidiary has made any extension of credit to any director or Executive Officer of the Recipient or any Recipient Subsidiary, any holder of five percent (5%) or more of the Recipient’s issued and outstanding capital stock, or any of their respective spouses or children or any Affiliate of any of the foregoing (each, a “*Related Party*”), other than in compliance with 12 C.F.R. Part 215 (Regulation O). Except as disclosed on Schedule G, to the Recipient’s knowledge, no Related Party has any (i) material commercial, industrial, banking, consulting, legal, accounting, charitable or familial relationship with any vendor or material customer of the Recipient or any Recipient Subsidiary that is not on arms-length terms, or (ii) direct or indirect ownership interest in any person or entity with which the Recipient or any Recipient Subsidiary has a material business relationship that is not on arms-length terms (not including publicly-traded entities in which such person owns less than two percent (2%) of the outstanding capital stock).

## ARTICLE IV

### COVENANTS

Section 4.1 Affirmative Covenants. The Recipient 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 Purchase as promptly as practicable and otherwise to enable consummation of the transactions contemplated hereby and shall use commercially reasonable efforts to cooperate with the other party to that end.

(b) Certain Notifications Until Closing. From the Signing Date until the Closing, the Recipient 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 Recipient contained in this Agreement to be untrue or inaccurate in any material respect or to cause any covenant or agreement of the Recipient 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 Recipient is aware and which, individually or in the aggregate, has had or would reasonably be expected to have a 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 and Information.

(i) The provisions of this Section 4.1(c)(i) shall apply, (x) with respect to the Investor, from the Signing Date until the date when the Investor or one of its Affiliates no longer owns, directly or indirectly, any Subordinated Debt and (y) with respect to the Inspector General of the Treasury and the Comptroller General of the United States, from and after the Signing Date but, after the date when the Investor or one of its Affiliates no longer owns, directly or indirectly, any Subordinated Debt, only with respect to the period in which the Investor or one of its Affiliates directly or indirectly owned any Subordinated Debt. Subject to the foregoing, and limited solely to information determined by the Investor to be relevant to the Subordinated Debt, the Recipient will permit, and shall cause each of the Recipient Subsidiaries to permit, the Investor, the Inspector General of the Treasury and the Comptroller General of the United States and their respective agents, consultants, contractors and advisors to (x) examine any books, papers, records, Tax returns (including all schedules and attachments thereto), data and other information, (y) make copies thereof and (z) discuss the affairs, finances and accounts of the Recipient and the Recipient Subsidiaries with the personnel (including the principal officers) of the Recipient and the Recipient Subsidiaries, all upon reasonable notice, *provided*, that:

(A) any examinations and discussions pursuant to this Section 4.1(c)(i) shall be conducted during normal business hours and in such manner as not to

interfere unreasonably with the conduct of the business of the Recipient and the Recipient Subsidiaries;

(B) neither the Recipient nor any Recipient Subsidiary shall be required by this Section 4.1(c)(i) to disclose any information to the extent (x) prohibited by applicable law or regulation (including laws and regulations relating to the use or disclosure of confidential supervisory information), or (y) that such disclosure would reasonably be expected to cause a violation of any agreement to which the Recipient or any Recipient Subsidiary is a party or would cause a risk of a loss of privilege to the Recipient or any Recipient Subsidiary (*provided* that the Recipient shall use commercially reasonable efforts to make appropriate substitute disclosure arrangements under circumstances where the restrictions in this clause (B) apply);

(C) the obligations of the Recipient and the Recipient Subsidiaries to disclose information pursuant to this Section 4.1(c)(i) to the Inspector General of the Treasury, the Comptroller General of the United States and their respective agents, consultants, contractors or advisors, shall be subject to the agreement by the Inspector General of the Treasury or the Comptroller General of the United States, as applicable, with respect to documents obtained under this Section 4.1(c)(i), 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 Recipient as to information that should be afforded confidential treatment, as appropriate; and

(D) for avoidance of doubt, any investigation or discussions pursuant to this Section 4.1(c)(i) may, at the Investor's option, be conducted on site at any office of the Recipient or any Recipient Subsidiary.

(ii) Subject to the assignment of the rights under this Section 4.1(c)(ii) pursuant to Section 4.1(c)(iii), from the Signing Date until the date on which all the Subordinated Debt has been redeemed in whole, the Recipient 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 Recipient, and in any event within ~~ninety (90)~~ one hundred twenty (120) days thereafter, a consolidated balance sheet of the Recipient as of the end of such fiscal year, and consolidated statements of income, retained earnings and cash flows of the Recipient 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 Recipient 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 Recipient, a copy of any quarterly reports provided to Equityholders of the Recipient;

(C) as soon as available after the Recipient receives any assessment of the Recipient's internal controls, a copy of such assessment (other than assessments provided by the Appropriate Federal Banking Agency or the Appropriate State Banking Agency that the Recipient is prohibited by applicable law or regulation from disclosing to the Investor);

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

(E) at the same time as such items are sent to all Equityholders in the case of S Corps or Members in the case of mutual institutions, copies of any information or documents, excluding, if the Recipient is a mutual institution, any general solicitations or advertisements for services and products, sent by the Recipient to its Members; *provided, however* that, notwithstanding clauses (A)-(E) of this Section 4.1(c)(ii), this Section 4.1(c)(ii) shall not require the Recipient to prepare audited financial statements if it does not otherwise prepare audited financial statements and shall not require the Recipient to submit Call Reports to the Investor.

(iii) The Investor's information rights pursuant to Section 4.1(c)(ii) and the Investor's right to receive certifications from the Recipient pursuant to Section 4.1(d)(i) may be assigned by the Investor to a transferee or assignee of the Subordinated Debt with a face value of no less than an amount equal to ten percent (10%) of the Purchase Price.

(iv) Nothing in this Section shall be construed to limit the authority that the Inspector General of the Treasury, the Comptroller General of the United States or any other applicable Governmental Entity has under law.

(v) The Recipient shall provide to the Investor all such information as the Investor may request from time to time related to the study under Section 525 of Division N of the Consolidated Appropriations Act, 2021 and related studies.

(d) Certifications. Subject to the assignment of the rights under ~~this Section 4.1(d)(i)~~ pursuant to Section 4.1(c)(iii), the Recipient shall provide the following certifications to the Investor:

(i) Upon delivery of each Supplemental Report, the Recipient's principal executive officer or principal financial officer (each as defined in the ECIP Interim Final Rule) will certify to the Investor that the information provided on each Supplemental Report is accurate;

(ii) Following the Closing Date, within one hundred twenty (120) days of the end of each fiscal year of the Recipient during which a Supplemental Report is submitted, the Recipient will deliver to the Investor (1) a certification by the Recipient that the processes and controls used to generate the Supplemental Reports are satisfactory and (2) an attestation with respect to the processes and controls used to generate the Supplemental Reports from the Recipient's independent auditor if the Recipient is required to include an attestation as to its internal control over financial reporting in connection with

the filing of audited financial statements with any Governmental Entity or self-regulatory agency; and

(iii) By December 31 of the calendar year in which the Closing occurs and, thereafter, annually, for so long as required by the ECIP Interim Final Rule, a certification substantially in the form attached hereto as Annex D by two of the Recipient's Senior Executive Officers (one of which must be the Recipient's principal executive officer or principal financial officer) (each as defined in the ECIP Interim Final Rule) that the Recipient is in compliance with each of the excessive compensation, severance pay and excessive or luxury expenditures requirements and limitations on capital distributions set forth in ECIP Interim Final Rule, as published and in effect at the time of the certification; *provided* that without the consent of the Investor, the date of such annual certifications shall not be later than nor more than 30 days earlier than the anniversary date for the first annual certification following the Closing.

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

(e) Compensation Matters.

(i) Restrictions on compensation and severance payments. During the ECIP Period, the Recipient shall comply, and take all necessary action to ensure that any Recipient Subsidiary complies, in all respects with the requirements set forth in the ECIP Interim Final Rule regarding restrictions on executive compensation and severance payments, and any material changes to the policies and procedures related thereto.

(ii) Excessive or luxury expenditures. Within ninety (90) days of the Closing Date, the Board of Directors shall adopt an excessive or luxury expenditures policy, provide such policy to the Investor and the Recipient's Appropriate Federal Banking Agency, and post the text of such policy on its Internet website, if the Recipient maintains an Internet website. The Recipient shall comply, and take all necessary action to ensure that any Recipient Subsidiary complies, in all respects with the requirements set forth in the ECIP Interim Final Rule regarding restrictions on excessive or luxury expenditures, and any material changes to the excessive or luxury expenditures policy adopted by the Board of Directors.

(f) Capital Distributions. During the ECIP Period, the Recipient shall comply with each of the restrictions on capital distributions (as defined in 31 C.F.R. § 35.21) applicable to it as set forth in the ECIP Interim Final Rule.

(g) Payment of Principal and Interest. The Recipient covenants and agrees for the benefit of the Holders of the Subordinated Debt that it will duly and punctually pay or cause to be paid the principal of and interest on the Subordinated Debt at the respective times and in the manner provided herein and in the Subordinated Debt. Payment of the principal of and interest on the Subordinated Debt due on the Maturity Date will be made by the Recipient in immediately available funds against presentation and surrender of the Subordinated Debt. Subject to the terms of the Subordinated Debt, each installment of interest on the Subordinated Debt due on an Interest



Payment Date other than the Maturity Date shall be paid 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. Notwithstanding anything herein to the contrary, if the Recipient is an insured depository institution, (1) the Recipient shall not pay any interest on the Subordinated Debt while it remains in default in the payment of any assessment to the Federal Deposit Insurance Corporation if payment of such interest would then be prohibited by 12 U.S.C. Section 1828(b) (or any successor statute), and (2) if the Recipient becomes a critically undercapitalized depository institution, the Recipient shall not make any payments of principal or interest on the Subordinated Debt if the Recipient would then be prohibited from making any such payments by 12 U.S.C. Section 1831o (or any successor statute), *provided*, in each case, the Recipient shall not be relieved from making such payments of principal or interest on the Subordinated Debt when permitted by applicable law.

(h) Qualified Lending Reports.

(i) Following the Closing Date, for the period through the earlier of (x) the date on which the Subordinated Debt is redeemed in whole and (y) ~~the~~ the end of the period during which the interest rate applicable to the Subordinated Debt adjusts based on the Supplemental Reports, the Recipient shall submit to the Investor a report in a form substantially similar to that posted on Investor's ECIP website (the "*Quarterly Supplemental Report*"), in accordance with the submission instructions set forth in such Quarterly Supplemental Report concurrently with (A) in the case of a Recipient that is an insured depository institution, the submission of the Call Report for the quarter covered by the Quarterly Supplemental Report, (B) with respect to a Bank Holding Company or Savings and Loan Holding Company that files on Reporting Form FR Y-9SP or Reporting Form FR Y-9LP but not FR Y-9C, the submission of its IDI Subsidiary's(ies') Call Report for the quarter covered by the Quarterly Supplemental Report and (C) in the case of a Recipient that is a Bank Holding Company or Savings and Loan Holding Company that files on Reporting Form FR Y-9C, the Form FR Y-9C for the quarter covered by the Quarterly Supplemental Report, as applicable, setting forth an updated calculation of (i) the amount of Qualified Lending as of the applicable quarter end date and (ii) as applicable, the difference between the Baseline and such updated amount of Qualified Lending;

(ii) If the Investor determines that the Initial Supplemental Report or any Quarterly Supplemental Report is inaccurate, the Investor may require the Recipient to restate the Initial Supplemental Report or any applicable Quarterly Supplemental Report, and (i) the "Baseline Qualified Lending" on such restated Initial Supplemental Report shall become the Baseline or (ii) the Qualified Lending on such restated Quarterly Supplemental Report shall become the Qualified Lending, as applicable;

(iii) If any Initial Supplemental Report or Quarterly Supplemental Report is inaccurate, the Investor shall be entitled to recover from the Recipient, upon demand, the amount of any difference between (x) the amount of the interest payment(s) actually made to the Investor based on such inaccurate report and (y) the correct amount of the interest payment(s) that should have been made, but for such inaccuracy; *provided*, that to the extent such inaccuracy resulted in an overpayment of interest, the Investor shall not have any obligation to return to or otherwise reimburse the Recipient for such excess interest

payment. The Recipient shall provide the Investor with a written description of any such inaccuracy within three (3) business days after the Recipient's discovery thereof;

(iv) If the Investor transfers the Subordinated Debt, then any amounts payable in respect of Subordinated Debt that have been transferred shall, if and as directed by the Investor, be paid to the transferee of the Subordinated Debt;

(v) The Investor shall have the right from time to time to modify the Quarterly Supplemental Report, by posting an amended and restated version of the Quarterly Supplemental Report on its website, to conform the Quarterly Supplemental Report to (A) reflect changes in GAAP, (B) reflect changes in the form or content of, or definitions used in, Call Reports, Reporting Form FR Y-9C or any other applicable reporting form or (C) to make clarifications, technical corrections and/or any other adjustments as the Investor determines to be necessary or appropriate. Notwithstanding anything herein to the contrary, upon posting by the Investor on its website, the Quarterly Supplemental Report shall be deemed to be amended and restated as so posted, without the need for any further act on the part of any person or entity. If any such modification includes a change to the caption or number of any line item of the Quarterly Supplemental Report, any reference herein to such line item shall thereafter be a reference to such re-captioned or renumbered line item;

(vi) The Recipient's financial records shall be maintained in such a manner and scope so as to ensure that the Initial Supplemental Report and Quarterly Supplemental Reports can be prepared and filed in accordance with the instructions thereto and will reflect a fair presentation of the Recipient's, and its Affiliates' as applicable, Qualified Lending and Deep Impact Lending, as defined in such Supplemental Report; and

(vii) The Recipient shall maintain in its files a signed and attested record of its completed Initial Supplemental Report, any Quarterly Supplemental Reports, any amended reports, and the methodology used to generate the data in the Initial Supplemental Report and Quarterly Supplemental Reports, for five (5) years after the report date, unless any applicable state requirements mandate a longer retention period.

(i) Reporting Requirements. Prior to the date on which all the Subordinated Debt has been redeemed in whole, the Recipient covenants and agrees that, upon the written request of the Investor or any Holder to which rights are assigned pursuant to Section 1.9 of Annex E and at all times ~~on or from and~~ after the Closing Date such request, (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 Recipient becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, it shall comply with the terms and conditions set forth in Annex E.

(j) Nonpayment of Interest. Whenever interest payable on the Subordinated Debt will not be paid in full for any Interest Period (as defined in the Subordinated Debt), including nonpayment because interest will be deferred pursuant to the applicable provisions of this Agreement and the Subordinated Security, then no later than three (3) business days prior to the applicable Interest Payment Date (as defined in the Subordinated Debt) the principal executive

officer and principal financial officer of the Recipient shall provide written notice, in a form reasonably satisfactory to the Investor, informing the Investor that the Recipient will not make the applicable interest payment and providing the rationale of the Recipient for not making such interest payment.

(k) Compliance with Federal Law. The Recipient shall comply with, and hereby assures that it will comply with, all applicable federal statutes and regulations relating to nondiscrimination including: (i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), including Treasury’s implementing regulations at 31 C.F.R. Part 22; (ii) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and (iii) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), including Treasury’s implementing regulations at 31 C.F.R. Part 23 and the general age discrimination regulations at 45 C.F.R. Part 90.

(l) Transactions with Affiliates. Until such time as the Investor or one of its Affiliates, directly or indirectly, ceases to own any Subordinated Debt, (i) the Recipient, if subject to Section 23A and Section 23B of the Federal Reserve Act (12 U.S.C. §§ 371c and 371c-1) shall comply with such Sections and Regulation W promulgated thereunder (12 C.F.R. Part 223) and (ii) the Recipient, if not subject to such Sections and Regulation, shall comply with such Sections and Regulation to the same extent as if the Recipient were a member of the Federal Reserve System, except for any transactions between a Bank Holding Company or Savings and Loan Holding Company and its IDI Subsidiaries.

(m) Outreach Plan. The Recipient shall provide community outreach and communication, where appropriate, describing the availability and application process of receiving loans made possible by the ECIP through organizations, trade associations, and individuals that represent or work within or are members of minority communities.

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

(a) Certain Transactions. The Recipient shall not merge or consolidate with, or sell, transfer, convey 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 Recipient), expressly assumes the due and punctual performance and observance of each and every covenant, agreement and condition of this Agreement and the Subordinated Debt to be performed and observed by the Recipient, including the due and punctual payment of the principal of and interest on the Subordinated Debt, and, if applicable, the issuance by the successor party of an instrument equivalent to the Subordinated Debt. Any such successor entity must also qualify at the time of the transaction as an Eligible Financial Institution unless prior written approval of the Investor is obtained.

(b) S Corporation Status. If the Recipient is an S Corp as of the Signing Date, the Recipient shall not revoke or change ~~such~~ its status for federal income tax purposes as an S corporation within the meaning of Sections 1361 and 1362 of the Code or the status of any Recipient Subsidiary as a QSub within the meaning of Section 1361(b)(3)(B) of the Code without the prior written consent of the Majority Holders.

(c) CDFI and MDI Status. If the Recipient is a CDFI as of the Signing Date, the Recipient shall not revoke ~~or change~~ its status as a CDFI, ~~or permit and shall use its reasonable best efforts to prevent~~ its status as a CDFI ~~to be from being~~ changed, within the meaning of 12 U.S.C. § 4702 and in accordance with 12 C.F.R. § 1805.201. If the Recipient is an MDI as of the Signing Date, the Recipient shall not revoke its designation as an MDI and shall use its reasonable best efforts to maintain its designation as an MDI.

(d) Restriction on Dividends and Repurchases.

(i) In the case of mutual institutions, (A) no dividends may be declared or paid by the Recipient on any Equity or other capital instruments it is authorized to issue under applicable law, nor may any discretionary payments be made on any other securities or instruments that are *pari passu* with or junior to the Subordinated Debt with respect to distributions or ranking in liquidation, unless all accrued and unpaid interest for all past Interest Periods on the Subordinated Debt has been paid in full, and there is no unpaid Deferred Interest, and (B) the Recipient may not repurchase or redeem any Equity or other capital instruments, or any securities or instruments ranking *pari passu* with or junior to the Subordinated Debt, unless all accrued and unpaid interest for all past Interest Periods on the Subordinated Debt has been paid in full, and there is no unpaid Deferred Interest.

(ii) In the case of S corps, (A) no dividends may be declared or paid by the Recipient on any securities or other instruments it is authorized to issue under applicable law, nor may any discretionary payments be made on any other securities or instruments, that are *pari passu* with or junior to the Subordinated Debt with respect to distributions or ranking in liquidation unless all accrued and unpaid interest for all past Interest Periods on the Subordinated Debt has been paid in full, and there is no unpaid Deferred Interest, and (B) the Recipient may not repurchase or redeem any securities or instruments ranking *pari passu* with or junior to the Subordinated Debt, including Equity or an equivalent equity interest, unless all accrued and unpaid interest for all past Interest Periods on the Subordinated Debt has been paid in full, and there is no unpaid Deferred Interest. Notwithstanding anything to the contrary above, the Recipient may make capital distributions, or purchase or redeem securities that are *pari passu* with or junior to the Subordinated Debt, to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings. Such distributions shall be subject to an annual reconciliation, with any surplus or deficiency to be deducted or added to distributions, as applicable, in the following year.

(iii) For the avoidance of doubt, the foregoing contractual restrictions shall not restrict the Recipient from making required, non-discretionary payments on securities or instruments that are *pari passu* with or junior to the Subordinated Debt it has issued, such as payments at stated maturity in accordance with an instrument's terms or payments of interest that may not be deferred, and the foregoing contractual restrictions and clarification shall not supersede otherwise applicable limitations or determinations with respect to distributions or payments pursuant to the rules or regulations of any Appropriate Federal Banking Agency.

## ARTICLE V

### REMEDIES OF THE HOLDERS UPON EVENT OF DEFAULT AND OTHER BREACHES OR DEFAULTS

Section 5.1 Event of Default. “*Event of Default*” shall mean the occurrence or existence of any one or more of the following (whatever the reason for such and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental agency or body) with respect to the Subordinated Debt:

(a) if the Recipient is an insured depository institution, (i) the Recipient shall consent to the appointment of a receiver or other similar official (other than a conservator) in any liquidation, insolvency or similar proceeding with respect to the Recipient or all or substantially all of its property; or (ii) a court having jurisdiction in the premises or any administrative or governmental agency or body shall enter a decree or order for the appointment of a receiver or other similar official (other than a conservator) in any liquidation, insolvency or similar proceeding with respect to the Recipient for all or substantially all of its property, and such decree or order shall have remained in force undischarged or unstayed for a period of sixty (60) days; or

(b) if the Recipient is a Bank Holding Company or Savings and Loan Holding Company, (i) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Recipient or a Major Depository Institution Subsidiary in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Recipient or a Major Depository Institution Subsidiary or of any substantial part of their respective property, or ordering the winding up or liquidation of their respective affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of sixty (60) consecutive days, or (ii) the commencement by the Recipient or a Major Depository Institution Subsidiary of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or the consent by the Recipient or a Major Depository Institution Subsidiary to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Recipient or such Major Depository Institution Subsidiary or of any substantial part of their respective property, or the making by the Recipient or such Major Depository Institution Subsidiary of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Recipient or a Major Depository Institution Subsidiary in furtherance of any such action.

#### Section 5.2 Acceleration and Other Remedies.

(a) When any Event of Default has occurred and is continuing, then 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, each Holder may exercise any and all remedies available to it under the Transaction Documents or applicable law. For the avoidance of doubt, there is no right of

acceleration in the case of a default in the payment of principal of, premium, if any, or interest on, the Subordinated Debt or in the performance of any other obligation of the Recipient under this Agreement or the Subordinated Debt.

(b) Notwithstanding anything to the contrary herein, to the extent then required under or pursuant to applicable laws or regulations (including, without limitation, applicable capital regulations) then in effect, no repayment pursuant to an acceleration of maturity may be made on the Subordinated Debt without the prior written approval of any bank supervisory authority having jurisdiction over the Recipient and requiring such approval.

Section 5.3 Suits for Enforcement. In case any one or more Events of Default shall have occurred and be continuing, any Holder, subject to the terms of Article VII hereof, may proceed to protect and enforce its rights under this Article V by suit in equity or action at law. In the event of the failure by the Recipient to make payment of principal of or interest on the Subordinated Debt (and, in the case of payment of interest, such failure to pay shall have continued for two (2) business days), the Recipient will, upon written demand of any Holder, pay to such Holder the whole amount then due and payable (without acceleration) on such Holder's Subordinated Debt, with interest on the overdue amount at the rate borne by the Subordinated Debt to the extent such interest is legally enforceable. Such demand shall not serve to accelerate the Holder's Subordinated Debt. If the Recipient fails to pay such amount upon such demand, the Holder may among other things, institute a judicial proceeding for the collection of such amount. It is agreed that in the event of such action, or any action between a Holder of the Subordinated Debt and the Recipient (including its officers and agents) in connection with a breach or enforcement of this Agreement, the Holder of the Subordinated Debt 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 5.4 Holders May File Proofs of Claim. In case there shall be pending receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other administrative or judicial proceeding relative to the Recipient or the property of the Recipient, any Holder, irrespective of whether the principal of the Subordinated Debt 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 5.4, 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 Subordinated Debt held by any such Holder and, in case of any administrative or 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 administrative or judicial proceedings relative to the Recipient, or to the creditors or property of the Recipient, 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 5.5 Waiver of Past Defaults. ~~The Holders of not less than a majority in aggregate principal amount of the outstanding Subordinated Debt~~The Majority Holders may on

behalf of the Holders of all the Subordinated Debt waive any past default hereunder with respect to such Subordinated Debt and its consequences, except a default in the payment of principal or interest. Upon any such waiver, such default shall cease to exist, for every purpose of this Agreement except Section 5.7 through Section 5.9; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon or for any purpose to Section 5.7 through Section 5.9. This Section 5.5 shall apply only to the rights of the Holders in their capacity as such and, notwithstanding anything to the contrary in the preceding sentences of this Section 5.5, any waiver pursuant to this Section 5.5 shall not extend to the rights, remedies or consequences set forth in Section 5.7 through Section 5.9.

Section 5.6 Receivership. If the Recipient is an insured depository ~~institutions~~institution, it is expressly understood and agreed that the Federal Deposit Insurance Corporation, as receiver or conservator of the Recipient, shall have the right, but not the obligation, in the performance of its legal duties, and as part of any transaction or plan of reorganization or liquidation designed to protect or further the continued existence of the Recipient or the rights of any parties or agencies with an interest in, or claim against, the Recipient or its assets, to transfer or direct the transfer of the obligations of the Subordinated Debt to any national banking association, state bank or bank holding company selected by such official which shall expressly assume the obligation of the due and punctual payment of the unpaid principal of, premium, if any, and interest on, the Subordinated Debt and the due and punctual performance of all covenants and conditions hereof; and that the completion of such transfer and assumption shall serve to supersede and void any default, acceleration or subordination which may have occurred, or which may occur due or related to such transaction, plan, transfer or assumption pursuant to the provisions of the Subordinated Debt, and shall serve to return the ~~holder~~Holder of the Subordinated Debt to the same position, other than for substitution of the obligor, it would have occupied had no default, acceleration or subordination occurred.

Section 5.7 Rate Reductions in the Event of Breaches and Violations. If Treasury determines, in its sole discretion, that the Recipient has breached, violated or defaulted under (i) any covenant, agreement or obligation of the Recipient included in this Agreement or the Subordinated Debt ~~or~~, (ii) Section 104A of the Community Development Banking Act, or the ECIP Interim Final Rule, or (iii) any additional rules or regulations established in connection with ECIP that further the purposes of Section 104A of the Community Development Banking Act, Treasury may, in its sole discretion, determine that the Recipient shall not be eligible for any rate reduction with respect to the Subordinated Debt for such period as Treasury, in its sole discretion, shall determine. Any such determination shall cause the applicable interest rate of the Subordinated Debt to reset as specified in the Subordinated Security. Treasury shall provide notice to the Recipient of any determination with respect to the Recipient's disqualification from eligibility for rate reductions or the termination of any such disqualification; *provided* that any failure by Treasury to provide notice of any such determination or defect in such notice or the transmission thereof shall not affect or prejudice Treasury's rights or remedies under this Section 5.7 or the Subordinated Debt. Notwithstanding the foregoing, a default in the payment of interest shall not be subject to this Section 5.7.

Section 5.8 Recipient ~~Nonecompliance~~Breach, Violation or Default.

(a) If Treasury determines, in its sole discretion, ~~an instance of noncompliance by that~~ the Recipient or an Affiliate of the Recipient ~~withhas breached, violated or defaulted under~~ (i) ~~any term or condition of covenant, agreement or obligation of the Recipient or an Affiliate of the Recipient included in~~ this Agreement or the Subordinated Debt ~~or~~, (ii) Section 104A of the Community Development Banking Act, ~~or~~ the ECIP Interim Final Rule, ~~or~~ (iii) any additional rules or regulations established in connection with ECIP, ~~has occurred that further the purposes of Section 104A of the Community Development Banking Act,~~ Treasury may, in its sole discretion, report such ~~nonecompliancebreach, violation or default~~ to the CDFI Fund or other entities within or affiliated with Treasury. The Recipient acknowledges ~~and agrees~~ that any such report of ~~nonecompliancea breach, violation or default~~ may result in the Recipient becoming ineligible for awards or programs offered by the CDFI Fund or other entities within or affiliated with Treasury at that time or in the future in accordance with the terms and conditions of such awards or programs offered by the CDFI Fund or other entities within or affiliated with Treasury.

(b) The restrictions on, and notice requirement with respect to, the transferability of the Subordinated Debt set forth in Section 6.6(f)(v) shall cease to apply if Treasury determines, in its sole discretion, ~~an instance of noncompliance bythat~~ the Recipient or an Affiliate of the Recipient has ~~occurred with respect to~~breached, violated or defaulted under (i) ~~any term or condition of covenant, agreement or obligation of the Recipient or an Affiliate of the Recipient included in~~ this Agreement or the Subordinated Debt ~~or~~, (ii) Section 104A of the Community Development Banking Act, ~~or~~ the ECIP Interim Final Rule, ~~or~~ (iii) any additional rules or regulations established in connection with ECIP that further the purposes of Section 104A of the Community Development Banking Act.

Section 5.9 Additional Remedies.

(a) If Treasury determines, in its sole discretion, that ~~an instance of noncompliance by~~ the Recipient or an Affiliate of the Recipient ~~withhas breached, violated or defaulted under~~ (i) ~~the terms and conditions of any covenant, agreement or obligation of the Recipient or an Affiliate of the Recipient included in~~ this Agreement or the Subordinated Debt ~~or~~, (ii) Section 104A of the Community Development Banking Act, ~~or~~ the ECIP Interim Final Rule, ~~or~~ (iii) any additional rules or regulations established in connection with ECIP, ~~has occurred that further the purposes of Section 104A of the Community Development Banking Act,~~ Treasury may propose a remedy that Treasury determines, in its sole discretion, is proportional to the breach, violation or default. If Treasury makes such a determination and proposes a remedy under this Section 5.9(a), Treasury shall notify the Recipient in writing of its proposed determination of ~~nonecompliancea breach, violation or default~~, provide an explanation of the nature of the ~~nonecompliancebreach, violation or default~~, and specify athe proposed remedy. Upon receipt of such notice, the Recipient shall, within seven (7) days, accept Treasury's proposed remedy, propose an alternative remedy, or provide information and documentation contesting Treasury's proposed determination. Treasury shall consider any such submission by the Recipient and make a final written determination, which will state Treasury's findings regarding ~~nonecompliance~~the breach, violation or default and the remedy to be imposed.



(b) If Treasury makes a final determination under Section 5.9(a) that ~~an instance of noncompliance~~ breach, violation or default has occurred, Treasury may, in its sole discretion, require additional reporting or monitoring; initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180; or take any such other action as Treasury, in its sole discretion, deems appropriate and determines, in its sole discretion, to be proportional to the breach, violation or default; provided, however, that Treasury shall not require acceleration of the interest or principal on the Subordinated Debt as a remedy under this Section 5.9 and such acceleration shall be governed exclusively by Section 5.2.

(c) Treasury may make a final determination regarding ~~noncompliance~~ breach, violation or default without regard to Section 5.9(a) if Treasury determines, in its sole discretion, that such determination is necessary to protect a material interest of the federal government. In such event, Treasury shall notify the Recipient of the remedy that Treasury, in its sole discretion, shall impose, after which the Recipient may contest Treasury's final determination or propose an alternative remedy in writing to Treasury. Following the receipt of such a submission by the Recipient, Treasury may, in its sole discretion, maintain or alter its final determination.

~~(d) — Any final determination of noncompliance and any final determination to take any remedial action described herein shall not be subject to further review. To the extent permitted by law, the Recipient waives any right to judicial review of any such determinations and further agrees not to assert in any court any claim arising from or relating to any such determination or remedial action.~~

~~(e)(d)~~ Instead of, or in addition to, the remedies listed above, Treasury may refer any ~~noncompliance~~ breach, violation or default or any allegations of fraud, waste, or abuse to the Inspector General of the Treasury.

~~(f)(e)~~ Notwithstanding the foregoing, a default in the payment of interest shall not be subject to this Section 5.9.

## ARTICLE VI

### ADDITIONAL AGREEMENTS

Section 6.1 Purchase for Investment. The Investor acknowledges that the Subordinated Debt has not been registered under the Securities Act, or under any state securities laws (or, if the Recipient is a national bank or federal savings association, Part 16). The Investor acknowledges that the Subordinated Debt is not being sold pursuant to an indenture (an “*Indenture*”) qualified under the Trust Indenture Act of 1939 (the “*Indenture Act*”). The Investor (a) is acquiring the Subordinated Debt pursuant to an exemption from registration under the Securities Act (and, if the Recipient is a national bank or federal savings association, Part 16) and an exemption from qualification of an indenture under the Indenture Act, and is acquiring the Subordinated Debt solely for investment with no present intention to distribute the Subordinated Debt to any person in violation of the Securities Act or any applicable U.S. state securities laws (or if, applicable, Part 16), (b) will not sell or otherwise dispose of any of the Subordinated Debt, except in compliance with the registration requirements or exemption provisions of the Securities Act and any applicable U.S. state securities laws (or if, applicable, Part 16), and (c) has such knowledge

and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of the Purchase and of making an informed investment decision.

Section 6.2 Form of Subordinated Security. The Subordinated Debt shall be substantially in the form of Annex A hereto, the terms of which are incorporated in and made a part of this Agreement. The Subordinated Debt 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 Subordinated Debt 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 6.3 Execution of Subordinated Debt. The Subordinated Debt shall be executed in the name and on behalf of the Recipient by the manual or facsimile signature of its President, Chief Executive Officer, Chief Financial Officer or one of its Executive Vice Presidents under its seal (if legally required) which may be affixed thereto or printed, engraved or otherwise reproduced thereon, by facsimile or otherwise, and which need not be attested, unless otherwise required by the Recipient's Charter or bylaws or applicable law. Every Subordinated Security shall be dated the date of its issuance and delivery.

Section 6.4 Computation of Interest. (a) The amount of interest payable for any Interest Period (~~as defined below~~) will be computed as provided in the Subordinated Debt.

(b) Each Subordinated Security will bear interest at the Applicable Interest Rate set forth in Section 2(a) of the face of the Subordinated Security attached hereto as Annex A for the Interest Period on the principal thereof, on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest (including Defaulted Interest but excluding, for the avoidance of doubt, any interest installment the payment of which has been deferred pursuant to Section 6.14), payable on each Interest Payment Date or the Maturity Date, as the case may be. Interest on any Subordinated Security that is payable, and is punctually paid or duly provided for by the Recipient, on any Interest Payment Date shall be paid to the person in whose name such Subordinated Security is registered at the close of business on the Regular Record Date for such interest installment.

(c) Any interest on the Subordinated Security that is payable, but is not punctually paid or duly provided for by the Recipient, 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 Recipient on either the next succeeding Interest Payment Date or another date specified by the Recipient to the persons in whose names such Subordinated Debt is registered at the close of business on either (x), if such Defaulted Interest is to be paid on the next succeeding Interest Payment Date, the related Regular Record Date, or (y), if such Defaulted Interest is to be paid on any other date, a special record date for the payment of such Defaulted Interest. To the extent any Defaulted Interest is paid by the Recipient, the Recipient shall notify the Holder in writing of the amount of Defaulted Interest proposed to be paid on each such Subordinated Security and the date of the proposed payment.

(d) To the extent that Defaulted Interest is to be paid on a date other than on an Interest Payment Date, the Board of Directors shall fix a special record date for the payment of such

Defaulted Interest, which shall not be more than fifteen (15) nor less than ten (10) days prior to the date of the proposed payment. The Recipient 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 Subordinated Security at his, her or its address as it appears in the Subordinated Securities Register, not less than ten (10) days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the person in whose name such Subordinated Security is registered at the close of business on such special record date and thereafter the Recipient shall have no further payment obligation in respect of the Defaulted Interest.

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

Subject to the foregoing provisions of this Section 6.4, each Subordinated Security delivered under this Agreement upon registration of transfer of or in exchange for or in lieu of any other Subordinated Security shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Subordinated Security.

Section 6.5 Legends.

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

“THIS SUBORDINATED SECURITY WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN DENOMINATIONS OF A MINIMUM 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 OR IN A DENOMINATION OTHER THAN IN A MULTIPLE 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 ISSUER AND THE UNITED STATES DEPARTMENT OF THE TREASURY AND SECURITIES PURCHASE AGREEMENT – STANDARD TERMS (TOGETHER, THE “AGREEMENT”), EACH OF WHICH ARE INCORPORATED INTO THIS SUBORDINATED SECURITY.

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

THE PAYMENT OF PRINCIPAL OF OR INTEREST ON THIS SUBORDINATED DEBT SECURITY MAY NOT BE ACCELERATED WITHOUT THE PRIOR APPROVAL OF THE APPROPRIATE FEDERAL BANKING AGENCY IF REQUIRED UNDER RULES OR REGULATIONS OF SUCH APPROPRIATE FEDERAL BANKING AGENCY, AND THE ISSUER MAY NOT REDEEM THIS SUBORDINATED DEBT SECURITY PRIOR TO MATURITY, REPURCHASE THIS SUBORDINATED DEBT SECURITY, OR EXERCISE A CALL OPTION IN CONNECTION WITH THIS SUBORDINATED DEBT SECURITY WITHOUT THE PRIOR APPROVAL OF THE APPROPRIATE FEDERAL BANKING AGENCY IF REQUIRED UNDER RULES OR REGULATIONS OF SUCH APPROPRIATE FEDERAL BANKING AGENCY.

THIS SECURITY MAY BE FULLY SUBORDINATED TO INTERESTS HELD BY THE U.S. GOVERNMENT IN THE EVENT THAT THE ISSUER ENTERS INTO A RECEIVERSHIP, INSOLVENCY, LIQUIDATION, OR SIMILAR PROCEEDING.

*[IF THE ISSUER IS A BANK HOLDING COMPANY, SAVINGS AND LOAN HOLDING COMPANY, NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION, INCLUDE:* THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE, OR (IF THE ISSUER IS A NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION) PART 16 OF THE REGULATIONS OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY (“PART 16”), 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 AND PART 16 (IF APPLICABLE) OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS OR SUCH REGULATIONS, AS APPLICABLE. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER (IF THE ISSUER IS A NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION, AS INCORPORATED INTO PART 16). ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS A “*QUALIFIED INSTITUTIONAL BUYER*” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT

OR PART 16, AS APPLICABLE, (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 (IF THE ISSUER IS A NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION, AS INCORPORATED INTO PART 16), (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND PART 16, AS APPLICABLE, AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

[IF THE ISSUER IS A FEDERAL SAVINGS ASSOCIATION, INCLUDE: WITHOUT LIMITING THE FOREGOING, AN INDENTURE MEETING THE REQUIREMENTS OF 12 C.F.R. 5.56(d) MUST BE IN PLACE BEFORE THIS SECURITY IS TRANSFERRED TO ANY PERSON WHO IS NOT AN “ACCREDITED INVESTOR” (AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT).]

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

THIS SECURITY IS *NOT* A SAVINGS ACCOUNT OR DEPOSIT AND IT IS *NOT* INSURED OR GUARANTEED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENT AGENCY.

THIS SECURITY IS SUBORDINATED TO THE CLAIMS OF GENERAL AND SECURED CREDITORS, IS NOT SECURED AND IS SUBORDINATE AND JUNIOR IN ITS RIGHT OF PAYMENT TO THE OBLIGATIONS OF ALL CREDITORS, INCLUDING BOTH SECURED AND UNSECURED OR GENERAL CREDITORS, AND TO ALL “SENIOR INDEBTEDNESS” AS DEFINED IN THE AGREEMENT, EXCEPT THOSE SPECIFICALLY DESIGNATED AS RANKING ON A PARITY WITH, OR SUBORDINATED TO, THIS SUBORDINATED SECURITY.

[IF THE ISSUER IS AN INSURED DEPOSITORY INSTITUTION, INCLUDE: THIS SECURITY IS ALSO SUBORDINATED TO CLAIMS OF DEPOSITORS AND IS INELIGIBLE AS COLLATERAL FOR A LOAN BY THE ISSUER.]

*[IF THE ISSUER IS A FEDERAL SAVINGS ASSOCIATION, INCLUDE: THIS SECURITY IS ALSO SUBORDINATED ON LIQUIDATION, AS TO PRINCIPAL, INTEREST, AND PREMIUM, TO ALL CLAIMS AGAINST THE ISSUER THAT HAVE THE SAME PRIORITY AS SAVINGS ACCOUNTS OR A HIGHER PRIORITY.]*

THIS SECURITY IS NOT SECURED BY THE ISSUER'S ASSETS OR THE ASSETS OF ANY AFFILIATE OF THE ISSUER. AN AFFILIATE MEANS ANY PERSON OR COMPANY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THE ISSUER. THIS SECURITY IS NOT ELIGIBLE COLLATERAL FOR A LOAN BY THE ISSUER.

*[IF THE ISSUER IS AN INSURED DEPOSITORY INSTITUTION, INCLUDE: PURSUANT TO 12 U.S.C. 1828(b), THE ISSUER SHALL NOT PAY ANY DIVIDENDS ON ITS CAPITAL STOCK OR INTEREST ON ITS CAPITAL NOTES OR DEBENTURES (IF SUCH INTEREST IS REQUIRED TO BE PAID ONLY OUT OF NET PROFITS) OR DISTRIBUTE ANY OF ITS CAPITAL ASSETS WHILE IT REMAINS IN DEFAULT IN THE PAYMENT OF ANY ASSESSMENT DUE TO THE FEDERAL DEPOSIT INSURANCE CORPORATION.]*

*[IF THE ISSUER IS AN INSURED DEPOSITORY INSTITUTION, INCLUDE: PURSUANT TO 12 U.S.C. 1831o(h), THE ISSUER MAY NOT MAKE ANY PAYMENT OF PRINCIPAL OR INTEREST ON THIS OBLIGATION BEGINNING 60 DAYS AFTER BECOMING CRITICALLY UNDERCAPITALIZED, UNLESS THE FEDERAL DEPOSIT INSURANCE CORPORATION HAS MADE AN EXCEPTION PURSUANT TO 12 U.S.C. 1831o(h)(2)(B).]*

PURSUANT TO SECTION 11 OF THE REGULATORY CAPITAL RULES SET FORTH IN 12 C.F.R. PART 3 (WITH RESPECT TO NATIONAL BANKS AND FEDERAL SAVINGS ASSOCIATIONS), 12 C.F.R. PART 217 (WITH RESPECT TO BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES AND STATE MEMBER BANKS) AND 12 C.F.R. PART 324 (WITH RESPECT TO STATE NONMEMBER BANKS OR STATE SAVINGS ASSOCIATIONS), THE ISSUER WILL BE SUBJECT TO LIMITATIONS ON DISTRIBUTIONS (INCLUDING PAYMENTS OF INTEREST ON THIS SUBORDINATED SECURITY) IF THE ISSUER DOES NOT SATISFY ITS CAPITAL BUFFER REQUIREMENT IN FULL.

*[IF THE ISSUER IS AN INSURED DEPOSITORY INSTITUTION, INCLUDE: WITH RESPECT TO AN INSOLVENCY OF THE ISSUER, THE FEDERAL DEPOSIT INSURANCE CORPORATION, ACTING AS RECEIVER, HAS THE AUTHORITY TO TRANSFER THE ISSUER'S OBLIGATION UNDER THIS SUBORDINATED SECURITY AND TO SUPERSEDE OR VOID ANY DEFAULT, ACCELERATION, OR SUBORDINATION THAT MAY HAVE OCCURRED.]*

[IF THE ISSUER IS AN INSURED DEPOSITORY INSTITUTION, INCLUDE: IF THE ISSUER IS “UNDERCAPITALIZED” AS DEFINED BY APPLICABLE LAW AND FAILS TO SATISFACTORILY IMPLEMENT A REQUIRED CAPITAL RESTORATION PLAN, THE ISSUER MAY BE SUBJECT TO ALL THE ADDITIONAL RESTRICTIONS AND REQUIREMENTS APPLICABLE TO A “SIGNIFICANTLY UNDERCAPITALIZED” INSTITUTION, AS DEFINED BY APPLICABLE LAW, INCLUDING BEING REQUIRED TO SELL SHARES IN THE ISSUER, BEING ACQUIRED BY A DEPOSITORY INSTITUTION HOLDING COMPANY, OR BEING MERGED OR CONSOLIDATED WITH ANOTHER DEPOSITORY INSTITUTION, AND SUCH AUTHORITY BY THE OCC SUPERSEDES AND VOIDS ANY DEFAULTS THAT MAY HAVE OCCURRED.]

[IF THE ISSUER IS AN INSURED DEPOSITORY INSTITUTION, INCLUDE: IF THE ISSUER IS “CRITICALLY UNDERCAPITALIZED,” AS DEFINED BY APPLICABLE LAW, THE ISSUER IS PROHIBITED FROM MAKING PRINCIPAL OR INTEREST PAYMENTS ON THIS SUBORDINATED SECURITY WITHOUT PRIOR REGULATORY APPROVAL.]”

(b) In the event that any Subordinated Debt (i)(A) becomes registered under the Securities Act (or, if applicable, Part 16) or (B) is eligible to be transferred without restriction in accordance with Rule 144 or another exemption from registration under the Securities Act (other than Rule 144A) (or, if applicable, Part 16); and (ii)(A) becomes subject to an Indenture qualified under the Indenture Act or (B) is exempt from qualification under the Indenture Act, the Recipient shall issue new certificates or other instruments representing such Subordinated Debt, which shall not contain the applicable legends in Section 6.5(a) above; *provided* that the Investor surrenders to the Recipient the previously issued certificates or other instruments.

#### Section 6.6 Transfer of Subordinated Debt.

(a) The Recipient or its duly appointed agent shall maintain a register (the “*Subordinated Securities Register*”) for the Subordinated Debt in which it shall register the issuance and transfer of the Subordinated Debt. All transfers of the Subordinated Debt shall be recorded on the Subordinated Securities Register maintained by the Recipient or its agent, and the Recipient shall be entitled to regard the registered Holder of ~~each~~such Subordinated Security as the actual owner of the Subordinated Security so registered until the Recipient or its agent is required to record a transfer of such Subordinated Security on its Subordinated Securities Register. The Recipient or its agent shall, subject to applicable securities laws, be required to record any such transfer when it receives the Subordinated Security to be transferred duly and properly endorsed by the registered Holder or by its attorney duly authorized in writing.

(b) The Recipient shall at any time, upon written request of the Holder of a Subordinated Security and surrender of the Subordinated Security for such purpose, at the expense of the Recipient, issue new Subordinated Debt in exchange therefor in such denominations of at least \$1,000, as shall be specified by the Holder of such Subordinated Security, in an aggregate principal amount equal to the then unpaid principal amount of the Subordinated Debt surrendered and substantially in the form of Annex A, with appropriate insertions and variations, and bearing

interest from the date to which interest has been paid on the Subordinated Security surrendered. All Subordinated Debt issued upon any registration of transfer of exchange pursuant to this Section 6.6(b) shall be valid obligations of the Recipient, evidencing the same debt, and entitled to the same benefits under this Agreement, as the Subordinated Debt surrendered upon such registration of transfer or exchange.

(c) All Subordinated Debt 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 Recipient 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 Subordinated Debt, but the Recipient 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 Subordinated Security, the Recipient and any agent of the Recipient may deem and treat the person in whose name such Subordinated Security is registered as the absolute owner and Holder of such Subordinated Security for the purpose of receiving payment of principal of and interest on such Subordinated Security and none of the Recipient or any agents of the Recipient shall be affected by notice to the contrary.

(f) Subject to compliance with applicable law, the Investor (and any investment vehicles established and used by the Investor to purchase, hold, and sell Subordinated Debt) shall be permitted to transfer, sell, assign or otherwise dispose of ("*Transfer*") all or a portion of the Subordinated Debt at any time and from time to time, and the Recipient shall take all steps as may be reasonably requested by the Investor to facilitate the sale of the Subordinated Debt, including as set forth in Section 6.9, *provided that*:

(i) The Investor shall not Transfer any Subordinated Debt if such Transfer would (A) require the Recipient to be subject to the periodic reporting requirements of Section 13 or 15(d) of the Exchange Act and the Recipient was not already subject to such requirements, or (B) if the Recipient is a national bank or federal savings association, require the Recipient to register the securities under Part 16;

(ii) Prior to the sale of all or a portion of the Subordinated Debt by the Investor to a third party, the Investor shall deliver to the Recipient a notice ("*ROFR Notice*") setting forth the aggregate principal amount of Subordinated Debt proposed to be sold (the "*Offered Securities*") and the cash purchase price thereof (which shall reflect a valuation of the Subordinated Debt by an independent third party) (the "*Offer Price*") and other terms and conditions on which the Investor proposes to sell the Offered Securities. Within ten (10) days from the date the Investor delivers the ROFR Notice to the Recipient (the "*Review Period*"), the Recipient shall deliver to the Investor a written notice (a "*Response Notice*") stating whether it elects to purchase all the Offered Securities and irrevocably offering to purchase such number of Offered Securities on the terms contained in the ROFR Notice, which purchase shall, as applicable, be conditional upon receipt of prior approval from the Recipient's Appropriate Federal Banking Agency. If the Recipient does not



deliver a Response Notice in accordance with this Section 6.6(f)(ii) prior to the expiration of the Review Period, then the Recipient will be deemed to have elected not to exercise the right of first refusal specified in the ROFR Notice and the Investor shall be free to sell the Offered Securities to a third party on the terms reflected in the ROFR Notice.

(iii) The Investor shall not sell more than twenty-five percent (25%) of the outstanding obligations referred to in clause (iii) of the definition of “Indebtedness” to a single third party without the Recipient’s consent, which may not be unreasonably delayed, conditioned or withheld;

(iv) With the prior consent of the Recipient (which may not be unreasonably delayed, conditioned or withheld), the Investor may Transfer all or a portion of the Subordinated Debt for no consideration or for a *de minimis* amount to a mission-aligned nonprofit Affiliate of an Eligible Financial Institution participating in the ECIP that is an Insured CDFI (an “*Eligible Nonprofit*”); and

(v) Subject to Section 5.8(b), the Investor shall not sell the Subordinated Debt to a third party (other than to an Eligible Nonprofit) prior to the Tenth Anniversary (as defined in the Subordinated Security) without the prior consent of the Recipient (which may not be unreasonably delayed, conditioned or withheld). In addition, subject to Section 5.8(b), the Investor shall provide the Recipient eighteen (18) months’ advance notice of the Investor’s intent to Transfer the Subordinated Debt to a third party other than an Eligible Nonprofit.

(g) In furtherance of the foregoing, the Recipient shall provide reasonable cooperation to facilitate any Transfers of the Subordinated Debt, including, as is reasonable under the circumstances, by furnishing such information concerning the Recipient and its business as a proposed transferee may reasonably request and making management of the Recipient 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. For the avoidance of doubt, the term “third party” as used in this Section 6.6 shall not refer to an investment vehicle or other entity controlled by the Investor, or to any Affiliate of the Investor.

Section 6.7 Replacement of Subordinated Debt. Upon receipt of evidence reasonably satisfactory to the Recipient of the loss, theft, destruction or mutilation of any Subordinated Security, and, in the case of any such loss, theft or destruction, upon delivery of a bond of indemnity reasonably satisfactory to the Recipient (*provided* that any Holder of a Subordinated Security may instead deliver to the Recipient an indemnity agreement in form and substance reasonably satisfactory to the Recipient), or, in the case of any such mutilation, upon surrender and cancellation of the Subordinated Security, as the case may be, the Recipient will issue a new Subordinated Security of like tenor, in lieu of such lost, stolen, destroyed or mutilated Subordinated Security.

Section 6.8 Cancellation. All Subordinated Debt surrendered for the purpose of payment, exchange or registration of transfer, shall be surrendered to the Recipient and promptly canceled by it, and no Subordinated Debt shall be issued in lieu thereof except as expressly

permitted by any of the provisions of this Agreement. The Recipient shall destroy all canceled Subordinated Debt.

Section 6.9 Rule 144; Rule 144A; 4(a)(1½) Transactions.

(a) At all times after the Signing Date, the Recipient covenants that (1) it will, upon the request of the Investor or any subsequent holders of the Subordinated Debt (“*Holder*s”), 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 Subordinated Debt (including, in the case of a Recipient that is a national bank or federal savings association, as such Rule is incorporated into Part 16), make “current public information” available, as provided in Section (c)(1) of Rule 144 (if the Recipient is a “Reporting Issuer” within the meaning of Rule 144) or in Section (c)(2) of Rule 144 (if the Recipient 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(a)(1½)” exemption to sell any of its Subordinated Debt, 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 Subordinated Debt pursuant to such exemption, or (z) to the extent any Holder is relying on Rule 144A under the Securities Act (including, in the case of a Recipient that is a national bank or federal savings association, as such Rule is incorporated into Part 16) to sell any of its Subordinated Debt, 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 Subordinated Debt without registration under the Securities Act (or, in the case of a Recipient that is a national bank or federal savings association, under Part 16) 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(a)(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 (or, in each case and in the case of a Recipient that is a national bank or federal savings association, as applicable under Part 16); *provided* that the Recipient shall not be required to take any action described in this Section 6.9 that would cause the Recipient to become subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act if the Recipient was not subject to such requirements prior to taking such action. Upon the request of any Holder, the Recipient will deliver to such Holder a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

(b) If the Recipient is a state-chartered bank or savings association, the Investor and Recipient acknowledge that, as of the Signing Date, the offer and sale of the Subordinated Debt is a security of an insured depository institution and, accordingly, the transfer of such securities is exempt from the registration requirements of the Securities Act and qualification and registration requirements under state law. Notwithstanding the foregoing, so long as the Subordinated Debt is subject to the exemption provided by Section 3(a)(2) or Section 3(a)(5) of the Securities Act, the provisions of this Section 6.9 shall be interpreted so as to nonetheless provide a Holder of Subordinated Debt with the benefit of the cooperation of the Recipient to facilitate a sale of the Subordinated Debt, including the preparation and provision of materials referenced in Section 6.9(a)(1)(y).

(c) The Recipient agrees to indemnify Investor, Investor’s officials, 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 Recipient pursuant to this Section 6.9 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.

(d) If the indemnification provided for in Section 6.9(c) 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 Recipient, 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 Recipient, 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 Recipient, 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 Recipient or by the Indemnitee and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; the Recipient and Investor agree that it would not be just and equitable if contribution pursuant to this Section 6.9(d) 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 6.9(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 Recipient if the Recipient was not guilty of such fraudulent misrepresentation.

#### Section 6.10 Redemption.

(a) Optional Redemption. The Recipient may, at its option, redeem the outstanding Subordinated Debt (i) in whole or in part, from time to time, on or after the fifth anniversary of the Original Issue Date, or (ii) in whole but not in part at any time within ninety (90) days following a Regulatory Trigger Event (any such date, a “*Redemption Date*”), in each case, at a redemption price equal to the sum of (i) 100% of the principal amount thereof being called for redemption and (ii) any accrued and unpaid interest (including accrued and unpaid Deferred Interest). The redemption price for any Subordinated Debt shall be payable on the relevant Redemption Date to the Holder of such Subordinated Debt against surrender thereof to the Recipient 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. Notwithstanding the foregoing, the Recipient may not redeem any Subordinated Debt without having received the prior approval of the Appropriate Federal Banking Agency to the extent required under capital rules applicable to the Recipient and without complying with the capital rules applicable to the Recipient.

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

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

(d) Partial Redemption. The Recipient may redeem less than all of the outstanding Subordinated Debt, provided that the amount called for redemption at any time is not less than twenty percent (20%%) of the Purchase Price (or one hundred percent (100%%) of the Subordinated Debt then outstanding if representing a principal amount less than twenty percent (20%%) of the Purchase Price). 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 Subordinated Debt shall be redeemed from time to time. If less than the full aggregate principal amount of any Subordinated Security is redeemed, the Recipient shall issue a new Subordinated Security in the unredeemed aggregate principal amount thereof without charge to the Holder thereof. Subordinated Debt may be redeemed in part only on a *pro rata* basis and only in minimum denominations of \$1,000 and integral multiples thereof.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the Redemption Date specified in the notice all funds necessary for the redemption have been deposited by the Recipient, in trust for the *pro rata* benefit of the Holders of the Subordinated Debt 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 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 Subordinated Debt so called for redemption, the aggregate principal amount of such Subordinated Debt 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 Subordinated Debt (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 Recipient, after which time the Holders of such Subordinated Debt (or portion thereof so called for redemption) shall look only to the Recipient for payment of the redemption price of such Subordinated Debt.

(f) Status of Redeemed Securities. Subordinated Debt that ~~are~~is redeemed, repurchased or otherwise acquired by the Recipient shall be cancelled and shall not thereafter be reissued by the Recipient.

Section 6.11 Governance Rights for Non-Payment of Interest.

(a) Board Observation Rights. Whenever, at any time or times, interest on the Subordinated Debt has not been paid for an aggregate of five (5) Interest Periods or more, whether due to deferral or otherwise and whether or not consecutive, the Recipient shall invite a representative (a “*Subordinated Observer*”) selected by the ~~holders~~Holders of the Subordinated Debt, voting as a single class, to attend all meetings of the Board of Directors in a nonvoting observer capacity and, in this respect, shall give such Subordinated Observer copies of all notices, minutes, consents, and other materials that it provides to its directors in connection with such meetings (subject to disclosure limitations under applicable law); *provided*, that the ~~holders~~Holders of the Subordinated Debt shall not be obligated to select a Subordinated Observer, nor shall such Subordinated Observer, if selected, be obligated to attend any meeting to which he/she is invited. The rights of the holders of the Subordinated Debt set forth in this Section 6.11(a) shall terminate when interest payments have been timely paid in full on the Subordinated Debt for at least four (4) consecutive Interest Periods and when there is no unpaid Deferred Interest, subject to revesting in the event of each and every subsequent default of the character above mentioned.

(b) Subordinated Directors.

(i) If, at any time or times, interest on the Subordinated Debt has not been paid for an aggregate of six (6) Interest Periods or more, whether due to deferral or otherwise and whether or not consecutive (a “*Director Trigger Event*”), the Holders shall have the right, but not the obligation, to select up to two (2) individuals to serve on the Board of Directors of the Recipient; it being understood, that even if the Holders do not immediately select any individuals to serve on the Board of Directors of the Recipient following the occurrence of a Director Trigger Event, the Holders shall nevertheless retain the right to do so until termination of such right pursuant to Section 6.11(b)(v). Upon the Holders’ selection of any such individuals, the Recipient and its Board of Directors shall take all necessary action to: (i) cause the size of the Board of Directors to be increased by one (1) (if the Holders select one (1) individual) or two (2) (if the Holders select two (2) individuals) and (ii) cause such director vacancy or two (2) director vacancies, as the case may be, to be filled by the individual or two (2) individuals selected by the Holders, as the case may be (the “*Subordinated Directors*” and each a “*Subordinated Director*”).

(ii) After any Subordinated Director joins the Recipient’s Board of Directors pursuant to Section 6.11(b)(i), until the termination of the Holders’ selection rights pursuant to Section 6.11(b)(v), the Board of Directors shall take all necessary action to (x) include such Subordinated Director on the slate of directors for nomination at the Recipient’s annual meetings of stockholders, (y) recommend that the Recipient’s

shareholders vote to elect such Subordinated Director and (z) solicit proxies for such Subordinated Director in the same manner that the Board of Directors solicits proxies for the other director nominees of the Recipient.

(iii) If at any time after a Subordinated Director joins the Board of Directors and prior to the termination of the selection and nomination rights pursuant to Section 6.11(b)(v) the office of any Subordinated Director becomes vacant for any reason, the Holders may select a successor, and the Board of Directors shall take all action necessary to appoint such successor to the Board of Directors.

(iv) Notwithstanding the foregoing, it shall be a qualification for selection or nomination for any Subordinated Director that the nomination or election of such Subordinated Director to the Board of Directors shall not cause the Recipient to violate any corporate governance requirements of any securities exchange or other trading facility on which securities of the Recipient may then be listed or traded that listed or traded companies must have a majority of independent directors.

(v) The selection and nomination rights set forth in Section 6.11(b)(i), (ii) and (iii) shall terminate when all accrued and unpaid interest has been timely paid in full on the Subordinated Debt for at least four (4) consecutive Interest Periods and there is no unpaid Deferred Interest, subject to revesting upon the occurrence of a subsequent Director Trigger Event.

(vi) For the avoidance of doubt, the Holders holding more than fifty percent (50%) of the aggregate outstanding principal amount of the Subordinated Debt (the “*Majority Holders*”) shall be entitled to take all necessary action to exercise and enforce the rights set forth in this Section 6.11 on behalf of the Holders.

Section 6.12 Communications to Holders. Any Holder shall have the right, upon five (5) business days prior written notice to the Recipient or its duly appointed agent to obtain a complete list of Holders. In addition, any Holder shall have the right to request that the Recipient or its duly appointed agent send a notice on behalf of such Holder to all other Holders at the addresses set forth on the Subordinated Securities Register.

Section 6.13 Noncompliance. The Recipient acknowledges and agrees that this Agreement is entered into under Section 104A of the Community Development Banking Act and that the ECIP Interim Final Rule was promulgated under ~~the Community Development Banking that~~ Act and, accordingly, where applicable, the enforcement of the provisions of the Agreement and the ECIP Interim Final Rule (and any violations thereof) are subject to 12 U.S.C. § 4717. The Recipient further acknowledges and agrees that the Investor may inform the Appropriate Federal Banking Agency of Recipient’s apparent noncompliance.

Section 6.14 Deferral of Interest.

(a) Payments of interest on the Subordinated Debt shall be deferred for any Interest Period, with the result that such payment of interest shall not be due on the originally scheduled Interest Payment Date and shall instead be due on a subsequent Interest Payment Date or the

Maturity Date, as applicable and as determined in accordance with this Section 6.14 if as of the applicable Interest Payment Date, any of the following is true:

- (i) the Recipient fails to be classified as “well capitalized”, as defined in the applicable regulations of its Appropriate Federal Banking Agency;
- (ii) the Recipient failed to achieve positive net income for the most recently completed quarter prior to the relevant Interest Payment Date;
- (iii) the Recipient is subject to distribution limitations under the capital rules applicable to it, such as those set forth in 12 C.F.R. § 3.11; 12 C.F.R. § 217.11 or 12 C.F.R. § 324.11; or
- (iv) the Recipient determines that the payment would be detrimental to the financial health of the Recipient, and the principal executive officer and principal financial officer of the Recipient provide written notice, in a form reasonably satisfactory to the Investor, of such determination and the basis thereof.

(b) Any interest installment that is deferred pursuant to Section 6.14(a) (“*Deferred Interest*”) shall be tested against Section 6.14(a)(i)–Section 6.14(a)(iv) at each subsequent Interest Payment Date, ~~such and the applicable~~ Interest Deferral Period shall continue until none of the items in Section 6.14(a)(i)–Section 6.14(a)(iv) is true. Deferred Interest shall be payable on any Interest Payment Date and shall become due at the first Interest Payment Date as of which none of such items is true. 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 principal amount of the Subordinated Debt in accordance with the terms thereof, but no additional interest will accrue on any Deferred Interest. If an Interest Deferral Period has occurred and is continuing on the Maturity Date, any accrued and unpaid Deferred Interest shall be due on the Maturity Date.

(c) The Recipient may, in its discretion, provide the Investor notice that it waives the deferral provisions set forth in Section 6.14(a) above with respect to any Interest Payment Date, and may pay interest that would otherwise be subject to deferral. Notwithstanding any such waiver pursuant to this Section 6.14(c), the Recipient’s interest payments must adhere to any distribution or interest payment limitations set forth by the Recipient’s Appropriate Federal Banking Agency.

Section 6.15 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 Recipient shall, at the Recipient’s sole cost and expense, (i) furnish to the Investor all instruments, documents and other agreements required to be furnished by the Recipient pursuant to the terms of this Agreement, including any documents required to be delivered pursuant to Section 6.9 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 Subordinated Debt 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.

## ARTICLE VII

### SUBORDINATION OF THE SUBORDINATED DEBT

Section 7.1 Agreement to Subordinate. (a) The Recipient covenants and agrees, and each Holder of Subordinated Debt issued hereunder likewise covenants and agrees, that the Subordinated Debt shall be issued subject to the provisions of this Article VII; and each Holder of a 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 Recipient of the principal of and interest on all Subordinated Debt issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right of payment to the prior payment in full of all amounts then due and payable in respect of Senior Indebtedness, whether outstanding at the date of this Agreement or thereafter incurred.

(c) No provision of this Article VII 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 Subordinated Debt hereunder.

Section 7.2 Default on Senior Indebtedness. (a) In the event and during the continuation of any default by the Recipient in the payment of principal, premium, interest or any other payment due on any Senior Indebtedness, no payment shall be made by the Recipient with respect to the principal or interest on the Subordinated Debt or any other amounts which may be due on the Subordinated Debt 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 Recipient with respect to the principal or interest on the Subordinated Debt or any other amounts which may be due on the Subordinated Debt 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 Subordinated Security, when such payment is prohibited by the preceding paragraphs of this Section 7.2, such payment shall be held in trust for the benefit of, and shall be paid over or delivered by the Holder of the Subordinated Security 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 Recipient in writing within ninety (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 Recipient shall be paid to the holders of such Senior Indebtedness. The Recipient shall, within ten (10) business days of receipt of such notice, provide Investor with (i) a copy of such notice delivered to the Recipient and (ii) a certificate signed on behalf of the Recipient 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 Subordinated Security should pay or deliver the amounts specified in such notice in the manner specified therein.

Section 7.3 Liquidation; Dissolution. (a) Upon any payment by the Recipient or distribution of assets of the Recipient of any kind or character, whether in cash, property or securities, to creditors upon any dissolution, winding-up, liquidation or reorganization of the Recipient, whether voluntary or involuntary or in insolvency, receivership or other proceedings, the holders of all Senior Indebtedness of the Recipient 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 Recipient on account of the principal of or interest on the Subordinated Debt or any other amounts which may be due on the Subordinated Debt pursuant to the terms hereof or thereof; and upon any such dissolution, winding-up, liquidation or reorganization, any payment by the Recipient, or distribution of assets of the Recipient of any kind or character, whether in cash, property or securities, which the Holder of the Subordinated Debt would be entitled to receive from the Recipient, except for the provisions of this Article VII, shall be paid by the Recipient or by any receiver, liquidating trustee, agent or other person making such payment or distribution, or by the Holder of the Subordinated Debt under this Agreement if received by them or it, directly to the holders of Senior Indebtedness of the Recipient (*pro rata* to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders, as calculated by the Recipient) 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 Subordinated Debt.

(b) In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Recipient of any kind or character prohibited by Section 7.3(a), whether in cash, property or securities, shall be received by any Holder of the Subordinated Debt, before the amounts of all Senior Indebtedness [is](#)are 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 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 Recipient, 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 Recipient shall provide Investor with a certificate signed on behalf of the Recipient by a Senior Executive Officer confirming that the Holder of the Subordinated Debt should pay or deliver such amounts to the holders of such Senior Indebtedness.

(c) For purposes of this Article VII, the words “*cash, property or securities*” shall not be deemed to include Equity of the Recipient as reorganized or readjusted, or securities of the Recipient or any other entity provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article VII with respect to the Subordinated Debt to the payment of Senior Indebtedness that may at the time be outstanding, *provided* that (i) such Senior Indebtedness is assumed by the new entity, if any, resulting from any such reorganization or readjustment, and (ii) the rights of the holders of such Senior Indebtedness are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Recipient with, or the merger of the Recipient into, another person or the liquidation or dissolution of the Recipient 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 7.3 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 7.4 Subrogation. (a) Subject to the payment in full of all ~~of~~ Senior Indebtedness, the rights of the Holders of the Subordinated Debt 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 Recipient, as the case may be, applicable to such Senior Indebtedness until the principal of and interest on the Subordinated Debt 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 Subordinated Debt would be entitled except for the provisions of this Article VII, and no payment pursuant to the provisions of this Article VII to or for the benefit of the holders of such Senior Indebtedness by the Holders of the Subordinated Debt shall, as between the Recipient, its creditors other than holders of Senior Indebtedness of the Recipient, and the Holders of the Subordinated Debt, be deemed to be a payment by the Recipient to or on account of such Senior Indebtedness. It is understood that the provisions of this Article VII are intended solely for the purposes of defining the relative rights of the Holders of the Subordinated Debt, on the one hand, and the holders of such Senior Indebtedness on the other hand.

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

Section 7.5 Notice by the Recipient. (a) The Recipient shall give prompt written notice to the Holders of the Subordinated Debt of any fact known to the Recipient that would prohibit the making of any payment of monies in respect of the Subordinated Debt pursuant to the provisions of this Article VII.

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

Section 7.6 Subordination May Not Be Impaired. (a) No right of any present or future holder of any Senior Indebtedness of the Recipient 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 Recipient, 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 Recipient, 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 Recipient may, at any time and from time to time, without the consent of or notice to the Holders of the Subordinated Debt, without incurring responsibility to the Holders of the Subordinated Debt and without impairing or releasing the subordination provided in this Article VII or the obligations hereunder of the Holders of the Subordinated Debt 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 Recipient, as the case may be, and any other person.

## 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 Recipient if the Closing shall not have occurred by the thirtieth (30<sup>th</sup>) calendar day following the Signing Date; *provided, however*, that in the event the Closing has not occurred by such thirtieth (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 thirtieth (30<sup>th</sup>) calendar day and not be under any obligation to extend the term of this Agreement thereafter; *provided, further*, that the right to terminate this Agreement under this Section 8.1(a)(i) shall not be available to any party whose breach of any representation or warranty or failure to perform any obligation under this Agreement shall have caused or resulted in the failure of the Closing to occur on or prior to such date; or
  - (ii) by either the Investor or the Recipient 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 Recipient; or
- (b) the date on which all the Subordinated Debt has been redeemed in whole; or
- (c) if the Closing shall not have occurred by June 30, 2022, 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 rights and remedies of Treasury with respect to the representations, warranties, covenants and obligations of the Recipient herein shall not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time by Treasury or any of its personnel or agents with respect to the accuracy or inaccuracy of, or compliance with, any such representation, warranty, covenant or obligation.

Section 8.3 Amendment. No amendment, modification, termination or waiver of any provision of this Agreement or the Subordinated Debt or any of the other Transaction Documents

will be effective unless made in writing and signed by an officer or a duly authorized representative of each party hereto, and, in the case of any amendment, modification, termination or waiver affecting the Subordinated Debt, the Majority Holders; *provided* that for so long as the Subordinated Debt is outstanding, the Investor may at any time and from time to time unilaterally amend this 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; and any rules and regulations ~~promulgated thereunder and any other publications or interpretative releases of the Investor governing ECIP~~; *provided, further* that notwithstanding anything else in this Section 8.3, no amendment, modification, termination or waiver with respect to the Subordinated Debt shall, unless in writing and signed by all Holders, do any of the following: (A) change the principal or the rate of interest on any Subordinated Security; (B) extend any date fixed for any payment of principal or interest; (C) change the definition of the terms “*Holder*” 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 Recipient 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 Subordinated Debt at the time outstanding, each future Holder of the Subordinated Debt and the Recipient. 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 Purchase are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable law. No waiver will be effective unless it is in a writing signed by a duly authorized officer of the waiving party that makes express reference to the provision or provisions subject to such waiver.

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 Purchase contemplated hereby and (b) that notice may be served upon (i) the Recipient at the address and in the manner set forth for notices to the Recipient in Section 8.6 and (ii) the Investor at the address and in the manner set forth for notices to the Recipient 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 PURCHASE 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 to the Recipient shall be delivered as set forth in Schedule A, or pursuant to such other instruction as may be designated in writing by the Recipient to the Investor. All notices to the Holders of Subordinated Debt shall be delivered in writing, mailed first-class postage prepaid, to each Holder of a Subordinated Security at the address of such Holder as it appears in the Subordinated Securities Register. All notices to the Investor shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the Investor to the Recipient.

If to the Investor:

United States Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220  
Attention: [to come]  
Facsimile: [to come]  
E-mail: [to come]

with a copy to:

[Address to come]  
Attention: [to come]  
Facsimile: [to come]  
E-mail: [to come]

Section 8.7 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 Recipient's Equityholders or other equity securityholders (a "*Business Combination*") where such party is not the surviving entity, or a sale of substantially all of its assets, to the entity which is the survivor of such Business Combination or the purchaser in such sale, (b) an assignment of certain access and information rights as provided in Section 4.1(c) or the right to receive Qualified Lending Reports as provided in Section 4.1(h) or Annex E or (c) an assignment by the Investor of this Agreement to an Affiliate of the Investor; *provided* that if the Investor assigns this Agreement to an Affiliate, the Investor shall be relieved of its obligations under this Agreement but (i) all rights, remedies and obligations of the Investor hereunder shall continue and be enforceable by such Affiliate, (ii) the Recipient's obligations and liabilities hereunder shall continue to be outstanding and (iii) all references to the Investor herein shall be deemed to include such Affiliate.

Section 8.8 Severability. If any provision of this Agreement or the Subordinated Debt, 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 8.9 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 Recipient and the Investor (and any Indemnitee) any benefit, right or remedies.

Section 8.10 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.

\* \* \*

**ANNEX A**

**FORM OF SUBORDINATED SECURITY**

[ATTACHED]



**FORM OF OFFICER’S CERTIFICATE**

**OFFICER’S CERTIFICATE OF**

**[RECIPIENT]**

In connection with that certain letter agreement, dated [\_\_\_\_], 20[ ] (the “*Agreement*”) by and between [RECIPIENT] (the “*Recipient*”) and the United States Department of the Treasury which incorporates that certain Securities Purchase 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 Recipient.
2. The representations and warranties of the Recipient set forth in Section 3.1 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 Recipient has performed in all material respects all obligations required to be performed by it under the Agreement.
3. The Recipient is an Eligible Financial Institution and, as applicable, has delivered to the Investor true, complete and correct copies of any certifications pertinent to its status as an Eligible Financial Institution.
4. No material changes have been made, or are anticipated to be made, to the Investment and Lending Plan the Recipient submitted in connection with its ECIP Application.
5. The Recipient is in compliance with the provisions of Section 104A of the Community Development Banking and Financial Institutions Act of 1994, and all rules and regulations issued thereunder, including the ECIP Interim Final Rule.
6. Neither the Recipient nor any Recipient Subsidiary is a “covered entity” as defined in Section 104A(h)(2)(ii) of the Community Development Banking Act.

The foregoing certifications are made and delivered as of [\_\_\_\_] pursuant to Section 2.3 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[ ].

**[RECIPIENT]**

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

**FORM OF OPINION**

(a) The Recipient has been duly formed and is validly existing as a [**TYPE OF ORGANIZATION**] and, if applicable, is in good standing under the laws of the jurisdiction of its organization. The Recipient 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 Recipient has been duly qualified as a foreign entity for the transaction of business and is, if applicable, in good standing, under the laws of each jurisdiction in which it owns or leases material properties or conducts any material business so as to require such qualification.

(c) The Subordinated Debt has been duly and validly authorized, and, when executed and delivered pursuant to the Agreement, the Subordinated Debt will be the legal, valid and binding obligations of the Recipient, enforceable in accordance with their terms, except as the same may be limited by applicable receivership, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity.

(d) The Recipient 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 Subordinated Debt).

(e) The execution, delivery and performance by the Recipient 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 Recipient and its Equityholders, and no further approval or authorization is required on the part of the Recipient, including, without limitation, by any rule or requirement of any national securities exchange.

(f) The Agreement is a legal, valid and binding obligation of the Recipient enforceable against the Recipient in accordance with its terms, except as limited by applicable receivership, bankruptcy, insolvency, reorganization, moratorium, conservatorship 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 Recipient of this Agreement and the performance by the Recipient of its obligations thereunder (i) do not require any approval by any Governmental Entity to be obtained on the part of the Recipient, 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 Recipient or any Recipient 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 Recipient and, pursuant to any applicable laws, is issued by any Governmental Entity having jurisdiction over the Recipient.

(h) Other than 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 Recipient in connection with the consummation by the Recipient of the Purchase.

(i) The Recipient is not nor, after giving effect to the issuance of the Subordinated Debt 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.

(j) The Recipient is an Eligible Financial Institution.

ANNEX D

**FORM OF ECIP INTERIM FINAL RULE CERTIFICATION**

**ECIP CERTIFICATION OF  
[RECIPIENT]**

In connection with that certain Letter Agreement, dated [                    ], 20[    ] (the “*Agreement*”) by and between [RECIPIENT] (the “*Recipient*”) and the United States Department of the Treasury (the “*Investor*”), the undersigned does hereby certify on behalf of the Recipient as follows:

1. I am a duly elected/appointed Senior Executive Officer of the Recipient;
2. From the Closing Date through the date of this certification, the Recipient has complied with the requirements in:
  - a. 31 C.F.R. 35.22(a), which addresses restrictions on executive compensation;
  - b. 31 C.F.R. 35.22(b), which addresses restrictions on severance payments;
  - c. 31 C.F.R. 35.22(c), which addresses restrictions on excessive or luxury expenditures;
  - d. 31 C.F.R. 35.22(d), which addresses material changes in policies or procedures maintained for purposes of compliance with 31 C.F.R. 35.22(a)–(c);
  - e. 31 C.F.R. 35.23(a), which addresses restrictions on capital distributions due to nonpayment of the Subordinated Debt; and
  - f. 31 C.F.R. 35.23(b), which addresses limitations on the amount of capital distributions.
3. The undersigned and the Recipient understand that a knowing and willful false or fraudulent statement made in connection with this certification may be punished by fine, imprisonment, or both. (See, for example, 18 U.S.C. 1001).

The foregoing certifications are made and delivered as of [                    ] pursuant to Section 4.1(d)(iii) of the Agreement.

Capitalized terms used and not otherwise defined herein shall have the meanings assigned to them in the Agreement unless otherwise stated.

*[Signature page follows]*

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

**[RECIPIENT]**

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

Name:

Title: [Chief Executive Officer/  
Chief Financial Officer]

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

Name:

Title: [Chief Executive Officer/  
Chief Financial Officer]

ANNEX E

**REGISTRATION RIGHTS**

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

(a) “*Applicable Securities Regulator*” means, in the case of a Recipient that is a state-chartered bank or savings association, the Governmental Entity having the powers, functions and duties of the SEC to administer and enforce Sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Exchange Act with respect to securities issued by the Recipient.

(b) “*Holder*” means the Investor and any other Holderholder of Registrable Securities to whom the registration rights conferred by this Agreement have been transferred in compliance with Section 1.9 hereof.

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

(d) “*OCC*” means the Office of the Comptroller of the Currency.

(e) “*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 Recipient of its intent to register its Registrable Securities either pursuant to Section 1.2(b) or Section 1.2(d) of this Annex E prior to the date of such Holder’s forfeiture.

(f) “*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 (or Part 16, if the Recipient is a national bank or federal savings association), and the declaration or ordering of effectiveness of such registration statement or amendment thereto or (B) filing a prospectus and/or prospectus supplement with respect to an appropriate effective registration statement on Form S-3.

(g) “*Registrable Securities*” means (A) all Subordinated Debt, and (B) any equity 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 share dividend or share split or in connection with a combination of shares, recapitalization, reclassification, merger, amalgamation, arrangement, consolidation or other reorganization, *provided* that, once issued, such securities will not be Registrable Securities when (1) they are sold pursuant to an effective registration statement under the Securities Act (or Part 16, if the Recipient is a national bank or federal savings association), (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.

(h) “*Registration Expenses*” mean all expenses incurred by the Recipient 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 Recipient, “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 Recipient’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.

(i) “*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.

(j) “*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).

(k) “*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 Recipient or Recipient Subsidiaries or in connection with dividend reinvestment plans.

#### Section 1.2 Registration.

(a) The Recipient covenants and agrees that as promptly as practicable after the date that the Recipient becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (and in any event no later than thirty (30) days thereafter), the Recipient shall prepare and file with the SEC (or the OCC, if the Recipient is a national bank or federal savings association) a Shelf Registration Statement covering all Registrable Securities (or otherwise designate an existing shelf registration on an appropriate form under Rule 415 under the Securities Act (a “*Shelf Registration Statement*”) filed with the SEC (or the OCC, if the Recipient is a federal savings association) 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 Recipient 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 (or Part 16, if the Recipient is a federal savings association) 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 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. So long as the Recipient is a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) at the time of filing of the Shelf Registration Statement with the SEC, such Shelf Registration Statement shall be designated by the Recipient as an automatic Shelf Registration Statement. Notwithstanding the foregoing, if the



Recipient is not eligible to file a registration statement on Form S-3, then the Recipient 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 Statement on an appropriate form under Rule 415 under the Securities Act (or Part 16, if the Recipient is a national bank or federal savings association). 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 Recipient and the Recipient 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 Recipient 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 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 Recipient 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 Recipient 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 Recipient or its securityholders for such registration or underwritten offering to be effected at such time, in which event the Recipient shall have the right to defer such registration or offering for a period of not more than forty-five (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 Recipient (1) only if the Recipient 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 twelve (12)-month period and not more than ninety (90) days in the aggregate in any twelve (12)-month period. The Recipient shall notify the Holders of the date of any anticipated termination of any such deferral period prior to such date.

(d) If during any period when an effective Shelf Registration Statement is not available, the Recipient 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 Recipient 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 (10) days prior to the anticipated filing date) and will include in such registration all Registrable Securities with respect to which the Recipient has received written requests for inclusion therein within ten (10) business days after the date of the Recipient'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 Recipient 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 Recipient 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 Recipient 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 Recipient 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 Recipient; *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 Recipient, the managing underwriters and the Investor (if the Investor is participating in the underwriting).

(f) If either (x) the Recipient 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 Recipient, and in either case the managing underwriters advise the Recipient 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 Recipient 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 Recipient 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 Recipient that have been requested to be so included, subject to the terms of this Agreement; *provided, however*, that if the Recipient 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 [this Annex E](#) would otherwise result in a breach under such agreement.

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

Section 1.4 Obligations of the Recipient. The Recipient shall use its reasonable best efforts, for so long as there are Registrable Securities outstanding, to take such actions as are under its control to not become an ineligible issuer (as defined in Rule 405 under the Securities Act) and to remain a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) if it has such status on the Signing Date or becomes eligible for such status thereafter. In addition, 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 Recipient shall, as expeditiously as reasonably practicable:

(a) Prepare and file with the SEC (or the OCC, if the Recipient is a national bank or federal savings association) (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. The plan of distribution included in such registration statement shall include, among other things, an underwritten offering, ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers, block trades, privately negotiated transactions, the writing or settlement of options or other derivative transactions and any other method permitted pursuant to applicable law, and any combination of any such methods of sale.

(b) Prepare and file with the SEC (or the OCC, if the Recipient is a national bank or federal savings association) 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 (or Part 16, if the Recipient is a national bank or federal savings association); and (B) to the Indenture, with respect to the disposition of all securities covered by such registration statement and Indenture.

(c) Furnish to the Holders and any underwriters such number of copies of the applicable registration statement and each such amendment and supplement thereto (including in each case all exhibits) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act (or Part 16, if the Recipient is a national bank or federal savings association), the Indenture and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned or to be distributed by them.

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

(e) Notify each Holder of Registrable Securities at any time when a prospectus relating thereto is required to be delivered under the Securities Act (or Part 16, if the Recipient is

a national bank or federal savings association) of the happening of any event as a result of which the applicable prospectus, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing.

(f) Give written notice to the Holders:

(i) when any registration statement or Indenture filed pursuant to Section 4.1(i) of the Agreement or any amendment thereto has been filed with the SEC (or Part 16, if the Recipient is a national bank or federal savings association) (except for any amendment effected by the filing of a document with the SEC pursuant to the Exchange Act) (or with the OCC, if the Recipient is national bank or federal savings association) and when such registration statement or any post-effective amendment thereto has become effective;

(ii) of any request by the SEC (or the OCC, if the Recipient is a national bank or federal savings association) for amendments or supplements to any registration statement or the prospectus included therein, or the Indenture or for additional information;

(iii) of the issuance by the SEC (or the OCC, if the Recipient is a national bank or federal savings association) of any stop order suspending the effectiveness of any registration statement or the initiation of any proceedings for that purpose;

(iv) of the receipt by the Recipient 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;

(v) of the happening of any event that requires the Recipient 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

(vi) if at any time the representations and warranties of the Recipient contained in any underwriting agreement contemplated by Section 1.4(j) of this Annex E cease to be true and correct.

(g) Use its reasonable best efforts to prevent the issuance or obtain the withdrawal of any order suspending the effectiveness of any registration statement referred to in Section 1.4(f)(i) of this Annex E at the earliest practicable time.

(h) Upon the occurrence of any event contemplated by Section 1.4(a) or Section 1.4(f)(iv) 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 Recipient notifies the Holders in accordance with Section 1.4(f)(iv) 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 Recipient all copies of such prospectus (at the Recipient'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 twelve (12)-month period shall not exceed ninety (90) days. The Recipient shall notify the Holders of the date of any anticipated termination of any such suspension period prior to such date.

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

(j) If an underwritten offering is requested pursuant to Section 1.2(b) of this Annex E, enter into an underwriting agreement in customary form, scope and substance and take all such other actions reasonably requested by the Holders of a majority of the Registrable Securities being sold in connection therewith or by the managing underwriter(s), if any, to expedite or facilitate the underwritten disposition of such Registrable Securities, and in connection therewith in any underwritten offering (including making members of management and executives of the Recipient 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 Recipient 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 and "10b-5" letters of counsel to the Recipient, addressed to the managing underwriter(s), if any, covering the matters customarily covered in such opinions and letters requested in underwritten offerings, (C) use its reasonable best efforts to obtain "cold comfort" letters from the independent certified public accountants of the Recipient (and, if necessary, any other independent certified public accountants of any business acquired by the Recipient 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 Recipient.

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

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

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

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

Section 1.5 Suspension of Sales. Upon receipt of written notice from the Recipient 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 Recipient that the use of the prospectus and, if applicable, prospectus supplement or Indenture may be resumed, and, if so directed by the Recipient, the Investor and/or such Holder shall deliver to the Recipient (at the Recipient'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 twelve (12)-month period shall not exceed ninety (90) days. The Recipient shall notify the Investor and the Holders prior to the anticipated termination of any such suspension period of the date of such anticipated termination.

Section 1.6 Termination of Registration Rights. A Holder's registration rights as to any securities held by such Holder (and its Affiliates, partners, members and former members) shall not be available unless such securities are Registrable Securities.

Section 1.7 Furnishing Information.

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

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

Section 1.8 Indemnification.

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

(b) If the indemnification provided for in Section 1.8 of this Annex E 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 Recipient, 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 Recipient, 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 Recipient, 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 Recipient or by the Indemnitee and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; the Recipient and each Holder agree that it would not be just and equitable if contribution pursuant to this Section 1.8(b) 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(b) of this Annex E. No Indemnitee guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from the Recipient if the Recipient was not guilty of such fraudulent misrepresentation.

Section 1.9 Assignment of Registration Rights. The rights of the Investor to registration of Registrable Securities pursuant to Section 1.2 of this Annex E may be assigned by the Investor to a transferee or assignee of Registrable Securities; *provided, however*, the transferor shall, within ten (10) days after such transfer, furnish to the Recipient written notice of the name and address of such transferee or assignee and the number and type of Registrable Securities that are being assigned.

Section 1.10 Clear Market. With respect to any underwritten offering of Registrable Securities by the Investor or other Holders pursuant to this Annex E, the Recipient 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 Recipient or any securities convertible into or exchangeable or exercisable for subordinated debentures or equity securities of the Recipient, during the period not to exceed ten (10) days prior and sixty (60) days following the effective date of such offering or such longer period up to ninety (90) days as may be requested by the managing underwriter for such underwritten offering. The Recipient 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 ninety (90) days as may be requested by the managing underwriter.

Section 1.11 Forfeiture of Rights. At any time, any holder of Registrable Securities (including any Holder) may elect to forfeit its rights set forth in this Annex E from that date forward; *provided*, that a Holder forfeiting such rights shall nonetheless be entitled to participate under Section 1.2(d) – (f) of this Annex E in any Pending Underwritten Offering to the same extent that such Holder would have been entitled to if the holder had not withdrawn; and *provided, further*, that no such forfeiture shall terminate a Holder's rights or obligations under



Section 1.7 of this Annex E with respect to any prior registration or Pending Underwritten Offering.

Section 1.12 Specific Performance. The parties hereto acknowledge that there would be no adequate remedy at law if the Recipient 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 Recipient under this ~~Annex E~~Section 1.12 in accordance with the terms and conditions of this Annex E.

Section 1.13 No Inconsistent Agreements. The Recipient 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 Recipient 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 Recipient shall use its reasonable best efforts to amend such agreements to ensure they are consistent with the provisions of this Annex E. Any transaction entered into by the Recipient that would reasonably be expected to require the inclusion in a Shelf Registration Statement or any report of the Recipient filed with the SEC (or the OCC, if the Recipient is a national bank or federal savings association) of any separate financial statements pursuant to Rule 3-05 of Regulation S-X or pro forma financial statements pursuant to Article 11 of Regulation S-X shall include provisions requiring the Recipient's counterparty to provide any information necessary to allow the Recipient to comply with its obligation hereunder.

Section 1.14 Certain Offerings by the Investor. An “*underwritten*” offering or other disposition shall include any distribution of such securities on behalf of the Investor by one or more broker-dealers, an “*underwriting agreement*” shall include any purchase agreement entered into by such broker-dealers, and any “*registration statement*” or “*prospectus*” shall include any offering document approved by the Recipient and used in connection with such distribution.

Section 1.15 Other Cooperation. If the Recipient is a state-chartered savings association and the transfer or sale of the Registrable Securities is subject to any requirements under applicable state law or regulation relating to such transfer or sale, the Recipient will cooperate and assist in complying with such law and regulation in order to provide the Holders with the benefit of rights to effect or participate in broadly distributed underwritten offerings of the Registrable Securities.

Section 1.16 State-Chartered Banks and Savings Associations. If the Recipient is a state-chartered bank or savings association, the Investor and Recipient acknowledge that, as of the Signing Date, the Registrable Securities are securities of an insured depository institution and, accordingly, the transfer of such securities is exempt from the registration requirements of the Securities Act and qualification and registration requirements under state law. Notwithstanding

the foregoing, so long as the Registrable Securities are subject to the exemption provided by Section 3(a)(2) or Section 3(a)(5) of the Securities Act, the provisions of this Annex E shall, to the extent practicable and where applicable, be interpreted so as to nonetheless provide the Holders with the benefit of rights to effect or participate in broadly distributed underwritten offerings of the Registrable Securities. Without limiting the generality of the foregoing, so long as the Registrable Securities are subject to the exemption provided by Section 3(a)(2) or Section 3(a)(5) of the Securities Act: (i) all references to the “SEC” shall be deemed to refer to the Applicable Securities Regulator and all references to provisions of the Securities Act shall be deemed to refer to the corresponding provision of the applicable banking law or regulation, if any; and (ii) if, under such applicable laws, rules and regulations of the Applicable Securities Regulator, no registration statement or correlative filing is required to be made, then (A) any references herein to a “registration statement” or “prospectus” shall be deemed to refer to an offering memorandum or other offering materials with respect to the applicable transfer of Registrable Securities, (B) any references herein to the filing of a registration statement shall be deemed to refer instead to the time when such broadly distributed underwritten offering is proposed to be commenced and (C) any references herein to the preparation and filing of a registration statement or prospectus shall be deemed to refer to the preparation of an offering memorandum or other appropriate offering materials.