As filed with the Securities and Exchange Commission on January 18, 2011

Registration No. 333-170203

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Amendment No. 3
to
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

BankUnited, Inc.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	**6035** (Primary Standard Industrial Classification Code Number)	**27-0162450** (I.R.S. Employer Identification Number)

14817 Oak Lane
Miami Lakes, Florida 33016
(305) 569-2000
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

John A. Kanas
Chairman, President and Chief Executive Officer
BankUnited, Inc.
14817 Oak Lane
Miami Lakes, Florida 33016
(305) 569-2000
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Richard B. Aftanas, Esq. Skadden, Arps, Slate, Meagher & Flom LLP Four Times Square New York, New York 10036 (212) 735-3000	**Richard D. Truesdell, Jr., Esq.** Davis Polk & Wardwell LLP 450 Lexington Avenue New York, New York 10017 (212) 450-4000

Approximate date of commencement of proposed sale to the public:
As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 of the Securities Act of 1933 check the following box. o

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Securities Exchange Act of 1934.

Large accelerated filer o	Accelerated filer o	Non-accelerated filer ☒ (Do not check if a smaller reporting company)	Smaller reporting company o

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to Be Registered	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee(3)
Common stock, par value $0.01 per share	$754,687,500	$87,619

(1) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(a) under the Securities Act of 1933.

(2) Includes offering price of shares of common stock that the underwriters have the option to purchase pursuant to their over-allotment option.

(3) $21,390 of this amount was previously paid in connection with the initial October 2010 filing of the Registration Statement to which this Amendment No. 3 relates.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file an amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

The information in this preliminary prospectus is not complete and may be changed. Neither we nor the selling stockholders may sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion. Dated January 18, 2011

PROSPECTUS

26,250,000 Shares

BankUnited, Inc.

Common Stock

This is the initial public offering of our common stock. We are offering 4,000,000 shares of our common stock. The selling stockholders identified in this prospectus are offering an additional 22,250,000 shares. We will not receive any of the proceeds from the sale of the shares being sold by the selling stockholders.

Prior to this offering there has been no public market for our common stock. It is currently estimated that the public offering price per share of our common stock will be between $23.00 and $25.00 per share. Our common stock has been approved for listing on the New York Stock Exchange under the symbol "BKU."

See "Risk Factors" on page 13 to read about factors you should consider before buying our common stock.

Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

	Per Share	Total
Initial public offering price	$	$
Underwriting discounts	$	$
Proceeds, before expenses, to us	$	$
Proceeds, before expenses, to the selling stockholders	$	$

To the extent that the underwriters sell more than 26,250,000 shares of our common stock, the underwriters have the option to purchase up to an additional 3,937,500 shares of our common stock from the selling stockholders at the initial public offering price less the underwriting discount, within 30 days from the date of this prospectus, to cover over-allotments.

The underwriters expect to deliver the shares of our common stock against payment in New York, New York on , 2011.

Morgan Stanley **BofA Merrill Lynch**

Deutsche Bank Securities **Goldman, Sachs & Co.**

Keefe, Bruyette & Woods **RBC Capital Markets** **UBS Investment Bank**

Prospectus dated , 2011

We, the selling stockholders and the underwriters have not authorized anyone to provide any information other than that contained in this prospectus or in any free writing prospectus prepared by or on behalf of us or to which we have referred you. We, the selling stockholders and the underwriters take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We are not, and the selling stockholders and underwriters are not, making an offer of these securities in any jurisdiction where the offer is not permitted. You should not assume that the information contained in this prospectus is accurate as of any date other than the date on the front of this prospectus.

TABLE OF CONTENTS

The shares of our common stock that you purchase in this offering will not be a bank deposit and will not be insured or guaranteed by the FDIC or any other government agency. Your investment will be subject to investment risk, and you must be capable of affording the loss of your entire investment.

For investors outside the United States: None of we, the selling stockholders or any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. You are required to inform yourselves about and to observe any restrictions relating to this offering and the distribution of this prospectus.

MARKET AND INDUSTRY DATA AND FORECASTS

This prospectus includes market and industry data and forecasts that we have developed from independent research firms, publicly available information, various industry publications, other published industry sources or our internal data and estimates. Independent research reports, industry publications and other published industry sources generally indicate that the information contained therein was obtained from sources believed to be reliable, but do not guarantee the accuracy and completeness of such information. Although we believe that the publications and reports are reliable, none of we, the selling stockholders or the underwriters have independently verified the data. Our internal data, estimates and forecasts are based on information obtained from our investors, trade and business organizations and other contacts in the markets in which we operate and our management's understanding of industry conditions. Although we believe that such information is reliable, we have not had such information verified by any independent sources.

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus. This summary may not contain all of the information that you should consider before investing in our common stock. You should read the entire prospectus carefully, including the section entitled "Risk Factors," our financial statements and the related notes thereto and management's discussion and analysis thereof included elsewhere in this prospectus, before making an investment decision to purchase our common stock. Unless we state otherwise or the context otherwise requires, references in this prospectus to "we," "our," "us," and the "Company" for all periods subsequent to the Acquisition (as defined below) refer to BankUnited, Inc., a Delaware corporation, and its consolidated subsidiaries. References in this prospectus to "BankUnited" and the "Bank" for all periods beginning May 22, 2009 refer to BankUnited, a federal savings association, formed to acquire substantially all of the assets (including loans, employees and certain operations), and assume all of the non-brokered deposits and substantially all other liabilities, of the Failed Bank (as defined below).

BankUnited, Inc.

Summary

BankUnited, Inc. is a savings and loan holding company with two wholly-owned subsidiaries: BankUnited, which is one of the largest independent depository institutions headquartered in Florida by assets, and BankUnited Investment Services, Inc., or BankUnited Investment Services, a Florida insurance agency which provides comprehensive wealth management products and financial planning services. BankUnited is a federally-chartered, federally-insured savings association headquartered in Miami Lakes, Florida, with $11.2 billion of assets, more than 1,100 professionals and 78 branches in 13 counties at September 30, 2010. Our goal is to build a premier, large regional bank with a low-risk, long-term value-oriented business model focused on small and medium sized businesses and consumers. We endeavor to provide personalized customer service and offer a full range of traditional banking products and financial services to both our commercial and consumer customers, who are predominantly located in Florida.

BankUnited, Inc. was organized by a management team led by our Chairman, President and Chief Executive Officer, John A. Kanas, on April 28, 2009 and was initially capitalized with $945.0 million by a group of investors. On May 21, 2009, BankUnited was granted a savings association charter and the newly formed bank acquired substantially all of the assets and assumed all of the non-brokered deposits and substantially all other liabilities of BankUnited, FSB, or the Failed Bank, from the Federal Deposit Insurance Corporation, or the FDIC, in a transaction which we refer to as the Acquisition. Concurrently with the Acquisition, we entered into two loss sharing agreements, or the Loss Sharing Agreements, which cover certain legacy assets, including the entire legacy loan portfolio and other real estate owned, or OREO, and certain purchased investment securities, including private-label mortgage-backed securities and non-investment grade securities. We refer to assets covered by the Loss Sharing Agreements as Covered Assets (or, in certain cases, Covered Loans or Covered Securities).

Since the Bank's establishment in May 2009, we have pursued our new strategy and as part of this strategy we have recruited a new executive management team, substantially enhanced our middle management team, redesigned the Bank's underwriting functions, and have begun the process of improving the Bank's information technology systems and optimizing our existing branch network. For the nine months ended September 30, 2010, the Company was one of the most profitable and well-capitalized bank holding companies in the United States, having earned 1.9% on its average assets and 17.7% on its average common stockholder's equity, and achieved a 41.9% efficiency ratio. BankUnited's tier 1 leverage ratio was 10.1% and its tier 1 risk-based capital ratio was 42.5% at September 30, 2010. The Company's tangible common equity ratio was 10.7% at September 30, 2010.

We intend to invest our excess capital to grow opportunistically both organically and through acquisitions.

Our management team is led by Mr. Kanas, a veteran of the banking industry who built North Fork Bancorporation, or North Fork, into a leading regional bank based in New York. At the time of its sale to Capital One Financial Corporation, or Capital One, in December 2006, North Fork was one of the top 25 bank holding companies in the United States. Mr. Kanas served as the Chairman of North Fork from 1986 to 2006 and President and Chief Executive Officer of North Fork from 1977 to 2006. Through organic growth and over 15 acquisitions, Mr. Kanas oversaw the growth and expansion of North Fork from less than $1 billion in assets in 1977 to nearly $60 billion in assets by 2006. According to FactSet Research Systems, while for the five-year period prior to its sale to Capital One, North Fork generated a total annualized return of 11.2%, which equaled the median total annualized return of the top fifty U.S. bank holding companies (excluding North Fork) by assets, for the ten-year period, North Fork generated a total annualized return of 20.5%, compared to a median total annualized return of 14.5%. North Fork distinguished itself as one of the most efficient banking companies in the United States through Mr. Kanas' vision of safe and prudent expansion, cost control and capital management. North Fork was sold to Capital One in December 2006 for $13.2 billion, or 4.0 times tangible equity, a transaction multiple higher than both the median transaction multiple of 3.2 for sales of banks with assets between $10 billion and $30 billion and the median transaction multiple of 3.0 for sales in the banking industry during the period from 2000 to 2006.

The Acquisition

On May 21, 2009, BankUnited entered into a purchase and assumption agreement, or the Purchase and Assumption Agreement, with the FDIC, Receiver of the Failed Bank, to acquire substantially all of the assets and assume all of the non-brokered deposits and substantially all other liabilities of the Failed Bank. Excluding the effects of acquisition accounting adjustments, BankUnited acquired $13.6 billion of assets and assumed $12.8 billion of liabilities. The fair value of the assets acquired was $10.9 billion and the fair value of the liabilities assumed was $13.1 billion. BankUnited received a net cash consideration from the FDIC in the amount of $2.2 billion.

The Acquisition consisted of assets with a fair value of $10.9 billion, including $5.0 billion of loans (with a corresponding unpaid principal balance, or UPB, of $11.2 billion), a $3.4 billion FDIC indemnification asset, $538.9 million of investment securities, $1.2 billion of cash and cash equivalents, $177.7 million of foreclosed assets, $243.3 million of Federal Home Loan Bank, or FHLB, stock and $347.4 million of other assets. Liabilities with a fair value of $13.1 billion were also assumed, including $8.3 billion of non-brokered deposits, $4.6 billion of FHLB advances, and $112.2 million of other liabilities.

Concurrently with the Acquisition, the Bank entered into the Loss Sharing Agreements with the FDIC that cover certain legacy assets, including the entire loan portfolio and OREO, and certain purchased investment securities, including private-label mortgage-backed securities and non-investment grade securities. The Bank acquired other BankUnited, FSB assets that are not covered by the Loss Sharing Agreements with the FDIC including cash, certain investment securities purchased at fair market value and other tangible assets. The Loss Sharing Agreements do not apply to subsequently acquired, purchased or originated assets. At September 30, 2010, the Covered Assets consisted of assets with a book value of $4.3 billion. The total UPB (or, for investment securities, unamortized cost basis) of the Covered Assets at September 30, 2010 was $8.9 billion.

Pursuant to the terms of the Loss Sharing Agreements, the Covered Assets are subject to a stated loss threshold whereby the FDIC will reimburse the Bank for 80% of losses up to the $4.0 billion stated threshold and 95% of losses in excess of the $4.0 billion stated threshold, calculated, in each case, based on UPB (or, for investment securities, unamortized cost basis) plus certain interest and expenses. The carrying value of the FDIC indemnification asset at September 30, 2010 was $2.7 billion. The Bank will reimburse the FDIC for its share of recoveries with respect to losses for which the FDIC paid the Bank a reimbursement under the Loss Sharing Agreements. The FDIC's obligation to reimburse the Company for losses with respect to the Covered Assets began with the first dollar of loss incurred. We have received $997.2 million from the FDIC in reimbursements under the Loss Sharing Agreements for claims filed for losses incurred as of September 30, 2010. See "Business—The Acquisition—Loss Sharing Agreements."

Several elements of our Acquisition are favorable relative to other FDIC-assisted transactions and position the Company to generate significant value. At the time of the Acquisition, bank failures were on the rise and the U.S. Treasury's unprecedented Supervisory Capital Assessment Program for the largest U.S. bank holding companies was underway. Due in part to the distress in the banking system, economic uncertainty and poor capital markets conditions, the Covered Loans and OREO were purchased by the Bank in a bidding process for 76.5% of their $11.4 billion in UPB as of the Acquisition date, which represented the fair market value for those assets at that time. The discount was one of the largest relative to other FDIC-assisted transactions and reflected, in addition to the abovementioned factors, the poor quality of the assets acquired as noted by the ratio of non-performing assets to total assets of 23.5% at May 21, 2009. In addition, our bid included the granting of a warrant to the FDIC, allowing the FDIC to participate in the economic upside of the transaction if certain performance levels are achieved. Along with the pricing terms, the Loss Sharing Agreements and the size of the transaction enable the Company to generate significant capital even in severe loss scenarios. For example, in the worst case scenario of a 100% credit loss on all Covered Loans and OREO, we would recover no less than 89.7% of the UPB as of the Acquisition date, assuming compliance with the terms of the Loss Sharing Agreements.

Furthermore, the Loss Sharing Agreements include attractive provisions that optimize our flexibility and reduce our risk associated with the Covered Assets, including the following:

- ***Ability to sell loans.*** We may sell up to 2.5% of the Covered Loans based on the UPB at Acquisition, or approximately $280.0 million, on an annual basis without prior consent of the FDIC. Any losses incurred from such loan sales are covered under the Loss Sharing Agreements.

- ***No residual credit risk.*** We have the right to sell any or all of the Covered Assets at the termination date of our Loss Sharing Agreements, and any losses incurred will be covered. This allows us to crystallize any residual loss that would otherwise materialize after the expiration of the Loss Sharing Agreements.

- ***Certain securities covered.*** Certain private-label mortgage-backed securities purchased in the Acquisition are covered under the Loss Sharing Agreements.

- ***Enhanced flexibility to execute corporate strategy opportunistically.*** The Bank has the ability to pursue certain strategic transactions including, after an 18-month lock-up period from the Acquisition date, this offering.

We view our relationship with the FDIC as a long-term partnership in which both parties are economically aligned to minimize credit losses on the Covered Assets.

Our Competitive Strengths

We believe that we are especially well positioned to create value for our stockholders.

- ***Experienced and respected management team with a successful track record.*** Our management team is led by Mr. Kanas, who has attracted an entirely new executive management team and enhanced our middle management team with seasoned professionals with significant banking experience and a history of high performance at nationally recognized mid- to large-cap financial institutions. Many of our management team members have extensive experience working together at North Fork and have successfully executed operating business models similar to ours in the past. In addition, our management has a successful track record of growing bank franchises both organically and through acquisitions.

- ***Strong and reliable revenue.*** A majority of BankUnited's revenue is currently derived from assets that are covered by the Loss Sharing Agreements. For the nine months ended September 30, 2010, the Company earned 1.9% on its average assets and 17.7% on its average common stockholder's equity, both of which were among the leading ratios in the U.S. banking industry.

- ***Limited credit risk exposure for Covered Assets.*** At September 30, 2010, the Covered Assets were being carried at a book value of $4.3 billion and the total UPB (or, for investment securities, unamortized cost basis) of the Covered Assets was $8.9 billion. Since the Bank's current estimate of cumulative losses on the Covered Assets of approximately $4.8 billion exceeds the $4.0 billion stated loss threshold in the Loss Sharing Agreements, 95% of any incremental credit losses above our current estimates attributable to the Covered Assets would be absorbed by the FDIC and 5% of the losses would be absorbed by the Bank under the Loss Sharing Agreements.

- ***Robust capital position.*** At September 30, 2010, BankUnited was one of the most well-capitalized banks in the United States, affording it the financial flexibility to pursue growth opportunities and pay dividends. We had a 10.7% tangible common equity ratio, and the Bank had a 10.1% tier 1 leverage ratio and a 42.5% tier 1 risk-based ratio. We declared quarterly dividends of $14.0 million on September 17 and December 9, 2010. In addition, on October 19, 2010, we declared a special one-time dividend of $6.0 million.

- ***Ideally situated for growth and expansion.*** We believe we are extremely well positioned for growth. The banking industry in our markets, Florida and the southeastern United States, is significantly distressed. We believe this distress will give us opportunities to acquire other institutions and attract talented bankers and customers from competing banks. Our strong capital position and generation, as well as scalable operating system, should allow us to take advantage of these opportunities.

- ***New high-capacity operating platform.*** Since May 2009, we have made significant investments in our infrastructure and technology in order to create a scalable platform for future organic and non-organic growth. We are in the midst of converting to a new core deposit system that has significant capacity and delivers comprehensive commercial and consumer products and services. We have made other significant investments in financial reporting and servicing systems. We believe we are creating a technology platform that will allow us to compete effectively with large regional banking institutions.

Risks We Face

There are a number of risks that you should consider before buying our common stock. These risks are discussed more fully in the section entitled "Risk Factors" beginning on page 13. These risks include, but are not limited to:

- Failure to comply with the terms of our Loss Sharing Agreements with the FDIC may result in significant losses;

- The geographic concentration of our markets in the coastal regions of Florida makes our business highly susceptible to local economic conditions and natural disasters;

- Delinquencies and defaults in residential mortgages have recently increased, creating a backlog in courts and an increase in the amount of legislative action that might restrict or delay our ability to foreclose and hence delay the collection of payments for single family residential loans under the Loss Sharing Agreements; and

- The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 may have a material effect on our operations.

Our Business

Our primary business is to offer a full range of traditional banking products and financial services coupled with high-touch, personalized customer service to both our commercial and consumer customers, who are predominantly located in Florida. We offer a full array of lending products to cater to our customers' needs, including, but not limited to, small business loans, commercial real estate loans, equipment loans, term loans, asset-backed loans, letters of credit, commercial lines of credit, residential mortgage loans, home equity and consumer loans. We also offer traditional depository products, including checking accounts, money market deposit accounts, savings accounts and certificates of deposit, repo products and cash management services. Through dedicated financial consultants and licensed bankers, BankUnited Investment Services provides comprehensive wealth management products and services, including mutual funds, annuities, life insurance, individual securities and succession, estate and financial planning services. We believe that our customers are attracted to us because we offer the resources and sophistication of a large bank as well as the responsiveness and relationship-based approach of a community bank.

Our Market Area

We view our market as the southeast region of the United States with a current focus on Florida, and in particular the Miami metropolitan statistical area, or MSA. We believe Florida represents a long-term attractive banking market. According to estimates from SNL Financial, from June 30, 2000 to June 30, 2010, Florida added 2.9 million new residents, the third most of any U.S. state, and, at June 30, 2010, had a total population of 18.9 million and a median household income of $49,910. Additionally, the state has 1.9 million active businesses. We believe Florida's population provides tremendous opportunities for us to grow our business. At June 30, 2010, BankUnited ranked 11th in deposit market share in Florida and 6th in the Miami MSA, according to SNL Financial.

Florida's economy and banking industry continue to face significant challenges. Since 2007, many Florida banks have experienced capital constraints and liquidity challenges as a result of significant losses from loans with poor credit quality and investments that have had sizeable decreases in value or realized losses. The undercapitalization and increased regulation of the banking sector have caused many banks to reduce lending to new and existing clients and focus primarily on improving their balance sheets, putting pressure on commercial borrowers to look for new banking relationships. As of September 30, 2010, 40 banks with $31.8 billion in assets have failed since 2008 in Florida. Given our competitive strengths, including an experienced management team, robust capital position and scalable platform, we believe these challenges present significant acquisition and organic growth opportunities for us.

Over time, we will look to expand our branch network outside of Florida in selected markets such as New York, where our management team has had significant experience and has the competitive advantage of having managed one of the most successful regional banks in that market. However, for a limited period of time, certain of our executive officers are subject to non-compete agreements which may restrict them from operating in New York, New Jersey and Connecticut.

Our Business Strategy

Since the Acquisition, we have focused on the financial needs of small and medium sized businesses and consumers throughout Florida. Through BankUnited, we deliver a comprehensive range of traditional depository and lending products, online services and cash management tools for businesses. We also offer on a national basis commercial lease financing services and municipal leasing services. Through our non-bank subsidiary, BankUnited Investment Services, we offer a suite of products including mutual funds, annuities, life insurance, individual securities and other wealth management services.

Our goal is to build a premier, large regional bank in attractive growth markets, employing the following key elements:

- ***Transformation to relationship banking.*** Since the Acquisition, our primary strategic objective has been to transform the Bank from a price-driven, transaction-based, mortgage lender to a service-driven, relationship-based, business-focused bank. We have taken an active approach to accomplish this transformation, including:

  - *Recruitment of top talent.* The entire management leadership team and a large majority of the next tier of management have been replaced with top performers who were recruited nationally. We have also hired teams of relationship bankers from regional competitors. Furthermore, given BankUnited's strong capital levels and expansion strategy, we believe we have an opportunity to continue hiring and developing talent for the foreseeable future.

  - *Shift of culture towards building relationships.* We emphasize winning relationships rather than gathering accounts. As such, we have implemented new compensation practices that properly align our employees with our strategic vision by rewarding long-term profitability instead of volume, exited the broker business and focused on building long-term relationships with small business customers.

  - *Investment in physical infrastructure.* In addition to our investment in people, we have been enhancing and optimizing both our facilities and branch network. We have focused on eliminating non-strategic branches and facilities, consolidated most of our non-branch operations into one location and improved the overall presentation and infrastructure of our resulting footprint.

  - *Improvement of our technology platform.* We are committed to building a technology infrastructure that enables us to deliver best-in-class products and services to our clients and is also scalable to accommodate our long-term growth plans. As such, we have made and are continuing to make significant investments in our information technology infrastructure, including a conversion to a more robust core deposit platform that is scheduled for completion in early 2011.

  With the changes implemented as discussed above, we have increased our core deposits (defined as total deposits less certificates of deposit, or CDs) since the Acquisition to September 30, 2010 from $2.1 billion to $3.8 billion and lowered our cost of deposits (excluding the impact of accretion from fair value adjustments due to acquisition accounting) from 3.5% to 1.6%. In addition, since the Acquisition to September 30, 2010, we have generated $429.5 million of new commercial and commercial real estate loan commitments.

- ***Multi-faceted expansion plan.*** We intend to geographically expand our franchise and reinvest our excess capital by hiring talented producers, opening *de novo* branches and acquiring complementary businesses. These expansion strategies complement our overall strategic vision.

  - *Hire talented producers.* A key component to expanding our franchise footprint is to opportunistically hire talented individuals or teams with relationships in commercial banking, small business banking or our other primary business lines. For example, since the Acquisition to September 30, 2010, we have hired 31 lenders from various regional competitors.

- *Open de novo branches.* As part of our strategy to broaden our branch network, BankUnited plans to expand into new markets and to broaden its footprint. We plan to open new branches and consolidate certain existing branches with those in more desirable locations within the same market. In 2009, we consolidated 9 branches and in 2010, we opened 2 new branches and currently have 7 branches under development, which will allow us to, among other things, expand our presence in Tampa and enter the Orlando market.

- *Acquire complementary businesses.* We believe significant opportunities exist for additional expansion through acquisitions both in our current market and in other markets within the United States with similar characteristics. Our acquisition strategy includes FDIC-assisted transactions, traditional whole bank acquisitions and complementary acquisitions of select banking and banking-related businesses. For example, we recently acquired two leasing businesses, which serve as the platform for our ability to provide commercial financing services on a national basis.

- ***Build a scalable and efficient operating model.*** Our management team has a history of running highly efficient banking institutions and is focused on building a culture of expense control. Furthermore, we have made and intend to continue to make significant investments in our information technology systems to position us for future growth. For the nine months ended September 30, 2010, the Company's efficiency ratio was 41.9%, which compares favorably with other U.S. banks.

- ***Maintain strong regulatory relationships.*** We believe that maintaining strong relationships with regulators is an important element of any bank strategy. As such, we maintain an active dialogue with our primary regulators. Additionally, we view our relationship with the FDIC as a long-term partnership in which both parties are economically aligned to minimize credit losses on the Covered Assets. We continually collaborate with the FDIC to develop and implement new loss mitigation strategies for the Covered Assets. We have received $997.2 million from the FDIC in reimbursements under the Loss Sharing Agreements for claims filed for losses incurred as of September 30, 2010.

Additional Information

Our principal executive offices are located at 14817 Oak Lane, Miami Lakes, Florida 33016. Our telephone number is (305) 569-2000. Our Internet address is www.bankunited.com. Information on, or accessible through, our website is not part of this prospectus.

Reorganization

We are currently a direct, wholly-owned subsidiary of BU Financial Holdings LLC, or the LLC, a Delaware limited liability company, and whose common equity interests are referred to herein as units. Prior to the completion of this offering, we will effect a reorganization so that our investors, our named executive officers and all other members of the LLC will hold equity interests in us directly rather than indirectly through the LLC. Immediately prior to the consummation of this offering, the LLC will be liquidated and all interests in the registrant, BankUnited, Inc., a Delaware corporation, will be distributed to the members of the LLC in accordance with its amended and restated limited liability company agreement dated as of May 21, 2009, or the LLC Agreement. There are currently 36 holders of units in the LLC. All of the transactions necessary to effect the liquidation are collectively referred to herein as the "Reorganization." For additional information, see "Compensation Discussion and Analysis—Executive Officer Compensation—Equity-Based Compensation."

The Offering

Common stock offered by us	4,000,000 shares of common stock
Common stock offered by the selling stockholders	22,250,000 shares of common stock
Over-allotment option	3,937,500 shares of common stock from the selling stockholders
Common stock to be outstanding after this offering	96,971,850 shares of common stock
Use of proceeds	We estimate that the net proceeds to us from this offering after deducting estimated underwriting discounts and commissions and offering expenses will be approximately $86.2 million, based on an assumed initial public offering price of $24.00 per share, the midpoint of the price range set forth on the cover of this prospectus. We intend to use the net proceeds from this offering for general corporate purposes. We will not receive any proceeds from the sale of our common stock by the selling stockholders, including any proceeds that the selling stockholders may receive from the exercise by the underwriters of their over-allotment option. For additional information, see the section entitled "Use of Proceeds."
Dividend policy	We initially anticipate paying a quarterly dividend of $0.14 per share on our common stock, subject to the discretion of our board of directors, or our Board, and dependent on, among other things, our financial condition, results of operations, capital requirements, restrictions contained in future financing instruments and other factors that our Board may deem relevant. Dividends from the Bank are the principal source of funds for the payment of dividends on our common stock. The Bank is subject to certain restrictions that may limit its ability to pay dividends to us.
New York Stock Exchange symbol	BKU
Risk factors	Please read the section entitled "Risk Factors" beginning on page 13 for a discussion of some of the factors you should consider before buying our common stock.

References in this section to the number of shares of our common stock to be outstanding after this offering are based on 92,971,850 shares of our common stock outstanding as of January 10, 2011. Such references exclude:

- 981,710 shares of common stock issuable upon exercise of outstanding stock options at a weighted average exercise price of $17.04 per share (of which 113,451 shares are issuable upon exercise of vested stock options) as of January 10, 2011; and
- 7,500,000 shares of common stock reserved for issuance, and not subject to outstanding options, under the BankUnited, Inc. 2010 Omnibus Equity Incentive Plan.

Unless otherwise indicated, the information presented in this prospectus:

- gives effect to a 10-for-1 common stock split, which was effected on January 10, 2011;
- assumes an initial public offering price of $24.00 per share, the midpoint of the price range set forth on the cover of this prospectus;
- assumes that the underwriters' option to purchase additional shares of our common stock from the selling stockholders to cover over-allotments, if any, is not exercised; and
- for purposes of the number or weighted average of shares of common stock outstanding only, assumes that the warrant issued to the FDIC in connection with the Acquisition is redeemed in cash pursuant to the terms thereof.

Summary Historical Consolidated Financial Data

You should read the summary historical consolidated financial information set forth below in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Capitalization" and the consolidated financial statements and the related notes thereto included elsewhere in this prospectus. The summary historical consolidated financial information set forth below at and for the nine months ended September 30, 2010 is derived from our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus and includes all adjustments (consisting of normal recurring adjustments) that we considered necessary for a fair presentation of the financial position and the results of operations for these periods. Operating results for the nine months ended September 30, 2010 are not necessarily indicative of the results that may be expected for the year ended December 31, 2010. The summary historical consolidated financial information set forth below at December 31, 2009 and for the period from April 28, 2009 (date of inception) to December 31, 2009 has been derived from our audited consolidated financial statements included elsewhere in this prospectus. The summary historical consolidated financial information set forth below for each of the periods from October 1, 2008 to May 21, 2009 and at and for the fiscal years ended September 30, 2008 and 2007 has been derived from the audited consolidated financial statements of the Failed Bank included elsewhere in this prospectus.

Although we were incorporated on April 28, 2009, neither we nor the Bank had any substantive operations prior to the Acquisition on May 21, 2009. Results of operations of the Company for the post-Acquisition periods are not comparable to the results of operations of the Failed Bank for the pre-Acquisition periods. Results of operations for the post-Acquisition periods reflect, among other things, the acquisition method of accounting. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Periods Presented and Factors Affecting Comparability."

	BankUnited, Inc.			Failed Bank	
	At September 30, 2010			At September 30,	
	Actual (unaudited)	As Adjusted(1)	At December 31, 2009	2008	2007
	(dollars in thousands, except per share data)				
Consolidated Balance Sheet Data:					
Cash and cash equivalents	$ 494,586	580,763	$ 356,215	$ 1,223,346	$ 512,885
Investment securities available for sale, at fair value	3,088,504	3,088,504	2,243,143	755,225	1,098,665
Loans held in portfolio, net	4,079,234	4,079,234	4,588,898	11,249,367	12,561,693
FDIC indemnification asset	2,723,059	2,723,059	3,279,165	—	—
Goodwill and other intangible assets	60,759	60,759	60,981	28,353	28,353
Total assets	11,151,301	11,237,478	11,129,961	14,088,591	15,107,310
Deposits	7,300,460	7,300,460	7,666,775	8,176,817	7,305,788
Federal Home Loan Bank advances	2,260,006	2,260,006	2,079,051	5,279,350	6,234,360
Total liabilities	9,908,462	9,908,462	10,035,701	13,689,821	13,904,508
Total stockholder's equity	1,242,839	1,329,016	1,094,260	398,770	1,202,802

	BankUnited, Inc.		Failed Bank		
	Nine Months Ended September 30, 2010	Period from April 28, 2009 to December 31, 2009(2)	Period from October 1, 2008 to May 21, 2009(2)	At September 30, 2008	At September 30, 2007
	(unaudited)				
	(dollars in thousands, except per share data)				
Consolidated Income Statement Data:					
Interest income	$ 414,959	$ 335,524	$ 339,068	$ 834,460	$ 957,897
Interest expense	127,495	83,856	333,392	555,594	604,558
Net interest income	287,464	251,668	5,676	278,866	353,339
Provision for loan losses	45,157	22,621	919,139	856,374	31,500
Net interest income (loss) after provision for loan losses	242,307	229,047	(913,463)	(577,508)	321,839
Non-interest income (loss)	237,520	252,828	(81,431)	(128,859)	28,367
Non-interest expense	220,048	282,454	238,403	246,480	185,634
Income (loss) before income taxes	259,779	199,421	(1,233,297)	(952,847)	164,572
Provision (benefit) for income before taxes	102,857	80,375	—	(94,462)	55,067
Net income (loss)	$ 156,922	$ 119,046	$ (1,233,297)	$ (858,385)	$ 109,505
Share Data:					
Earnings (loss) per common share, basic and diluted	$ 1.69	$ 1.29	$ (12,332,970)	$ (8,583,850)	$ 1,095,054
Weighted average common shares outstanding	92,943,620	92,664,910	100	100	100
Other Data (unaudited):					
Financial ratios					
Return on average assets(3)	1.86%	1.69%	(14.26)%	(5.94)%	0.78%
Return on average common stockholder's equity(3)	17.72%	18.98%	(2,041.04)%	(75.43)%	10.04%
Yield on earning assets(3)	7.16%	7.42%	3.91%	5.91%	6.96%
Cost of interest bearing liabilities(3)	1.82%	1.39%	3.94%	4.36%	4.91%
Equity to assets ratio	11.15%	9.83%	(7.25)%	2.83%	7.96%
Interest rate spread(3)	5.34%	6.03%	(0.03)%	1.55%	2.05%
Net interest margin(3)	4.95%	5.58%	0.06%	1.98%	2.57%
Loan to deposit ratio	56.67%	60.15%	128.73%	146.33%	172.74%
Asset quality ratios					
Non-performing loans to total loans(4)(6)	0.68%	0.38%	24.58%	11.98%	1.59%
Non-performing assets to total assets(5)	1.99%	1.24%	23.53%	11.13%	1.51%
Allowance for loan losses to total loans	1.40%	0.49%	11.14%	5.98%	0.46%
Allowance for loan losses to non-performing loans	206.28%	130.22%	45.33%	49.96%	29.15%
Net charge-offs to average loans(3)	0.31%	0.00%	5.51%	1.58%	0.08%

Table of Contents

	BankUnited, Inc.		Failed Bank	
	At September 30, 2010 (unaudited)	At December 31, 2009(2)	At September 30, 2008	2007
Capital ratios(7)				
Tangible common equity to tangible assets(8)	10.66%	9.33%	2.63%	7.79%
Tier 1 common capital to total risk weighted assets	42.46%	40.42%	4.90%	14.64%
Tier 1 risk-based capital	42.46%	40.42%	4.90%	14.64%
Total risk-based capital	43.27%	40.55%	6.21%	15.37%
Tier 1 leverage	10.09%	8.78%	2.89%	7.84%

(1) On an as adjusted basis to give effect to the sale of 4,000,000 shares of our common stock in this offering at an assumed initial public offering price of $24.00 per share, the midpoint of the price range set forth on the cover of this prospectus, after deducting estimated underwriting discounts and commissions and offering expenses.

(2) The Company was incorporated on April 28, 2009, but neither the Company nor the Bank had any substantive operations prior to the Acquisition on May 21, 2009. The period from May 22, 2009 to December 31, 2009 contained 224 days. The period from October 1, 2008 to May 21, 2009 contained 233 days.

(3) Ratio is annualized for the period from October 1, 2008 to May 21, 2009, for the period from May 22, 2009 to December 31, 2009 and for the nine months ended September 30, 2010. See note 2 above.

(4) Non-performing loans include nonaccrual loans, loans past due 90 days or more and, for the pre-Acquisition periods, certain other impaired loans still accruing interest. For the pre-Acquisition periods, restructured 1-4 single family residential loans in compliance with modified terms are excluded from non-performing loans. For the post-Acquisition periods, contractually delinquent loans acquired with evidence of deterioration in credit quality, or ACI loans, on which interest continues to be accreted are excluded from non-performing loans. The carrying value of ACI loans contractually delinquent by more than 90 days, but not identified as impaired was $0.9 billion and $1.2 billion at September 30, 2010 and December 31, 2009, respectively. These ratios may therefore not be compatible to similar ratios of our peers.

(5) Non-performing assets include non-performing loans and OREO.

(6) Total loans is net of unearned discounts and deferred fees and costs.

(7) All capital ratios presented are ratios of the Bank except for the tangible common equity to tangible assets ratio which is of the Company.

(8) Tangible common equity to tangible assets is a non-GAAP financial measure. For purposes of computing tangible common equity to tangible assets, tangible common equity is calculated as common stockholder's equity less goodwill and other intangible assets, net, and tangible assets is calculated as total assets less goodwill and other intangible assets, net. The most directly comparable GAAP financial measure is total stockholder's equity to total assets. See the reconciliation under Note 7 under "Selected Historical Consolidated Financial Data."

A $1.00 increase (decrease) in the assumed initial public offering price of $24.00 per share would increase (decrease) additional cash and cash equivalents, total assets and total stockholder's equity by $3.8 million, assuming that the number of shares offered by us, as set forth on the cover of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and offering expenses.

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the following risk factors, as well as all of the other information contained in this prospectus including our consolidated financial statements and the related notes thereto, before deciding to invest in our common stock. The occurrence of any of the following risks could materially and adversely affect our business, prospects, financial condition, results of operations and cash flow. In such case, the trading price of our common stock could decline and you could lose all or part of your investment.

Risks Related to Our Business

Failure to comply with the terms of our Loss Sharing Agreements with the FDIC may result in significant losses.

In May 2009, we purchased substantially all of the assets and assumed all of the non-brokered deposits and substantially all other liabilities of the Failed Bank in an FDIC-assisted transaction, and presently a substantial portion of BankUnited's revenue is derived from such assets. The purchased loans, commitments, foreclosed assets and certain securities are covered by the Loss Sharing Agreements with the FDIC, which provide that a significant portion of the losses related to the Covered Assets will be borne by the FDIC. Under the Loss Sharing Agreements, we are obligated to comply with certain loan servicing standards, including requirements to participate in government-sponsored loan modification programs. As these standards evolve, we may experience difficulties in complying with the requirements of the Loss Sharing Agreements, which could result in Covered Assets losing some or all of their coverage. BankUnited is subject to audits with the terms of the Loss Sharing Agreements by the FDIC through its designated agent. The required terms of the agreements are extensive and failure to comply with any of the guidelines could result in a specific asset or group of assets losing their loss sharing coverage. See "Business—The Acquisition—Loss Sharing Agreements."

The geographic concentration of our markets in the coastal regions of Florida makes our business highly susceptible to local economic conditions and natural disasters.

Unlike larger financial institutions that are more geographically diversified, our branch offices are primarily concentrated in the coastal regions of Florida. Additionally, a significant portion of our loans secured by real estate are secured by commercial and residential properties in Florida. The Florida economy and our market in particular have been affected by the downturn in commercial and residential property values, and the decline in real estate values in Florida during the downturn has been higher than the national average. Additionally, the Florida economy relies heavily on tourism and seasonal residents, which have also been affected by recent market disruptions. Continued deterioration in economic conditions in the markets we serve or the occurrence of a natural disaster, such as a hurricane, or a man-made catastrophe, such as the Gulf of Mexico oil spill, could result in one or more of the following:

- an increase in loan delinquencies;
- an increase in problem assets and foreclosures;
- a decrease in the demand for our products and services; or
- a decrease in the value of collateral for loans, especially real estate, in turn reducing customers' borrowing power, the value of assets associated with problem loans and collateral coverage.

Hurricanes and other catastrophes to which our markets in the coastal regions of Florida are susceptible also can disrupt our operations, result in damage to our properties, reduce or destroy the value of collateral and negatively affect the local economies in which we operate, which could have a material adverse effect on our results of operations.

A decline in existing and new real estate sales decreases lending opportunities, may delay the collection of our cash flow from the Loss Sharing Agreements, and negatively affects our income. We do not anticipate that the real estate market will improve in the near-term and, accordingly, this could lead to additional valuation adjustments on our loan portfolios.

Delinquencies and defaults in residential mortgages have recently increased, creating a backlog in courts and an increase in the amount of legislative action that might restrict or delay our ability to foreclose and hence delay the collection of payments for single family residential loans under the Loss Sharing Agreements.

For the single family residential loans covered by the Loss Sharing Agreements, we cannot collect loss share payments until we liquidate the properties securing those loans. These loss share payments could be delayed by an extended foreclosure process, including delays resulting from a court backlog, local or national foreclosure moratoriums or other delays, and these delays could have a material adverse effect on our results of operations. Homeowner protection laws may also delay the initiation or completion of foreclosure proceedings on specified types of residential mortgage loans. Any such limitations are likely to cause delayed or reduced collections from mortgagors. Any restriction on our ability to foreclose on a loan, any requirement that we forgo a portion of the amount otherwise due on a loan or any requirement that we modify any original loan terms could negatively impact our business, financial condition, liquidity and results of operations.

Our loan portfolio has and will continue to be affected by the ongoing correction in residential and commercial real estate prices and reduced levels of residential and commercial real estate sales.

Soft residential and commercial real estate markets, higher delinquency and default rates, and increasingly volatile and constrained secondary credit markets have affected the mortgage industry generally, and Florida in particular, which is where our business is currently most heavily concentrated. Our financial results may be adversely affected by changes in real estate values. We make credit and reserve decisions based on the current conditions of borrowers or projects combined with our expectations for the future. If the slowdown in the real estate market continues, we could experience higher charge-offs and delinquencies beyond that which is provided in the allowance for loan losses. Although we have the Loss Sharing Agreements with the FDIC, these agreements do not cover 100% of the losses attributable to Covered Assets. In addition, the Loss Sharing Agreements will not mitigate any losses on our non-Covered Assets and our earnings could be adversely affected through a higher than anticipated provision for loan losses on such assets.

Our business is highly susceptible to credit risk on our non-Covered Assets.

As a lender, we are exposed to the risk that our customers will be unable to repay their loans according to their terms and that the collateral securing the payment of their loans (if any) may not be sufficient to assure repayment. Similarly, we have credit risk embedded in our securities portfolio. Our credit standards, procedures and policies may not prevent us from incurring substantial credit losses, particularly in light of market developments in recent years. Recent economic and market developments and the potential for continued economic disruption present considerable risks to us and it is difficult to determine the depth and duration of the economic and financial market problems and the many ways in which they may impact our business in general. The Loss Sharing Agreements only cover certain legacy assets, and credit losses on assets not covered by the Loss Sharing Agreements could have a material adverse effect on our operating results.

Changes in interest rates could have an adverse impact on our results of operations and financial condition.

Our earnings and cash flows depend to a great extent upon the level of our net interest income. Changes in interest rates can increase or decrease our net interest income, because different types of assets and liabilities may react differently, and at different times, to market interest rate changes. Net interest income is the difference between the interest income we earn on loans, investments and other interest earning assets, and the interest we pay on interest bearing liabilities, such as deposits and borrowings. When interest bearing liabilities mature or reprice more quickly than interest earning assets in a period, an increase in interest rates could reduce net interest income. Similarly, when interest earning assets mature or reprice more quickly than interest bearing liabilities, falling interest rates could reduce net interest income. Additionally, an increase in interest rates may, among other things, reduce the demand for loans and our ability to originate loans and decrease loan repayment rates. A decrease in the general level of interest rates may affect us through, among other things, increased prepayments on our loan and mortgage-backed securities portfolios and increased competition for deposits. Accordingly, changes in the level of market interest rates affect our net yield on interest earning assets, loan origination volume, loan and mortgage-backed securities portfolios, and our overall results. Interest rates are highly sensitive to many factors beyond our control, including general economic conditions and policies of various governmental and regulatory agencies, particularly the Federal Reserve.

We attempt to manage our risk from changes in market interest rates by adjusting the rates, maturity, repricing, and balances of the different types of interest-earning assets and interest bearing liabilities; however, interest rate risk management techniques are not precise, and we may not be able to successfully manage our interest rate risk. As a result, a rapid increase or decrease in interest rates could have an adverse effect on our net interest margin and results of operations.

We depend on our executive officers and key personnel to continue the implementation of our long-term business strategy and could be harmed by the loss of their services.

We believe that our continued growth and future success will depend in large part on the skills of our senior management team. We believe our senior management team possesses valuable knowledge about and experience in the banking industry and that their knowledge and relationships would be very difficult to replicate. Although our senior management team has entered into employment agreements with us, they may not complete the term of their employment agreements or renew them upon expiration. Our success also depends on the experience of our branch managers and lending officers and on their relationships with the customers and communities they serve. The loss of service of one or more of our executive officers or key personnel, or the inability to recruit and retain qualified personnel in the future, could have an adverse effect on our business, financial condition or operating results and the value of our common stock.

Our allowance for credit losses may not be adequate to cover actual credit losses.

We maintain an allowance for loan losses that represents management's estimate of probable losses inherent in our credit portfolio. This estimate requires management to make certain assumptions and involves a high degree of judgment, particularly as our originated loan portfolio is not yet seasoned and has not yet developed an observable loss trend and Covered Loans that did not exhibit evidence of deterioration in credit quality at acquisition, or non-ACI loans, have limited delinquency statistics. Management considers numerous factors, including, but not limited to, internal risk ratings, loss forecasts, collateral values, geographic location, borrower FICO scores, delinquency rates, the proportion of non-performing and restructured loans in the loan portfolio, origination channels, product mix, underwriting practices, industry conditions, economic trends and net charge-off trends.

If management's assumptions and judgments prove to be incorrect, our current allowance may be insufficient and we may be required to increase our allowance for loan losses. In addition, federal and state regulators periodically review our allowance for loan losses and may require us to increase our provision for loan losses or recognize further loan charge-offs, based on judgments different than those of our management. Continued adverse economic conditions could make management's estimate even more complex and difficult to determine. Any increase in our allowance for loan losses will result in a decrease in net income and capital and could have a material adverse effect on our financial condition and results of operations. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Analysis of the Allowance for Loan Losses" and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates—Accounting for Covered Loans."

We may not be able to find suitable acquisition candidates and may be unable to manage our growth due to acquisitions.

A key component of our growth strategy is to pursue acquisitions of complementary businesses. As consolidation of the banking industry continues, the competition for suitable acquisition candidates may increase. We compete with other banking companies for acquisition opportunities and there are a limited number of candidates that meet our acquisition criteria. Consequently, we may not be able to identify suitable candidates for acquisitions. If we are unable to locate suitable acquisition candidates willing to sell on terms acceptable to us, our net income could decline and we would be required to find other methods to grow our business.

Even if suitable candidates are identified and we succeed in consummating future acquisitions, acquisitions involve risks that the acquired business may not achieve anticipated revenue, earnings or cash flows. There may also be unforeseen liabilities relating to the acquired institution or arising out of the acquisition, asset quality problems of the acquired entity, difficulty operating in markets in which we have had no or only limited experience and other conditions not within our control, such as adverse personnel relations, loss of customers because of change in identity, and deterioration in local economic conditions.

In addition, the process of integrating acquired entities will divert significant management time and resources. We may not be able to integrate successfully or operate profitably any financial institutions we may acquire. We may experience disruption and incur unexpected expenses in integrating acquisitions. Any acquisitions we do make may not enhance our cash flows, business, financial condition, results of operations or prospects and may have an adverse effect on our results of operations, particularly during periods in which the acquisitions are being integrated into our operations.

We face significant competition from other financial institutions and financial services providers, which may decrease our growth or profits.

The primary market we serve is Florida. Consumer and commercial banking in Florida is highly competitive. Our market contains not only a large number of community and regional banks, but also a significant presence of the country's largest commercial banks. We compete with other state and national financial institutions located in Florida and adjoining states as well as savings and loan associations, savings banks and credit unions for deposits and loans. In addition, we compete with financial intermediaries, such as consumer finance companies, mortgage banking companies, insurance companies, securities firms, mutual funds and several government agencies as well as major retailers, all actively engaged in providing various types of loans and other financial services.

The financial services industry could become even more competitive as a result of legislative, regulatory and technological changes and continued consolidation. Banks, securities firms and insurance companies can merge under the umbrella of a financial holding company, which can offer virtually any type of financial service, including banking, securities underwriting, insurance (both agency and underwriting) and merchant banking. Increased competition among financial services companies due to the recent consolidation of certain competing financial institutions may adversely affect our ability to market our products and services. Also, technology has lowered barriers to entry and made it possible for banks to compete in our market without a retail footprint by offering competitive rates, as well as non-banks to offer products and services traditionally provided by banks. Many of our competitors have fewer regulatory constraints and may have lower cost structures. Additionally, due to their size, many competitors may offer a broader range of products and services as well as better pricing for certain products and services than we can.

Our ability to compete successfully depends on a number of factors, including:

- the ability to develop, maintain and build upon long-term customer relationships based on quality service, high ethical standards and safe and sound assets;
- the ability to attract and retain qualified employees to operate our business effectively;
- the ability to expand our market position;
- the scope, relevance and pricing of products and services offered to meet customer needs and demands;
- the rate at which we introduce new products and services relative to our competitors;
- customer satisfaction with our level of service; and
- industry and general economic trends.

Failure to perform in any of these areas could significantly weaken our competitive position, which could adversely affect our growth and profitability, which, in turn, could harm our business, financial condition and results of operations.

Since we engage in lending secured by real estate and may be forced to foreclose on the collateral property and own the underlying real estate, we may be subject to the increased costs and risks associated with the ownership of real property, which could have an adverse effect on our business or results of operations.

A significant portion of our loan portfolio is secured by real property. During the ordinary course of business, we may foreclose on and take title to properties securing certain loans, in which case, we are exposed to the risks inherent in the ownership of real estate. The amount that we, as a mortgagee, may realize after a default is dependent upon factors outside of our control, including:

- general or local economic conditions;
- environmental cleanup liability;
- neighborhood values;
- interest rates;
- real estate tax rates;
- operating expenses of the mortgaged properties;
- supply of and demand for rental units or properties;
- ability to obtain and maintain adequate occupancy of the properties;
- zoning laws;
- governmental rules, regulations and fiscal policies; and
- hurricanes or other natural or man-made disasters.

Certain expenditures associated with the ownership of real estate, principally real estate taxes and maintenance costs, may also adversely affect our operating expenses.

We are dependent on our information technology and telecommunications systems and third-party servicers, and systems failures, interruptions or breaches of security could have an adverse effect on our financial condition and results of operations.

Our business is highly dependent on the successful and uninterrupted functioning of our information technology and telecommunications systems and third-party servicers. We outsource our major systems including our electronic funds transfer, or EFT, transaction processing, cash management and online banking services. We rely on these systems to process new and renewal loans, gather deposits, provide customer service, facilitate collections and share data across our organization. The failure of these systems, or the termination of a third-party software license or service agreement on which any of these systems is based, could interrupt our operations. Because our information technology and telecommunications systems interface with and depend on third-party systems, we could experience service denials if demand for such services exceeds capacity or such third-party systems fail or experience interruptions. If sustained or repeated, a system failure or service denial could result in a deterioration of our ability to process new and renewal loans, gather deposits and provide customer service, compromise our ability to operate effectively, damage our reputation, result in a loss of customer business, and/or subject us to additional regulatory scrutiny and possible financial liability, any of which could have a material adverse effect on our financial condition and results of operations.

We are currently in the process of implementing substantial changes to our core deposit platform. We may not be able to successfully implement this new core system in an effective manner. In addition, we may incur significant increases in costs and encounter extensive delays in the implementation and rollout of our new operating system. If there are technological impediments, unforeseen complications, errors or breakdowns in implementing this new core operating system or if this new core operating system does not meet the requirements of our customers, our business, financial condition, results of operations or customer perceptions may be adversely affected.

In addition, we provide our customers the ability to bank remotely, including online and over the telephone. The secure transmission of confidential information over the Internet and other remote channels is a critical element of remote banking. Our network could be vulnerable to unauthorized access, computer viruses, phishing schemes and other security breaches. We may be required to spend significant capital and other resources to protect against the threat of security breaches and computer viruses, or to alleviate problems caused by security breaches or viruses. To the extent that our activities or the activities of our customers involve the storage and transmission of confidential information, security breaches and viruses could expose us to claims, litigation and other possible liabilities. Any inability to prevent security breaches or computer viruses could also cause existing customers to lose confidence in our systems and could adversely affect our reputation and our ability to generate business.

BankUnited is a de novo bank, which could be mistaken for the Failed Bank, and this and other reputational risks could affect our results.

BankUnited was established as a *de novo* federal savings association in order to participate in the FDIC-assisted acquisition of the Failed Bank. There is a reputational risk in being incorrectly associated with the Failed Bank. Our ability to originate and maintain accounts is highly dependent upon consumer and other external perceptions of our business practices and/or our financial health. Adverse perceptions regarding our business practices and/or our financial health could damage our reputation in both the customer and funding markets, leading to difficulties in generating and maintaining accounts as well as in financing them. Adverse developments with respect to the consumer or other external perceptions regarding the practices of our competitors, or our industry as a whole, may also adversely impact our reputation. In addition, adverse reputational impacts on third parties with whom we have important relationships may also adversely impact our reputation. Adverse reputational impacts or events may also increase our litigation risk. We carefully monitor internal and external developments for areas of potential reputational risk and have established governance structures to assist in evaluating such risks in our business practices and decisions.

Three material weaknesses were identified in the first audit period following the Acquisition. Existing or future material weaknesses in our internal controls, if not properly corrected, could result in material misstatements in our financial statements.

We are not yet required to comply with Section 404 of the Sarbanes-Oxley Act of 2002, or to make an assessment of the effectiveness of our internal control over financial reporting under the Sarbanes-Oxley Act of 2002. Furthermore, our independent auditors have not been engaged to express, nor have they expressed, an opinion on the effectiveness of our internal control over financial reporting in accordance with Sarbanes-Oxley Act of 2002. However, in connection with the audit of our consolidated financial statements for the period from May 22, 2009 through December 31, 2009, which we refer to as the period ended or ending December 31, 2009, we identified three material weaknesses in our system of internal control over financial reporting. A material weakness is a deficiency, or combination of deficiencies in internal controls over financial reporting, that results in a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

The first material weakness identified relates to the fact that management did not design effective controls over its loan modeling process in order to account for certain loans in accordance with the requirements of Accounting Standards Codification, or ASC, Subtopic 310-30, *Loans and Debt Securities Acquired with Deteriorated Credit Quality*. A material weakness existed due to the fact that the design of internal control did not provide for an independent review or approval and validation of the loan cash flow model and related assumptions. In addition, the design of internal control over the loan cash flow model did not provide for adequate access, change management, and end-user computing controls including spreadsheets. Furthermore, management's controls were not designed to reflect on a timely basis the impact of changes in market conditions on the loan cash flow model and related assumptions. The second material weakness relates to the fact that management did not maintain effective internal controls over the valuation and resulting writedown to fair market value of OREO properties. Specifically, a material weakness existed due to the fact that the control over the timely recording of OREO values by the Collateral Valuation Department in the Company's sub-ledger system was not operating effectively. The third material weakness relates to the fact that BankUnited did not design effective controls over its financial reporting process in order to ascertain the complete, accurate, and timely preparation of its consolidated financial statements, including the applicable disclosures and footnotes, or design effective review controls to provide for proper accounting of nonroutine transactions. A material weakness existed due to the fact that the design of internal control did not provide for a comprehensive review of interim financial information and the consolidated financial statements to ensure the completeness and accuracy of information supporting various financial statement components.

Steps we are taking to address the identified material weaknesses may not be sufficient to remediate the identified material weaknesses or prevent additional material weaknesses from occurring. If we fail to remediate the material weaknesses or if additional material weaknesses are discovered in the future, we may fail to meet our future reporting obligations and our financial statements may contain material misstatements. Any such failure could also adversely affect the results of the periodic management evaluations and annual auditor attestation reports regarding the effectiveness of our internal controls over financial reporting, and could negatively impact our business, results of operations and reputation.

BankUnited Investment Services offers third-party products including mutual funds, annuities, life insurance, individual securities and other wealth management services which could experience significant declines in value subjecting us to reputational damage and litigation risk.

Through our subsidiary BankUnited Investment Services, we offer third-party products including mutual funds, annuities, life insurance, individual securities and other wealth management products and services. If these products do not generate competitive risk-adjusted returns that satisfy clients in a variety of asset classes, we will have difficulty maintaining existing business and attracting new business. Additionally, our investment services businesses involve the risk that clients or others may sue us, claiming that we have failed to perform under a contract or otherwise failed to carry out a duty owed to them. Our investment services businesses are particularly subject to this risk and this risk may be heightened during periods when credit, equity or other financial markets are deteriorating in value or are particularly volatile, or when clients or investors are experiencing losses. Significant declines in the performance of these third-party products could subject us to reputational damage and litigation risk.

Risks Relating to the Regulation of Our Industry

The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 may have a material effect on our operations.

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or the Dodd-Frank Act, which imposes significant regulatory and compliance changes. The key effects of the Dodd-Frank Act on our business are:

- changes to the thrift supervisory structure;
- changes to regulatory capital requirements;
- creation of new government regulatory agencies;
- limitation on federal preemption;
- changes in insured depository institution regulations; and
- mortgage loan origination and risk retention.

The changes resulting from the Dodd-Frank Act may impact the profitability of our business activities, require changes to certain of our business practices, impose upon us more stringent capital, liquidity and leverage requirements or otherwise adversely affect our business. These changes may also require us to invest significant management attention and resources to evaluate and make any changes necessary to comply with new statutory and regulatory requirements. Failure to comply with the new requirements or with any future changes in laws or regulations may negatively impact our results of operations and financial condition. For a more detailed description of the Dodd-Frank Act, see "Regulation and Supervision—The Dodd-Frank Act."

We operate in a highly regulated environment and the laws and regulations that govern our operations, corporate governance, executive compensation and accounting principles, or changes in them, or our failure to comply with them, may adversely affect us.

We are subject to extensive regulation, supervision, and legislation that govern almost all aspects of our operations. Intended to protect customers, depositors and deposit insurance funds, these laws and regulations, among other matters, prescribe minimum capital requirements, impose limitations on the business activities in which we can engage, limit the dividend or distributions that BankUnited can pay to us, restrict the ability of institutions to guarantee our debt, and impose certain specific accounting requirements on us that may be more restrictive and may result in greater or earlier charges to earnings or reductions in our capital than generally accepted accounting principles. Compliance with laws and regulations can be difficult and costly, and changes to laws and regulations often impose additional compliance costs. Our failure to comply with these laws and regulations, even if the failure follows good faith effort or reflects a difference in interpretation, could subject us to restrictions on our business activities, fines and other penalties, any of which could adversely affect our results of operations, capital base and the price of our securities. Further, any new laws, rules and regulations could make compliance more difficult or expensive or otherwise adversely affect our business and financial condition.

In addition, as a public company, we will incur significant legal, accounting, insurance and other expenses. Compliance with other rules of the United States Securities and Exchange Commission, or the SEC, and the rules of the stock exchange on which our common stock is listed will increase our legal and financial compliance costs and make some activities more time consuming and costly.

The FDIC's restoration plan and the related increased assessment rate could adversely affect our earnings.

Market developments have significantly depleted the deposit insurance fund, or DIF, of the FDIC and reduced the ratio of reserves to insured deposits. As a result of recent economic conditions and the enactment of the Dodd-Frank Act, the FDIC has increased the deposit insurance assessment rates and thus raised deposit premiums for insured depository institutions. If these increases are insufficient for the DIF to meet its funding requirements, further special assessments or increases in deposit insurance premiums may be required. We are generally unable to control the amount of premiums that we are required to pay for FDIC insurance. If there are additional bank or financial institution failures, we may be required to pay even higher FDIC premiums than the recently increased levels. Any future additional assessments, increases or required prepayments in FDIC insurance premiums may materially adversely affect results of operations.

Federal banking agencies periodically conduct examinations of our business, including compliance with laws and regulations, and our failure to comply with any supervisory actions to which we are or become subject as a result of such examinations may adversely affect us.

Federal banking agencies, including the Office of Thrift Supervision, or OTS, periodically conduct examinations of our business, including compliance with laws and regulations. If, as a result of an examination, a federal banking agency were to determine that the financial condition, capital resources, asset quality, earnings prospects, management, liquidity or other aspects of any of our operations had become unsatisfactory, or that the Company or its management was in violation of any law or regulation, it may take a number of different remedial actions as it deems appropriate. These actions include the power to enjoin "unsafe or unsound" practices, to require affirmative actions to correct any conditions resulting from any violation or practice, to issue an administrative order that can be judicially enforced, to direct an increase in BankUnited's capital, to restrict our growth, to assess civil monetary penalties against our officers or directors, to remove officers and directors and, if it is concluded that such conditions cannot be corrected or there is an imminent risk of loss to depositors, to terminate BankUnited's deposit insurance. If we become subject to such regulatory actions, our business, results of operations and reputation may be negatively impacted.

Many of our new activities and expansion plans require regulatory approvals, and failure to obtain them may restrict our growth.

We intend to complement and expand our business by pursuing strategic acquisitions of banks and other financial institutions. We must generally receive federal regulatory approval before we can acquire an institution or business. In determining whether to approve a proposed acquisition, federal bank regulators will consider, among other factors, the effect of the acquisition on the competition, our financial condition, and our future prospects. The regulators also review current and projected capital ratios and levels, the competence, experience, and integrity of management and its record of compliance with laws and regulations, the convenience and needs of the communities to be served (including the acquiring institution's record of compliance under the Community Reinvestment Act, or CRA) and the effectiveness of the acquiring institution in combating money laundering activities. Such regulatory approvals may not be granted on terms that are acceptable to us, or at all. We may also be required to sell branches as a condition to receiving regulatory approval, which condition may not be acceptable to us or, if acceptable to us, may reduce the benefit of any acquisition.

In addition to the acquisition of existing financial institutions, as opportunities arise, we plan to continue *de novo* branching as a part of our internal growth strategy and possibly enter into new markets through *de novo* branching. *De novo* branching and any acquisition carries with it numerous risks, including the inability to obtain all required regulatory approvals. The failure to obtain these regulatory approvals for potential future strategic acquisitions and *de novo* branches may impact our business plans and restrict our growth.

Financial institutions, such as BankUnited, face a risk of noncompliance and enforcement action with the Bank Secrecy Act and other anti-money laundering statutes and regulations.

The federal Bank Secrecy Act, the USA PATRIOT Act, and other laws and regulations require financial institutions, among other duties, to institute and maintain an effective anti-money laundering program and file suspicious activity and currency transaction reports as appropriate. The federal Financial Crimes Enforcement Network, established by the U.S. Treasury Department to administer the Bank Secrecy Act, is authorized to impose significant civil money penalties for violations of those requirements, and has recently engaged in coordinated enforcement efforts with the individual federal banking regulators, as well as the U.S. Department of Justice, Drug Enforcement Administration, and Internal Revenue Service. There is also increased scrutiny of compliance with the rules enforced by the Office of Foreign Assets Control.

In order to comply with regulations, guidelines and examination procedures in this area, we have enhanced our anti-money laundering program by adopting new policies and procedures and selecting a new, robust automated anti-money laundering software solution that is scheduled to be implemented in early 2011. If our policies, procedures and systems are deemed deficient or the policies, procedures and systems of the financial institutions that we have already acquired or may acquire in the future are deficient, we would be subject to liability, including fines and regulatory actions such as restrictions on our ability to pay dividends and the necessity to obtain regulatory approvals to proceed with certain aspects of our business plan, including our acquisition plans.

We are subject to the CRA and fair lending laws, and failure to comply with these laws could lead to material penalties.

The CRA, the Equal Credit Opportunity Act, the Fair Housing Act and other fair lending laws and regulations impose nondiscriminatory lending requirements on financial institutions. The Department of Justice and other federal agencies are responsible for enforcing these laws and regulations. A successful challenge to an institution's performance under the CRA or fair lending laws and regulations could result in a wide variety of sanctions, including the required payment of damages and civil money penalties, injunctive relief, imposition of restrictions on mergers and acquisitions activity, and restrictions on expansion activity. Private parties may also have the ability to challenge an institution's performance under fair lending laws in private class action litigation.

Risks Related to this Offering and Ownership of Our Common Stock

There is no prior public market for our common stock and one may not develop.

Prior to this offering, there has not been a public trading market for our common stock. An active trading market may not develop or be sustained after this offering. If an active trading market does not develop, you may have difficulty selling your shares of common stock at an attractive price, or at all. The initial public offering price for our common stock sold in this offering will be determined by negotiations among us, the selling stockholders and the underwriters. This price may not be indicative of the price at which our common stock will trade after this offering. The market price of our common stock may decline below the initial offering price, and you may not be able to sell your common stock at or above the price you paid in this offering, or at all.

Our stock price may be volatile, and you could lose all or part of your investment as a result.

You should consider an investment in our common stock to be risky, and you should invest in our common stock only if you can withstand a significant loss and wide fluctuation in the market value of your investment. The market price of our common stock could be subject to wide fluctuations in response to, among other things, the factors described in this "Risk Factors" section, and other factors, some of which are beyond our control. These factors include:

- quarterly variations in our results of operations or the quarterly financial results of companies perceived to be similar to us;
- changes in expectations as to our future financial performance, including financial estimates by securities analysts and investors;
- our announcements or our competitors' announcements regarding new products or services, enhancements, significant contracts, acquisitions or strategic investments;
- fluctuations in the market valuations of companies perceived by investors to be comparable to us;
- future sales of our common stock;
- additions or departures of members of our senior management or other key personnel;
- changes in industry conditions or perceptions; and
- changes in applicable laws, rules or regulations and other dynamics.

Furthermore, the stock markets have experienced price and volume fluctuations that have affected and continue to affect the market price of equity securities of many companies. These fluctuations have often been unrelated or disproportionate to the operating performance of these companies. These broad market fluctuations, as well as general economic, systemic, political and market conditions, such as recessions, loss of investor confidence, interest rate changes, or international currency fluctuations, may negatively affect the market price of our common stock.

If any of the foregoing occurs, it could cause our stock price to fall and may expose us to securities class action litigation that, even if unsuccessful, could be costly to defend and a distraction to management.

We may not pay cash dividends on our common stock.

Although we intend to pay dividends to our stockholders, we have no obligation to do so and may change our dividend policy at any time without notice to our stockholders. Holders of our common stock are only entitled to receive such cash dividends as our Board may declare out of funds legally available for such payments. Any decision to declare and pay dividends will be dependent on a variety of factors, including our financial condition, earnings, legal requirements and other factors that our Board deems relevant. In addition, our ability to pay dividends may be limited by covenants of any future indebtedness we or our subsidiaries incur. As a result, you many not receive any return on an investment in our common stock unless you sell our common stock for a price greater than that which you paid for it. In addition, since we are a holding company with no significant assets other than the capital stock of our banking subsidiary, we will need to depend upon dividends from the Bank for substantially all of our income. Accordingly, our ability to pay dividends depends primarily upon the receipt of dividends or other capital distributions from the Bank. The Bank's ability to pay dividends to us is subject to, among other things, its earnings, financial condition and need for funds, as well as federal and state governmental policies and regulations applicable to us and the Bank, which limit the amount that may be paid as dividends without prior regulatory approval.

You will incur immediate and substantial dilution in the net tangible book value of the shares you purchase in this offering.

The initial public offering price is likely to be substantially higher than the net tangible book value per share of our common stock based on the total value of our tangible assets less our total liabilities divided by our shares of common stock outstanding immediately following this offering. Therefore, if you purchase common stock in this offering, you will experience immediate and substantial dilution in net tangible book per share value after completion of this offering. To the extent outstanding options to purchase our common stock are exercised, there will be further dilution. See the section entitled "Dilution."

Our stock price could decline due to the large number of outstanding shares of our common stock eligible for future sale.

Sales of substantial amounts of our common stock in the public market following this offering, or the perception that these sales could occur, could cause the market price of our common stock to decline. These sales could also make it more difficult for us to sell equity or equity-related securities in the future, at a time and place that we deem appropriate.

Upon completion of this offering, we will have 96,971,850 outstanding shares of common stock. Of the outstanding shares, all of the 26,250,000 shares sold in this offering (30,187,500 shares if the underwriters exercise in full their over-allotment option) will be freely tradable, except that any shares purchased by "affiliates" (as that term is defined in Rule 144 under the Securities Act of 1933, or the Securities Act), only may be sold in compliance with the limitations described in the section entitled "Shares Eligible For Future Sale—Rule 144." Taking into consideration the effect of the lock-up agreements described below and the provisions of Rule 144 under the Securities Act, the remaining shares of our common stock may may be eligible for resale in the public market under Rule 144 under the Securities Act subject to applicable restrictions under Rule 144.

We, our executive officers, directors and the selling stockholders have agreed with the underwriters, subject to certain exceptions, not to dispose of or hedge any of their shares of common stock or securities convertible into or exchangeable for shares during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus, except with the prior written consent of Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated. See the section entitled "Underwriters." In addition, (1) each of Mr. Kanas and certain funds affiliated with Blackstone, Carlyle, Centerbridge and WL Ross have separately agreed during the 18 months from the date of this prospectus and (2) our other executive officers have separately agreed during the 12 months from the date of this prospectus not to effect any sales pursuant to Rule 144 under the Securities Act of any of our equity securities. See "Description of Our Capital Stock—Registration Rights." Any future sales of common stock by our executive officers will further be subject to minimum equity ownership requirements to which our executive officers have agreed. See "Compensation Discussion and Analysis—Executive Officer Compensation—Equity Ownership Requirements."

In addition, we intend to file a registration statement on Form S-8 under the Securities Act to register an aggregate of approximately 8.5 million shares of common stock for issuance under our 2009 Stock Option Plan and 2010 Omnibus Equity Incentive Plan. We may issue all of these shares without any action or approval by our stockholders, and these shares once issued (including upon exercise of outstanding options) will be available for sale into the public market subject to the restrictions described above, if applicable to the holder. Any shares issued in connection with acquisitions, the exercise of stock options or otherwise would dilute the percentage ownership held by investors who purchase our shares in this offering.

"Anti-takeover" provisions and the regulations to which we are subject may make it more difficult for a third party to acquire control of us, even if the change in control would be beneficial to stockholders.

We are a savings and loan holding company incorporated in the state of Delaware. Anti-takeover provisions in Delaware law and our certificate of incorporation and by-laws, as well as regulatory approvals that would be required under federal law, could make it more difficult for a third-party to take control of us and may prevent stockholders from receiving a premium for their shares of our common stock. These provisions could adversely affect the market price of our common stock and could reduce the amount that stockholders might get if we are sold.

Our certificate of incorporation will provide for, among other things:

- advance notice for nomination of directors and other stockholder proposals;
- the removal of directors by stockholders for cause only;
- limitations on the ability of stockholders to call a special meeting of stockholders;
- a prohibition of stockholder action by written consent;
- the approval by a super-majority of outstanding shares to amend certain provisions of the by-laws and the certificate of incorporation; and
- the authorization of "blank check" preferred stock with such designations, rights and preferences as may be determined from time to time by our Board.

Delaware law also imposes some restrictions on mergers and other business combinations between us and any holder of 15% or more of our outstanding common stock. See the section entitled "Description of Our Capital Stock—Anti-Takeover Considerations and Special Provisions of our Certificate of Incorporation, By-Laws and Delaware Law." We believe that these provisions protect our stockholders from coercive or otherwise unfair takeover tactics by requiring potential acquirers to negotiate with our Board and by providing our Board with more time to assess any acquisition proposal. However, these provisions apply even if the offer may be determined to be beneficial by some stockholders and could delay or prevent an acquisition that our Board determines is not in our best interest and that of our stockholders.

Furthermore, banking laws impose notice, approval and ongoing regulatory requirements on any shareholder or other party that seeks to acquire direct or indirect "control" of an FDIC-insured depository institution. These laws include the Savings and Loan Holding Company Act, the Bank Holding Company Act of 1956 and the Change in Bank Control Act. These laws could delay or prevent an acquisition.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements under "Prospectus Summary," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business" and elsewhere in this prospectus may contain forward-looking statements that reflect our current views with respect to, among other things, future events and financial performance. We generally identify forward-looking statements by terminology such as "outlook," "believes," "expects," "potential," "continues," "may," "will," "could," "should," "seeks," "approximately," "predicts," "intends," "plans," "estimates," "anticipates" or the negative version of those words or other comparable words. Any forward-looking statements contained in this prospectus are based on the historical performance of us and our subsidiaries or on our current plans, estimates and expectations. The inclusion of this forward-looking information should not be regarded as a representation by us, the underwriters or any other person that the future plans, estimates or expectations contemplated by us will be achieved. Such forward-looking statements are subject to various risks and uncertainties and assumptions relating to our operations, financial results, financial condition, business prospects, growth strategy and liquidity. If one or more of these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, our actual results may vary materially from those indicated in these statements. These factors should not be construed as exhaustive and should be read in conjunction with the other cautionary statements that are included elsewhere in this prospectus. We do not undertake any obligation to publicly update or review any forward-looking statement, whether as a result of new information, future developments or otherwise. A number of important factors could cause actual results to differ materially from those indicated by the forward-looking statements, including, but not limited to, those factors described in "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations."

REORGANIZATION

We are currently a direct, wholly-owned subsidiary of the LLC. Prior to the completion of this offering, we will effect reorganization so that our investors, our named executive officers and all other members of the LLC will hold equity interests in us directly rather than indirectly through the LLC.

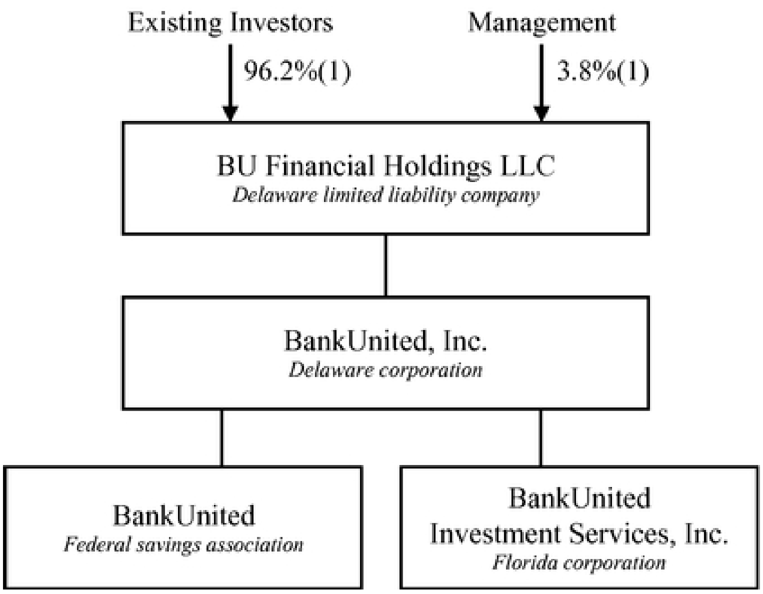
Immediately prior to the consummation of this offering, the LLC will be liquidated and all interests in the registrant, BankUnited, Inc. will be distributed to the members of the LLC in accordance with its LLC Agreement. Following this liquidation, BankUnited, Inc. will be the ultimate parent entity of the group and will have two wholly-owned subsidiaries: BankUnited and BankUnited Investment Services. There are currently 36 holders of units in the LLC.

For additional information, see "Compensation Discussion and Analysis—Executive Officer Compensation—Equity-Based Compensation."

Table of Contents

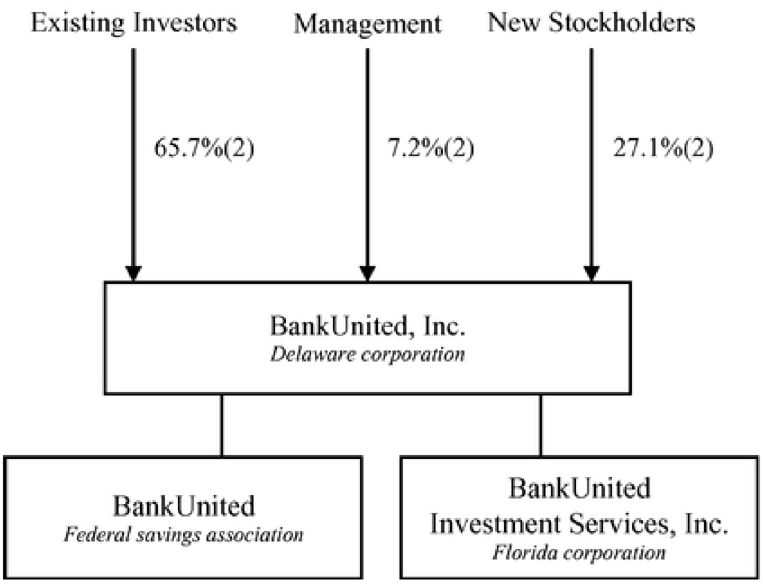
The following diagram shows our organizational structure, including our principal subsidiaries only, prior to giving effect to the Reorganization:

Pre-Reorganization



Immediately after the consummation of this offering and after the completion of the Reorganization, the following diagram shows our organization structure, including our principal subsidiaries only:

Post-Reorganization and IPO



---

(1) Percentages exclude impact of PIUs.

(2) Includes impact of PIUs, based on an assumed initial offering price of $24.00 per share, the midpoint of the price range set forth on the cover of this prospectus.

USE OF PROCEEDS

We estimate that the net proceeds to us from the sale of our common stock in this offering will be $86.2 million, at an assumed initial public offering price of $24.00 per share, the midpoint of the price range set forth on the cover of this prospectus, and after deducting estimated underwriting discounts and commissions and offering expenses. Each $1.00 increase (decrease) in the assumed initial public offering price of $24.00 per share, the midpoint of the price range set forth on the cover of this prospectus, would increase (decrease) the net proceeds to us of this offering by $3.8 million, assuming the number of shares offered by us, as set forth on the cover of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and offering expenses. We will not receive any proceeds from the sale of shares of our common stock by the selling stockholders. We intend to use the net proceeds of this offering for general corporate purposes.

DIVIDEND POLICY

We initially anticipate paying a quarterly dividend of $0.14 per share on our common stock, subject to the discretion of our Board and dependent on, among other things, our financial condition, results of operations, capital requirements, restrictions contained in future financing instruments and other factors that our Board may deem relevant. Dividends from the Bank are the principal source of funds for the payment of dividends on our common stock. The Bank is subject to certain restrictions that may limit its ability to pay dividends to us. See "Regulation and Supervision—Regulatory Limits on Dividends and Distributions." During the period ended December 31, 2009, we did not pay a cash dividend to the holder of our common stock. On October 28, 2010, we paid a quarterly dividend of $14.0 million, with a record date of October 15, 2010. On October 28, 2010, we also paid a one-time special dividend of $6.0 million, with a record date of October 19, 2010. On December 9, 2010, we declared another quarterly dividend of $14.0 million, with a record date of January 3, 2011, which will be paid on January 18, 2011.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and our capitalization at September 30, 2010:

- on an actual basis; and
- on an as adjusted basis to give effect to the sale of shares of common stock in this offering at an assumed initial public offering price of $24.00 per share, the midpoint of the price range on the cover of this prospectus, after deducting estimated underwriting discounts and commissions and offering expenses as if it had occurred on September 30, 2010 and our amended and restated certificate of incorporation, which will become effective in connection with the consummation of this offering.

This table should be read in conjunction with "Selected Historical Consolidated Financial Information," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and the related notes thereto appearing elsewhere in this prospectus.

	At September 30, 2010	
	Actual	As Adjusted(1)
	(unaudited) (dollars in thousands, except share and per share data)	
Cash and cash equivalents	$ 494,586	$ 580,763
Other borrowings	$ 2,260,006	$ 2,260,006
Stockholder's equity:		
Preferred stock $0.01 par value per share: no shares authorized, no shares issued and outstanding, actual; 100,000,000 shares authorized, no shares issued and outstanding, as adjusted	—	—
Common stock, $0.01 par value per share: 110,000,000 shares authorized, 92,971,850 shares issued and outstanding, actual; 400,000,000 shares authorized, 96,971,850 shares issued and outstanding, as adjusted	930	970
Paid-in capital	949,320	1,035,457
Paid-in capital from stock-based compensation	1,083	1,083
Retained earnings	261,968	261,968
Accumulated other comprehensive income	29,538	29,538
Total stockholder's equity	1,242,839	1,329,016
Total capitalization	$ 3,502,845	$ 3,589,022

(1) The recording of compensation expense related to the exchange of PIUs for a combination of common stock and options, which is not deductible for tax purposes, immediately prior to the consummation of this offering will result in an offsetting increase in paid-in capital, and thus will not affect total capitalization.

A $1.00 increase (decrease) in the assumed initial public offering price of $24.00 per share would increase (decrease) total stockholder's equity and total capitalization by $3.8 million, assuming that the number of shares offered by us, as set forth on the cover of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and offering expenses.

DILUTION

If you invest in our common stock, your ownership interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the as adjusted net tangible book value per share of our common stock upon consummation of this offering. Our historical net tangible book value at September 30, 2010 was $1.2 billion, or $12.71 per share of common stock based on the 92,971,850 shares issued and outstanding as of such date. Net tangible book value per share represents the book value of our total tangible assets less the book value of our total liabilities divided by the number of shares of common stock then issued and outstanding.

After giving effect to our sale of 4,000,000 shares of common stock at an assumed initial public offering price of $24.00 per share, the midpoint of the price range on the cover of this prospectus, and after deducting estimated underwriting discounts and commissions and offering expenses, our as adjusted net tangible book value at September 30, 2010 would have been $1.3 billion, or $13.08 per share. This amount represents an immediate increase in net tangible book value to our existing stockholders of $0.37 per share and an immediate dilution to new investors of $10.92 per share.

The following table illustrates this per share dilution:

Assumed initial public offering price per share		$ 24.00
Net tangible book value per share at September 30, 2010	$ 12.71	
Increase in net tangible book value per share attributable to this offering	0.37	
As adjusted net tangible book value per share after this offering		13.08
Net tangible book value dilution per share to new investors in this offering		$ 10.92

Each $1.00 increase (decrease) in the assumed initial public offering price of $24.00 per share would increase (decrease) our as adjusted net tangible book value by approximately $3.8 million, or approximately $0.04 per share, and the pro forma dilution per share to investors in this offering by approximately $0.96 per share, assuming that the number of shares offered by us, as set forth on the cover of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and offering expenses. The number of shares offered by us in this offering may be increased or decreased from the number of shares on the cover page of this prospectus. Each increase (decrease) of 1.0 million shares in the number of shares offered by us would increase (decrease) our as adjusted net tangible book value by approximately $22.8 million, or approximately $0.10 per share, and the pro forma dilution per share to investors in this offering by approximately $0.10 per share, assuming the assumed initial public offering price per share of $24.00 per share, the midpoint of the price range on the cover of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and offering expenses. The as adjusted information discussed above is illustrative only and will adjust based on the actual initial public offering price and other terms of this offering determined at pricing.

If the underwriters exercise their option to purchase additional shares of our common stock in full in this offering, the net tangible book value per share after this offering would not change since the shares for this option are all being provided by our selling stockholders and we will not receive any of the proceeds from the sale of these shares.

The following table summarizes at September 30, 2010 the average price per share paid by our existing stockholders and by investors participating in this offering, based on an assumed initial public offering price of $24.00 per share, the midpoint of the price range on the cover of this prospectus, and before deducting estimated underwriting discounts and commissions and offering expenses.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percentage	Amount
Existing stockholders	92,971,850	95.9%	$ 930,250,000	90.6%	$ 10.01
New investors	4,000,000	4.1	96,000,000	9.4	24.00
Total	96,971,850	100%	$ 1,026,250,000	100%	

Assuming no exercise of the over-allotment option, sales of shares of common stock by the selling stockholders in this offering will reduce the number of shares of common stock held by existing stockholders to 70,721,850, or approximately 72.9% of the total shares of common stock outstanding after this offering, and will increase the number of shares held by new investors to 26,250,000, or approximately 27.1% of the total shares of common stock outstanding after this offering. If the underwriters exercise their over-allotment option in full, the number of shares held by existing stockholders will be reduced to 66,784,350 shares, or 68.9% of the total shares outstanding, and the number of shares held by investors participating in this offering will be increased to 30,187,500 shares, or 31.1% of the total shares outstanding.

The above discussion and tables excludes 981,710 shares of common stock issuable upon exercise of outstanding stock options at a weighted average exercise price of $17.04 per share (of which 113,451 shares are issuable upon exercise of vested stock options) as of January 10, 2011 and 7,500,000 shares of common stock reserved for issuance, and not subject to outstanding options, under the BankUnited, Inc. 2010 Omnibus Equity Incentive Plan. To the extent any of the foregoing options are exercised, there will be further dilution to investors participating in this offering.

SELECTED HISTORICAL CONSOLIDATED FINANCIAL INFORMATION

You should read the selected historical consolidated financial information set forth below in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Capitalization" and the consolidated financial statements and the related notes thereto included elsewhere in this prospectus. The selected historical consolidated financial information set forth below at and for the nine months ended September 30, 2010 is derived from our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus and includes all adjustments (consisting of normal recurring adjustments) that we considered necessary for a fair presentation of the financial position and the results of operations for these periods. Operating results for the nine months ended September 30, 2010 are not necessarily indicative of the results that may be expected for the year ended December 31, 2010. The selected historical consolidated financial information set forth below at December 31, 2009 and for the period from April 28, 2009 (date of inception) to December 31, 2009 has been derived from our audited consolidated financial statements included elsewhere in this prospectus. The selected historical consolidated financial information set forth below at September 30, 2008 and 2007, for each of the periods from October 1, 2008 to May 21, 2009 and for the fiscal years ended September 30, 2008 and 2007 has been derived from the audited consolidated financial statements of the Failed Bank included elsewhere in this prospectus. The selected historical consolidated financial information set forth below at and for the fiscal years ended September 30, 2006 and 2005 has been derived from the unaudited consolidated financial statements of the Failed Bank not included in this prospectus.

Although we were incorporated on April 28, 2009, neither we nor the Bank had any substantive operations prior to the Acquisition on May 21, 2009. Results of operations of the Company for the post-Acquisition periods are not comparable to the results of operations of the Failed Bank for the pre-Acquisition periods. Results of operations for the post-Acquisition periods reflect, among other things, the acquisition method of accounting. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Periods Presented and Factors Affecting Comparability."

	BankUnited, Inc.		Failed Bank			
			At September 30,			
	At September 30, 2010 (unaudited)	At December 31, 2009	2008	2007	2006 (unaudited)	2005 (unaudited)
	(dollars in thousands, except per share data)					
CONSOLIDATED BALANCE SHEET DATA:						
Cash and cash equivalents	$ 494,586	$ 356,215	$ 1,223,346	$ 512,885	$ 66,600	$ 237,950
Investment securities available for sale, at fair value	3,088,504	2,243,143	755,225	1,098,665	1,520,294	1,912,643
Loans held in portfolio, net	4,079,234	4,588,898	11,249,367	12,561,693	11,400,706	8,027,592
FDIC indemnification asset	2,723,059	3,279,165	—	—	—	—
Goodwill and other intangible assets	60,759	60,981	28,353	28,353	28,353	28,353
Total assets	11,151,301	11,129,961	14,088,591	15,107,310	13,543,992	10,639,895
Deposits	7,300,460	7,666,775	8,176,817	7,305,788	6,110,855	4,766,931
Federal Home Loan Bank advances	2,260,006	2,079,051	5,279,350	6,234,360	5,174,350	3,820,385
Total liabilities	9,908,462	10,035,701	13,689,821	13,904,508	12,538,156	9,870,482
Total stockholder's equity	1,242,839	1,094,260	398,770	1,202,802	1,005,836	769,413

	BankUnited, Inc.		Failed Bank				
	Nine Months Ended September 30, 2010	Period from April 28, 2009 to December 31, 2009(1)	Period from October 1, 2008 to May 21, 2009(1)	At September 30, 2008	2007	2006	2005
	(unaudited)					(unaudited)	(unaudited)
	(dollars in thousands, except share data)						
Consolidated Income Statement Data:							
Interest income	$ 414,959	$ 335,524	$ 339,068	$ 834,460	$ 957,897	$ 712,807	$ 428,692
Interest expense	127,495	83,856	333,392	555,594	604,558	442,333	250,873
Net interest income	287,464	251,668	5,676	278,866	353,339	270,474	177,819
Provision for loan losses	45,157	22,621	919,139	856,374	31,500	10,400	3,840
Net interest income (loss) after provision for loan losses	242,307	229,047	(913,463)	(577,508)	321,839	260,074	173,979
Non-interest income (loss)	237,520	252,828	(81,431)	(128,859)	28,367	32,598	18,213
Non-interest expense	220,048	282,454	238,403	246,480	185,634	136,668	133,327
Income (loss) before income taxes	259,779	199,421	(1,233,297)	(952,847)	164,572	156,004	58,865
Provision (benefit) for income before taxes	102,857	80,375	—	(94,462)	55,067	51,794	17,909
Net income (loss)	$ 156,922	$ 119,046	$ (1,233,297)	$ (858,385)	$ 109,505	$ 104,210	$ 40,956
Share Data:							
Earnings (loss) per common share, basic and diluted	$ 1.69	$ 1.29	$(12,332,970)	$(8,583,850)	$1,095,054	$ 1,042,100	$ 409,560
Weighted average common shares outstanding	92,943,620	92,664,910	100	100	100	100	100
Other Data (unaudited):							
Financial ratios							
Return on average assets(2)	1.86%	1.69%	(14.26)%	(5.94)%	0.78%	0.86%	0.44%
Return on average common stockholder's equity(2)	17.72%	18.98%	(2,041.04)%	(75.43)%	10.04%	12.04%	5.86%
Yield on earning assets(2)	7.16%	7.42%	3.91 %	5.91 %	6.96%	6.06%	4.70%
Cost of interest bearing liabilities(2)	1.82%	1.39%	3.94 %	4.36 %	4.91%	4.16%	3.05%
Equity to assets ratio	11.15%	9.83%	(7.25)%	2.83 %	7.96%	7.43%	7.23%
Interest rate spread(2)	5.34%	6.03%	(0.03)%	1.55 %	2.05%	1.90%	1.65%
Net interest margin(2)	4.95%	5.58%	0.06 %	1.98 %	2.57%	2.30%	1.95%
Loan to deposit ratio	56.67%	60.15%	128.73 %	146.33 %	172.74%	189.21%	171.15%

	BankUnited, Inc.		Failed Bank				
	Nine Months Ended September 30, 2010	Period from April 28, 2009 to December 31, 2009(1)	Period from October 1, 2008 to May 21, 2009(1)	At September 30,			
				2008	2007	2006	2005
	(unaudited)					(unaudited)	(unaudited)
	(dollars in thousands, except share data)						
Asset quality ratios							
Non-performing loans to total loans(3)(5)	0.68%	0.38%	24.58 %	11.98 %	1.59%	0.18%	0.10%
Non-performing assets to total assets(4)(5)	1.99%	1.24%	23.53 %	11.13 %	1.51%	0.16%	0.08%
Allowance for loan losses to total loans	1.40%	0.49%	11.14 %	5.98 %	0.46%	0.32%	0.32%
Allowance for loan losses to non-performing loans	206.28%	130.22%	45.33 %	49.96 %	29.15%	175.40%	306.94%
Net charge-offs to average loans(2)	0.31%	0.00%	5.51 %	1.58 %	0.08%	0.00%	0.03%

	BankUnited, Inc.		Failed Bank			
	At September 30, 2010	At December 31, 2009(1)	At September 30,			
			2008	2007	2006	2005
	(unaudited)				(unaudited)	(unaudited)
Capital ratios(6)						
Tangible common equity to tangible assets(7)	10.66%	9.33%	2.63%	7.79%	7.23%	6.98%
Tier 1 common capital to total risk weighted assets	42.46%	40.42%	4.90%	14.64%	13.79%	14.03%
Tier 1 risk-based capital	42.46%	40.42%	4.90%	14.64%	13.79%	14.03%
Total risk-based capital	43.27%	40.55%	6.21%	15.37%	14.28%	14.49%
Tier 1 leverage	10.09%	8.78%	2.89%	7.84%	7.31%	7.11%

(1) The Company was incorporated on April 28, 2009, but neither the Company nor the Bank had any substantive operations prior to the Acquisition on May 21, 2009. The period from May 22, 2009 to December 31, 2009 contained 224 days. The period from October 1, 2008 to May 21, 2009 contained 233 days.

(2) Ratio is annualized for the period from October 1, 2008 to May 21, 2009, for the period from May 22, 2009 to December 31, 2009 and for the nine months ended September 30, 2010. See note 1 above.

(3) Non-performing loans include nonaccrual loans, loans past due 90 days or more and, for the pre-Acquisition periods, certain other impaired loans still accruing interest. For the pre-Acquisition periods, restructured 1-4 single family residential loans in compliance with modified terms are excluded from non-performing loans. For the post-Acquisition periods, contractually delinquent ACI loans on which interest continues to be accreted are excluded from non-performing loans. The carrying value of ACI loans contractually delinquent by more than 90 days, but not identified as impaired was $0.9 billion and $1.2 billion at September 30, 2010 and December 31, 2009, respectively. These ratios may therefore not be compatible to similar ratios of our peers.

(4) Non-performing assets include non-performing loans and OREO.

(5) Total loans is net of unearned discounts and deferred fees and costs.

(6) All capital ratios presented are ratios of the Bank except for the tangible common equity to tangible assets ratio which is of the Company.

(7) Tangible common equity to tangible assets is a non-GAAP financial measure. For purposes of computing tangible common equity to tangible assets, tangible common equity is calculated as common stockholder's equity less goodwill and other intangible assets, net, and tangible assets is calculated as total assets less goodwill and other intangible assets, net. Tangible common equity to tangible assets should not be viewed as a substitute for total

stockholder's equity to total assets. The most directly comparable GAAP financial measure is total stockholder's equity to total assets. See the reconciliation below:

	BankUnited, Inc.		Failed Bank			
			At September 30,			
	At September 30, 2010 (unaudited)	At December 31, 2009	2008	2007	2006 (unaudited)	2005 (unaudited)
	(dollars in thousands)					
Total stockholder's equity	$ 1,242,839	$ 1,094,260	$ 398,770	$ 1,202,802	$ 1,005,836	$ 769,413
Less: goodwill and other intangible assets, net	60,759	60,981	28,353	28,353	28,353	28,353
Tangible common stockholder's equity	$ 1,182,080	$ 1,033,279	$ 370,417	$ 1,174,449	$ 977,483	$ 741,060
Total assets	$ 11,151,301	$ 11,129,961	$14,088,591	$15,107,310	$13,543,992	$10,639,895
Less: goodwill and other intangible assets, net	60,759	60,981	28,353	28,353	28,353	28,353
Tangible assets	$ 11,090,542	$ 11,068,980	$14,060,238	$15,078,957	$13,515,639	$10,611,542
Equity to assets	11.15%	9.83%	2.83%	7.96%	7.43%	7.23%
Tangible common equity to tangible assets	10.66%	9.33%	2.63%	7.79%	7.23%	6.98%

Management of the Company believes this non-GAAP financial measure provides an additional meaningful method of evaluating certain aspects of the Company's capital strength from period to period on a basis that may not be otherwise apparent under GAAP. Management also believes that this non-GAAP financial measure, which complements the capital ratios defined by regulators, is useful to investors who are interested in the Company's equity to assets ratio exclusive of the effect of changes in intangible assets on equity and total assets.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with the "Selected Historical Consolidated Financial Information," and our financial statements and related notes thereto included elsewhere in this prospectus. In addition to historical information, this discussion contains forward-looking statements that involve risks, uncertainties and assumptions that could cause actual results to differ materially from management's expectations. Factors that could cause such differences are discussed in the sections entitled "Cautionary Note Regarding Forward-Looking Statements" and "Risk Factors." We assume no obligation to update any of these forward-looking statements.

Overview

BankUnited, Inc. is a savings and loan holding company with two wholly-owned subsidiaries: BankUnited, which is one of the largest independent depository institutions headquartered in Florida by assets, and BankUnited Investment Services, a Florida insurance agency. As of the close of business on May 21, 2009, BankUnited entered into the Purchase and Assumption Agreement including the Loss Sharing Agreements with the FDIC to acquire substantially all of the assets and assume all of the non-brokered deposits and substantially all other liabilities of the Failed Bank. The Failed Bank was closed by the OTS and placed into receivership with the FDIC on May 21, 2009. Neither the Company nor the Bank had any substantive operations prior to the Acquisition.

BankUnited has a network of 78 branches in 13 Florida counties as of September 30, 2010. Since the Acquisition, we have focused on providing a full range of commercial and consumer banking services to growing companies and their executives, commercial and middle-market businesses and consumers in Florida's coastal regions. Through BankUnited, we deliver a comprehensive range of traditional depository and lending products, online banking services and cash management tools to our customers. Through its non-bank subsidiary, BankUnited Investment Services, the Company offers wealth management products as well as succession planning, estate planning and financial planning services. The Company recently acquired two businesses to start its leasing platform on a national basis. Through United Capital Business Lending, we offer equipment financing services and through Pinnacle Public Finance, we offer municipal leasing services.

Periods Presented and Factors Affecting Comparability

Financial information presented throughout this "Management's Discussion and Analysis of Financial Condition and Results of Operations" for the nine months ended September 30, 2010 and the period from May 22, 2009 through December 31, 2009 (which we refer to as the post-Acquisition periods) is that of the Company. Historical financial information for the period from October 1, 2008 through May 21, 2009 and the fiscal years ended September 30, 2008, 2007, 2006 and 2005 (which we refer to as the pre-Acquisition periods) is that of the Failed Bank. Results of operations of the Company for the post-Acquisition periods are not comparable to the results of operations of the Failed Bank for the pre-Acquisition periods. Results of operations for the post-Acquisition periods reflect, among other things, the acquisition method of accounting.

Under the acquisition method of accounting, all of the assets acquired and liabilities assumed were initially recorded on the consolidated balance sheet of the Company at their estimated fair values as of May 21, 2009. These estimated fair values differed substantially from the carrying amounts of the assets acquired and liabilities assumed as reflected in the financial statements of the Failed Bank immediately prior to the Acquisition. The most significant reasons for the non-comparability of the consolidated financial statements include:

- The estimated fair value at which the acquired loans were initially recorded by the Company was significantly less than the pre-Acquisition carrying value of those loans on the balance sheet of the Failed Bank. No allowance for loan losses was recorded with respect to acquired loans at the

Acquisition date. The writedown of loans to fair value in conjunction with the application of acquisition accounting and credit protection provided by the Loss Sharing Agreements resulted in a significantly lower provision for loan losses subsequent to the Acquisition;

- Acquired investment securities were recorded at their estimated fair values at the Acquisition date, significantly reducing the potential for other-than-temporary impairment charges in periods subsequent to the Acquisition for the acquired securities;

- An indemnification asset related to the Loss Sharing Agreements with the FDIC was recorded in conjunction with the Acquisition;

- Interest income, interest expense and the net interest margin subsequent to the Acquisition reflect the impact of accretion of the fair value adjustments made to the carrying amounts of interest earning assets and interest bearing liabilities;

- Non-interest income for periods subsequent to the Acquisition includes the effects of accretion of discount on the indemnification asset and net gains associated with the resolution of Covered Assets;

- Certain loans reflected as nonaccrual loans in the financial statements of the Failed Bank are no longer categorized as non-performing assets due to classification of such loans as ACI loans in accordance with ASC Subtopic 310-30, *Loan and Debt Securities Acquired with Deteriorated Credit Quality*. The balances of non-performing assets were significantly reduced by the adjustments to fair value recorded in conjunction with the Acquisition;

- Goodwill was recorded in conjunction with the Acquisition;

- The Company received $2.2 billion in cash from the FDIC upon consummation of the Acquisition; and

- The Company received a capital injection of $945.0 million at inception.

A summary comparison of the pre-Acquisition carrying amounts and estimated fair values of assets acquired and liabilities assumed as of the Acquisition date follows *(dollars in thousands)*:

	As Recorded by the Failed Bank	Fair Value Adjustments	Net Cash Received From the FDIC	As Recorded by the Company
Assets				
Cash and cash equivalents	$ 1,160,321	$ —	$ 2,156,393	$ 3,316,714
Investment securities, at fair value	608,388	(69,444)	—	538,944
FHLB stock	243,334	—	—	243,334
Loans held in portfolio, net	11,174,232	(6,163,904)	—	5,010,328
FDIC receivable	—	69,444	—	69,444
FDIC indemnification asset	—	3,442,890	—	3,442,890
Bank owned life insurance	129,111	—	—	129,111
Other real estate owned	199,819	(22,140)	—	177,679
Deferred tax asset, net	—	37,269	—	37,269
Goodwill and other intangible assets	—	61,150	—	61,150
Other assets	95,171	(44,696)	—	50,475
Total assets	13,610,376	(2,689,431)	2,156,393	13,077,338
Liabilities				
Deposits	8,225,916	108,566	—	8,334,482
Securities sold under agreements to repurchase	1,310	—	—	1,310
Federal Home Loan Bank advances	4,429,350	201,264	—	4,630,614
Advance payments by borrowers for taxes				—
and insurance	52,362	—	—	52,362
Other liabilities	59,137	(567)	—	58,570
Total liabilities	12,768,075	309,263	—	13,077,338
Net Assets	$ 842,301	$ (2,998,694)	$ 2,156,393	$ —

Primary Factors Used to Evaluate Our Business

As a financial institution, we manage and evaluate various aspects of both our results of operations and our financial condition. We evaluate the levels and trends of the line items included in our balance sheet and income statement, as well as various financial ratios that are commonly used in our industry. We analyze these ratios and financial trends against our own historical performance, our budgeted performance and the financial condition and performance of comparable financial institutions in our region and nationally.

Subsequent to the Acquisition, comparison of our financial performance against other financial institutions is impacted by the application of the acquisition method of accounting and the accounting for loans acquired with evidence of deterioration in credit quality, which we refer to as ACI loans, as discussed below.

Results of operations

The primary line items we use to manage and evaluate our results of operations include net interest income, the provision for loan losses, non-interest income, non-interest expense and net income.

Net interest income

Net interest income is the difference between interest earned on interest earning assets and interest incurred on interest bearing liabilities and is the primary driver of core earnings. Net interest income is impacted by the relative mix of interest earning assets and interest bearing liabilities, the ratio of interest earning assets to total assets and of interest bearing liabilities to total funding sources, movements in market interest rates, levels of non-performing assets and pricing pressure from competitors. Due to the revaluation of Covered Assets in conjunction with the application of acquisition accounting and the resultant accretion, generally Covered Assets have higher yields than do assets purchased or originated since May 21, 2009. Net interest income will be impacted in future periods as Covered Assets are repaid or mature and these assets comprise a lower percentage of total interest earning assets. The mix of interest earning assets is influenced by loan demand and by management's continual assessment of the rate of return and relative risk associated with various classes of earning assets.

The mix of interest bearing liabilities is influenced by management's assessment of the need for lower cost funding sources weighed against relationships with customers and growth requirements and is impacted by competition for deposits in the Bank's market and the availability and pricing of other sources of funds.

Key measures that we use to evaluate our net interest income are the level and stability of the net interest margin and the interest rate spread. Net interest margin is calculated by dividing net interest income for the period by average interest earning assets. The interest rate spread is the difference between the yield earned on average interest earning assets and the rate paid on average interest bearing liabilities for the period.

For the post-Acquisition periods, net interest income is also impacted by accretion of fair value adjustments recorded in conjunction with the Acquisition and the accounting for ACI loans. Fair value adjustments of interest earning assets and interest bearing liabilities recorded at Acquisition are accreted to interest income or expense over the lives of the related assets or liabilities. Generally, accretion of fair value adjustments increases interest income and decreases interest expense, and thus has a positive impact on our net interest income, net interest margin and interest rate spread.

At Acquisition, ACI loans were recorded at fair value, measured based on the present value of expected cash flows. The excess of expected cash flows over the recorded fair value at Acquisition, known as accretable yield, is being recognized as interest income over the lives of the underlying loans. Since the post-Acquisition carrying value of ACI loans is based on the amount expected to be collected, and due to the resultant accretion, these loans are not classified as nonaccrual, although they may be contractually delinquent. Accretion related to ACI loans has a positive impact on our net interest income, net interest margin and interest rate spread. The impact of accretion and ACI loan accounting on net interest income makes it difficult to compare our net interest margin and interest rate spread to those reported by other financial institutions.

The accretion of fair value adjustments will continue to have a significant impact on our net interest income as long as Covered Assets represent a significant portion of our interest earning assets as opposed to assets originated or purchased after May 21, 2009. At September 30, 2010, Covered Loans represented 91.7% of our loan portfolio (based on book value) and Covered Securities represented 8.8% of our investment portfolio. In total, covered interest earning assets represented 51.5% of our interest earning assets at September 30, 2010.

Interest expense incurred on our interest bearing liabilities is impacted by the accretion of fair value adjustments on our time deposits and our advances from the FHLB recorded in connection with the Acquisition. However, the impact on interest expense has decreased significantly in 2010 and will continue to decrease in 2011. Accretion of fair value adjustments on time deposits totaled $18.3 million for the nine months ending September 30, 2010 (and is projected to be $21.4 million for 2010) as compared to $79.9 million for the period ending December 31, 2009. Accretion of fair value adjustments on FHLB advances totaled $19.0 million for the nine months ended September 30, 2010 (and is projected to be $23.9 million for 2010) as compared to $25.1 million for the period ended December 31, 2009. For 2011, accretion of fair value adjustments on time deposits is projected to be $7.0 million, and accretion of fair value adjustments on FHLB advances is projected to be $19.1 million.

Provision for loan losses

The provision for loan losses is the amount of expense that, based on our judgment, is required to maintain the allowance for loan losses at an adequate level to absorb probable losses inherent in the loan portfolio at the balance sheet date and that, in management's judgment, is appropriate under U.S. generally accepted accounting principles. The determination of the amount of the allowance is complex and involves a high degree of judgment and subjectivity.

The risk of loss associated with Covered Loans differs significantly from the risk of loss associated with non-Covered Loans. The Loss Sharing Agreements significantly limit the Company's exposure to credit losses on Covered Loans. Recognition of future losses on Covered Loans is also mitigated by the fair market value of loans established in the application of acquisition accounting. Because the determination of fair value at which the loans acquired from the Failed Bank were initially recorded as of May 21, 2009 encompassed assumptions about expected future cash flows and credit risk, no allowance for loan losses was recorded at the date of acquisition. Fair value adjustments to the carrying amount of acquired loans totaled $6.2 billion.

Covered Loans may be further broken out into two broad categories: (i) ACI loans and (ii) loans that did not exhibit evidence of deterioration in credit quality at acquisition, or non-ACI loans. Subsequent to the Acquisition, an allowance for loan losses related to the ACI loans is recorded only when estimates of future cash flows related to these loans are revised downward, indicating further deterioration in credit quality. An allowance for loan losses for non-ACI loans may be established if factors considered relevant by management indicate that the credit quality of the non-ACI loans has deteriorated.

Since the recording of a provision for loan losses on Covered Loans represents an increase in the amount of reimbursement we expect to receive from the FDIC, we also record an increase in the FDIC indemnification asset for the present value of the projected increase in reimbursement, with a corresponding increase in non-interest income, recorded in "Net loss on indemnification asset resulting from net recoveries" as discussed below in the section entitled "—Non-interest income." Therefore, the impact on our results of operations of any provision for loan losses on Covered Loans is significantly mitigated by an increase in non-interest income. For the nine months ended September 30, 2010 and the period ended December 31, 2009, we recorded provisions for loan losses on Covered Loans of $42.5 million and $21.3 million, respectively. For the nine months ended September 30, 2010 and the period ended December 31, 2009, the impact to earnings from these provisions was significantly mitigated by recording non-interest income of $23.0 million and $14.4 million, respectively.

For the nine months ended September 30, 2010 and the period ended December 31, 2009, we recorded provisions for loan losses of $2.6 million and $1.3 million, respectively, for loans we originated or purchased subsequent to the Acquisition. These loans are not protected by the Loss Sharing Agreements and as such, these provisions are not offset by an increase in non-interest income.

Non-interest income

For the nine months ended September 30, 2010 and the period ended December 31, 2009, the majority of our non-interest income resulted from the resolution of assets covered by our Loss Sharing Agreements with the FDIC and accretion of discount on the FDIC indemnification asset. Typically, the primary components of non-interest income of financial institutions are service charges and fees and gains or losses related to the sale or valuation of investment securities, loans and other assets. Thus, it is difficult to compare the amount and composition of our non-interest income with that of other financial institutions of our size both regionally and nationally.

The FDIC indemnification asset was initially recorded at its estimated fair value of $3.4 billion, represented by the present value of estimated future cash payments from the FDIC for probable losses on Covered Assets, up to 90 days of past due interest, excluding loans on nonaccrual at Acquisition, and reimbursement of certain expenses. The discount rate of 7.10% used in the initial calculation of fair value was determined using a risk-free yield curve plus a premium reflecting the uncertainty related to the collection, amount and timing of the cash flows and other liquidity concerns. Accretion is a result of discounting and may also increase or decrease from period to period due to changes in expected cash flows from the Covered Loans.

If projected cash flows from the ACI loans increase, the yield on the loans will increase and the discount rate of accretion on the FDIC indemnification asset will decrease as less cash flow is expected to be recovered from the indemnification asset. For the nine months ended September 30, 2010 and the period ended December 31, 2009, the average rate at which income was accreted on the FDIC indemnification asset was 5.32% and 7.10%, respectively.

A rollforward of the FDIC indemnification asset from May 21, 2009 to September 30, 2010 follows *(dollars in thousands)*:

Balance, May 21, 2009	$ 3,442,890
Accretion	149,544
Reduction for claims filed	(290,701)
Net loss on indemnification asset resulting from net recoveries	(22,568)
Balance, December 31, 2009	3,279,165
Accretion	116,915
Reduction for claims filed	(628,089)
Net loss on indemnification asset resulting from net recoveries	(44,932)
Balance, September 30, 2010	$ 2,723,059

Accretion of the discount on the FDIC indemnification asset results in an increase to the balance of the FDIC indemnification asset with a corresponding increase in non-interest income. We project the amount of accretion will decline in future periods, because our projected cash flows from ACI loans have been increasing, and as a result we expect to collect less cash flow from the indemnification asset as discussed above.

The balance of the FDIC indemnification asset is reduced as claims for reimbursement are filed with the FDIC. The receipt of payments from the FDIC results in an increase to cash.

The balance of the FDIC indemnification asset has also been reduced as a result of decreases in estimated cash flows to be received from the FDIC related to the ultimate resolution of Covered Assets. We record an offsetting entry in the income statement line item "Net loss on indemnification asset resulting from net recoveries." This line item includes the significantly mitigating impact related to loan loss provisions on Covered Loans, the impact of lower projected FDIC reimbursement resulting from the favorable resolution of Covered Loans as described below, and the offsetting impact related to gains or losses on the sale of Covered Loans and impairment of OREO. The table below shows the various components of this income statement line item for the nine months ended September 30, 2010 and period ended December 31, 2009.

Income from resolution of Covered Loans is included in the income statement line item "Income from resolution of Covered Assets, net" and represents the difference in the projected losses from ACI loans and payment received in satisfaction of such loans that were resolved, either by prepayment, sale, foreclosure, short sale or, for the non-residential portfolio, charge-offs, as well as losses from permanent modification of ACI loans accounted for in pools during the period. Gains and losses from the resolution or permanent modification of Covered Loans are included in this line item. The amount of income recorded in any period will be impacted by the number and UPB of ACI loans resolved and our ability to accurately project cash flows from ACI loans in future periods. In general, we expect the amount of this income to decrease in future periods as we gain additional history in terms of the performance of the loans we acquired, which we will reflect in the update of our projected cash flows from ACI loans each quarter. Income from the resolution of non-ACI loans is not significant.

Under the Purchase and Assumption Agreement, we are permitted to sell on an annual basis up to 2.5% of the Covered Loans, based upon the UPB at Acquisition, or approximately $280.0 million, without prior consent of the FDIC. Any losses incurred from such loan sales are covered under the Loss Sharing Agreements. A loss of $47.1 million was recognized during the period ending December 31, 2009 on non-recourse sales of ACI loans with UPB of $275.0 million to third parties. This loss was significantly mitigated by income of approximately $37.6 million, included in the income statement line item "Net loss on indemnification asset resulting from net recoveries." We may continue to exercise our right to sell Covered Loans in future periods.

The following table summarizes the pre-tax components of the gains and losses associated with the resolution of Covered Assets as described above, plus the provision for loan losses on non-Covered Loans, for the nine months ended September 30, 2010 and period ended December 31, 2009 *(dollars in thousands)*:

	Nine Months Ended September 30, 2010			Period Ended December 31, 2009		
	Transaction Income (Loss)	Net Loss on Indemnification Asset Resulting From Net Recoveries	Net Impact on Earnings	Transaction Income (Loss)	Net Loss on Indemnification Asset Resulting From Net Recoveries	Net Impact on Earnings
Provision for losses on Covered Loans	$ (42,538)	$ 22,979	$ (19,559)	$ (21,287)	$ 14,433	$ (6,854)
Provision for losses on non-Covered Loans	(2,619)	—	(2,619)	(1,334)	—	(1,334)
Total provision for loan losses	(45,157)	22,979	(22,178)	(22,621)	14,433	(8,188)
Income from resolution of Covered Assets, net	112,777			120,954		
Net loss on sale of Covered Loans	—			(47,078)		
	112,777	(76,978)	35,799	73,876	(51,201)	22,675
Gain (loss) on sale of OREO	2,270			—	—	—
Loss due to impairment of OREO	(12,164)			(21,055)		
	(9,894)	9,067	(827)	(21,055)	14,200	(6,855)
Total	$ 57,726	$ (44,932)	$ 12,794	$ 30,200	$ (22,568)	$ 7,632

The following table provides further detail of the components of income from resolution of Covered Assets, net:

	Nine Months Ended September 30, 2010	Period Ended December 31, 2009
Payments in full	$ 122,500	$ 76,428
Foreclosures	(9,675)	30,489
Short sales	13,465	28,610
Modifications	(2,048)	—
Charge-offs	(15,352)	(14,573)
Recoveries	3,887	—
Income from resolution of Covered Assets, net	$ 112,777	$ 120,954

The volume of loan resolutions resulting from repayments, modifications and recoveries increased for the nine months ended September 30, 2010 compared to the period ended December 31, 2009 as we augmented and enhanced our mortgage servicing and workout and recovery departments and were increasingly able to work with borrowers to effect resolution of outstanding loans. The impact of modifications on income from resolution of Covered Assets reflects increased participation by borrowers in the HAMP program during 2010. Net gains from foreclosures and short sales declined for the nine months ended September 30, 2010 due to continuing home price deterioration in our primary market areas. The impact of additional historical experience on our ability to estimate future cash flows from these types of resolutions has also reduced the effect of these resolutions on current period earnings.

Certain OREO related expenses, including attorney's fees, foreclosure costs, property preservation costs, maintenance and repair costs, advances for taxes and insurance, appraisal costs, and inspection costs, are also reimbursed under the terms of the Loss Sharing Agreements with the FDIC. Such expenses are recorded in non-interest expense when incurred, and the reimbursement is recorded as "FDIC reimbursement of costs of resolution of covered assets" in non-interest income when submitted to the FDIC. This may result in the expense and the related income from reimbursements being recorded in different periods. During the nine months ended September 30, 2010 and the period ended December 31, 2009, non-interest expense included $41.6 million and $26.1 million, respectively, of disbursements subject to reimbursement under the Loss Sharing Agreements. For those same periods, $30.1 million and $10.3 million, respectively, of those disbursements were submitted to the FDIC for reimbursement at the 80% level. As of September 30, 2010, $27.3 million of these disbursements remain to be submitted for reimbursement from the FDIC in future periods.

Non-interest expense

Non-interest expense includes employee compensation and benefits, occupancy and equipment, impairment of OREO, foreclosure expense, OREO expense, deposit insurance expense, professional fees, telecommunications and data processing and other expense. For the period ending December 31, 2009, non-interest expense also included two significant non-recurring items. The first of these was the write-off of a receivable from the FDIC in the amount of $69.4 million, which was established at the date of the Acquisition and related to the disputed valuation of certain acquired investment securities. Given that the disagreement over the valuation extended past December 31, 2009 with the likelihood that no additional consideration would be paid, the receivable was written off in 2009. Subsequently, the Company reached a settlement with the FDIC regarding this dispute. Under the settlement, the Company received $24.1 million, which will be reflected in non-interest income during the fourth quarter of 2010. The second of these non-recurring items was $39.8 million in direct costs associated with the Acquisition, consisting primarily of legal and investment banking advisory fees.

Our employee compensation and benefits expense includes expense related to PIUs issued to certain members of executive management. The PIUs are divided into two equal types of profits interests. Half of the PIUs are time-based and vest with the passage of time following the grant date (which we refer to as Time-based PIUs) and the remaining half of the PIUs will vest immediately prior to the consummation of this offering (which we refer to as IRR-based PIUs). Fair value of PIUs is estimated using a Black-Scholes option pricing model including assumptions as to expected volatility, dividends, terms, and risk-free rates. Beginning with the third quarter of 2009, the fair value is updated quarterly. The fair value of the PIUs has increased since the third quarter of 2009 through September 30, 2010, driven by a reduction in risk-free rates and an increase in expected volatility over that timeframe. The estimated fair value per unit of the Company's PIUs from September 30, 2009 to September 30, 2010 is as follows:

September 30, 2009	$ 707.30
December 31, 2009	$ 850.30
March 31, 2010	$ 843.70
June 30, 2010	$ 1,029.85
September 30, 2010	$ 1,238.25

For additional information, see "Compensation Discussion and Analysis—Executive Officer Compensation—Equity-Based Compensation."

Compensation expense for the Time-based PIUs is recorded over the vesting period based on their fair value. For the nine months ended September 30, 2010 and the period ended December 31, 2009, we recorded compensation expense related to Time-based PIUs of $20.0 million and $8.8 million, respectively.

In conjunction with this offering, we expect to record compensation expense related to the exchange of PIUs for a combination of common stock and options immediately prior to the consummation of this offering. The amount of compensation expense will be based on the initial public offering price. Assuming an initial public offering price of $24.00 per share, the midpoint of the price range on the cover of this prospectus, we would expect to incur a charge of approximately $91.1 million.

OREO expense and foreclosure expense is comprised of net gains or losses on the sale of OREO properties, expenses of holding and maintaining OREO properties such as real estate taxes and insurance, and legal fees and other foreclosure expenses. Impairment of OREO represents further deterioration in the fair value of properties that were initially recorded at fair value at the time of foreclosure. OREO expense, foreclosure expense and impairment of OREO have remained at high levels since the Acquisition due to continuing deterioration in home prices coupled with the high volume of foreclosures.

At September 30, 2010, all OREO properties were covered by the Loss Sharing Agreements with the FDIC. For the post-Acquisition periods, OREO losses are substantially offset by non-interest income related to indemnification by the FDIC. Generally, OREO related expenses are also reimbursed under the terms of the Loss Sharing Agreements with the FDIC.

Other non-interest expense includes expenses related to the increase in fair value of a warrant issued to the FDIC in conjunction with the Acquisition. Specifically, the value of the warrant equals 10% of the value the Company realizes in an IPO or exit event in excess of the valuation that would be implied if the Company was valued at the average price-to-tangible book value multiple for the top quartile of publicly traded U.S. banks and thrifts in excess of $10 billion in assets. The Company has utilized information provided by third parties to assist in the determination of the fair value of the warrant at the Acquisition and at each quarter end beginning with September 30, 2009. The warrant value has increased through September 30, 2010 as the projected timing of the IPO has shortened. In addition, the average price-to-tangible book value multiple for the top quartile of publicly-traded U.S. banks and thrifts in excess of $10 billion in assets has decreased from approximately 2.5 at September 30, 2009 to approximately 2.1 at September 30, 2010. The warrant was initially recorded with a fair value of $1.5 million at May 21, 2009. For the nine months ended September 30, 2010 and the period ended December 31, 2009, we recorded $4.5 million and $1.7 million, respectively, of additional non-interest expense reflecting the increase in the fair value of the warrant. In October 2010, the Company and the FDIC agreed to amend the warrant to guarantee a minimum value to the FDIC in the amount of $25.0 million. The Company will recognize at least the difference between the recorded liability of $7.7 million at September 30, 2010 and the guaranteed minimum value of the warrant in non-interest expense in the fourth quarter of 2010.

We evaluate our non-interest expense based on measures including our efficiency ratio and trends in the individual categories of non-interest expense, after giving consideration to the planned growth of our business.

Net income

We evaluate our net income based on measures including return on average assets and return on average common stockholder's equity.

Financial Condition

Balance sheets of the Company for the post-Acquisition periods reflect the impact of the application of acquisition accounting and the resulting adjustment of assets acquired and liabilities assumed to their fair values, and are therefore not comparable in many respects to balance sheets of the Failed Bank for the pre-Acquisition periods. In particular, the carrying amount of investment securities, loans, the FDIC indemnification asset, goodwill and other intangible assets, net deferred tax assets, deposit liabilities, and FHLB advances were materially impacted by these adjustments.

Loans, OREO and certain investment securities, including certain private-label mortgage-backed and non-investment grade securities acquired from the Failed Bank are covered by the Loss Sharing Agreements with the FDIC. The Loss Sharing Agreements afford the Company significant protection against future credit losses related to these assets. Under the Loss Sharing Agreements, the FDIC will cover 80% of losses and certain expenses related to the Covered Assets up to the $4.0 billion stated threshold and 95% of losses and certain expenses that exceed the $4.0 billion stated threshold. The Loss Sharing Agreements last for ten years for single family residential loans and for five years (with recoveries for eight years) for other loan types and investment securities. The Loss Sharing Agreements coverage may be extended for two additional years under certain circumstances.

Of the securities acquired in the Acquisition, $252.9 million at fair value of non-agency mortgage-backed securities and mortgage-backed security mutual funds, trust preferred collateralized debt obligations, Agency preferred stocks, and corporate securities are covered under the non-residential Loss Sharing Agreement. BankUnited will be reimbursed 80% (95% if cumulative losses have exceeded the $4.0 billion stated threshold) of realized losses, other-than-temporary impairments and any reimbursable expenses. BankUnited must pay the FDIC 80% (95% if cumulative losses are greater than the stated threshold) of realized gains and other-than-temporary impairment recoveries. Unrealized mark-to-market changes from the application of fair value accounting do not qualify for loss sharing. BankUnited cannot sell securities covered under the Loss Sharing Agreements without prior approval of the FDIC. To date, the Company has not submitted any claims for reimbursement for the investment securities covered under the Loss Sharing Agreements.

The portfolio of available for sale securities has grown to $3.1 billion at September 30, 2010 from $2.2 billion at December 31, 2009 and $0.5 billion immediately following the Acquisition. Growth of the investment portfolio since the Acquisition has been driven primarily by the deployment of cash acquired into higher yielding assets during a period of diminished loan demand. Our investment strategy has focused on providing liquidity necessary for the day-to-day operations of the Company, adding a suitable balance of high credit quality, diversifying assets on the consolidated balance sheet, managing interest rate risk, and generating acceptable returns given our established risk parameters. We have sought to maintain liquidity and manage interest rate risk by investing a significant portion of the portfolio in high quality liquid securities consisting primarily of U.S. Government agency floating rate residential mortgage-backed securities. We have also invested in highly rated structured products including private-label residential mortgage-backed securities and Re-Real Estate Mortgage Investment Conduits, or Re-REMICS, bank preferred stocks and asset-backed securities collateralized primarily by auto loans, credit card receivables, student loans and floor plan loans that, while somewhat less liquid, provide the Company with higher yields. A relatively short effective portfolio duration helps mitigate interest rate risk arising from the currently low level of market interest rates and the longer duration of the loan portfolio acquired from the Failed Bank.

Loans acquired in the Acquisition were recorded at their estimated fair values at Acquisition, which were substantially less than the UPB of the loans. Additionally, the allowance for loan losses, discounts, premiums, and deferred origination fees and costs related to the acquired loans were eliminated in the application of the acquisition method of accounting. Net loans decreased to $4.1 billion at September 30, 2010 from $4.6 billion at December 31, 2009 and $5.0 billion immediately following the Acquisition, primarily due to the resolution of ACI loans.

Residential loan demand in the Company's primary market areas remains depressed, limiting the volume of new residential originations, but there has been growth in the commercial loan portfolio commensurate with a shift in our lending strategy to an emphasis on commercial and commercial real estate lending.

Asset Quality

In discussing asset quality, a distinction must be made between Covered Loans and loans originated or purchased by us since the Acquisition, or the non-Covered Loans. Non-Covered Loans were underwritten under significantly different and generally more conservative standards than the Covered Loans. In particular, credit approval policies have been strengthened, wholesale mortgage origination channels have been eliminated, "no-doc" and option adjustable rate mortgage, or ARM, loan products have been eliminated, and real estate appraisal policies have been improved. Although the risk profile of Covered Loans is higher than that of the non-Covered Loans, our exposure to loss related to the Covered Loans is significantly mitigated by the Loss Sharing Agreements and by the fair value basis recorded in these loans resulting from the application of acquisition accounting.

In monitoring asset quality, we consider the results of our internal credit risk rating process and certain key ratios including the ratio of non-performing loans to total loans, non-performing assets to total assets, portfolio delinquency and charge-off trends, among other factors. Comparison of these metrics to those reported by other financial institutions and to historical metrics of the Failed Bank is difficult because of the impact of the revaluation of the acquired loans and of ACI loan accounting. Our non-performing asset ratios as well as the ratio of the allowance for loan losses to total loans and to non-performing loans are lower as a result of acquisition accounting and ACI loan accounting. ACI loans are not reflected as nonaccrual loans even though they may be contractually delinquent due to continuing discount accretion. Discount accretion continues to be recorded as there continues to be an expectation of future cash flows from these loans.

As of September 30, 2010, substantially all of our non-performing assets are Covered Assets.

Funding Sources

Deposits are our primary funding source, supplemented by FHLB advances. Since the Acquisition, we have worked towards optimizing our deposit mix and lowering our cost of deposits by reducing rate sensitive time deposits. In the future, we expect commercial core deposits will drive core deposit growth. At Acquisition, approximately 74.8% of total deposits were concentrated in time deposits, with consumer core deposits accounting for 21.7% of total deposits and commercial core deposits accounting for 3.5% of total deposits. At September 30, 2010, time deposits accounted for 47.7% of total deposits while consumer core deposits represented 41.3% of the total and commercial core deposits represented 11.0% of total deposits.

The Bank's liquidity needs are primarily met by its cash position, growth in core deposits, cash flow from its amortizing investment and loan portfolios, and reimbursements under the Loss Sharing Agreements. If necessary, the Bank currently has the ability to raise additional liquidity through collateralized borrowings, FHLB advances or the sale of available for sale investment securities. We regularly monitor several measures of liquidity, including liquid assets, defined as cash and cash equivalents, and pledgeable securities, to total assets.

Strengths, Opportunities and Challenges

Management believes that our Company has several key strengths, including:

- An experienced, re-built management team.
- A strong balance sheet due to significant protection from credit losses on Covered Assets arising from the Loss Sharing Agreements with the FDIC.
- A robust capital position. The Company was initially capitalized with common equity of $945.0 million, of which $875.0 million has been contributed to the Bank. The Bank currently exceeds "well-capitalized" guidelines under regulatory standards, with tier 1 leverage and tier 1 risk-based capital ratios of 10.1% and 42.5%, respectively, at September 30, 2010.

Management has identified significant opportunities for our Company, including:

- Our capital position, market presence and experienced lending team position us well to compete for high quality commercial credits in our primary market areas. As of September 30, 2010, the commercial real estate and commercial loan portfolios contained $267.6 million in gross loans originated since the Acquisition.
- Organic growth through planned expansion of our branch footprint.
- Potential growth through strategic acquisitions of healthy financial institutions and complementary businesses and participation in the resolution of failed and troubled institutions in the Southeast.
- The potential to further shift our deposit mix from time deposits into lower cost money market and transaction accounts. Since the Acquisition to September 30, 2010, we have increased our core deposits from $2.1 billion to $3.8 billion.

We have also identified significant challenges confronting the industry and our Company:

- The economic impact of the financial crisis continues into 2010 and can be expected to continue into 2011.
- The Company expects that it and the banking industry as a whole may be required by market forces and/or regulation to operate with higher capital ratios than in the recent past.
- Continued distressed economic conditions in the Company's primary markets, including home price depreciation, may lead to further elevated levels of non-performing assets and continued deterioration in credit quality, particularly in the acquired loan portfolio.
- Loan demand weakened throughout 2009 in the geographic markets that the Company serves as a result of sharply curtailed real estate activities and the economic recession. We believe the Company's capital and liquidity levels position us well to compete successfully for quality credits in our market. Since the Acquisition, our loan origination strategy has focused on conservative underwriting and traditional, high quality commercial and single family residential loan products. However, continued distressed economic and real estate market conditions could negatively impact the credit quality of loans originated since the Acquisition. Additionally, weak loan demand may put pressure on our net interest margin.
- The current low interest rate environment limits the yields we are able to obtain on interest earning assets, including both new assets acquired as we grow and assets that replace existing,

high yielding Covered Assets as they are paid down or mature. The yield on newly acquired assets will depend on prevailing interest rates at the date they are purchased or originated.

Recent Regulatory Actions Impacting the Financial Services Industry

Regulatory policy and actions have become increasingly subject to change and difficult to predict, both in general and as they may be applied specifically to the Company.

On July 21, 2010, the Dodd-Frank Act was signed into law. The Dodd-Frank Act implements far-reaching changes across the financial regulatory landscape, including provisions that, among other things, will:

- Abolish the OTS by April 2012, transferring the supervision of federal thrifts, such as BankUnited, to the Office of the Comptroller of the Currency, or OCC, and the supervision of thrift holding companies, such as the Company, to the Federal Reserve.
- Centralize responsibility for consumer financial protection by creating a new agency, the Consumer Financial Protection Bureau, or CFPB, with broad rulemaking, supervision and enforcement authority.
- Require a variety of new capital rules.
- Change the assessment base for federal deposit insurance.
- Increase the minimum ratio of net worth to insured deposits of the DIF. This increase is generally expected to impose more deposit insurance cost on us and other institutions with assets of $10 billion or more.
- Provide for new disclosure and other requirements relating to executive compensation and corporate governance.
- Make permanent the $250,000 limit for federal deposit insurance and provide unlimited federal deposit insurance until January 1, 2013 for non-interest bearing demand transaction accounts at all insured depository institutions.
- Repeal the federal prohibitions on the payment of interest on demand deposits.
- Increase the examination and rule-making authority of the Federal Reserve.
- Require companies, including thrift holding companies that directly or indirectly control an insured depository institution to serve as a source of financial strength to their depository institution subsidiaries.
- Restrict proprietary trading by banks, bank holding companies and others, and their acquisition and retention of ownership interests in and sponsorship of hedge funds and private equity funds.

Many aspects of the Dodd-Frank Act are subject to rulemaking and will take effect over several years, making it difficult to anticipate the overall financial impact on the Company and the financial services industry more generally. Provisions in the legislation that affect deposit insurance assessments and payment of interest on demand deposits could increase the costs associated with deposits. Provisions in the legislation that will impose new capital requirements on the Company could require the Company to seek additional sources of capital in the future.

In addition, other proposals have been offered by the current administration, by members of Congress and international regulatory forums that, if enacted, may have significant and potentially adverse effects on the Company, the full impact of which is difficult to predict at this time. For additional discussion, see "Regulation and Supervision."

Results of Operations for the Post-Acquisition Periods

The Company reported net income of $156.9 million for the nine months ending September 30, 2010 and $119.0 million for the period from April 28, 2009 (date of inception) through December 31, 2009.

Net Interest Income

The following table presents, for the periods indicated, information about (i) average balances, the total dollar amount of interest income from earning assets and the resultant average yields; (ii) average balances, the total dollar amount of interest expense on interest bearing liabilities and the resultant average rates; (iii) net interest income; (iv) the interest rate spread; and (v) the net interest margin. Nonaccrual and restructured loans are included in the average balances presented in this table; however, interest income foregone on nonaccrual loans is not included. Yields have been calculated on a pre-tax basis *(dollars in thousands)*:

	Nine Months Ended September 30, 2010			Period from May 22, 2009 to December 31, 2009		
	Average Balance	Interest	Yield/ Rate(1)	Average Balance	Interest	Yield/ Rate(1)
Assets:						
Interest earning assets:						
Investment securities available for sale	$ 412,196	$ 5,894	1.91%	$ 69,778	$ 1,999	4.71%
Mortgage-backed securities	2,438,608	87,488	4.78%	889,776	43,143	7.97%
Total investment securities available for sale	2,850,804	93,382	4.37%	959,554	45,142	7.73%
Other interest earning assets	628,914	1,485	0.32%	1,719,417	2,922	0.28%
Loans receivable	4,252,602	320,092	10.04%	4,754,739	287,460	9.92%
Total interest earning assets	7,732,320	414,959	7.16%	7,433,710	335,524	7.42%
Allowance for loan losses	(31,230)			(1,031)		
Noninterest earning assets	3,558,771			4,026,356		
Total assets	$ 11,259,861			$ 11,459,035		
Liabilities and Equity:						
Interest bearing liabilities:						
Interest bearing deposits:						
Interest bearing demand	$ 253,830	$ 1,423	0.75%	$ 183,416	$ 891	0.79%
Savings and money market	2,808,277	26,422	1.26%	2,153,446	25,578	1.94%
Time deposits	4,068,348	55,786	1.83%	5,506,320	31,360	0.93%
Total interest bearing deposits	7,130,455	83,631	1.57%	7,843,182	57,829	1.20%
Borrowings:						
Federal Home Loan Bank advances	2,240,126	43,792	2.61%	1,974,755	26,026	2.15%
Short term borrowings	10,358	72	0.93%	2,091	1	0.02%
Total interest bearing liabilities	9,380,939	127,495	1.82%	9,820,028	83,856	1.39%
Non interest bearing demand deposits	414,350			303,810		
Other non-interest bearing liabilities	280,357			313,399		
Total liabilities	10,075,646			10,437,237		
Equity	1,184,215			1,021,798		
Total liabilities and equity	$ 11,259,861			$ 11,459,035		
Net interest income		287,464			$ 251,668	
Interest rate spread			5.34%			6.03%
Net interest margin			4.95%			5.58%

(1) Annualized.

Increases and decreases in interest income and interest expense result from changes in average balances (volume) of interest earning assets and liabilities, as well as changes in average interest rates, which are impacted by accretion of fair value adjustments recorded in conjunction with the Acquisition. The comparison of total interest income and total interest expense for the nine months ended September 30, 2010 to the period ended December 31, 2009 is also impacted by the different number of days in the comparative periods. The following table shows the effect that these factors had on the interest earned on our interest earning assets and the interest incurred on our interest bearing liabilities for the periods indicated. The effect of changes in volume is determined by multiplying the change in volume by the previous period's average rate. Similarly, the effect of rate changes is calculated by multiplying the change in average rate by the previous period's volume. Changes applicable to both volume and rate have been allocated to volume *(dollars in thousands)*:

	Nine Months Ended September 30, 2010 Compared to Period Ended December 31, 2009			
	Changes in Volume	Changes in Rate	Change due to Number of Days	Total Increase (Decrease)
Interest Income Attributable to				
Investment securities available for sale	$ 4,270	$ (1,467)	$ 1,092	$ 3,895
Mortgage-backed securities	49,412	(21,268)	16,201	44,345
Total investment securities available for sale	53,682	(22,735)	17,293	48,240
Other interest earning assets	(2,203)	499	267	(1,437)
Loans receivable	(30,779)	4,135	59,276	32,632
Total interest earning assets	20,700	(18,101)	76,836	79,435
Interest Expense Attributable to				
Interest bearing demand deposits	$ 334	$ (58)	$ 256	$ 532
Savings and money market deposit accounts	7,013	(10,911)	4,742	844
Time deposits	(22,870)	37,283	10,013	24,426
Total interest bearing deposits	(15,523)	26,314	15,011	25,802
FHLB advances	3,022	6,884	7,860	17,766
Short term borrowings	44	14	13	71
Total interest bearing liabilities	(12,457)	33,212	22,884	43,639
Increase (decrease) in net interest income	$ 33,157	$ (51,313)	$ 53,952	$ 35,796

Nine months ending September 30, 2010 compared to period from May 22, 2009 to December 31, 2009

Net interest income was $287.5 million for the nine months ending September 30, 2010 and $251.7 million for the period ending December 31, 2009, for an increase of $35.8 million. The increase in net interest income was comprised of an increase in interest income of $79.4 million partially offset by an increase in interest expense of $43.6 million. On an annualized basis, net interest income was $382.8 million and $414.9 million for the nine months ending September 30, 2010 and period ending December 31, 2009, respectively. The decline of $32.1 million, or 7.7%, in annualized net interest income was comprised of an increase of $33.8 million in interest expense partly offset by an increase of $1.7 million in interest income.

The increase in interest income on an annualized basis reflects increased interest income from investment securities partially offset by a decline in interest income from loans. The increase in interest income from investment securities resulted from an increase in average volume significantly mitigated by a decline in the average yield. The average yield on investment securities declined to 4.37% for the nine months ending September 30, 2010 from 7.73% for the period ending December 31, 2009. The decrease in average yield resulted primarily from new purchases reflecting lower general market rates of interest as well as the continued impact of a shift since the Acquisition in the type of securities purchased, including $1.2 billion of U.S. Government agency floating rate securities and $0.4 billion of non-mortgage asset-backed securities purchased as of September 30, 2010. The decline in interest income from loans is indicative of a decline in average volume resulting from paydowns and resolutions, partially offset by an increase in the average yield to 10.04% for the nine months ending September 30, 2010 as compared to 9.92% for the period ending December 31, 2009. The increased yield reflects the origination and purchase of new loans at lower prevailing market rates of interest offset by an increased yield on Covered Loans. The average yield on loans originated and purchased since the Acquisition was 5.28% and 6.35% for the nine months ending September 30, 2010 and period ending December 31, 2009, respectively. The yield on Covered Loans increased to 10.30% for the period ending September 30, 2010 from 9.93% for the period ending December 31, 2009 due to an increase in projected cash flows from the Covered Loans.

Interest expense on deposits increased on an annualized basis by $17.6 million for the nine months ending September 30, 2010 due to lower accretion of fair market value adjustments on time deposits as acquired time deposits matured, partially mitigated by a shift in deposit mix toward lower rate products and a decline in market rates. Accretion of fair value adjustments on time deposits totaled $18.3 million for the nine months ending September 30, 2010 as compared to $79.9 million for the period ending December 31, 2009. The average rate paid on time deposits excluding the impact of accretion was 2.45% for the nine months ending September 30, 2010 and 3.32% for the period ending December 31, 2009. The decline in the adjusted average rate is attributable to lower prevailing rates. Interest expense on FHLB advances and other borrowings increased by $16.2 million on an annualized basis as a result of lower accretion of fair value adjustments, as well as increased volume of outstanding FHLB advances. Accretion of fair value adjustments on FHLB advances totaled $19.0 million for the nine months ended September 30, 2010 as compared to $25.1 million for the period ended December 31, 2009. Accretion decreased the average rate paid on FHLB advances by 122 and 228 basis points for the nine months ending September 30, 2010 and period ended December 31, 2009, respectively. The decline in accretion is due to the maturity and repayment of a portion of the advances outstanding at the Acquisition date, along with the difference in the number of days in the comparative periods.

The net interest margin for the nine months ending September 30, 2010 was 4.95% as compared to 5.58% for the period ending December 31, 2009, a decline of 63 basis points. The average yield on interest earning assets declined by 26 basis points for the nine months ending September 30, 2010 as compared to the period ending December 31, 2009 while the average rate paid on interest bearing liabilities increased by 43 basis points, for a decline in the interest rate spread of 69 basis points. The decline in both net interest margin and interest rate spread resulted primarily from lower accretion of fair value adjustments, particularly on interest bearing liabilities, the origination and purchase of loans and investment securities at lower prevailing market rates of interest, and a shift in the composition of interest earning assets from loans to investment securities as discussed above.

Provision for Loan Losses

Our determination of the amount of the allowance and corresponding provision for loan losses considers ongoing evaluations of the various segments of the Company's loan portfolio and of individually significant credits, levels of non-performing loans and charge-offs, statistical trends and economic and other relevant factors. See "—Analysis of the Allowance for Loan Losses" below for more information about how we determine the appropriate level of the allowance.

Non-Interest Income

The Company reported non-interest income of $237.5 million for the nine months ending September 30, 2010 and $252.8 million for the period from May 22, 2009 to December 31, 2009. The following table presents a comparison of the categories of non-interest income for the periods indicated *(dollars in thousands)*:

	Nine Months Ended September 30, 2010	Period from May 22, 2009 to December 31, 2009
Accretion of discount on FDIC indemnification asset	$ 116,915	$ 149,544
Income from resolution of Covered Assets, net	112,777	120,954
Net loss on indemnification asset resulting from net recoveries	(44,932)	(22,568)
FDIC reimbursement of costs of resolution of Covered Assets	22,393	8,095
Net loss on sale of loans	—	(47,078)
Non-interest income from Covered Assets	207,153	208,947
Service charges on deposits and other fee income	6,398	4,913
Service charges on loans	1,501	1,509
Loan servicing fees	—	331
Gain on extinguishment of debt	—	31,303
Loss on sale or exchange of investment securities available for sale	(2,292)	(337)
Mortgage insurance income	12,097	1,338
Other non-interest income	12,663	4,824
Total non-interest income	$ 237,520	$ 252,828

The following table summarizes the pre-tax components of the gains and losses associated with the resolution of Covered Assets, plus the provision for loan losses on non-Covered Loans, for the nine months ended September 30, 2010 and period ended December 31, 2009 *(dollars in thousands)*:

	Nine Months Ended September 30, 2010			Period Ended December 31, 2009		
	Transaction Income (Loss)	Net Loss on Indemnification Asset Resulting From Net Recoveries	Net Impact on Earnings	Transaction Income (Loss)	Net Loss on Indemnification Asset Resulting From Net Recoveries	Net Impact on Earnings
Provision for losses on Covered Loans	$ (42,538)	$ 22,979	$ (19,559)	$ (21,287)	$ 14,433	$ (6,854)
Provision for losses on non-Covered Loans	(2,619)	—	(2,619)	(1,334)	—	(1,334)
Total provision for loan losses	(45,157)	22,979	(22,178)	(22,621)	14,433	(8,188)
Income from resolution of Covered Assets, net	112,777			120,954		
Net loss on sale of Covered Loans	—			(47,078)		
	112,777	(76,978)	35,799	73,876	(51,201)	22,675
Gain (loss) on sale of OREO	2,270			—	—	—
Loss due to impairment of OREO	(12,164)			(21,055)		
	(9,894)	9,067	(827)	(21,055)	14,200	(6,855)
Total	$ 57,726	$ (44,932)	$ 12,794	$ 30,200	$ (22,568)	$ 7,632

Nine months ending September 30, 2010 compared to period from May 22, 2009 to December 31, 2009

For the nine months ended September 30, 2010 and the period from May 22, 2009 to December 31, 2009, non-interest income was significantly impacted by the effect of the Acquisition and the related Loss Sharing Agreements with the FDIC. Accretion of discount on the FDIC indemnification asset totaled $116.9 million for the nine months ending September 30, 2010 and $149.5 million for the period ending December 31, 2009. The decrease in accretion for the nine months ending September 30, 2010 as compared to the period ending December 31, 2009 was related to the decrease in the average balance of the indemnification asset as well as a decrease in the average discount rate during the period to 5.32% from 7.10%.

When the Company recognizes gains or losses related to Covered Assets in its consolidated financial statements, changes in the estimated amount recoverable from the FDIC under the Loss Sharing Agreements with respect to those gains or losses are also reflected in the consolidated financial statements. The net impact on earnings before taxes of transactions related to Covered Assets, plus the provision for loan losses on non-Covered Loans, for the nine months ending September 30, 2010 and period ending December 31, 2009 was $12.8 million and $7.6 million, respectively, as detailed in the table above.

Additional impairment arising since the Acquisition related to Covered Loans is recorded in earnings through the provision for losses on Covered Loans. Under the terms of the Loss Sharing Agreements, the Company is entitled to recover from the FDIC a portion of losses on these loans; therefore, the discounted amount of additional expected cash flows from the FDIC related to these losses is recorded in non-interest income in the line item "Net loss on indemnification asset resulting from net recoveries" and reflected as a corresponding increase in the FDIC indemnification asset.

Covered Loans may be resolved through repayment, foreclosure, short sale of the underlying collateral or, for the non-residential portfolio, charge-offs, or sale of the loans. The difference between payment received in resolution of Covered Loans and the amount of projected losses from resolution of those loans as well as losses from permanent modifications of ACI loans accounted for in pools, is recorded in the income statement line item "Income from resolution of covered assets, net". Losses from the resolution or permanent modification of Covered Loans increase the amount recoverable from the FDIC under the Loss Sharing Agreements. Gains from the resolution of Covered Loans reduce the amount recoverable from the FDIC under the Loss Sharing Agreements. These additions to or reductions in amounts recoverable from the FDIC related to the resolution of Covered Loans are recorded in non-interest income in the line item "Net loss on indemnification asset resulting from net recoveries" and reflected as corresponding increases or decreases in the FDIC indemnification asset. For the nine months ending September 30, 2010 and period ending December 31, 2009, ACI loans with an UPB of $1.2 billion and $1.4 billion were resolved, resulting in income of $112.8 million and $121.0 million, respectively.

During the period ending December 31, 2009, Covered Loans with an UPB of $275.0 million and a carrying value of $126.7 million were sold on a non-recourse basis to third parties. A loss on sale of $47.1 million was recognized during the period ending December 31, 2009. The amount recoverable from the FDIC related to this loss was recorded as an increase in the FDIC indemnification asset and a corresponding increase in the non-interest income line item "Net loss on indemnification asset resulting from net recoveries".

The Company records impairment charges related to declines in the net realizable value of OREO properties subject to the Loss Sharing Agreements and recognizes additional gains or losses upon the eventual sale of such OREO properties. The estimated increase or reduction in amounts recoverable from the FDIC with respect to these gains and losses is reflected as an increase or decrease in the FDIC indemnification asset and in non-interest income in the line item "Net loss on indemnification asset resulting from net recoveries".

Net loss on indemnification asset resulting from net recoveries of $(44.9) million and $(22.6) million was recorded for the nine months ending September 30, 2010 and period ending December 31, 2009, respectively, representing the net change in the FDIC indemnification asset resulting from increases or decreases in cash flows estimated to be received from the FDIC related to the ultimate resolution of Covered Assets as discussed in the preceding paragraphs.

For the nine months ended September 30, 2010 and the period ended December 31, 2009, non-interest income includes $22.4 million and $8.1 million, respectively, related to claims that were submitted to the FDIC for reimbursement of certain disbursements made by the Company with respect to resolution of Covered Assets.

The Company prepaid FHLB advances with a principal balance of $2.7 billion during the period ending December 31, 2009. These advances had a carrying amount of $2.8 billion at the time of repayment. The Company recognized a gain of $31.3 million on this transaction.

During the nine months ending September 30, 2010, the Company incurred net losses of $2.3 million on the sale or exchange of investment securities available for sale. The majority of this loss related to an exchange of certain non-covered trust preferred securities for preferred stock of the same issuer to achieve higher returns and more favorable tax treatment. Based on the market value of the trust preferred securities at the time of the exchange, the Company recognized a gross realized loss of $2.8 million on the transaction.

Mortgage insurance income represents mortgage insurance proceeds received with respect to Covered Loans in excess of the portion of losses on those loans that is recoverable from the FDIC. Mortgage insurance proceeds up to the amount of losses on Covered Loans reimbursable by the FDIC offsets amounts otherwise recoverable from the FDIC. The increase in mortgage insurance income for the nine months ending September 30, 2010 as compared to the period ending December 31, 2009 is a result of increased efforts by the Company to file and collect insurance claims.

The increase in other non-interest income for the nine months ending September 30, 2010 as compared to the period ending December 31, 2009 related in large part to increased fees earned by the Company's non-bank subsidiary, BankUnited Investment Services, Inc.

Non-Interest Expense

The following table presents the components of non-interest expense for the periods indicated *(dollars in thousands)*:

	Nine Months Ended September 30, 2010	Period from May 22, 2009 to December 31, 2009
Employee compensation and benefits	$ 100,334	$ 62,648
Occupancy and equipment	19,843	19,925
Impairment of OREO	12,164	21,055
Foreclosure expense	28,384	16,632
OREO expense	10,903	7,576
Deposit insurance expense	10,420	11,850
Professional fees	7,668	14,854
Telecommunications and data processing	8,772	6,440
Other non-interest expense	21,560	12,230
	220,048	173,210
Loss on FDIC receivable—securities valuation dispute	—	69,444
Acquisition related costs	—	39,800
Acquisition related expense	—	109,244
Total non-interest expense	$ 220,048	$ 282,454

Nine months ending September 30, 2010 compared to period from May 22, 2009 to December 31, 2009

On an annualized basis, non-interest expense as a percentage of average assets was 2.6% for the nine months ended September 30, 2010 as compared to 4.0% for the period ended December 31, 2009. The decline was primarily attributable to non-recurring expenses related to the Acquisition that were incurred during the period ended December 31, 2009, reduced professional fees, lower occupancy costs, and lower deposit insurance assessments, partially offset by increased employee compensation and benefits cost and OREO and foreclosure expense.

As is typical for financial institutions, employee compensation and benefits represent the single largest component of recurring non-interest expense. On an annualized basis, employee compensation and benefits increased by approximately $32.1 million, or 31.4%, for the nine months ending September 30, 2010 as compared to the period ending December 31, 2009. This increase resulted in part from continued enhancement of our management team and other personnel subsequent to the Acquisition. Employee compensation and benefits also included $20.0 million and $8.8 million for the nine months ended September 30, 2010 and period ending December 31, 2009, respectively, related to Time-based PIUs.

The decline in occupancy and equipment expense for the nine months ended September 30, 2010 resulted primarily from the renegotiation of leases and reduced depreciation.

Professional fees for the period ended December 31, 2009 included non-recurring legal and accounting fees related to certain litigation matters and formation of the Company.

OREO expense, foreclosure expense and impairment of OREO remained at high levels during the nine months ended September 30, 2010 and the period ended December 31, 2009 due to continuing deterioration in home prices and the high volume of foreclosures. The rate of home price deterioration moderated to some extent during 2010, contributing to reduced impairment charges for the nine months ending September 30, 2010 as compared to the period ending December 31, 2009. At September 30, 2010, approximately 5,500 units were in the foreclosure process, down from a peak of approximately 7,300 units in November of 2009.

OREO losses and OREO related expenses for the post-Acquisition periods are substantially offset by non-interest income related to indemnification by the FDIC. During the nine months ending September 30, 2010 and the period ending December 31, 2009, non-interest expense includes approximately $41.6 million and $26.1 million, respectively, of disbursements subject to reimbursement under the Loss Sharing Agreements. For those same periods, $30.1 and $10.3 million, respectively of these disbursements were submitted to the FDIC for reimbursement at the 80% level. As of September 30, 2010, $27.3 million of these disbursements remain to be submitted for reimbursement from the FDIC in future periods.

The primary components of other non-interest expense are promotion and advertising, loan related expenses, the cost of regulatory examinations, the change in fair value of the warrant issued to the FDIC and general office expense.

Income Taxes

The provision for income taxes for the nine months ending September 30, 2010 and period ending December 31, 2009 was $102.9 million and $80.4 million, respectively. The Company's effective tax rate was 39.6% and 40.3% for the nine months ending September 30, 2010 and period ending December 31, 2009. The Company's effective tax rate differed from the statutory federal tax rate of 35.0% primarily due to the effect of state income taxes and expense related to PIUs. At September 30, 2010 and December 31, 2009, the Company had net deferred tax liabilities of $15.7 million and net deferred tax assets of $22.5 million, respectively. Based on an evaluation of the ultimate realization of deferred tax assets considering the availability of tax loss carrybacks, future taxable income that will result from reversal of existing taxable temporary differences, including negative goodwill recognized for tax purposes, and taxable income expected to be generated from future operations in light of the Company's current level of profitability, we have concluded it is more likely than not that the deferred tax assets will be realized.

Balance Sheet Analysis for the Post-Acquisition Periods

Average interest earning assets increased $298.6 million to $7.7 billion for the nine months ending September 30, 2010 from $7.4 billion for the period ending December 31, 2009. This increase was driven primarily by an increase in the average balance of investment securities resulting from continued deployment of cash acquired in the Acquisition and from reimbursements under the Loss Sharing Agreements. Average non-interest earning assets declined by $467.6 million, largely attributable to the decrease in the FDIC indemnification asset.

Average interest bearing liabilities decreased by $439.1 million to $9.4 billion for the nine months ending September 30, 2010 from $9.8 billion for the period ending December 31, 2009, reflecting a decrease in average interest-bearing deposits partially offset by an increase in outstanding FHLB advances. The reduction in outstanding interest-bearing deposits resulted from a reduction in rates offered and a shift in emphasis away from rate sensitive time deposits. Average non-interest bearing liabilities increased by $77.5 million, primarily as a result of an increase in non-interest bearing demand deposits. Average equity increased by $162.4 million, primarily due to earnings.

Investment Securities Available for Sale

The following table shows the amortized cost and fair value of our investment securities as of the dates indicated. All of our investment securities are classified available for sale *(dollars in thousands)*:

	At September 30, 2010		At December 31, 2009	
	Amortized Cost	Fair Value	Amortized Cost	Fair Value
U.S. Treasury securities	$ —	$ —	$ 10,066	$ 10,072
U.S. Government agency and sponsored enterprise residential mortgage-backed securities	1,344,928	1,368,239	1,288,277	1,288,643
Other residential collateralized mortgage obligations	693,398	706,280	480,478	476,839
Residential mortgage pass-through certificates	299,452	364,539	318,018	364,672
Nonmortgage asset-backed securities	426,018	427,931	30,000	30,000
Mutual funds and preferred stocks	121,584	124,281	43,344	43,523
State and municipal obligations	23,473	23,678	23,214	23,356
Small Business Administration securities	66,355	66,657	—	—
Other debt securities	3,594	6,899	3,331	6,038
Total investment securities available for sale	$ 2,978,802	$ 3,088,504	$ 2,196,728	$ 2,243,143

Our available for sale securities portfolio consists of the securities acquired in the Acquisition (the "acquired securities") and those purchased by us subsequent to the Acquisition. Investment securities increased by $1.7 billion, from $0.5 billion at May 21, 2009 to $2.2 billion at December 31, 2009 and by an additional $0.9 billion, to $3.1 billion, at September 30, 2010. Purchases of investment securities totaled $1.3 billion and $1.8 billion for the nine months ending September 30, 2010 and period ending December 31, 2009, respectively, offset by pay-downs, maturities and sales of $0.5 billion and $0.2 billion, respectively.

The following tables show, as of September 30, 2010 and December 31, 2009, the breakdown of Covered and non-Covered Securities in the Company's investment portfolio *(dollars in thousands):*

	At September 30, 2010							
	Covered Securities				Non-Covered Securities			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
U.S. Government agency and sponsored enterprise residential mortgage-backed securities	$ —	$ —	$ —	$ —	$1,344,928	$ 23,331	$ (20)	$1,368,239
Other residential collateralized mortgage obligations	1,729	97	—	1,826	691,669	13,852	(1,067)	704,454
Residential mortgage pass-through certificates	183,374	64,284	(1,601)	246,057	116,078	2,404	—	118,482
Non mortgage asset-backed securities	—	—	—	—	426,018	1,988	(75)	427,931
Mutual funds and preferred stocks	16,408	—	(936)	15,472	105,176	3,633	—	108,809
State and municipal obligations	—	—	—	—	23,473	211	(6)	23,678
Small Business Administration securities	—	—	—	—	66,355	354	(52)	66,657
Other debt securities	3,594	3,305	—	6,899	—	—	—	—
Total investment securities available for sale	$ 205,105	$ 67,686	$ (2,537)	$270,254	$2,773,697	$ 45,773	$ (1,220)	$2,818,250

	At December 31, 2009							
	Covered Securities				Non-Covered Securities			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
U.S. Treasury securities	$ —	$ —	$ —	$ —	$ 10,066	$ 6	$ —	$ 10,072
U.S. Government agency and sponsored enterprise residential mortgage-backed securities	—	—	—	—	1,288,277	3,581	(3,215)	1,288,643
Other residential collateralized mortgage obligations	1,747	89	—	1,836	478,731	1,007	(4,735)	475,003
Residential mortgage pass-through certificates	199,402	51,196	(480)	250,118	118,616	—	(4,062)	114,554
Asset-backed securities	—	—	—	—	30,000	—	—	30,000
Mutual funds and preferred stocks	18,094	338	(698)	17,734	25,250	661	(122)	25,789
State and municipal obligations	—	—	—	—	23,214	143	(1)	23,356
Other debt securities	3,331	2,707	—	6,038	—	—	—	—
Total investment securities available for sale	$ 222,574	$ 54,330	$ (1,178)	$275,726	$1,974,154	$ 5,398	$ (12,135)	$1,967,417

Covered securities include non-agency mortgage-backed securities and mortgage-backed security mutual funds, trust preferred collateralized debt obligations, Agency preferred stocks, and corporate securities covered under the non-residential Loss Sharing Agreement. BankUnited will be reimbursed 80%, or 95% if cumulative losses exceed the $4.0 billion stated threshold, of realized losses, other than temporary impairments, and reimbursable expenses associated with the covered securities. BankUnited must pay the FDIC 80%, or 95% if cumulative losses are greater than the stated threshold, of realized gains and other-than-temporary impairment recoveries. To date, the Company has not submitted any claims for reimbursement related to the covered securities.

The following table shows the composition, as of September 30, 2010, of securities added to the portfolio since the Acquisition *(dollars in millions)*:

	Fair Value
U.S. Government agency and sponsored enterprise residential mortgage-backed securities	$ 1,238.7
Other residential collateralized mortgage obligations	704.5
Residential mortgage pass-through certificates	118.5
Nonmortgage asset-backed securities	427.9
Mutual funds and preferred stocks	108.8
State and municipal obligations	16.8
Small Business Administration securities	66.7
Total	$ 2,681.9

The following table shows the scheduled maturities adjusted for anticipated prepayments of mortgage-backed and other pass through securities, carrying values and current yields for our investment portfolio as of September 30, 2010. Yields on tax-exempt securities have been calculated on a pre-tax basis *(dollars in thousands):*

	Within One Year		After One Year Through Five Years		After Five Years Through Ten Years		After Ten Years		Total	
	Carrying Value	Weighted Average Yield	Carrying Value	Weighted Average Yield	Carrying Value	Weighted Average Yield	Carrying Value	Weighted Average Yield	Carrying Value	Weighted Average Yield
U.S. Government agency and sponsored enterprise residential mortgage-backed securities	$ 221,207	1.44%	$ 527,399	1.29%	$ 313,567	1.20%	$ 306,066	1.28%	$ 1,368,239	1.29%
Other residential collateralized mortgage obligations	208,398	5.91%	425,470	5.34%	57,315	6.27%	15,097	5.49%	706,280	5.59%
Residential mortgage pass-through certificates	77,271	10.38%	173,948	11.00%	77,619	12.14%	35,701	15.18%	364,539	11.52%
Non mortgage asset-backed securities	98,414	0.67%	320,365	2.22%	9,152	2.95%	—	0.00%	427,931	1.88%
State and municipal obligations	9,659	0.18%	13,745	1.95%	274	7.61%	—	3.83%	23,678	1.29%
Small Business Administration securities	6,573	4.24%	20,380	4.22%	24,716	3.97%	14,988	3.57%	66,657	3.99%
Other debt securities	—		—		—		6,899	15.37%	6,899	15.37%
	$ 621,522	3.80%	$ 1,481,307	3.70%	$ 482,643	3.51%	$ 378,751	2.81%	$ 2,964,223	3.75%
Mutual funds and preferred stocks with no scheduled maturity									124,281	9.52%
Total investment securities available for sale									$ 3,088,504	3.82%

The effective duration of the investment portfolio as of September 30, 2010 is 0.9 years.

We evaluate the credit quality of individual securities in the portfolio quarterly to determine whether any of the investments in unrealized loss positions are other-than-temporarily impaired. This evaluation considers the duration and severity of impairment; collateral values and levels of subordination or over-collateralization; collateral performance; the credit rating, earnings performance and business prospects of the issuer and other relevant factors. We may consider factors that raise significant concerns about an issuer's ability to continue as a going concern such as negative cash flows from operations, working capital deficiencies, or non-compliance with statutory capital requirements or debt covenants. We may also consider adverse changes in the regulatory or economic environment as well as significant adverse changes in general market conditions of the geographic area or the industry in which individual issuers operate. We consider both our intent to sell investment securities and whether it is more likely than not that we will be required to sell the securities within a period of time sufficient for a recovery in value, which might be until maturity for debt securities or for a reasonable forecasted period of recovery for equity securities.

No securities were determined to be other-than-temporarily impaired during the nine months ending September 30, 2010 or the period ending December 31, 2009. Approximately 94% of the securities purchased since the Acquisition were agency-backed or rated AAA at the time of acquisition. At September 30, 2010, securities in unrealized loss positions included private-label collateralized mortgage obligations with total unrealized losses of $1.1 million, private label residential mortgage pass-through certificates with total unrealized losses of $1.6 million, mutual funds and preferred stocks with total unrealized losses of $0.9 million and other securities in unrealized loss positions totaling $0.2 million. At December 31, 2009, securities in significant unrealized loss positions included U.S. Government agency mortgage-backed securities with total unrealized losses of $3.2 million and private-label mortgage-backed securities with total unrealized losses of $9.3 million. All of these securities had been in unrealized loss positions for less than twelve months at September 30, 2010 and at December 31, 2009.

The timely repayment of principal and interest on the U.S. Government agency mortgage-backed securities is either explicitly or implicitly guaranteed by the full faith and credit of the U.S. Government. Management engaged a third party to perform projected cash flow analyses of the private-label mortgage-backed securities, incorporating CUSIP level collateral default rate, voluntary prepayment rate, severity and delinquency assumptions. Based on the results of this analysis, no credit losses were projected. We do not intend to sell these securities and it is more likely than not that we will be able to retain them for a period of time sufficient for recovery in value. Given the expectation of timely repayment of principal and the limited duration and severity of impairment, we concluded that none of the debt securities were other-than-temporarily impaired. Given the results of our analysis of the underlying issuers and the limited duration and severity of impairment, we considered the impairment of the equity securities to be temporary.

As a member institution of the Federal Home Loan Bank of Atlanta, BankUnited is required to own capital stock in the FHLB. No market exists for this stock, and the Bank's investment can be liquidated only through repurchase by the FHLB. During the nine months ended September 30, 2010, $17.4 million of FHLB stock was redeemed at par. The Company monitors its investment in FHLB stock for impairment through review of recent financial results, dividend payment history and information from credit agencies. As of September 30, 2010, management had not identified any indicators of impairment of FHLB stock.

Loan Portfolio

The loan portfolio comprises the Company's primary interest-earning asset. At September 30, 2010 and December 31, 2009, respectively, 95.7% and 98.4% of real estate loans and 91.7% and 97.3% of total loans were Covered Loans. The following table shows the composition of the Company's loan portfolio and the breakdown of the portfolio between Covered ACI Loans, Covered non-ACI Loans and non-Covered Loans at the dates indicated *(dollars in thousands)*:

	September 30, 2010					December 31, 2009				
	Covered Loans					Covered Loans				
	ACI	Non-ACI	Non-Covered Loans	Total Loans	% of Total	ACI	Non-ACI	Non-Covered Loans	Total Loans	% of Total
Real Estate Loans:										
1-4 single family residential	$ 2,765,552	$ 160,784	$ 71,234	$ 2,997,570	71.9%	$ 3,306,306	$ 184,669	$ 43,110	$ 3,534,085	76.0%
Home equity loans and lines of credit	102,320	210,451	1,693	314,464	7.5%	113,578	215,591	1,615	330,784	7.1%
Multi-family	68,205	5,686	15,719	89,610	2.1%	71,321	4,971	700	76,992	1.7%
Commercial real estate	317,533	36,555	73,930	428,018	10.3%	363,965	39,733	24,460	428,158	9.2%
Construction	9,563	—	1,348	10,911	0.3%	44,812	377	—	45,189	1.0%
Land	50,600	172	1,591	52,363	1.2%	43,903	173	—	44,076	0.9%
Total real estate loans	3,313,773	413,648	165,515	3,892,936	93.3%	3,943,885	445,514	69,885	4,459,284	95.9%
Other Loans:										
Commercial	59,384	35,764	175,022	270,170	6.5%	81,765	48,635	51,565	181,965	3.9%
Consumer	4,517	—	3,728	8,245	0.2%	7,065	—	3,151	10,216	0.2%
Total other loans	63,901	35,764	178,750	278,415	6.7%	88,830	48,635	54,716	192,181	4.1%
Total loans	3,377,674	449,412	344,265	4,171,351	100.0%	4,032,715	494,149	124,601	4,651,465	100.0%
Unearned discounts and deferred fees and costs, net	—	(32,474)	(1,836)	(34,310)		—	(39,986)	40	(39,946)	
Allowance for loan losses	(37,342)	(16,587)	(3,878)	(57,807)		(20,021)	(1,266)	(1,334)	(22,621)	
Loans, net	$ 3,340,332	$ 400,351	$ 338,551	$ 4,079,234		$ 4,012,694	$ 452,897	$ 123,307	$ 4,588,898	

Residential Mortgages

The portfolio contains option ARM, "no-doc" or "reduced-doc" and wholesale production loans originated by the Failed Bank prior to the Acquisition. All of these loans are Covered Loans; therefore, the Company's exposure to future losses on these mortgage loans is mitigated by the Loss Sharing Agreements as well as by the fair value basis recorded in these loans resulting from the application of acquisition accounting. Loans secured by residential real estate have consistently represented the majority of the total loan portfolio. The Covered Loan portfolio includes Covered Loans which have been modified by us under the U.S. Treasury Department's Home Affordable Modification Program, or HAMP, or other loan modification programs.

The non-covered residential loan portfolio includes loans originated and purchased post-Acquisition. Subsequent to the Acquisition, we shut down the broker origination channel of the Failed Bank and we launched our retail-focused origination platform at the end of 2009. We currently originate residential mortgage loans with terms ranging from 10 to 40 years, with either fixed or adjustable interest rates, primarily to customers in the state of Florida. Newly originated residential mortgage loans are primarily closed-end first lien loans for the purchase or re-finance of owner occupied property. At September 30, 2010, $22.8 million, or 32.1%, of our non-covered one-to-four single family residential loan portfolio was originated loans. Significantly all of our newly originated residential mortgage loans are not refinancings of Covered Loans.

We have decided to purchase loans to supplement our nascent mortgage origination platform and to geographically diversify our loan portfolio given the current credit environment of the non-agency mortgage market in Florida. At September 30, 2010, $48.4 million, or 67.9%, of our non-covered residential loan portfolio was purchased loans.

One-to-four single family residential mortgages totaled $3.0 billion, or 71.9%, of the portfolio and $3.5 billion, or 76.0%, of the portfolio at September 30, 2010 and December 31, 2009, respectively. The decline in this portfolio segment subsequent to the Acquisition, both in total and as a percentage of loans, is primarily a result of the resolution of Covered Loans and transfers to OREO.

The following table presents a breakdown of the 1-4 single family residential mortgage portfolio categorized between fixed rate and adjustable rate mortgages at the dates indicated *(dollars in thousands)*:

	At September 30, 2010				At December 31, 2009			
	Covered Loans	Non-Covered Loans	Total	% of Total	Covered Loans	Non-Covered Loans	Total	% of Total
1-4 single family residential loans:								
Fixed rate loans	$ 745,384	$ 55,805	$ 801,189	26.7%	$ 645,871	$ 42,577	$ 688,448	19.5%
Adjustable rate loans(1)	2,180,952	15,429	2,196,381	73.3%	2,845,104	533	2,845,637	80.5%
Total 1-4 single family residential loans	$ 2,926,336	$ 71,234	$ 2,997,570	100%	$ 3,490,975	$ 43,110	$ 3,534,085	100.0%

(1) As of September 30, 2010 and December 31, 2009, option ARM loans with UPB of $2.6 billion and $3.7 billion, respectively, were negatively amortizing. Negative amortization included in the UPB of the option ARM portfolio totaled $183.1 million and $258.2 million at September 30, 2010 and December 31, 2009, respectively. However, due to initially recording these loans at their fair value on the Acquisition date as a result of the application of acquisition accounting, the carrying amount of the portfolio was substantially less than the aggregate UPB.

At September 30, 2010, 57.8%, 7.5%, 5.9% and 5.8% of 1-4 single family residential loans, based on UPB, were to borrowers domiciled in Florida, California, New Jersey and Illinois, respectively. At December 31, 2009, 56.8%, 8.1%, 5.7%, 5.6% and 4.9% of 1-4 single family residential loans, based on UPB, were to borrowers domiciled in Florida, California, Illinois, New Jersey and Arizona, respectively. No other state represented borrowers with more than 4.0% of 1-4 single family residential loans outstanding.

Other Loans

Other loans include commercial real estate, commercial and consumer loans.

Commercial real estate loans include term loans secured by income producing properties including rental apartments, industrial properties, retail shopping centers, office buildings and hotels as well as real estate secured lines of credit and acquisition, development and construction loans. Commercial real estate loans typically have shorter repayment periods and reprice more frequently than 1-4 single family residential loans. The Company's underwriting standards generally provide for loan terms of five years, with amortization schedules of no more than twenty-five years. Loan to value, or LTV, ratios are typically limited to no more than 80%. In addition, the Company usually obtains personal guarantees of the principals as additional security for most commercial real estate loans.

Commercial loans are typically made to growing companies and middle market businesses and include equipment loans, working capital lines of credit, asset-backed loans, acquisition finance credit facilities and Small Business Administration product offerings. These loans may be structured as term loans, typically with maturities of five years or less, or revolving lines of credit which typically mature annually.

Since the Acquisition, management's loan origination strategy has been more heavily focused on the commercial and commercial real estate portfolio segments, which collectively comprise 77.7% of loans originated or purchased since the Acquisition as of September 30, 2010. In addition, significantly all of our newly originated loans are not refinancings of Covered Loans.

Consumer loans include home equity loans and lines of credit, loans secured by certificates of deposit, auto loans, demand deposit account overdrafts and unsecured personal lines of credit.

The following table sets forth, as of December 31, 2009, the anticipated repayments of our loan portfolio by category, based on UPB. Anticipated repayments are based on contractual maturities adjusted for an estimated rate of prepayments and defaults based on historical trends, current interest rates, types of loans and refinance patterns *(dollars in thousands)*:

	Due in			
	One Year or Less	After One Through Five Years	After Five Years	Total
Real Estate Loans:				
1-4 single family residential	$ 806,914	$ 4,717,856	$ 2,679,762	$ 8,204,532
Home equity loans and lines of credit	56,089	182,646	232,887	471,622
Multi-family	24,804	42,042	43,877	110,723
Commercial real estate	64,066	207,925	312,032	584,023
Construction	36,641	62,721	10,472	109,834
Land	34,887	66,815	10,614	112,316
Total real estate loans	1,023,401	5,280,005	3,289,644	9,593,050
Other Loans:				
Commercial	46,188	93,007	65,333	204,528
Consumer	8,016	4,297	258	12,571
Total other loans	54,204	97,304	65,591	217,099
Total loans	$ 1,077,605	$ 5,377,309	$ 3,355,235	$ 9,810,149

The following table shows the distribution of UPB of those loans that mature in more than one year between fixed and adjustable interest rate loans as of December 31, 2009 *(dollars in thousands)*:

	Interest Rate Type		
	Fixed	Adjustable	Total
Real Estate Loans:			
1-4 single family residential	$ 1,110,980	$ 6,286,637	$ 7,397,617
Home equity loans and lines of credit	56,268	359,265	415,533
Multi-family	19,845	66,074	85,919
Commercial real estate	243,138	276,818	519,956
Construction	4,982	68,212	73,194
Land	2,162	75,267	77,429
Total real estate loans	1,437,375	7,132,273	8,569,648
Other Loans:			
Commercial	41,262	117,078	158,340
Consumer	4,384	172	4,556
Total other loans	45,646	117,250	162,896
Total loans	$ 1,483,021	$ 7,249,523	$ 8,732,544

Asset Quality

We recognize that developing and maintaining a strong credit culture is paramount to the success of the Company. We have established a credit risk management framework and put in place an experienced team to lead the workout and recovery process for the commercial and commercial real estate portfolios. We have also implemented a dedicated internal loan review function that reports directly to our Audit Committee. We have an experienced resolution team in place for covered residential mortgage loans, and have implemented outsourcing arrangements with industry leading firms in certain areas such as OREO resolution.

Loan performance is monitored by our credit, workout and recovery and loan review departments. Commercial and commercial real estate loans are regularly reviewed by our internal loan review department. The Company utilizes an asset risk classification system as part of its efforts to monitor and improve commercial asset quality. Borrowers with credit weaknesses that may jeopardize collectability will likely demonstrate one or more of the following: payment defaults, frequent overdrafts, operating losses, increasing balance sheet leverage, inadequate cash flow, project cost over-runs, unreasonable construction delays, exhausted interest reserves, past due real estate taxes or declining collateral values. Generally, a loan with one or more of these identified weaknesses will be classified substandard. Loans that have credit weaknesses that render collection or liquidation in full highly questionable or improbable based on current circumstances are classified doubtful. Loans exhibiting potential credit weaknesses that deserve management's close attention and that if left uncorrected may result in deterioration of the repayment capacity of the borrower are categorized as special mention.

Non-Covered Loans

At September 30, 2010, six non-covered commercial loans aggregating $6.8 million were rated special mention and three non-covered commercial loans aggregating $0.7 million were classified substandard. At December 31, 2009, no non-covered commercial loans were rated special mention and none were adversely classified.

At September 30, 2010, one non-covered residential loan with a principal balance of $0.4 million was delinquent greater than 30 days. There were no delinquent non-covered home equity loans at September 30, 2010. There were no delinquencies in the non-covered residential mortgage or home equity loan portfolios as of December 31, 2009.

The majority of our non-covered residential mortgage portfolio consists of purchased loans. The credit parameters for purchasing loans are similar to the underwriting guidelines in place for our mortgage origination platform. For purchasing seasoned loans, good payment history is needed. In general, we purchase performing jumbo mortgage pools which have average FICO scores above 700, primarily are owner-occupied and full documentation, and have a current LTV less than 80%. We perform due diligence on the purchased loans for credit, compliance, counterparty, payment history and property valuation.

At September 30, 2010, the purchased loan portfolio had the following characteristics: 73.1% were fixed rate loans, 86.5% were full documentation and had an average FICO score of 771 and average LTV of 74.8%. The majority of this portfolio was owner-occupied, with 79.7% primary residence and 20.3% second homes. In terms of vintage, 11.1% of the portfolio was originated in 2007, 83.3% in 2008 and 5.5% in 2009.

Similarly, the originated loan portfolio had the following characteristics at September 30, 2010: 89.5% were fixed rate loans, 100% were full documentation and had an average FICO score of 777 and average LTV of 61.1%. The majority of this portfolio was owner-occupied, with 95.2% primary residence, 4.4% second home and 0.4% investment properties. In terms of vintage, 22.9% of the portfolio was originated in 2009 and 77.1% in 2010.

Delinquent consumer loans in the originated portfolio were insignificant as of September 30, 2010 and December 31, 2009.

Covered Loans

Covered Loans consist of both ACI loans and non-ACI loans. At September 30, 2010, ACI loans totaled $3.4 billion and non-ACI loans totaled $0.4 billion. Covered 1-4 single family residential loans were placed into homogenous pools at Acquisition and the ongoing credit quality and performance of these loans is monitored on a pool basis. At Acquisition, the fair value of the pools was measured based on the expected cash flows to be derived from each pool. Initial cash flow expectations incorporated significant assumptions regarding prepayment rates, frequency of default and loss severity. For ACI pools, the difference between total contractual payments due and the cash flows expected to be received at Acquisition was recognized as non-accretable difference. The excess of expected cash flows over the recorded fair value of each ACI pool at Acquisition, known as the accretable yield, is being recognized as interest income over the life of each pool. We monitor the pools quarterly to determine whether any material changes have occurred in expected cash flows that would be indicative of impairment or necessitate reclassification between non-accretable difference and accretable yield. Generally, improvements in expected cash flows less than 2% of the UPB of a pool are not recorded. This initial threshold may be revised as we gain greater experience. Generally, commercial and commercial real estate loans are monitored individually due to their size and other unique characteristics.

Residential mortgage loans, including home equity loans, comprised 87.8% of the UPB of the acquired loan portfolio at the Acquisition date. We performed a detailed analysis of the portfolio to determine the key loan characteristics influencing performance. Key characteristics influencing the performance of the residential mortgage portfolio, including home equity loans, were determined to be delinquency status; product type, in particular, amortizing as opposed to option ARM products; current indexed LTV ratio; and original FICO score. The ACI loans in the residential mortgage portfolio were grouped into ten homogenous static pools based on these characteristics, and the non-ACI residential loans were grouped into two homogenous static pools. There were other variables which we initially expected to have a significant influence on performance and which were considered in our analysis; however, the results of our analysis demonstrated that their impact was less significant after controlling for current indexed LTV, product type, and FICO score. Therefore, these additional factors were not used in grouping the covered residential loans into pools and are not used in monitoring ongoing asset quality of the pools. The factors we considered but determined not to be significant included the level and type of documentation required at origination, i.e., whether a loan was originated under full documentation, reduced documentation, or no documentation programs; occupancy, defined as owner occupied vs. non-owner occupied collateral properties; geography; and vintage, i.e., year of origination.

1-4 single family residential non-ACI loans had an aggregate UPB of $212.8 million as of May 21, 2009. As of September 30, 2010, 31.9% of the UPB had been repaid, demonstrating the intent and ability of borrowers in this group to satisfy their mortgage obligations.

At September 30, 2010, 29.5% of the total UPB of the covered 1-4 single family residential loans was contractually delinquent by 60 days or more. However, future losses to the Company related to these loans are significantly mitigated by the Loss Sharing Agreements with the FDIC.

Covered home equity loans and lines of credit had a carrying amount of $312.8 million at September 30, 2010, including ACI loans of $102.3 million and non-ACI loans of $210.5 million. At September 30, 2010, 10.4% of covered home equity loans and lines of credit were 60 days or more contractually delinquent. Of the ACI home equity portfolio, 15.6% was 60 days or more contractually delinquent while 4.8% of the non-ACI portfolio was 60 days or more delinquent. Losses related to these loans are significantly mitigated by the Loss Sharing Agreements.

Commercial and other Covered Loans were stratified at Acquisition based primarily on product/collateral type and delinquency status. Ongoing asset quality of significant commercial and commercial real estate loans is monitored on an individual basis through the Company's regular credit review and risk rating process. Homogenous groups of smaller balance commercial and consumer loans are monitored collectively.

Non-ACI commercial and other loans had an aggregate UPB of $48.6 million at December 31, 2009. At September 30, 2010, non-ACI commercial and other loans had an aggregate UPB of $35.8 million. The majority of these loans were rated "pass" or "good" at September 30, 2010 and December 31, 2009 and the portfolio segment has limited delinquency history. At September 30, 2010, 25 loans totaling $11.7 million were rated special mention and 35 loans totaling $3.2 million were rated substandard.

Impaired Loans and Non-Performing Assets

Non-performing assets consist of (i) non-accrual loans, including loans that have been restructured and placed on nonaccrual status because of deterioration in the financial condition of the borrower, (ii) accruing loans that are more than 90 days contractually past due as to interest or principal, excluding ACI loans, and (iii) OREO. Impaired loans also include ACI loans for which expected cash flows have been revised downward since Acquisition. Because of discount accretion, these loans have not been classified as nonaccrual loans and we do not consider them to be non-performing assets. As of September 30, 2010 and December 31, 2009, substantially all of the nonaccrual loans and all of the OREO are Covered Assets. One commercial loan originated since the Acquisition with a balance of approximately $34,000 was on nonaccrual status at September 30, 2010. There are no other loans originated since the Acquisition that fall within these categories. The Company's exposure to loss related to Covered Assets is significantly mitigated by the Loss Sharing Agreements with the FDIC and by the fair value basis recorded in these loans resulting from the application of acquisition accounting.

The following table summarizes the Company's impaired loans and other non-performing assets at the dates indicated *(dollars in thousands):*

	At September 30, 2010	At December 31, 2009
Nonaccrual loans		
Real estate loans:		
1-4 single family residential	$ 13,895	$ 14,495
Home equity loans and lines of credit	9,496	2,726
Multi-family	377	—
Commercial real estate	2,170	—
Construction	—	—
Land	—	—
Total real estate loans	25,938	17,221
Other loans:		
Commercial	2,086	150
Consumer	—	—
Total other loans	2,086	150
Total nonaccrual loans	28,024	17,371
Accruing non-ACI and non-Covered Loans 90 days or more past due	—	—
Total non-performing loans	28,024	17,371
OREO	194,286	120,110
Total non-performing assets	222,310	137,481
Impaired ACI loans on accrual status	319,585	567,253
Total impaired loans and non-performing assets	$ 541,895	$ 704,734
Non-performing loans to total loans(1)	0.68%	0.38%
Non-performing assets to total assets	1.99%	1.24%
Allowance for loan losses to total loans(1)	1.40%	0.49%
Allowance for loan losses to non-performing loans	206.28%	130.22%

(1) Total loans for purposes of calculating these ratios is net of unearned discounts and deferred fees and costs.

At September 30, 2010 and December 31, 2009, substantially all of the nonaccrual loans consist of non-ACI loans that have been placed on nonaccrual status. Contractually delinquent ACI loans are not reflected as nonaccrual loans because the discount continues to be accreted. Discount accretion continues to be recorded as there continues to be an expectation of future cash flows from these loans. The carrying value of ACI loans contractually delinquent by more than 90 days but not identified as impaired was $0.9 billion and $1.2 billion at September 30, 2010 and December 31, 2009, respectively. These loans have not been identified as impaired because there has been no significant deterioration in expected cash flows since the date of acquisition.

Non-performing assets reported for the post-Acquisition periods are substantially lower than non-performing assets for the pre-Acquisition periods primarily due to the recording of these assets at their fair value in conjunction with the application of acquisition accounting and the fact that ACI loans are no longer reflected as nonaccrual loans as discussed above. The lower ratio of the allowance for loan losses to total loans at dates subsequent to the Acquisition is a direct result of the fact that no allowance was initially recorded with respect to the acquired loans. Rather, the estimated fair value at which these loans were initially recorded incorporated significant assumptions related to credit quality and default probabilities. Due to the foregoing factors, the ratios presented in the table above may lack comparability to those of our peers.

Except for ACI loans, loans are placed on nonaccrual status when (i) management has determined that full payment of all contractual principal and interest is in doubt, or (ii) the loan is past due 90 days or more as to principal and/or interest, unless the loan is well-secured and in the process of collection. Residential and consumer loans not accounted for in pools are returned to accrual status as of the date the loan is no longer delinquent in excess of 90 days and ultimate collectability is assured. Commercial real estate and commercial loans are returned to accruing status only after all past due principal and interest have been collected. Except for ACI loans accounted for in pools, loans that are the subject of troubled debt restructurings are placed on nonaccrual status at the time of the modification unless the borrower has no history of missed payments for six months prior to the restructuring. If borrowers perform pursuant to the modified loan terms for at least six months and the remaining loan balances are considered collectable, the loans are returned to accrual status. Interest income foregone on nonaccrual loans amounted to $0.6 million for the nine months ending September 30, 2010 and to $0.6 million for period ending December 31, 2009. Interest income reversed due to loans being placed on nonaccrual status amounted to $183,656 and $76,969 for the nine months ending September 30, 2010 and period ending December 31, 2009, respectively.

A loan modification is considered a troubled debt restructuring if the Company, for economic or legal reasons related to the borrower's financial difficulties, grants a concession to the borrower that the Company would not otherwise grant. These concessions may take the form of temporarily or permanently reduced interest rates, payment abatement periods, extensions of maturity, or in some cases, partial forgiveness of principal. Under generally accepted accounting principles, modified ACI loans accounted for in pools are not considered troubled debt restructurings and are not separated from their respective pools when modified. As of September 30, 2010, there were no ACI loans not accounted for in pools, non-ACI loans, or non-Covered Loans that were the subject of troubled debt restructurings.

Commercial and commercial real estate loans are charged off when, in management's judgment, the carrying amount of the loan is not collectible. Residential real estate loans and secured consumer loans are typically charged off when they become 120 to 180 days past due, depending on the collateral type. Secured loans may be written down to the fair value of the collateral less estimated disposition costs. Unsecured consumer loans are generally charged off when they become 90 days past due. Home equity loans and lines of credit are fully reserved for when they become 120 days past due, and generally fully charged off when they are 180 days past due.

Loss Mitigation Strategies

Although our exposure to loss on Covered Assets is mitigated by the Loss Sharing Agreements, we have implemented strategies designed to minimize losses on these assets. We have increased the quality and experience level of our workout and recovery and mortgage servicing departments. We evaluate each ACI loan to determine the most effective loss mitigation strategy, which may be modification, short sale, or foreclosure. In 2009, we began loan modifications under HAMP for eligible borrowers in the residential ACI portfolio. HAMP is a uniform loan modification process that provides eligible borrowers with sustainable monthly mortgage payments equal to a target 31% of their gross monthly income. As of September 30, 2010, 8,860 borrowers had been counseled regarding their participation in HAMP; 6,761 of those borrowers were initially determined to be potentially eligible for loan modifications under the program. As of September 30, 2010, 1,471 borrowers who did not elect to participate in the program had been sent termination letters and 2,313 borrowers had been denied due to ineligibility. At September 30, 2010, there were 1,878 permanent loan modifications and 225 active trial modifications.

Other Real Estate Owned

All of the OREO properties owned by the Company are Covered Assets. The following table presents the changes in OREO for the nine months ending September 30, 2010 and period ending December 31, 2009 *(dollars in thousands):*

	At September 30, 2010	At December 31, 2009
Balance at beginning of period	$ 120,110	$ 177,679
Transfers from the loan portfolio	283,220	115,192
Sales	(194,903)	(177,408)
Impairment loss recognized	(12,164)	(21,055)
Income (loss) from resolution of Covered Loans, net	(1,977)	25,702
Balance at end of period	$ 194,286	$ 120,110

Analysis of the Allowance for Loan Losses

The allowance for loan losses at dates subsequent to the Acquisition relates to (i) loans originated or purchased since the Acquisition, (ii) estimated additional losses arising on non-ACI loans subsequent to the Acquisition, and (iii) additional impairment recognized as a result of decreases in expected cash flows on ACI loans due to further credit deterioration. The impact of any additional provision for losses on Covered Loans is significantly mitigated by an increase in the FDIC indemnification asset.

Non-Covered and non-ACI Loans

Based on an analysis of historical performance of the non-ACI residential mortgage and home equity portfolio, OREO and short sale losses and recent trending data, we have concluded that changes in LTV ratios and FICO scores are the leading indicators of performance for this portfolio. The non-ACI residential mortgage portfolio has therefore been divided into homogenous pools based on LTV and FICO score for purposes of calculating the allowance for loan losses. Calculated frequency of roll to loss and severity percentages are applied to the dollar value of loans in each pool to calculate an overall loss allowance. FICO scores are refreshed quarterly and LTV ratios are updated using the Case-Shiller quarterly MSA Home Price Index to adjust the original appraised value of the underlying collateral. Frequency is calculated for each pool using a four month roll to loss percentage, based on the assumption that if an event has occurred with a borrower that will ultimately result in a loss, this will manifest itself as a loan in default and in process of foreclosure within four months. Loss severity given default is estimated based on internal data about OREO sales and short sales from the portfolio.

Due to the lack of similarity between the risk characteristics of non-Covered Loans and Covered Loans in the residential and home equity loan portfolios, management does not believe it is appropriate to use the historical performance of the Failed Bank's residential mortgage portfolio as a basis for calculating the allowance for loan losses applicable to non-Covered Loans. The portfolio of loans originated and purchased since the Acquisition is not seasoned and has not yet developed an observable loss trend. Therefore, the allowance for loan losses for non-covered residential loans is based primarily on management's assessment of the risk of default and on the OTS "Thrift Industry Charge-Off Rates by Asset Type, annualized Net Charge-Off Rates—Twelve Quarter Average" for the southeast region (the "OTS Charge-Off Rates"). We believe use of the twelve quarter average to be appropriate for this portfolio since it takes into account periods of both economic growth and serious economic contraction.

The allowance for non-covered and non-ACI commercial loans is based primarily on the Bank's internal credit risk rating system, the OTS Charge-Off Rates, and management's assessment of portfolio risk characteristics. The allowance is comprised of specific reserves for significant and classified loans that are individually evaluated and determined to be impaired as well as general reserves for individually evaluated loans determined not to be impaired and smaller balance, non-classified loans. For all commercial and commercial real estate exposures graded substandard or doubtful with committed credit facilities greater than or equal to $1,000,000, a quarterly net realizable value analysis is prepared by the credit, workout and recovery and loan review departments. This analysis forms the basis for specific reserves. Since the originated portfolio is not yet seasoned enough to exhibit a loss trend and the non-ACI portfolio has limited delinquency statistics, we currently use the OTS Charge-Off Rates and management's assessment of risk characteristics by portfolio segment in determining the appropriate general reserve percentages. We believe that loans rated special mention or substandard that are not determined to be individually impaired exhibit characteristics indicative of a heightened level of credit risk. Management may therefore augment general reserve percentages for loans in these categories.

Since the non-covered portfolio is not yet seasoned enough to exhibit a loss trend, the allowance for non-covered and non-ACI consumer loans is based primarily on the OTS Charge-Off Rates and management's assessment of portfolio risk characteristics. We provide a 100% reserve for consumer loans more than 120 days past due and charge them off after 270 days.

In addition to the quantitative calculations described above, a dollar value adjustment is made to the allowance for relevant qualitative factors when there is a material observable trend in those factors not already taken into account in the quantitative calculations. Qualitative factors that may result in an adjustment to the allowance include: levels of and trends in delinquencies and impaired loans; levels of and trends in recoveries of prior charge-offs; trends in volume, type and terms of loans; effects of changes in lending policies and procedures; experience, ability and depth of lending management, loan review and workout and recovery staff; credit concentrations; national, regional and local economic trends; housing and banking industry conditions and trends; emerging trends for particular loan types; and strategic initiatives of the Company that may impact loan performance.

For non-ACI loans, the allowance is calculated based on UPB. The total of UPB, less the calculated allowance, is then compared to the carrying amount of the loans. If the calculated balance net of the allowance is less than the carrying amount, an additional allowance is established. Any such increase in the allowance for non-ACI loans will result in a corresponding increase in the FDIC indemnification asset. For the nine months ended September 30, 2010 and period ended December 31, 2009, we recorded a provision for non-ACI loans of $15.6 million and $1.3 million, respectively.

ACI Loans

For ACI loans, a valuation allowance is established when periodic evaluations of expected cash flows reflect a decrease from the level of cash flows that were estimated to be collected at Acquisition plus any additional expected cash flows arising from revisions in those estimates. We perform a quarterly analysis of expected cash flows for ACI loans.

The analysis of expected cash flows for residential ACI pools incorporates updated pool level expected prepayment rates, default rates, and delinquency levels, and loan level loss severity given default assumptions. Prepayment, delinquency and default curves used for this purpose are derived from roll rates generated from the historical performance of the ACI residential loan portfolio observed over the immediately preceding four quarters. Given the static nature of the pools and unique characteristics of the loans, we believe that regularly updated historical information from the Company's own portfolio is the best available indicator of future performance. Estimates of default probability and severity of loss given default also incorporate updated LTV ratios. Historic and projected values for the Case-Shiller Home Price Index for the relevant MSA are utilized at the individual loan level to project current and future property values. Costs and fees represent an additional component of loss on default, and are projected using the "Making Home Affordable" cost factors provided by the Federal government.

Our analysis at December 31, 2009 indicated a decrease in expected cash flows due to credit related assumptions related to two ACI residential mortgage pools; therefore, a provision for loan losses of $20.0 million was recorded, along with a corresponding increase in the FDIC indemnification asset of $14.4 million. As of September 30, 2010, our analysis evidenced a significant improvement in expected cash flows related to these two ACI residential pools and an offsetting decrease in expected cash flows due to credit related assumptions related to the ACI home equity loan pool. As a result, the $20.0 million allowance established at December 31, 2009 related to ACI residential pools, along with the increase in the FDIC indemnification asset of $14.4 million, was reversed and a provision for loan losses of $9.4 million, along with a corresponding increase in the FDIC indemnification asset of $6.6 million, was recorded related to the pooled home equity ACI loans during the nine months ending September 30, 2010.

The primary assumptions underlying estimates of expected cash flows for commercial and other loans are default probability and severity of loss given default. Updated assumptions for large balance and delinquent loans in the commercial and commercial real estate ACI portfolios are based on net realizable value analyses prepared at the individual loan level by the Company's workout and recovery department. Updated assumptions for smaller balance commercial loans are based on a combination of the Company's own historical delinquency data and industry level delinquency data. Delinquency data is used as a proxy for defaults as the Company's experience has been that few of these loans return to performing status after being delinquent greater than 60 days. An additional multiplier is also applied in developing assumptions for loans rated special mention, substandard, or doubtful based on the Company's historical loss experience with classified loans. Cash flow estimates for consumer loan pools are based primarily on regularly updated historical performance information.

For the period ended December 31, 2009, there were no decreases in expected cash flows for commercial and other ACI loans; therefore, no allowance for loan losses was provided related to these loans. For the nine months ended September 30, 2010, our analysis indicated a decrease in expected cash flows from certain ACI commercial and commercial real estate loans evaluated individually for credit impairment, resulting in a provision for loan losses of $37.5 million related to these ACI loans. An increase in the FDIC indemnification asset of $19.3 million was recorded related to this provision.

In the aggregate, the provision for losses related to ACI loans was $27.0 million for the nine months ended September 30, 2010, comprised of the $20.0 million reversal and the provisions of $9.4 million and $37.5 million discussed above.

Table of Contents

The following table provides an analysis of the allowance for loan losses, provision for loan losses, and net charge-offs for the periods indicated *(dollars in thousands)*:

	Nine Months Ended September 30, 2010	Period from May 22, 2009 to December 31, 2009
Allowance for loan losses, beginning of period	$ 22,621	$ —
Provision for loan losses:		
Provision for losses on Covered ACI Loans	26,973	20,021
Provision for losses on Covered non-ACI Loans	15,565	1,266
Provision for losses on non-Covered Loans	2,619	1,334
Total provision for loan losses	45,157	22,621
Charge-offs:		
1-4 single family residential	—	—
Home equity loans and lines of credit	—	—
Multi-family	(1,248)	—
Commercial real estate	(962)	—
Construction	(3,500)	—
Land	(3,004)	—
Commercial	(1,042)	—
Consumer	(215)	—
Total charge-offs	(9,971)	—
Total recoveries	—	—
Net charge-offs	(9,971)	—
Allowance for loan losses, end of period	$ 57,807	$ 22,621
Increase in the indemnification asset related to the provision for loan losses on Covered Loans	$ 22,979	$ 14,433
Ratio of net charge-offs to average loans receivable outstanding during the period(1)	0.31%	0.00%

(1) Annualized.

The following table shows the distribution of the allowance for loan losses, broken out between Covered and non-Covered Loans, as of September 30, 2010 and December 31, 2009 *(dollars in thousands)*:

	At September 30, 2010					At December 31, 2009				
	Covered		Non-			Covered		Non-		
	ACI	Non-ACI	Covered	Total	%(1)	ACI	Non-ACI	Covered	Total	%(1)
1-4 single family residential	$ —	$ 473	$ 107	$ 580	71.9%	$ 20,021	$ 119	$ 65	$ 20,205	76.0%
Home equity loans and lines of credit	9,421	11,659	3	21,083	7.5%	—	11	4	15	7.1%
Multi-family	3,650	652	260	4,562	2.1%	—	60	11	71	1.7%
Commercial real estate	15,000	800	651	16,451	10.3%	—	465	303	768	9.2%
Construction	—	—	15	15	0.3%	—	5	—	5	1.0%
Land	5,923	26	76	6,025	1.2%	—	2	—	2	0.9%
Commercial	3,348	1,170	2,737	7,255	6.5%	—	604	905	1,509	3.9%
Consumer	—	—	29	29	0.2%	—	—	46	46	0.2%
Unallocated	—	1,807	—	1,807	—	—	—	—	—	—
Total allowance for loan losses	$ 37,342	$ 16,587	$ 3,878	$ 57,807	100.0%	$ 20,021	$ 1,266	$ 1,334	$ 22,621	100.0%

(1) Represents percentage of loans receivable in each category to total loans receivable.

Goodwill and Other Intangible Assets

In conjunction with the Acquisition, the Company recognized approximately $59.4 million of goodwill and a $1.8 million core deposit intangible. Goodwill was assigned to BankUnited. The Company performs goodwill impairment testing in the third quarter of each fiscal year or more frequently if events or circumstances indicate that impairment may exist. As of the third quarter of 2010 impairment testing date, the estimated fair value of the reporting unit exceeded its carrying amount; therefore, no impairment was indicated.

Other Assets

Other assets declined subsequent to the Acquisition primarily due to declines in escrow advances, mortgage insurance receivable and accrued interest receivable resulting from including these assets in the valuation of loans acquired in the application of acquisition accounting and the revaluation of furniture, fixtures and equipment in conjunction with the Acquisition. The increase in other assets from December 31, 2009 to September 30, 2010 was primarily attributable to an increase in accrued interest receivable related to growth in the investment and originated loan portfolios.

Deposits

The following table presents information about our deposits for the periods indicated *(dollars in thousands)*:

	Nine Months Ended September 30, 2010		Period from May 22, 2009 to December 31, 2009	
	Average Balance	Average Rate Paid	Average Balance	Average Rate Paid
Demand deposits:				
Non-interest bearing	$ 414,350	—%	$ 303,810	—%
Interest bearing	253,830	0.75%	183,416	0.79%
Savings and money market	2,808,277	1.26%	2,153,446	1.94%
Time deposits	4,068,348	1.83%	5,506,320	0.93%
Total deposits	$ 7,544,805	1.48%	$ 8,146,992	1.16%

Excluding the impact of accretion from fair value adjustments due to acquisition accounting, the average rate paid on interest bearing deposits for the nine months ended September 30, 2010 and period ended December 31, 2009 was 1.92% and 2.77%, respectively.

The following table shows scheduled maturities of certificates of deposit with denominations greater than or equal to $100,000 as of September 30, 2010 and December 31, 2009 *(dollars in thousands)*:

	At September 30, 2010	At December 31, 2009
Three months or less	$ 332,878	$ 415,049
Over three through six months	337,908	394,805
Over six through twelve months	430,757	684,966
Over twelve months	395,610	411,347
Total	$ 1,497,153	$ 1,906,167

Borrowed Funds

The following table sets forth information regarding our short-term borrowings, consisting of securities sold under agreements to repurchase, as of the dates, and for the periods, indicated *(dollars in thousands)*:

	Ending Balance	Weighted Average Rate	Maximum Amount At Month-End	Yearly Weighted Averages Balance	Yearly Weighted Averages Rate
For the nine months ended September 30, 2010	$ 386	0.08%	$ 17,459	$ 10,358	0.93%
For the period from May 22, 2009 to December 31, 2009	$ 2,972	0.01%	$ 2,972	$ 2,091	0.02%

The Company also utilizes FHLB advances to finance its operations. FHLB advances are secured by stock in the FHLB required to be purchased in proportion to outstanding advances and qualifying first mortgage, commercial real estate, and home equity loans and mortgage-backed securities. The contractual balance of FHLB advances at September 30, 2010 totaled $2.2 billion, with $1.1 billion, $565.0 million, $505.0 million and $0.4 million maturing in 2012, 2013, 2014 and 2015, respectively. The book value of outstanding FHLB advances decreased from $4.6 billion at Acquisition to $2.1 billion at December 31, 2009 and $2.3 billion at September 30, 2010 primarily due to repayment of outstanding advances with cash received in the Acquisition.

As discussed previously in this "Management's Discussion and Analysis of Financial Condition and Results of Operations," financial information of the Failed Bank for the pre-Acquisition periods lacks direct comparability in many respects to financial information of the Company presented for the post-Acquisition periods.

Results of Operations for the Pre-Acquisition Periods

The Failed Bank reported net losses of $(1.2) billion and $(858.4) million for the period from October 1, 2008 through May 21, 2009 and for the fiscal year ending September 30, 2008, or fiscal 2008, respectively, and net income of $109.5 million for the fiscal year ending September 30, 2007, or fiscal 2007. The net losses for the period ending May 21, 2009 and the fiscal year ending September 30, 2008 resulted primarily from severe deterioration in the Failed Bank's asset quality and the resultant reduction in net interest income, increase in the provision for loan losses, and impairment charges related to investment securities, OREO and mortgage servicing rights.

Net Interest Income

The following table presents, for the periods indicated, information about: (i) average balances, the total dollar amount of interest income from earning assets and the resultant average yields; (ii) average balances, the total dollar amount of interest expense on interest bearing liabilities and the resultant average rates; (iii) net interest income; (iv) the interest rate spread; and (v) the net interest margin. Average balance information is based on daily average balances for the periods indicated. Nonaccrual and restructured loans are included in the average balances presented in this table; however, interest income foregone on nonaccrual loans is not included. Yields have been calculated on a pre-tax basis *(dollars in thousands)*:

	Period from October 1, 2008 to May 21, 2009			Fiscal Years Ended September 30, 2008			2007		
	Average Balance	Interest	Yield/ Rate(1)	Average Balance	Interest	Yield/ Rate	Average Balance	Interest	Yield/ Rate
Assets:									
Interest earning assets:									
Investment securities available for sale	$ 88,655	$ 1,685	2.97%	$ 141,935	$ 7,417	5.23%	$ 221,919	$ 10,614	4.78%
Mortgage-backed securities	576,131	20,722	5.63%	780,279	43,017	5.51%	1,068,811	50,711	4.74%
Total investment securities available for sale	664,786	22,407	5.28%	922,214	50,434	5.47%	1,290,730	61,325	4.75%
Other interest earning assets	1,325,075	3,667	0.43%	630,204	21,856	3.47%	339,315	19,711	5.81%
Loans receivable	11,596,788	312,994	4.22%	12,564,903	762,170	6.07%	12,133,858	876,861	7.23%
Total interest earning assets	13,586,649	339,068	3.91%	14,117,321	834,460	5.91%	13,763,903	957,897	6.96%
Allowance for loan losses	(905,440)			(184,884)			(41,510)		
Noninterest earning assets	869,381			510,000			372,661		
Total assets	$ 13,550,590			$ 14,442,437			$ 14,095,054		
Liabilities and Equity:									
Interest bearing liabilities:									
Interest bearing deposits:									
Interest bearing demand	$ 164,669	$ 895	0.85%	$ 199,942	$ 2,145	1.07%	$ 232,451	$ 3,858	1.66%
Savings and money market accounts	1,485,455	28,009	2.95%	1,873,728	67,600	3.61%	1,736,947	79,588	4.58%
Time deposits	6,611,919	170,666	4.04%	4,929,198	223,110	4.53%	4,325,561	218,889	5.06%
Total interest bearing deposits	8,262,043	199,570	3.78%	7,002,868	292,855	4.18%	6,294,959	302,335	4.80%
Borrowings:									
FHLB advances	4,965,251	133,764	4.22%	5,605,211	259,000	4.62%	5,617,069	280,839	5.00%
Repurchase agreements	22,732	58	0.40%	124,564	3,739	3.00%	407,962	21,384	5.24%
Total interest bearing liabilities	13,250,026	333,392	3.94%	12,732,643	555,594	4.36%	12,319,990	604,558	4.91%
Non-interest bearing demand deposits	282,215			441,570			503,353		
Other non-interest bearing liabilities	113,006			130,225			180,993		
Total liabilities	13,645,247			13,304,438			13,004,336		
Equity	(94,657)			1,137,999			1,090,718		
Total liabilities and equity	$ 13,550,590			$ 14,442,437			$ 14,095,054		
Net interest income		$ 5,676			$ 278,866			$ 353,339	
Interest rate spread			(0.03)%			1.55%			2.05%
Net interest margin			0.06%			1.98%			2.57%

(1) Annualized.

Increases and decreases in interest income and interest expense result from changes in average balances (volume) of interest earning assets and liabilities, as well as changes in average interest rates.

The comparison of total interest income and total interest expense for the period ending May 21, 2009 to the fiscal year ending September 30, 2008 is also impacted by the different number of days in the comparative periods. The following table shows the effect that these factors had on the interest earned on the interest earning assets and the interest incurred on the interest bearing liabilities for the periods indicated. The effect of changes in volume is determined by multiplying the change in volume by the previous period's average rate. Similarly, the effect of rate changes is calculated by multiplying the change in average rate by the previous period's volume. Changes applicable to both volume and rate have been allocated to volume *(dollars in thousands)*:

	Period from October 1, 2008 to May 21, 2009 Compared to the Fiscal Year Ended September 30, 2008 Increase (Decrease) Due To				Fiscal Year Ended September 30, 2008 Compared to the Fiscal Year Ended September 30, 2007 Increase (Decrease) Due To		
	Changes in Volume	Changes in Rate	Change due to Number of Days	Total Increase (Decrease)	Changes in Volume	Changes in Rate	Total Increase (Decrease)
Interest Income Attributable to							
Investment securities available for sale	$ (1,002)	$ (2,049)	$ (2,681)	$ (5,732)	$ (4,180)	$ 983	$ (3,197)
Mortgage-backed securities	(7,368)	598	(15,525)	(22,295)	(15,907)	8,213	(7,694)
Total investment securities available for sale	(8,370)	(1,451)	(18,206)	(28,027)	(20,087)	9,196	(10,891)
Other interest earning assets	1,949	(12,230)	(7,908)	(18,189)	10,088	(7,943)	2,145
Loans receivable	(25,250)	(148,510)	(275,416)	(449,176)	26,147	(140,838)	(114,691)
Total interest earning assets	(31,671)	(162,191)	(301,530)	(495,392)	16,148	(139,585)	(123,437)
Interest Expense Attributable to							
Interest bearing demand deposits	$ (196)	$ (281)	$ (773)	$ (1,250)	$ (349)	$ (1,364)	$ (1,713)
Savings and money market deposit accounts	(7,235)	(7,894)	(24,462)	(39,591)	4,935	(16,923)	(11,988)
Time deposits	43,727	(15,418)	(80,753)	(52,444)	27,322	(23,101)	4,221
Total interest bearing deposits	36,296	(23,593)	(105,988)	(93,285)	31,908	(41,388)	(9,480)
FHLB advances	(17,272)	(14,312)	(93,652)	(125,236)	(548)	(21,291)	(21,839)
Repurchase agreements	(262)	(2,067)	(1,352)	(3,681)	(8,507)	(9,138)	(17,645)
Total interest bearing liabilities	18,762	(39,972)	(200,992)	(222,202)	22,853	(71,817)	(48,964)
Decrease in net interest income	$ (50,433)	$ (122,219)	$ (100,538)	$ (273,190)	$ (6,705)	$ (67,768)	$ (74,473)

Period from October 1, 2008 through May 21, 2009 compared to the fiscal year ending September 30, 2008

Net interest income was $5.7 million for the period ended May 21, 2009 as compared to $278.9 million for the fiscal year ended September 30, 2008, for a decline of $273.2 million. The decline in net interest income was comprised of a decline in interest income of $495.4 million and a decline in interest expense of $222.2 million. On an annualized basis, net interest income for the period from October 1, 2008 through May 21, 2009 decreased by $270.0 million or 96.8% as compared with the year ending September 30, 2008. The decrease in net interest income was comprised of a decline in annualized interest income of $303.3 million partially offset by a decline in annualized interest expense of $33.3 million.

The decrease in interest income resulted primarily from an increase in non-performing assets, evidenced by a decrease in the average yield on loans of 185 basis points from 6.07% for the year ending September 30, 2008 to 4.22% for the period ending May 21, 2009. Nonaccrual loans grew from $1.2 billion at September 30, 2008 to $2.4 billion at May 21, 2009. Decreases in the average volume of both investment securities and loans outstanding and a decline in market rates on variable rate investment securities also contributed to the decline in interest income. The decline in average volume of loans and investment securities resulted from the reduction in the scope of the Failed Bank's residential mortgage business and the size of the balance sheet in response to capital requirements and growth restrictions imposed by the OTS.

The decline in interest expense resulted from lower rates paid on both deposits and FHLB advances, reflective of continued repricing of liabilities at lower market rates, partly offset by an increase in the average volume of outstanding interest bearing liabilities.

The net interest margin decreased by 192 basis points from 1.98% for the fiscal year ending September 30, 2008 to 0.06% for the period ending May 21, 2009 while the interest rate spread declined by 158 basis points from 1.55% to (0.03)%. The primary driver of the decline in net interest margin and interest rate spread was the increase in non-performing assets.

Fiscal year ending September 30, 2008 compared to fiscal year ending September 30, 2007

Net interest income decreased to $278.9 million for the fiscal year ending September 30, 2008, representing a decline of $74.4 million, or 21.1%, as compared to the $353.3 million reported for the fiscal year ending September 30, 2007. The decline in net interest income was comprised of a decrease in interest income of $123.4 million offset by a decline in interest expense of $49.0 million.

The decline in interest income was mainly attributable to the decrease in the average yield on loans of 116 basis points offset in part by a $353.4 million increase in the average volume of interest earning assets. The average yield on loans was negatively impacted by the increase in nonaccrual loans and declining market interest rates. Nonaccrual loans increased to $1.2 billion at September 30, 2008 from $0.2 billion at September 30, 2007. The higher level of nonaccrual loans resulted in an adverse impact of approximately 60 basis points on the net interest margin. Another factor affecting the decrease in the average yield on loans was a decrease in prepayment fees from $22.2 million during the year ending September 30, 2007 to $7.6 million during the year ending September 30, 2008, offset in part by accelerated amortization of net deferred costs related to prepayments.

The decline in interest expense is attributable to the repricing of liabilities at lower prevailing interest rates, partially offset by an increase in the average balance of deposits, particularly time deposits.

The net interest margin decreased to 1.98% for fiscal 2008 as compared to 2.57% for fiscal 2007, a decrease of 59 basis points. The overall yield on interest earning assets declined by 105 basis points while the average rate paid on interest bearing liabilities declined by 55 basis points, for a 50 basis point decrease in the interest rate spread. The declines in the net interest margin and interest rate spread were mainly attributable to the decrease in the average yield on loans offset in part by an increase in the average volume of interest earning assets and a decline in the cost of interest bearing liabilities.

Interest income on loans for the pre-Acquisition periods included deferred interest on payment option loans, or loans for which contractual periodic payments did not cover the amount of contractual interest earned. The uncollected interest on these loans was added to the principal balance of the loans (negative amortization). Interest income included deferred interest of $28.2 million for the period ending May 21, 2009, $161.7 million for the fiscal year ending September 30, 2008 and $166.7 million for the fiscal year ending September 30, 2007. Total deferred interest included in outstanding loan balances resulting from negative amortization amounted to $265.3 million at May 21, 2009, $374.5 million at September 30, 2008 and $270.2 million at September 30, 2007.

Provision for Loan Losses

The provision for loan losses recorded by the Failed Bank was $919.1 million, $856.4 million and $31.5 million for the period from October 1, 2008 through May 21, 2009, the fiscal year ending September 30, 2008 and the fiscal year ending September 30, 2007, respectively. The increases in the provision for the period ending May 21, 2009 and the fiscal year ending September 30, 2008 largely reflected severe deterioration in the residential housing market, particularly in Florida and California. Total non-performing loans were $2.7 billion, or 24.6%, of total loans at May 21, 2009 and $1.4 billion, or 12.0%, of total loans at September 30, 2008 as compared to $201.1 million, or 1.6%, of total loans at September 30, 2007. Net charge-offs totaled $407.9 million for the period from October 1, 2008 to May 21, 2009, $199.1 million for the fiscal year ending September 30, 2008 and $9.3 million for the fiscal year ending September 30, 2007. The majority of charge-offs were concentrated in the 1-4 single family residential portfolio.

Non-Interest Income (Loss)

The Failed Bank reported a non-interest loss of $81.4 million for the period from October 1, 2008 to May 21, 2009, a non-interest loss of $128.9 million for the fiscal year ending September 30, 2008 and non-interest income of $28.4 million for the fiscal year ending September 30, 2007.

The following table presents a comparison of the categories of non-interest income (loss) for the periods indicated *(dollars in thousands)*:

	Period from October 1, 2008 to May 21, 2009	Fiscal Years Ended September 30, 2008	Fiscal Years Ended September 30, 2007
Service charges on deposits and other fee income	$ 5,357	$ 9,712	$ 8,736
Service charges on loans	2,072	4,630	5,315
Loan servicing fees	2,543	5,601	6,998
Impairment and amortization of mortgage servicing rights	(26,595)	(8,434)	(4,622)
Net gain (loss) on sale of investment securities	39	(1,465)	(564)
Net gain (loss) on sale and writedown of loans held for sale	196	(9,784)	9,777
Other-than-temporary impairment of securities available for sale	(68,609)	(142,035)	(5,042)
Fees received from BankUnited Financial Corporation	1,824	5,193	1,120
Other non-interest income	1,742	7,723	6,649
Total non-interest income (loss)	$ (81,431)	$ (128,859)	$ 28,367

Period from October 1, 2008 to May 21, 2009 compared to the fiscal year ending September 30, 2008

The non-interest loss for the period from October 1, 2008 to May 21, 2009 was largely driven by additional impairment charges on securities available for sale and mortgage servicing rights. See the section entitled "—Investment Securities Available for Sale" below for further discussion of impairment charges related to investment securities. The impairment of mortgage servicing assets resulted primarily from termination of the Failed Bank's rights to service loans for the Federal National Mortgage Association (Fannie Mae), or FNMA, and the Federal Home Loan Mortgage Corporation (Freddie Mac), or FHLMC, during the period ending May 21, 2009. A continued decline in secondary market mortgage activity led to a reduced gain (loss) on sale of loans for the period ending May 21, 2009. The reduction in other non-interest income resulted primarily from an adjustment to outstanding mortgage insurance claims receivable.

Fiscal year ending September 30, 2008 compared to the fiscal year ending September 30, 2007

During the fiscal year ending September 30, 2008, the Failed Bank recorded other-than-temporary impairment charges of $142.0 million relating to investment securities compared to $5.0 million for the fiscal year ending September 30, 2007. See the section entitled "Investment Securities Available for Sale" below for further discussion of these impairment charges.

Due to a reduction in the volume of loans serviced for others, impairment charges of $3.0 million and $1.3 million were recorded in fiscal 2008 and fiscal 2007, respectively, related to mortgage servicing rights.

The net loss on sale and writedown of loans held for sale for the year ending September 30, 2008 includes a $3.8 million adjustment at the lower of cost or market to the carrying amount of loans held for sale that were subsequently transferred to the loans held for investment portfolio. The remaining loss on sale of loans resulted from declining demand in the secondary market for the Failed Bank's residential loan portfolio. $381.0 million of residential loans were sold in fiscal 2008, as compared to $949.8 million in fiscal 2007.

Non-Interest Expense

The following table presents the components of non-interest expense for the periods indicated *(dollars in thousands)*:

	Period from October 1, 2008 to May 21, 2009	Fiscal Years Ended September 30,	
		2008	2007
Employee compensation and benefits	$ 51,695	$ 88,893	$ 87,958
Occupancy and equipment	25,247	46,743	41,187
OREO expense	34,697	17,901	594
Impairment of OREO	38,742	22,749	14
Professional fees	10,062	8,910	5,631
Foreclosure expense	4,907	6,007	535
Deposit insurance expense	38,299	6,147	3,119
Telecommunications and data processing	9,573	13,536	13,019
Other non-interest expense	25,181	35,594	33,577
Total non-interest expense	$ 238,403	$ 246,480	$ 185,634

Non-interest expense as a percentage of average assets increased to 2.8% (annualized) for the period ended May 21, 2009 from 1.7% for the fiscal year ending September 30, 2008 and 1.3% for the fiscal year ending September 30, 2007. The primary drivers of increasing non-interest expense over this period were increased impairment of OREO, higher OREO expense, foreclosure expense and the deposit insurance expense.

Period from October 1, 2008 to May 21, 2009 compared to the fiscal year ending September 30, 2008

On an annualized basis, employee compensation and benefits as a percentage of average assets remained consistent over the period ending May 21, 2009 and the fiscal year ending September 30, 2008. The total decline in employee compensation and benefits expense of $7.9 million or approximately 9% on an annualized basis was primarily a result of an approximate 70% reduction in the Failed Bank's wholesale residential lending staff and other reductions in the workforce.

OREO expense, foreclosure expense and impairment of OREO continued to increase during the period ending May 21, 2009 due to further deterioration in home prices and the increasing volume of foreclosures. As of May 21, 2009, there were slightly over 6,000 units in the foreclosure process as compared to approximately 3,000 units at September 30, 2008.

Deposit insurance expense was significantly impacted by additional assessments by the FDIC during the period ending May 21, 2009.

Fiscal year ending September 30, 2008 compared to the fiscal year ending September 30, 2007

Compensation and benefits as a percentage of average assets remained consistent over the fiscal years ending September 30, 2008 and 2007.

Occupancy and equipment expense for the fiscal year ended September 30, 2008 was impacted by the substantial curtailment of the Failed Bank's wholesale residential mortgage business, resulting in restructuring costs of $2.9 million. Depreciation expense for the fiscal year ending September 30, 2008 as compared to the fiscal year ending September 30, 2007 also increased, primarily a result of $1.1 million in additional software depreciation associated with the acquisition of branch operations, information security and systems integration software.

OREO and foreclosure expenses and impairment of OREO began to increase markedly during the fiscal year ending September 30, 2008 due to deterioration in home prices, driving an increasing volume of foreclosures.

The primary components of other non-interest expense for the period ended May 21, 2009 and the fiscal years ended September 30, 2007 and 2008 were loan related expenses, advertising and promotion, the cost of regulatory examinations, and general office expense.

Income Taxes

For the period ending May 21, 2009 and the fiscal years ending September 30, 2008 and 2007, the Failed Bank recorded an income tax provision (benefit) of $0.0, $(94.5) million and $55.1 million, respectively. The Failed Bank's effective tax rate for the period ending May 21, 2009 and the fiscal years ending September 30, 2008 and 2007 was 0.1%, 9.9% and 33.4%, respectively. The effective tax rate varied from the federal statutory tax rate of 35.0% primarily due to state income taxes and the valuation allowance established related to deferred tax assets. The Failed Bank had net deferred tax assets, prior to any valuation allowance, of $730.0 million and $338.1 million at May 21, 2009 and September 30 2008, respectively.

Balance Sheet Analysis for the Pre-Acquisition Periods

Average total assets of the Failed Bank declined by $891.8 million to $13.6 billion for the period ending May 21, 2009 from $14.4 billion for the fiscal year ended September 30, 2008. This decline related primarily to the decline in average loans, which was fueled by increased impairments and foreclosures during the period combined with normal paydowns and a curtailment in lending activity. Average total liabilities increased by $340.8 million to $13.6 billion for the period ending May 21, 2009 from $13.3 billion for the fiscal year ending September 30, 2008. Average deposits increased by $1.1 billion, offset by a $741.8 million decline in average outstanding borrowings.

Average total assets increased by $347.4 million for the fiscal year ended September 30, 2008 as compared to the fiscal year ended September 30, 2007, largely reflective of an increase in average loans. Average total liabilities increased by $300.1 million, primarily attributable to a $646.1 million increase in deposits, offset by a decline in average outstanding borrowings of $295.3 million.

Table of Contents

Investment Securities Available for Sale

The following table shows the amortized cost and fair value of the investment securities as of the dates indicated. All of the investment securities were classified available for sale *(dollars in thousands)*:

	At May 21, 2009		At September 30, 2008		At September 30, 2007	
	Amortized Cost	Fair Value	Amortized Cost	Fair Value	Amortized Cost	Fair Value
U.S. Treasury securities	$ 35,167	$ 35,423	$ 45,567	$ 45,726	$ 25,000	$ 24,977
U.S. Government agency and sponsored enterprise residential mortgage-backed securities	224,587	227,879	256,392	255,483	214,198	210,286
Other residential collateralized mortgage obligations	3,371	1,785	3,495	3,463	4,284	4,266
Residential mortgage pass-through certificates	323,829	230,091	430,711	394,321	714,189	701,671
Mutual funds and preferred stocks	18,241	18,094	24,886	24,482	109,929	107,158
State and Municipal obligations	22,671	22,696	22,220	22,260	47,314	46,618
Other debt securities	4,317	2,976	10,752	9,490	4,000	3,689
Total investment securities available for sale	$ 632,183	$ 538,944	$ 794,023	$ 755,225	$ 1,118,914	$ 1,098,665

Investment securities decreased by $216.3 million from September 30, 2008 to May 21, 2009 primarily due to impairment charges of $68.6 million coupled with paydowns and sales of $106.3 million, offset by purchases of $10.4 million. Investment securities decreased by $343.4 million from $1.1 billion at September 30, 2007 to $755.2 million at September 30, 2008. This decrease resulted primarily from impairment charges of $142.0 million, coupled with paydowns and sales of $395.1 million offset by purchases of $213.4 million.

During the period from October 1, 2008 through May 21, 2009, the Failed Bank recognized other-than-temporary impairment charges of $68.6 million, consisting of $39.4 million related to subordinate tranches of the Failed Bank's 2005 mortgage securitization (the "2005 securities"), $16.1 million related to private-label collateralized mortgage obligations ("CMOs"), $6.4 million related to trust preferred securities, $1.5 million related to FNMA and FHLMC preferred stock and $5.2 million related to a mutual fund. The majority of the impairment charges recorded during the period ending May 21, 2009 represented further deterioration in value of securities for which other-than-temporary impairment charges were initially recorded in fiscal 2008 as discussed below. Additional impairment of the 2005 securities and private-label CMOs was reflective of further deterioration in projected cash flows from the underlying collateral resulting from increasing frequency and severity of defaults. Recognition of other-than-temporary impairment of pooled trust preferred securities was based on a third party discounted cash flow analysis incorporating proprietary collateral default rate assumptions that indicated less than full recovery of principal, as well as consideration of the severity and duration of impairment. Other-than-temporary impairment of FNMA and FHLMC preferred stock was based on further deterioration in the market price of these securities coupled with lack of evidence of improvement in the financial condition of the issuers. Cash flow analysis incorporating updated underlying collateral default assumptions led to further other-than-temporary impairment of the mutual fund investment.

During the fiscal year ending September 30, 2008, the Failed Bank recorded other-than-temporary impairment charges totaling $142.0 million, including $89.3 million relating to the 2005 securities, $5.8 million relating to private-label CMOs, $37.8 million relating to FNMA and FHLMC preferred stocks, $8.1 million relating to a mutual fund, and $1.0 million relating to other debt securities. The determination that unrealized losses on the 2005 securities were other-than-temporary was based on an analysis of discounted expected future cash flows using third party developed models that incorporated proprietary behavioral assumptions about collateral default rates, loss severity levels and voluntary annual prepayment rates. Cash flow projections for the underlying mortgages, given current loss trends, indicated that projected losses could completely erode the value of certain subordinate classes and significantly erode the value of several other subordinate classes of the 2005 securitization, leading to the determination that these securities were other-than-temporarily impaired. Management's determination that certain other private-label CMOs were other-than-temporarily impaired was also based on the analysis of discounted expected future cash flows. The magnitude and duration of unrealized losses was considered in these determinations as well. As a result of significant declines in value of FNMA and FHLMC preferred stock after these entities were placed into conservatorship on September 7, 2008, the cost basis of these investments was well in excess of the market price of the stock at September 30, 2008. The determination that impairment of these securities was other-than-temporary was based on the severity of impairment and uncertainty about the potential for market recovery of the issuers. The mutual fund determined to be other-than-temporarily impaired was a fund that invested primarily in mortgage related investments, the majority of which were subordinate securities with increasing levels of underlying collateral delinquencies and defaults. The severity of impairment combined with the high probability of significant principal loss of the underlying collateral led to the conclusion that the security was other-than-temporarily impaired. The other debt securities consisted of pooled trust preferred securities, collateralized by subordinated debt issued by financial institutions. Management's determination that these securities were other-than-temporarily impaired was based on an analysis of projected collateral cash flows.

During the fiscal year ending September 30, 2007, the Failed Bank recognized other-than-temporary impairment charges of $5.0 million, consisting of $1.3 million on FNMA preferred stock and $3.7 million on two mutual fund investments. Other-than-temporary impairment of FNMA preferred stock was recognized primarily due to the severity and duration of the impairment and deteriorating financial condition of the issuer. Other-than-temporary impairment of the mutual fund investments was attributable to the severity and duration of impairment and deterioration in projected cash flows from the underlying collateral.

Loan Portfolio

The following table presents the composition of the loan portfolio as of the dates indicated *(dollars in thousands)*:

	At May 21, 2009		At September 30,							
			2008		2007		2006		2005	
	Balance	%	Balance	%	Balance	%	Balance	%	Balance	%
Real estate loans:										
1-4 single family residential	$ 8,993,077	83.1%	$ 9,916,696	84.4%	$ 10,693,832	86.3%	$ 9,661,913	85.9%	$ 6,678,322	84.2%
Home equity loans and lines of credit	505,642	4.7%	486,467	4.1%	420,386	3.4%	355,822	3.2%	257,789	3.3%
Multi-family	129,481	1.2%	144,324	1.2%	120,058	1.0%	85,544	0.8%	111,444	1.4%
Commercial real estate	594,877	5.5%	600,261	5.1%	496,556	4.0%	413,637	3.7%	344,503	4.3%
Construction	187,333	1.7%	171,213	1.5%	146,557	1.2%	174,466	1.5%	87,113	1.1%
Land	219,736	2.0%	224,723	1.9%	303,294	2.5%	337,023	3.0%	235,829	3.0%
Total real estate loans	10,630,146	98.2%	11,543,684	98.2%	12,180,683	98.4%	11,028,405	98.1%	7,715,000	97.3%
Other loans:										
Commercial	181,484	1.7%	197,985	1.7%	187,951	1.5%	194,269	1.7%	199,344	2.5%
Consumer	12,179	0.1%	12,740	0.1%	16,228	0.1%	17,809	0.2%	19,415	0.2%
Total other loans	193,663	1.8%	210,725	1.8%	204,179	1.6%	212,078	1.9%	218,759	2.7%
Total loans	10,823,809	100.0%	11,754,409	100.0%	12,384,862	100.0%	11,240,483	100.0%	7,933,759	100.0%
Unearned discount, premiums and deferred costs, net	190,406		210,875		235,454		196,601		119,588	
Loans held in portfolio, net of discount premiums and deferred costs	11,014,215		11,965,284		12,620,316		11,437,084		8,053,347	
Allowance for loan losses	(1,227,173)		(715,917)		(58,623)		(36,378)		(25,755)	
Total loans held in portfolio, net	$ 9,787,042		$ 11,249,367		$ 12,561,693		$ 11,400,706		$ 8,027,592	
Loans held for sale	$ 788		$ 10,050		$ 174,868		$ 9,542		$ 12,196	

Net loans held in portfolio decreased to $9.8 billion at May 21, 2009 from $11.2 billion at September 30, 2008 and $12.6 billion at September 30, 2007. This decrease was driven by the decline in the Failed Bank's 1-4 single family residential portfolio as discussed below.

Residential Mortgages

1-4 single family residential loans amounted to $9.0 billion or 83.1% of total loans at May 21, 2009, compared to $9.9 billion or 84.4% of total loans at September 30, 2008 and $10.7 billion or 86.3% of total loans at September 30, 2007. Beginning in fiscal 2008, the Failed Bank curtailed growth of the 1-4 single family residential portfolio. Total originations of residential loans were $22.8 million for the period ending May 21, 2009, $1.6 billion for the year ending September 30, 2008 and $4.0 billion for the year ending September 30, 2007.

The Failed Bank also terminated its option ARM and reduced documentation loan programs during fiscal 2008. Originations of option ARM loans totaled $187.0 million for fiscal 2008 and $3.1 billion for fiscal 2007, representing 11.9% and 77.5%, respectively, of total residential loan originations. Option ARM loans generally started with a below market incentive interest rate that adjusted to an applicable index rate plus a defined margin after a specified period of time. Each month, the borrower had the option to make one of several payments, including a minimum payment that may not have covered the interest accrued on the loan for the month, resulting in the deferred interest being added to the loan balance. The contractual terms of Option ARM loans limited the amount of the increase in the loan balance to 115% of the original balance. At the earlier of 5 years from origination or reaching the 115% cap, the loan was contractually reset to be repaid on a fully amortizing basis over its remaining term. Some residential mortgage loans were also originated under "reduced-doc" and "no-doc" programs requiring reduced or no verification of the borrowers' income, employment and assets.

The following table presents a breakdown of the 1-4 single family residential mortgage portfolio categorized between fixed rate, option adjustable rate mortgages and non-option adjustable rate mortgages at the dates indicated *(dollars in thousands)*:

	At May 21, 2009		At September 30, 2008		At September 30, 2007	
	Total Loans	% of Total	Total Loans	% of Total	Total Loans	% of Total
1-4 single family residential loans						
Fixed rate loans	$ 1,774,598	19.7%	$ 1,636,063	16.5%	$ 1,574,004	14.7%
Adjustable rate loans						
Option adjustable rate mortgages(1)	4,685,090	52.1%	6,714,460	67.7%	7,596,855	71.1%
Non-option adjustable rate mortgages	2,533,389	28.2%	1,566,173	15.8%	1,522,973	14.2%
Total	$ 8,993,077	100.0%	$ 9,916,696	100.0%	$ 10,693,832	100.0%

(1) Payment option loans with balances of $3.8 billion, $5.9 billion and $6.7 billion representing 78.9%, 88.2% and 89% of the payment option portfolio, respectively, were negatively amortizing at May 21, 2009, September 30, 2008 and September 30, 2007, respectively. As of May 21, 2009, September 30, 2008 and September 30, 2007, negative amortization included in the payment option portfolio totaled $265.3 million or 5.6% of the portfolio, $374.5 million or 5.6% of the portfolio and $270.2 million or 3.6% of the portfolio, respectively.

A breakdown of 1-4 single family residential loans by state as of the dates indicated follows *(dollars in millions):*

	At May 21, 2009		At September 30, 2008		At September 30, 2007	
	Amount	%	Amount	%	Amount	%
Florida	$ 5,076	56.4%	$ 5,508	55.5%	$ 5,966	55.8%
California	721	8.0%	823	8.3%	851	7.9%
Illinois	501	5.6%	542	5.5%	599	5.6%
Arizona	500	5.6%	611	6.2%	661	6.2%
New Jersey	480	5.3%	518	5.2%	547	5.1%
Virginia	348	3.9%	418	4.2%	471	4.4%
States with less than 4%	1,367	15.2%	1,497	15.1%	1,599	15.0%
Total	$ 8,993	100.0%	$ 9,917	100.0%	$ 10,694	100.0%

Asset Quality

Impaired Loans and Non-performing Assets

The following table summarizes the Company's impaired loans, including troubled debt restructurings, and other non-performing assets as of the dates indicated *(dollars in thousands):*

	At May 21, 2009	At September 30, 2008	2007	2006	2005
Nonaccrual loans					
Real estate loans:					
1-4 single family residential					
Payment option	$ 1,674,325	$ 968,647	$ 149,749	$ 11,757	$ 3,286
Non-payment option	453,743	153,125	22,894	5,826	3,746
Total 1-4 single family residential	2,128,068	1,121,772	172,643	17,583	7,032
Home equity loans and lines of credit	27,263	8,866	2,251	58	74
Multi-family	21,544	10,028	—	—	—
Commercial real estate	2,888	—	5,593	—	—
Construction	78,403	58,549	—	—	—
Land	94,493	38,465	—	—	—
Total real estate loans	2,352,659	1,237,680	180,487	17,641	7,106
Other loans:					
Commercial	763	65	232	3,073	1,285
Consumer	23	30	91	26	—
Total other loans	786	95	323	3,099	1,285
Total nonaccrual loans	2,353,445	1,237,775	180,810	20,740	8,391
Accruing loans 90 days or more past due	—	71	493	—	—
Other impaired loans still accruing	353,903	195,073	19,771	—	—
Total non-performing loans	2,707,348	1,432,919	201,074	20,740	8,391
OREO	177,679	135,324	27,732	729	542
Total non-performing assets	2,885,027	1,568,243	228,806	21,469	8,933
Troubled debt restructurings in compliance with modified terms(1)	651,236	68,033	—	—	—
Total impaired loans and non-performing assets	$ 3,536,263	$ 1,636,276	$ 228,806	$ 21,469	$ 8,933
Non-performing loans to total loans	24.58%	11.98%	1.59%	0.18%	0.10%
Non-performing assets to total assets	23.53%	11.13%	1.51%	0.16%	0.08%
Non-performing loans and troubled debt restructurings to total loans	30.49%	12.54%	1.59%	0.18%	0.10%
Allowance for loan losses to total loans	11.14%	5.98%	0.46%	0.32%	0.32%
Allowance for loan losses to non-performing loans	45.33%	49.96%	29.15%	175.40%	306.94%

(1) Consists of only 1-4 single family residential loans.

The increase in total non-performing assets from $228.8 million at September 30, 2007 to $1.6 billion at September 30, 2008 and $2.9 billion at May 21, 2009 resulted directly from the economic downturn, both nationally and in the Failed Bank's primary geographic markets, particularly the precipitous decline in housing prices. Non-performing loans were concentrated in the option ARM portfolio, and a significant percentage of the non-performing loans were those with higher LTV ratios, originated during periods of historically high housing prices.

Interest income foregone on nonaccrual loans amounted to $88.9 million for the period ending May 21, 2009 as compared to $85.9 million for the fiscal year ending September 30, 2008 and $10.0 million for fiscal 2007. Interest income reversed due to loans being placed on nonaccrual status amounted to $20.1 million for the period ending May 21, 2009 as compared to $39.3 million for the fiscal year ended September 30, 2008 and $8.1 million for the fiscal year ended September 30, 2007.

Nonaccrual loans include troubled debt restructured loans of $177.3 million, and $65.7 million at May 21, 2009 and September 30, 2008, respectively. There were no troubled debt restructured loans included in nonaccrual loans at September 30, 2007, 2006 or 2005. Additional interest income that would have been recognized on troubled debt restructured loans not on nonaccrual status if they had been current based on their original contractual terms was $3.3 million and $0.5 million for the period ended May 21, 2009 and the fiscal year ending September 30, 2008, respectively. Interest income recognized on these loans for the period ended May 21, 2009 and the fiscal year ended September 30, 2008 was $14.6 million and $2.9 million, respectively.

Analysis of the Allowance for Loan Losses

The following table provides an analysis of the allowance for loan losses and net charge-offs for the periods indicated *(dollars in thousands)*:

	Period from October 1, 2008 to May 21, 2009	Fiscal Years Ended September 30,			
		2008	2007	2006	2005
Allowance for loan losses, beginning of period	$ 715,917	$ 58,623	$ 36,378	$ 25,755	$ 24,039
Provision for loan losses	919,139	856,374	31,500	10,400	3,840
Charge-offs:					
1-4 single family residential	(434,391)	(211,323)	(5,347)	(130)	(972)
Home equity loans and lines of credit	(12,676)	(9,396)	(620)	(241)	(572)
Multi-family	—	—	—	—	—
Commercial real estate	—	—	—	—	—
Construction	—	(1,218)	—	—	—
Land	—	(6,647)	(2,651)	—	—
Commercial	(879)	(1,468)	(2,425)	(902)	(1,527)
Consumer	(1,064)	(257)	(7)	—	(118)
Total charge-offs	(449,010)	(230,309)	(11,050)	(1,273)	(3,189)
Recoveries:					
1-4 single family residential	40,825	31,079	1,407	—	—
Home equity loans and lines of credit	111	34	73	—	43
Multi-family	—	—	—	—	—
Commercial real estate	—	—	—	—	298
Construction	—	—	—	—	—
Land	—	—	—	—	—
Commercial	189	115	306	1,482	705
Consumer	2	1	9	14	19
Total recoveries	41,127	31,229	1,795	1,496	1,065
Net charge-offs	(407,883)	(199,080)	(9,255)	223	(2,124)
Allowance for loan losses, end of period	$ 1,227,173	$ 715,917	$ 58,623	$ 36,378	$ 25,755
Ratio of net charge-offs to average loans receivable outstanding during the period	5.51%(1)	1.58%	0.08%	0.00%	0.03%

(1) Annualized.

The following table allocates the allowance for loan losses by loan category as of the dates indicated *(dollars in thousands)*:

	At May 21, 2009		At September 30, 2008		2007		2006		2005	
	Amount	%(1)	Amount	%(1)	Amount	%(1)	Amount	%(1)	Amount	%(1)
1-4 single family residential	$ 890,551	83.1%	$ 616,486	84.4%	$ 33,911	86.3%	$ 12,917	85.9%	$ 8,292	84.2%
Home equity loans and lines of credit	41,638	4.7%	16,055	4.1%	6,850	3.4%	3,971	3.2%	2,909	3.3%
Multi-family	1,461	1.2%	836	1.2%	960	1.0%	684	0.8%	891	1.4%
Commercial real estate	186,130	5.5%	891	5.1%	8,092	4.0%	6,316	3.7%	3,076	4.3%
Construction	53,452	1.7%	47,495	1.5%	1,173	1.2%	1,396	1.5%	697	1.1%
Land	47,986	2.0%	30,699	1.9%	2,426	2.5%	2,696	3.0%	1,886	3.0%
Commercial	5,102	1.7%	2,860	1.7%	4,331	1.5%	7,613	1.7%	7,161	2.5%
Consumer	853	0.1%	595	0.1%	880	0.1%	785	0.2%	843	0.2%
Total allowance for loan losses	$ 1,227,173	100.0%	$ 715,917	100.0%	$ 58,623	100.0%	$ 36,378	100.0%	$ 25,755	100.0%

(1) Represents percentage of loans receivable in each category to total loans receivable.

Other Assets

Goodwill and Other Intangible Assets

Goodwill of $28.4 million at May 21, 2009 and at September 30, 2008 arose from previous business combinations entered into by the Failed Bank. Goodwill impairment tests were performed as of May 21, 2009 and as of September 30, 2008. As of May 21, 2009, the carrying value of the reporting unit to which goodwill was assigned was negative, therefore, the first phase of the goodwill impairment test was passed and no impairment of goodwill was recorded. At September 30, 2008, the carrying value of the reporting unit exceeded its estimated fair value, so the first phase of the goodwill impairment test was failed, indicating potential impairment. The second phase of the goodwill impairment test consists of comparing the carrying amount of goodwill to its implied fair value, derived by performing a pro-forma purchase price allocation of the reporting unit's identifiable assets and liabilities as of the impairment testing date, based on their estimated fair values. Based on this comparison, the implied fair value of goodwill exceeded its carrying amount; therefore, no impairment was indicated.

Other Assets

Other assets totaled $212.3 million and $247.1 million at May 21, 2009 and September 30, 2008, respectively. The most significant components of the decrease in other assets from September 30, 2008 to May 21, 2009 were a $25.9 million decline in mortgage servicing rights arising from impairment charges, and a $18.5 million decline in accrued interest receivable attributable primarily to the decline in total loans outstanding and the increase in non-performing loans.

Deposits

The following table presents information about deposits for the periods indicated *(dollars in thousands)*:

	Period from October 1, 2008 to May 21, 2009		Fiscal Years Ended September 30, 2008		Fiscal Years Ended September 30, 2007	
	Average Balance	Average Rate Paid	Average Balance	Average Rate Paid	Average Balance	Average Rate Paid
Demand deposits:						
Non-interest bearing	$ 282,215	—%	$ 441,570	—%	$ 503,353	—%
Interest bearing	164,669	0.85%	199,942	1.07%	232,451	1.66%
Savings and money market accounts	1,485,455	2.95%	1,873,728	3.61%	1,736,947	4.58%
Time deposits	6,611,919	4.04%	4,929,198	4.53%	4,325,561	5.06%
Total deposits	$ 8,544,258	3.66%	$ 7,444,438	3.93%	$ 6,798,312	4.45%

Borrowed Funds

The following table sets forth information regarding the short-term borrowings, consisting of securities sold under agreements to repurchase and federal funds purchased, as of the dates, and for the periods, indicated *(dollars in thousands)*:

	Ending Balance	Weighted-Average Rate	Maximum Amount At Month-End	Yearly Weighted Averages Balance	Yearly Weighted Averages Rate
For the period from October 1, 2008 to May 21, 2009:	$ 1,310	0.00%	$ 48,114	$ 22,732	0.40%
For the fiscal year ended September 30, 2008:	$ 56,930	0.99%	$ 227,218	$ 124,564	3.00%
For the fiscal year ended September 30, 2007:	$ 143,072	4.58%	$ 844,435	$ 407,962	5.24%

Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles and follow general practices within the industry in which we operate. Application of these principles requires management to make complex and subjective estimates and judgments that affect the amounts reported in the consolidated financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under current circumstances. These assumptions form the basis for our judgments about the carrying values of assets and liabilities that are not readily available from independent, objective sources. We evaluate our estimates on an ongoing basis. Use of alternative assumptions may have resulted in significantly different estimates. Actual results may differ from these estimates.

Accounting policies are an integral part of our financial statements. A thorough understanding of these accounting policies is essential when reviewing our reported results of operations and our financial position. We believe that the critical accounting policies and estimates discussed below involve additional management judgment due to the complexity and sensitivity of the methods and assumptions used.

Allowance for Loan Losses

The allowance for loan losses represents management's estimate of probable loan losses inherent in the Company's loan portfolio. Determining the amount of the allowance for loan losses is considered a critical accounting estimate because it requires significant judgment and the use of estimates related to the amount and timing of expected future cash flows on impaired loans, estimated losses based on risk characteristics of loans, and consideration of other qualitative factors, all of which may be susceptible to significant change. "Note 1—Summary of Significant Accounting Policies" of the notes to our audited consolidated financial statements describes the methodology used to determine the allowance for loan losses.

Accounting for Covered Loans

A significant portion of the Company's loans acquired on May 21, 2009 and covered by Loss Sharing Agreements demonstrated evidence of deterioration of credit quality since origination. We refer to these loans as ACI Loans. The accounting for these loans and the related FDIC indemnification asset requires the Company to estimate the timing and amount of cash flow to be collected from these loans and to continually update estimates of the cash flows expected to be collected over the life of the loans. These estimates are considered to be critical accounting estimates because they involve significant judgment and assumptions as to the amount and timing of cash flows to be collected.

Covered 1-4 single family residential loans were placed into homogenous pools at Acquisition and the ongoing credit quality and performance of these loans is monitored on a pool basis. We performed a detailed analysis of the acquired loan portfolio to determine the key loan characteristics influencing performance. We determined key characteristics to include delinquency status, product type, in particular, amortizing as opposed to option ARM products, current indexed LTV ratio and original FICO score. At Acquisition, the fair value of the pools was measured based on the expected cash flows to be derived from each pool. Initial cash flow expectations incorporated significant assumptions regarding prepayment rates, frequency of default and loss severity. For ACI pools, the difference between total contractual payments due and the cash flows expected to be received at Acquisition was recognized as non-accretable difference. The excess of expected cash flows over the recorded fair value of each ACI pool at Acquisition is referred to as the accretable yield and is being recognized as interest income over the life of each pool.

We monitor the pools quarterly by updating our expected cash flows to determine whether any material changes have occurred in expected cash flows that would be indicative of impairment or necessitate reclassification between non-accretable difference and accretable yield. The analysis of expected cash flows for residential ACI pools incorporates updated pool level expected prepayment rates, default rates, and delinquency levels, and loan level loss severity given default assumptions. Prepayment, delinquency and default curves used for this purpose are derived from roll rates generated from the historical performance of the ACI residential loan portfolio observed over the immediately preceding four quarters. Generally, improvements in expected cash flows less than 2% of the UPB of a pool are not recorded. This initial threshold may be revised as we gain greater experience. Generally, commercial and commercial real estate loans are monitored individually due to their size and other unique characteristics. The expected cash flows are estimated based on factors which include loan grades established in the Bank's ongoing credit review program, likelihood of default based on observations of specific loans during the credit review process as well as applicable industry data, loss severity based on updated evaluation of cash flow from available collateral, and the contractual terms of the underlying loan agreement.

Other Real Estate Owned

Assets acquired through, or in lieu of, loan foreclosure are held for sale and are initially recorded at the fair value of the collateral at the date of foreclosure based on estimates, including some obtained from third parties, less estimated costs to sell, establishing a new cost basis. Subsequent to foreclosure, valuations are periodically performed by management, and the assets are carried at the lower of cost or fair value, less estimated costs to sell. Significant property improvements that enhance the salability of the property are capitalized to the extent that the carrying value does not exceed estimated realizable value. Legal fees, maintenance and other direct costs of foreclosed properties are expensed as incurred. Given the large number of properties included in OREO, and the judgment involved in estimating fair value of the properties, accounting for OREO is regarded as a critical accounting policy.

Profits Interest Units

The LLC has issued equity awards in the form of PIUs to certain members of management. Compensation expense related to PIU awards is based on the fair value of the underlying unit on the date of the consolidated financial statements. Fair value of PIUs are estimated using a Black-Scholes option pricing model, which requires assumptions as to expected volatility, dividends, terms, and risk free rates. Determining the fair value of the PIUs is considered a critical accounting estimate because it requires significant judgments and the determination of fair value may be material to our consolidated financial statements. See "Note 1—Summary of Significant Accounting Policies" and "Note 15—Due to BUFH for Equity Awards Classified as Liabilities" of the notes to our audited consolidated financial statements for a description of PIUs.

Deferred Tax Asset

Deferred income tax assets and liabilities result from temporary differences between assets and liabilities measured for financial reporting purposes and for income tax return purposes. Realization of tax benefits for deductible temporary differences depends on having sufficient taxable income of an appropriate character within the carryforward periods. Management must evaluate the probability of realizing the deferred tax asset and determine the need for a valuation reserve as of the date of the consolidated financial statements. Given the judgment involved and the amount of the Company's deferred tax asset, this is considered a critical accounting estimate. See "Note 16—Income taxes" in the notes to our audited consolidated financial statements for a discussion of the Company's deferred taxes.

Recent Accounting Pronouncements

In June 2009, the Financial Accounting Standards Board ("FASB") issued guidance modifying the accounting for transfers and servicing of financial assets and removing the concept of a Qualifying Special Purpose Entity. This guidance was effective for transfers of financial assets occurring after December 31, 2009 and was adopted by the Company as of January 1, 2010. The adoption of this guidance did not have a material impact on the Company's financial position, results of operations or cash flows.

In June 2009, the FASB issued guidance impacting the determination of whether an entity is a variable interest entity ("VIE") and identification of the primary beneficiary of a VIE. The objective of this guidance was to improve financial reporting by enterprises involved with VIE's. This guidance was adopted by the Company as of January 1, 2010. Adoption did not have a material impact on the Company's financial position, results of operations or cash flows.

In January 2010, the FASB issued new guidance to improve disclosures about fair value measurements. Disclosure requirements were enhanced to require additional information regarding transfers to and from Levels 1 and 2 of the fair value hierarchy and the reasons for the transfers, and a gross presentation of activity within the rollforward of Level 3 fair value measurements. The guidance clarifies existing disclosure requirements as to the level of disaggregation of classes of assets and liabilities. In addition, enhanced disclosure is required concerning inputs and valuation techniques used to determine Level 2 and Level 3 fair value measurements. This guidance is generally effective for interim and annual reporting periods beginning after December 15, 2009; however, requirements to disclose separately purchases, sales, issuances, and settlements in the Level 3 rollforward are effective for interim and annual reporting periods beginning after December 15, 2010. The adoption of this guidance did not have a material impact on the Company's financial position, results of operations or cash flows.

In March 2010, the FASB issued new guidance clarifying that a modification of a loan that is part of a pool of loans acquired with deteriorated credit quality should not result in the removal of the loan from the pool. This guidance was effective for any modifications of loans accounted for within a pool in the first interim or annual reporting period ending after July 15, 2010. The adoption of this guidance did not have a material impact on the Company's financial position, results of operations or cash flows.

In July 2010, the FASB issued new guidance requiring expanded disclosures about the credit quality of financing receivables and the allowance for loan losses. Disclosures must be disaggregated by portfolio segment and class and include, among other things, a rollforward of the allowance for loan losses, credit qualify indicators, expanded information about past due and impaired loans and the related allowance, an aging of past due loans, and information about troubled debt restructurings. The required disclosures of information as of the end of a reporting period will be effective for the Company in its annual financial statements for the year ending December 31, 2010. Required disclosures about activity that occurs during a reporting period will be effective for the Company in the quarter ending March 31, 2011. The new guidance will result in additional financial statement disclosures but will not affect the Company's financial condition, results of operations or cash flows.

Liquidity and Capital Resources

To date, stockholder's equity has been influenced primarily by earnings, and to a lesser extent, changes in the unrealized gains, net of taxes, on investment securities available for sale and changes in unrealized losses, net of taxes on cash flow hedges. Stockholder's equity increased $149.3 million, or 15.8%, from $945.0 million at inception to $1.1 billion at December 31, 2009, due to the retention of earnings and increase in unrealized gains on available for sale investment securities. Stockholder's equity increased $148.6 million, or 13.6%, to $1.2 billion at September 30, 2010, primarily due to the retention of earnings.

BankUnited must get approval by the OTS to pay dividends to its parent. Applications were filed with the OTS in August 2010 and November 2010 requesting approval to pay a quarterly dividend from BankUnited to BankUnited, Inc. Approval of the OTS was obtained via letters dated August 31, 2010 and December 3, 2010. A dividend was paid in October 2010 with another declared in December 2010.

Pursuant to the Federal Deposit Insurance Corporation Improvement Act, or FDICIA, the OTS and FDIC have adopted regulations setting forth a five-tier system for measuring the capital adequacy of the financial institutions they supervise. At September 30, 2010 and December 31, 2009, BankUnited had capital levels that exceeded the well-capitalized guidelines. In addition, a condition of approval of BankUnited's application for Federal Deposit Insurance requires BankUnited to maintain a tier 1 leverage ratio at no less than eight percent throughout the first three years of operation. To date, BankUnited has exceeded that requirement.

Liquidity involves our ability to raise funds to support asset growth or reduce assets to meet deposit withdrawals and other borrowing needs, to maintain reserve requirements and to otherwise operate the Company on an ongoing basis. The Bank's liquidity needs are primarily met by its cash position, growth in core deposits, cash flow from its amortizing investment and loan portfolios, and reimbursements under the Loss Sharing Agreements. For additional information regarding our operating, investing, and financing cash flows, see "Consolidated Financial Statements—Consolidated Statements of Cash Flows."

If necessary, the Bank has the ability to raise liquidity through collateralized borrowings, FHLB advances, or the sale of its available for sale investment portfolio. The Company's asset/liability policy has established several measures of liquidity, including liquid assets (defined as cash and cash equivalents, and pledgeable securities) to total assets. The Company's liquidity is considered acceptable if liquid assets divided by total assets exceeds 2.5%. At September 30, 2010, the Company's liquid assets divided by total assets was 13.5%.

As a holding company, BankUnited, Inc. is a corporation separate and apart from our subsidiary BankUnited, and therefore, provides for its own liquidity. BankUnited, Inc.'s main sources of funding include management fees and dividends paid by its subsidiaries, and access to capital markets. There are regulatory limitations that affect the ability of BankUnited to pay dividends to BankUnited, Inc. Management believes that such limitations will not impact our ability to meet our on-going short-term cash obligations. We declared quarterly dividends of $14.0 million on September 17 and December 9, 2010. In addition, on October 19, 2010, we declared a special one-time dividend of $6.0 million.

We expect that after consummation of this offering, our cash and liquidity requirements will be generated by operations, including reimbursements under the Loss Sharing Agreements, and we intend to satisfy our capital requirements over the next 12 months through these sources of liquidity.

Interest Rate Sensitivity

The principal component of the Company's risk of loss arising from adverse changes in the fair value of financial instruments, or market risk, is interest rate risk. The primary objective of the Company's asset/liability management activities is to maximize net interest income, while maintaining acceptable levels of interest rate risk. The Company's Asset Liability Committee, or ALCO, is responsible for establishing policies to limit exposure to interest rate risk, and to ensure procedures are established to monitor compliance with these policies. The guidelines established by ALCO are reviewed and approved by the Company's Board of Directors. However, assets and liabilities with similar repricing characteristics may not reprice at the same time or to the same degree.

Management believes that the simulation of net interest income in different interest rate environments provides the most meaningful measure of the Company's interest rate risk. Income simulation analysis is designed to capture not only the potential of all assets and liabilities to mature or reprice, but also the probability that they will do so. Income simulation also attends to the relative interest rate sensitivities of these items, and projects their behavior over an extended period of time. Finally, income simulation permits management to access the probable effects on the balance sheet not only of changes in interest rates, but also of proposed strategies for responding to them.

The Company's income simulation model analyzes interest rate sensitivity by projecting net interest income over the next twenty four months in a most likely rate scenario based on forward interest rate curves versus net interest income in alternative rate scenarios. Management continually reviews and refines its interest rate risk management process in response to the changing economic climate. Currently, the Company's model projects a plus 100, plus 200, and plus 300 basis point change (with rates increasing 25 basis points per month until the applicable limit is reached) as well as a modified flat scenario incorporating a flattened yield curve. We did not simulate a decrease in interest rates at September 30, 2010 due to the extremely low rate environment.

The Company's ALCO policy has established that interest income sensitivity will be considered acceptable if net interest income in the plus 200 basis point scenario is within 10% of forecasted net interest income in the most likely rate scenario over the next twelve months and within 12% in the second year. At September 30, 2010, the impact on projected net interest income in a plus 200 basis point scenario is 1.4% in the first twelve months and 8.8% in the second year.

These forecasts are within an acceptable level of interest rate risk per the policies established by ALCO. In the event the model indicates an unacceptable level of risk, the Company could undertake a number of actions that would reduce this risk, including the sale of a portion of its available for sale investment portfolio or the use of risk management strategies such as interest rate swaps and caps.

Many assumptions were used by the Company to calculate the impact of changes in interest rates, including the change in rates. Actual results may not be similar to the Company's projections due to several factors including the timing and frequency of rate changes, market conditions and the shape of the yield curve. Actual results may also differ due to the Company's actions, if any, in response to the changing rates.

Off-Balance Sheet Arrangements

Commitments

We routinely enter into commitments to extend credit to our customers, including commitments to fund loans or lines of credit and commercial and standby letters of credit. The credit risk associated with these commitments is essentially the same as that involved in extending loans to customers and they are subject to our normal credit policies and approval processes. While these commitments represent contractual cash requirements, a significant portion of commitments to extend credit may expire without being drawn upon. The following table details our outstanding commitments to extend credit as of September 30, 2010 *(dollars in thousands)*:

	Covered	Non-Covered	Total
Commitments to fund loans	$ 4,301	$ 181,216	$ 185,517
Unfunded commitments under lines of credit	174,132	125,703	299,835
Commercial and standby letters of credit	1,933	6,896	8,829
Total	$ 180,366	$ 313,815	$ 494,181

Derivative Financial Instruments

Interest rate swaps are one of the tools we use to manage interest rate risk. These derivative instruments are used to mitigate exposure to changes in interest rates on FHLB advances and time deposits. These interest rate swaps are designated as cash flow hedging instruments. The fair value of these instruments is included in other assets or other liabilities in our consolidated balance sheets and changes in fair value are reported in accumulated other comprehensive income. At September 30, 2010, outstanding interest rate swaps designated as cash flow hedges had an aggregate notional amount of $630.0 million. The aggregate fair value of interest rate swaps designated as cash flow hedges included in other liabilities at September 30, 2010 was $67.7 million.

Contractual Obligations

The following table contains supplemental information regarding our outstanding contractual obligations as of December 31, 2009 *(dollars in thousands)* :

	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Long-term debt obligations	$ 2,226,938	$ 472,849	$ 1,245,083	$ 509,006	$ —
Operating lease obligations	51,837	8,665	24,393	10,871	7,908
Service contracts and purchase obligations	—	—	—	—	—
Certificates of deposits	4,633,823	3,677,617	834,759	121,447	—
Other long-term liabilities reflected on the balance sheet	—	—	—	—	—
Total	$ 6,912,598	$ 4,159,131	$ 2,104,235	$ 641,324	$ 7,908

BUSINESS

Summary

BankUnited, Inc. is a savings and loan holding company with two wholly-owned subsidiaries: BankUnited, which is one of the largest independent depository institution headquartered in Florida by assets, and BankUnited Investment Services, a Florida insurance agency which provides comprehensive wealth management products and financial planning services. BankUnited is a federally-chartered, federally-insured savings association headquartered in Miami Lakes, Florida, with $11.2 billion of assets, more than 1,100 professionals and 78 branches in 13 counties at September 30, 2010. Our goal is to build a premier, large regional bank with a low-risk, long-term value-oriented business model focused on small and medium sized businesses and consumers. We endeavor to provide personalized customer service and offer a full range of traditional banking products and financial services to both our commercial and consumer customers, who are predominantly located in Florida.

BankUnited, Inc. was organized by a management team led by our Chairman, President and Chief Executive Officer, Mr. Kanas, on April 28, 2009 and was initially capitalized with $945.0 million by a group of investors. On May 21, 2009, BankUnited was granted a savings association charter and the newly formed bank acquired substantially all of the assets and assumed all of the non-brokered deposits and substantially all other liabilities of the Failed Bank from the FDIC in the Acquisition. Concurrently with the Acquisition, we entered into the Loss Sharing Agreements, which cover certain legacy assets, including the entire legacy loan portfolio and OREO, and certain purchased investment securities, including private-label mortgage-backed securities and non-investment grade securities.

Since the Bank's establishment in May 2009, we have pursued our new strategy and as part of this strategy we have recruited a new executive management team and substantially enhanced our middle management team, redesigned the Bank's underwriting functions, and have begun the process of improving the Bank's information technology systems and optimizing our existing branch network. For the nine months ended September 30, 2010, the Company was one of the most profitable and well-capitalized bank holding companies in the United States, having earned 1.9% on its average assets and 17.7% on its average common stockholder's equity, and achieved a 41.9% efficiency ratio. BankUnited's tier 1 leverage ratio was 10.1% and its tier 1 risk-based capital ratio was 42.5% at September 30, 2010. The Company's tangible common equity ratio was 10.7% at September 30, 2010. We intend to invest our excess capital to grow opportunistically both organically and through acquisitions.

Our management team is led by Mr. Kanas, a veteran of the banking industry who built North Fork into a leading regional bank. At the time of its sale to Capital One in December 2006, North Fork was one of the top 25 bank holding companies in the United States. Mr. Kanas served as the Chairman of North Fork from 1986 to 2006 and President and Chief Executive Officer of North Fork from 1977 to 2006. Through organic growth and over 15 acquisitions, Mr. Kanas oversaw the growth and expansion of North Fork from less than $1 billion in assets in 1977 to nearly $60 billion in assets by 2006. According to FactSet Research Systems, while for the five-year period prior to its sale to Capital One, North Fork generated a total annualized return of 11.2%, which equaled the median total annualized return of the top fifty U.S. bank holding companies (excluding North Fork) by assets, for the ten-year period, North Fork generated a total annualized return of 20.5%, compared to a median total annualized return of 14.5%. North Fork distinguished itself as one of the most efficient banking companies in the United States through Mr. Kanas' vision of safe and prudent expansion, cost control and capital management. North Fork was sold to Capital One in December 2006 for $13.2 billion, or 4.0 times tangible equity, a transaction multiple higher than both the median transaction multiple of 3.2 for sales of banks with assets between $10 billion and $30 billion and the median transaction multiple of 3.0 for sales in the banking industry during the period from 2000 to 2006.

The Acquisition

Overview

On May 21, 2009 BankUnited entered into the Purchase and Assumption Agreement with the FDIC, Receiver of the Failed Bank, to acquire substantially all of the assets and assume all of the non-brokered deposits and substantially all other liabilities of the Failed Bank. Excluding the effects of acquisition accounting adjustments, BankUnited acquired $13.6 billion of assets and assumed $12.8 billion of liabilities. The fair value of the assets acquired was $10.9 billion and the fair value of the liabilities assumed was $13.1 billion. BankUnited received a net cash consideration from the FDIC in the amount of $2.2 billion.

The Acquisition consisted of assets with a fair value of $10.9 billion, including $5.0 billion of loans (with a corresponding UPB of $11.2 billion), a $3.4 billion FDIC indemnification asset, $538.9 million of investment securities, $1.2 billion of cash and cash equivalents, $177.7 million of foreclosed assets, $243.3 million of FHLB stock and $347.4 million of other assets. Liabilities with a fair value of $13.1 billion were also assumed, including $8.3 billion of non-brokered deposits, $4.6 billion of FHLB advances, and $112.2 million of other liabilities.

Several elements of our Acquisition are favorable relative to other FDIC-assisted transactions and position the Company to generate significant value. At the time of the Acquisition, bank failures were on the rise and the U.S. Treasury's unprecedented Supervisory Capital Assessment Program for the largest U.S. bank holding companies was underway. Due in part to the distress in the banking system, economic uncertainty and poor capital markets conditions, the Covered Loans and OREO were purchased by the Bank in a bidding process for 76.5% of their $11.4 billion in UPB as of the Acquisition date, which represented the fair market value for those assets at that time. The discount was one of the largest relative to other FDIC-assisted transactions and reflected, in addition to the above mentioned factors, the poor quality of the assets acquired as noted by the ratio of non-performing assets to total assets of 23.5% at May 21, 2009. In addition, the Company's bid included the granting of a warrant to the FDIC, allowing the FDIC to participate in the economic upside of the transaction if certain performance levels are achieved. Along with the pricing terms, the Loss Sharing Agreements and the size of the transaction enable the Company to generate significant capital even in severe loss scenarios. For example, in the worst case scenario of a 100% credit loss on all Covered Loans and OREO, we would recover no less than 89.7% of the UPB as of the Acquisition date, assuming compliance with the terms of the Loss Sharing Agreements.

Furthermore, the Loss Sharing Agreements include attractive provisions that optimize our flexibility and reduce our risk associated with the Covered Assets, including the following:

- ***Ability to sell loans.*** We may sell up to 2.5% of the Covered Loans based on the UPB at Acquisition, or approximately $280.0 million, on an annual basis without prior consent of the FDIC. Any losses incurred from such loan sales are covered under the Loss Sharing Agreements.

- ***No residual credit risk.*** We have the right to sell any or all of the Covered Assets at the termination date of our Loss Sharing Agreements, and any losses incurred will be covered. This allows us to crystallize any residual loss that would otherwise materialize after the expiration of the Loss Sharing Agreements.

- ***Certain securities covered.*** Certain private-label mortgage-backed securities purchased in the Acquisition are covered under the Loss Sharing Agreements.

- ***Enhanced flexibility to execute corporate strategy opportunistically.*** The Bank has the ability to pursue certain strategic transactions including, after an 18-month lock-up period from the Acquisition date, this offering.

We view our relationship with the FDIC as a long-term partnership in which both parties are economically aligned to minimize credit losses on the Covered Assets.

Loss Sharing Agreements

Concurrently with the Acquisition, the Bank entered into the Loss Sharing Agreements with the FDIC that cover certain legacy assets, including the entire loan portfolio and OREO, and certain purchased investment securities, including private-label mortgage-backed securities and non-investment grade securities. At September 30, 2010, the Covered Assets consisted of assets with a book value of $4.3 billion. The total UPB (or, for investment securities, unamortized cost basis) of the Covered Assets at September 30, 2010 was $8.9 billion. The Bank acquired other BankUnited, FSB assets that are not covered by the Loss Sharing Agreements with the FDIC including cash, certain investment securities purchased at fair market value and other tangible assets. The Loss Sharing Agreements do not apply to subsequently acquired, purchased or originated assets.

Pursuant to the terms of the Loss Sharing Agreements, the Covered Assets are subject to a stated loss threshold whereby the FDIC will reimburse the Bank for 80% of losses up to the $4.0 billion stated threshold and 95% of losses in excess of the $4.0 billion stated threshold, calculated, in each case, based on UPB (or, for investment securities, unamortized cost basis) plus certain interest and expenses. The carrying value of the FDIC indemnification asset at September 30, 2010 was $2.7 billion. The Bank will reimburse the FDIC for its share of recoveries with respect to losses for which the FDIC paid the Bank a reimbursement under the Loss Sharing Agreements. The FDIC's obligation to reimburse the Company for losses with respect to the Covered Assets began with the first dollar of loss incurred.

The Covered Securities acquired in connection with the Acquisition include certain private-label mortgage-backed securities and non-investment grade securities. The Covered Loans acquired in connection with the Acquisition include all:

- one-to-four family residential real estate loans (both owner occupied and investor-owned);
- home equity loans;
- all other loans (including commercial, commercial real estate and consumer loans);
- funding of assumed commitments and permitted advances and permitted amendments; and
- OREO.

The Loss Sharing Agreements consist of a single family shared-loss agreement or the Single Family Shared-Loss Agreement, and a commercial and other loans shared-loss agreement, or the Commercial Shared-Loss Agreement. The Single Family Shared-Loss Agreement provides for FDIC loss sharing and the Bank's reimbursement for recoveries to the FDIC for ten years from May 21, 2009 for single family residential loans. The Commercial Shared-Loss Agreement provides for FDIC loss sharing for five years from May 21, 2009 and the Bank's reimbursement for recoveries to the FDIC for eight years from May 21, 2009 for all other Covered Assets.

Under the Purchase and Assumption Agreement, the Bank may sell up to 2.5% of the Covered Loans based on the UPB at Acquisition, or approximately $280.0 million, on an annual basis without prior consent of the FDIC. Any losses incurred from such loan sale are covered under the Loss Sharing Agreements. Any loan sale in excess of the annual 2.5% of the Covered Loans requires approval from the FDIC to be eligible for loss share coverage. However, if the Bank seeks to sell residential or non-residential loans in excess of the agreed 2.5% threshold in the nine months prior to the tenth anniversary or the fifth anniversary, respectively, and the FDIC refuses to consent, then the Single Family Shared-Loss Agreement and the Commercial Shared-Loss Agreement will be extended for two years after their respective anniversaries. The terms of the Loss Sharing Agreements are extended only with respect to the loans to be included in such sales. The Bank will have the right to sell all or any portion of such loans without FDIC consent at any time within the nine months prior to the respective extended termination dates, and any losses incurred will be covered under the Loss Sharing Agreements. If exercised, this final sale mechanism ensures no residual credit risk in our Covered Loan portfolio that would otherwise arise from credit losses occurring after the five- and ten-year periods, respectively.

The Loss Sharing Agreements require us to follow specific servicing procedures and to undertake loss mitigation efforts. Additionally, the FDIC has information rights with respect to our performance under the Loss Sharing Agreements, requiring us to maintain detailed compliance records.

We have received $997.2 million from the FDIC in reimbursements under the Loss Sharing Agreements for claims filed for losses incurred as of September 30, 2010.

Our Competitive Strengths

We believe that we are especially well positioned to create value for our stockholders.

- ***Experienced and respected management team with a successful track record.*** Our management team is led by Mr. Kanas, who has attracted an entirely new executive management team and enhanced our middle management team with seasoned professionals with significant banking experience and a history of high performance at nationally recognized mid- to large-cap financial institutions. Many of our management team members have extensive experience working together at North Fork and have successfully executed operating business models similar to ours in the past. In addition, our management has a successful track record of growing bank franchises both organically and through acquisitions.

- ***Strong and reliable revenue.*** A majority of BankUnited's revenue is currently derived from assets that are covered by the Loss Sharing Agreements. For the nine months ended September 30, 2010, the Company earned 1.9% on its average assets and 17.7% on its average common stockholder's equity, both of which were among the leading ratios in the U.S. banking industry.

- ***Limited credit risk exposure for Covered Assets.*** At September 30, 2010, the Covered Assets were being carried at a book value of $4.3 billion and the total UPB (or, for investment securities, unamortized cost basis) of the Covered Assets was $8.9 billion. Since the Bank's current estimate of cumulative losses on the Covered Assets of approximately $4.8 billion exceeds the $4.0 billion stated loss threshold in the Loss Sharing Agreements, 95% of any incremental credit losses above our current estimates attributable to the Covered Assets would be absorbed by the FDIC and 5% of the losses would be absorbed by the Bank under the Loss Sharing Agreements.

- ***Robust capital position.*** At September 30, 2010, BankUnited was one of the most well-capitalized banks in the United States, affording it the financial flexibility to pursue growth opportunities and pay dividends. We had a 10.7% tangible common equity ratio and the Bank had a 10.1% tier 1 leverage ratio and a 42.5% tier 1 risk-based ratio. We declared quarterly dividends of $14.0 million on September 17 and December 9, 2010. In addition, on October 19, 2010, we declared a special one-time dividend of $6.0 million.

- ***Ideally situated for growth and expansion.*** We believe we are extremely well positioned for growth. The banking industry in our markets, Florida and the southeastern United States, is significantly distressed. We believe this distress will give us opportunities to acquire other institutions and attract talented bankers and customers from competing banks. Our strong capital position and generation, as well as scalable operating system, should allow us to take advantage of these opportunities.

- ***New high-capacity operating platform.*** Since May 2009, we have made significant investments in our infrastructure and technology in order to create a scalable platform for future organic and non-organic growth. We are in the midst of converting to a new core deposit system that has significant capacity and delivers comprehensive commercial and consumer products and services. We have made other significant investments in financial reporting and servicing systems. We believe we are creating a technology platform that will allow us to compete effectively with large regional banking institutions.

Our Market Area

We view our market as the southeast region of the United States with a current focus on Florida, and in particular the Miami MSA. We believe Florida represents a long-term attractive banking market. According to estimates from SNL Financial, from June 30, 2000 to June 30, 2010, Florida added 2.9 million new residents, the third most of any U.S. state, and, at June 30, 2010, had a total population of 18.9 million and a median household income of $49,910. Additionally, the state has 1.9 million active businesses. We believe Florida's population provides tremendous opportunities for us to grow our business. At June 30, 2010, BankUnited ranked 11th in deposit market share in Florida and 6th in the Miami MSA, according to SNL Financial.

Florida's economy and banking industry continue to face significant challenges. Since 2007, many Florida banks have experienced capital constraints and liquidity challenges as a result of significant losses from loans with poor credit quality and investments that have had sizeable decreases in value or realized losses. The undercapitalization and increased regulation of the banking sector have caused many banks to reduce lending to new and existing clients and focus primarily on improving their balance sheets, putting pressure on commercial borrowers to look for new banking relationships. As of September 30, 2010, 40 banks with $31.8 billion in assets have failed since 2008 in Florida. Given our competitive strengths, including an experienced management team, robust capital position and scalable platform, we believe these challenges present significant acquisition and organic growth opportunities for us.

Over time, we will look to expand our branch network outside of Florida in selected markets such as New York, where our management team has had significant experience and has the competitive advantage of having managed one of the most successful regional banks in that market. However, Mr. Kanas and Mr. Bohlsen, two of our named executive officers, are subject to non-compete agreements which expire in August 2012 and may restrict them from operating in New York, New Jersey and Connecticut.

Our Business Strategy

Since the Acquisition, we have focused on the financial needs of small and medium sized businesses and consumers throughout Florida. Through BankUnited, we deliver a comprehensive range of traditional depository and lending products, online services and cash management tools for businesses. We also offer on a national basis commercial lease financing services through United Capital Business Lending and municipal leasing services through Pinnacle Public Finance. Through our non-bank subsidiary, BankUnited Investment Services, we offer a suite of products including mutual funds, annuities, life insurance, individual securities and other wealth management services.

Our goal is to build a premier, large regional bank in attractive growth markets, employing the following key elements:

- ***Transformation to relationship banking.*** Since the Acquisition, our primary strategic objective has been to transform the Bank from a price-driven, transaction-based, mortgage lender to a service-driven, relationship-based, business-focused bank. We have taken an active approach to accomplish this transformation, including:

- *Recruitment of top talent.* The entire management leadership team and a large majority of the next tier of management have been replaced with top performers who were recruited nationally. We have also hired teams of relationship bankers from regional competitors. Furthermore, given BankUnited's strong capital levels and expansion strategy, we believe we have an opportunity to continue hiring and developing talent for the foreseeable future.

- *Shift of culture towards building relationships.* We emphasize winning relationships rather than gathering accounts. As such, we have implemented new compensation practices that properly align our employees with our strategic vision by rewarding long-term profitability instead of volume, exited the broker business and focused on building long-term relationships with small business customers.

- *Investment in physical infrastructure.* In addition to our investment in people, we have been enhancing and optimizing both our facilities and branch network. We have focused on eliminating non-strategic branches and facilities, consolidated most of our non-branch operations into one location and improved the overall presentation and infrastructure of our resulting footprint.

- *Improvement of our technology platform.* We are committed to building a technology infrastructure that enables us to deliver best-in-class products and services to our clients and is also scalable to accommodate our long-term growth plans. As such, we have made and are continuing to make significant investments in our information technology infrastructure, including a conversion to a more robust core deposit platform that is scheduled for completion in early 2011.

With the changes implemented as discussed above, we have increased our core deposits since the Acquisition to September 30, 2010 from $2.1 billion to $3.8 billion and lowered our cost of deposits (excluding the impact of accretion from fair value adjustments due to acquisition accounting) from 3.5% to 1.6%. In addition, since the Acquisition to September 30, 2010, we have generated $429.5 million of new commercial and commercial real estate loan commitments.

- ***Multi-faceted expansion plan.*** We intend to geographically expand our franchise and reinvest our excess capital by hiring talented producers, opening *de novo* branches and acquiring complementary businesses. These expansion strategies complement our overall strategic vision.

  - *Hire talented producers.* A key component to expanding our franchise footprint is to opportunistically hire talented individuals or teams with relationships in commercial banking, small business banking or our other primary business lines. For example, since the Acquisition to September 30, 2010, we have hired 31 lenders from various regional competitors.

  - *Open de novo branches.* As part of our strategy to broaden our branch network, BankUnited plans to expand into new markets and to broaden its footprint. We plan to open new branches and consolidate certain existing branches with those in more desirable locations within the same market. In 2009, we consolidated 9 branches and in 2010, we opened 2 new branches and currently have 7 branches under development, which will allow us to, among other things, expand our presence in Tampa and enter the Orlando market.

  - *Acquire complementary businesses.* We believe significant opportunities exist for additional expansion through acquisitions both in our current market and in other markets within the United States with similar characteristics that we may identify for expansion. Our acquisition strategy includes FDIC-assisted transactions, traditional whole bank acquisitions and complementary acquisitions of select banking and banking-related businesses. For example, we recently acquired two leasing businesses, which serve as the platform for us to provide commercial financing services on a national basis.

- ***Build a scalable and efficient operating model.*** Our management team has a history of running highly efficient banking institutions and is focused on building a culture of expense control. Furthermore, we have made and intend to continue to make significant investments in our information technology systems to position us for future growth. For the nine months ended September 30, 2010, the Company's efficiency ratio was 41.9%, which compares favorably with other U.S. banks.

- ***Maintain strong regulatory relationships.*** We believe that maintaining strong relationships with regulators is an important element of any bank strategy. As such, we maintain an active dialogue with our primary regulator. Additionally, we view our relationship with the FDIC as a long-term partnership in which both parties are economically aligned to minimize credit losses on the Covered Assets. We continually collaborate with the FDIC to develop and implement new loss mitigation strategies for the Covered Assets. We have received $997.2 million from the FDIC in reimbursements under the Loss Sharing Agreements for claims filed for losses incurred as of September 30, 2010.

Products and Services

Loan Origination Activities

General. Our primary lending focus is to serve consumers, commercial and middle-market businesses and their executives with a variety of financial products and services, while maintaining a strong and disciplined credit policy and procedures.

We offer a full array of lending products that cater to our customers' needs including small business loans, residential mortgage loans, commercial real estate loans, equipment loans, term loans, asset-backed loans, letters of credit and commercial lines of credit. Our lending products, policies and practices are not the same as that of the BankUnited, FSB. In particular, we do not originate or purchase negatively amortizing residential loans. As part of our loan activities, we also purchase performing residential loans on a national basis.

Concurrently with the Acquisition, nearly all lending was stopped until we developed a new lending policy which we implemented in October 2009. As of September 30, 2010, the loan portfolio includes $344.3 million in loans originated or purchased since the Acquisition. This includes $175.0 million in commercial loans, $92.6 million in commercial real estate loans and $76.7 million in residential and consumer loans. In addition, we have undrawn commitments of $132.0 million, primarily on commercial loans.

Commercial loans. At September 30, 2010, $175.0 million, or 50.8%, of our total new bank loan portfolio consisted of commercial loans. Our commercial loans, which are generally made to small and middle-market businesses primarily in Florida, include equipment loans, lines of credit, acquisition finance credit facilities and an array of Small Business Administration product offerings, and typically have maturities of 5 years or less.

Commercial real estate loans. At September 30, 2010, $92.6 million, or 26.9%, of our new bank loan portfolio consisted of commercial real estate loans. We offer term financing for the acquisition or refinancing of properties, primarily rental apartments, industrial properties, retail shopping centers and free-standing buildings, office buildings and hotels located primarily in Florida. Other products that we provide include secured lines of credit, acquisition, development and construction loan facilities and construction financing.

Residential real estate loans. At September 30, 2010, $71.2 million, or 20.7%, of our new bank loan portfolio consisted of both purchased ($48.4 million) and originated ($22.8 million) residential real estate loans. We have decided to purchase loans to supplement our nascent mortgage origination platform and to geographically diversify our loan portfolio given the current credit market environment of the non-agency mortgage market in Florida. While the credit parameters we use for purchased loans are substantially similar to the underwriting guidelines we use for originated loans, differences include: (i) loans are purchased on a nationwide basis, while originated loans are currently limited to Florida; (ii) purchased loans, on average, have a higher principal balance than originated loans; and (iii) we consider payment history in selecting which seasoned loans to purchase, while such information is not available for originated loans. We provide one-to-four family residential real estate loans with terms ranging from 10 to 40 years, with either fixed or adjustable interest rates. Loans are currently offered to customers primarily in Florida through BankUnited branches and loan officers. We do not originate subprime loans or option ARM loans. Loans are typically closed-end first lien loans for purposes of property purchased, or for refinancing existing loans with or without cashout. The majority of our loans are owner occupied, full documentation loans.

Consumer loans. At September 30, 2010, $5.4 million, or 1.6%, of our total new bank loan portfolio consisted of consumer loans. We offer consumer loans to our customers primarily in Florida for personal, family and household purposes, including home equity loans, auto, boat and personal installment loans.

Lease financing. In the fourth quarter of 2010, we acquired two leasing businesses. We now provide secured loan and lease programs for small and medium sized businesses on a national basis through United Capital Business Lending. These loans and leases are typically used for equipment purchases and upgrades, business expansion and acquisition purposes. Through Pinnacle Public Finance, we also offer tax-exempt leasing to municipalities and governmental entities nationwide for the financing of essential-use assets.

Credit Policy and Procedures

The fundamental principles of the Bank's credit policy and procedures are to maintain high quality credit standards, which enhance the long term value of the Bank to its customers, employees, stockholders and communities. Credit quality is a key corporate objective that is managed in concert with other key objectives including volume growth, earnings and expense management. We recognize that our credit policy and procedures are dynamic and responsive to the market place. It is the foundation of our credit culture.

The Board of Directors of the Bank is responsible for the safety and soundness of the Bank. As such, they are charged to monitor the efforts of the Bank's management activities. Since lending represents risk exposure, our Board and its duly appointed committees seek to ensure that the Bank maintains high credit quality standards.

The Bank has established asset oversight committees to administer the loan portfolio. These committees include: (i) the Enterprise Risk Management Committee; (ii) the Credit Risk Management Committee; (iii) the Asset Recovery Committee; and (iv) the Criticized Asset Committee. These committees meet at least quarterly to review and approve the lending activities of the Bank.

The credit approval process at the Bank provides for the prompt and thorough underwriting and approval or decline of loan requests. The approval method used is a hierarchy of individual lending authorities for new credits and renewals. The Credit Risk Management Committee approves loan authorities for lending and credit personnel, which are ultimately submitted to our Board for ratification. Lending authorities are based on position, capability and experience of the individuals filling these positions. Authorities are periodically reviewed and updated.

The Bank has established in-house borrower lending limits which are significantly lower than its legal lending limit of approximately $169.4 million, at September 30, 2010. The present in-house lending limit is set at $25.0 million based on total credit exposure of a borrower. However, exceptions to this limit may be made up to $40.0 million of total credit exposure if approved by the Chief Lending Officer and Chief Executive Officer of the Bank. These limits are reviewed periodically by the Credit Risk Management Committee and approved annually by our Board.

Deposits

We offer traditional depository products including checking accounts, money market deposit accounts, savings accounts and certificates of deposit with a variety of rates. Our deposits are insured by the FDIC up to statutory limits. At September 30, 2010, the balance of our interest bearing deposits was $6.8 billion, representing 93.3% of our total deposits, and the balance of our non-interest bearing deposits was $492.5 million, representing 6.7% of our total deposits. Our strategy is to increase our mix of core deposits and reduce our time deposits portfolio. We have a service fee schedule, which is competitive with other financial institutions in our market, covering such matters as maintenance fees on checking accounts, per item processing fees on checking accounts, returned check charges and similar fees.

Wealth Management

Through dedicated financial consultants and licensed bankers, BankUnited Investment Services provides a comprehensive wealth management product offering that includes mutual funds, annuities, life insurance, and individual securities. We also provide comprehensive succession planning, estate planning, and financial planning to individuals and business owners. We use a third-party financial services company to provide our trading platform, administrative and back office support, and provide our customers with 24-hour access to account balances and summaries, positions and portfolio views, transaction detail, customized portfolio view, and online statements.

Investments

The primary objectives of our investment policy are to provide liquidity necessary for the day-to-day operations of the Company, provide a suitable balance of high credit and diversified quality assets to the consolidated balance sheet, manage interest rate risk exposure, and generate acceptable returns given the Company's established risk parameters.

The investment policy is reviewed annually by our Board of Directors. Overall investment goals are established by our Board, Chief Executive Officer, Chief Financial Officer, and members of ALCO. The Board has delegated the responsibility of monitoring our investment activities to ALCO. Day-to-day activities pertaining to the investment portfolio are conducted within the Company's Treasury Division under the supervision of the Chief Financial Officer.

As part of the Acquisition, we acquired an investment portfolio with a fair value of $538.9 million. Of these assets, $252.9 million consisted of private-label mortgage-backed securities and corporate securities which are covered by the Commercial Shared-Loss Agreement. The remaining $286.0 million consisted of Treasury securities, municipal securities and mortgage-backed securities issued by the U.S. Government agency and sponsored enterprises, and are not covered by the Loss Sharing Agreements.

Our strategy for investment security purchases since the Acquisition has been to achieve the objectives noted above, with an emphasis on managing interest rate risk exposure and maintaining liquidity in the portfolio.

Marketing and Distribution

We conduct our banking business through 78 branches located in 13 coastal counties throughout Florida as of September 30, 2010. Our distribution network also includes 73 ATMs, fully integrated on-line banking, and a telephone banking service. We target growing companies and commercial and middle-market businesses, as well as individual consumers throughout Florida.

In order to market our deposit products, we use local print advertising and direct mail and provide sales incentives for our employees.

Competition

The primary market we serve is Florida. Our market is highly competitive. Our market contains not only a large number of community and regional banks, but also a significant presence of the country's largest commercial banks. We compete with other state and national financial institutions located in Florida and adjoining states as well as savings associations, savings banks and credit unions for deposits and loans. In addition, we compete with financial intermediaries, such as consumer finance companies, mortgage banking companies, insurance companies, securities firms, mutual funds and several government agencies as well as major retailers, all actively engaged in providing various types of loans and other financial services. Our largest banking competitors in our market include Bank of America, BankAtlantic, BB&T, JPMorgan Chase, Regions Bank, SunTrust Banks, TD Bank and Wells Fargo.

Interest rates, both on loans and deposits, and prices of fee-based services are significant competitive factors among financial institutions generally. Other important competitive factors include office location, office hours, quality of customer service, community reputation, continuity of personnel and services, and, in the case of larger commercial customers, relative lending limits and ability to offer sophisticated cash management and other commercial banking services. While we continue to provide competitive interest rates on both depository and lending products, we believe that we can compete most successfully by focusing on the financial needs of growing companies and their executives, consumers and commercial and middle-market businesses, and offering them a broad range of personalized services and sophisticated cash management tools tailored to their businesses. We also believe that further volatility and consolidation in the banking industry would create additional opportunities for us to enhance our competitive position.

Information Technology Systems

Information Technology and Bank Operations

We have recently made and continue to make significant investments in our information technology systems for our banking and lending operations and cash management activities. We believe this is a necessary investment in order to enhance our capabilities to offer new products and overall customer experience, and to provide scale for future growth and acquisitions. Critical enhancements include the consolidation of all residential servicing to a leading servicing platform, upgrading our general ledger system, selecting an automated anti-money laundering software solution and enhancing other ancillary systems. We are also in the process of converting our core deposit banking system to more effectively automate bank transactions for our branches, improve our commercial and consumer loan origination, electronic banking and direct response marketing processes, as well as enhance cash management, streamlined reporting, reconciliation support, and sales support.

The majority of our systems including our EFT, transaction processing and our online banking services are hosted by third-party service providers. Additionally, we rely on a leading third-party provider to provide a comprehensive, fully integrated solution that gives us the ability to automate areas of our residential loan servicing, including loan set-up and maintenance, customer service, cashiering, escrow administration, investor accounting, default management, corporate accounting and federal regulatory reporting. The scalability of this new infrastructure will support our growth strategy. In addition, the capability of these vendors to automatically switch over to standby systems allows us to recover our systems and provide business continuity very quickly in case of a disaster.

Loan Servicing

Substantially all of our loans are serviced by us. Since the Acquisition, we have invested heavily in our loan servicing platform to ensure we are taking best efforts in minimizing losses on the Covered Loans. Additionally, we have been an active participant in HAMP since 2009, which focuses on helping at-risk homeowners avoid foreclosure by reducing payments through interest rate reduction, term extension, principal forbearance and principal forgiveness. As of September 30, 2010, 8,860 borrowers have been counseled regarding their participation in HAMP, resulting in 1,878 permanent loan modifications and 225 active trial modifications.

Employees

At September 30, 2010, we employed 1,145 full-time employees and 24 part-time employees. None of our employees are parties to a collective bargaining agreement. We believe that our relations with our employees are good.

Facilities

We currently lease 120,672 square feet of office and operations space in Miami Lakes, Florida. This space includes our principal executive offices, operations center and a retail branch. At September 30, 2010, we provided banking services at 78 branch locations in 13 Florida counties. Of the 78 branch properties, we leased 75 locations and owned 3 locations.

At September 30, 2010, we also dedicated approximately 2,100 square feet of office and operations space in Miami Lakes, Florida to house BankUnited Investment Services, 10,619 square feet of office and operations space in Hunt Valley, Maryland to house United Business Capital Lending, and 5,488 square feet of office and operations space in Scottsdale, Arizona to house Pinnacle Public Finance.

We believe that our facilities are in good condition and are adequate to meet our operating needs for the foreseeable future.

Legal Proceedings

From time to time we are a party to various litigation matters incidental to the conduct of our business. We are not presently party to any legal proceedings the resolution of which we believe would have a material adverse effect on our business, operating results, financial condition or cash flow.

REGULATION AND SUPERVISION

The U.S. banking industry is highly regulated under federal and state law. These regulations affect the operations of the Company and its subsidiaries. You should understand that the primary objective of the U.S. bank regulatory system is the protection of depositors, not the protection of stockholders.

Statutes, regulations and policies limit the activities in which we may engage and the conduct of our permitted activities. Further, the regulatory system imposes reporting and information collection obligations. We incur significant costs relating to compliance with these laws and regulations. Banking statutes, regulations and policies are continually under review by federal and state legislatures and regulatory agencies, and a change in them, including changes in how they are interpreted or implemented, could have a material adverse effect on our business.

The material statutory and regulatory requirements that are applicable to us are summarized below. The description below is not intended to summarize all laws and regulations applicable to us.

BankUnited as a Federal Savings Association

BankUnited is a federal savings association organized under the federal Home Owners' Loan Act, or HOLA. A federal savings association is commonly referred to as a federal thrift. As a federal thrift, BankUnited is currently subject to ongoing and comprehensive supervision, regulation, examination and enforcement by the OTS. Recent changes in the law will, in the future, shift principal regulatory jurisdiction over BankUnited from the OTS to the OCC. We are in the process of evaluating the potential practical implications of this shift in regulatory jurisdiction, such as possible changes in how the Bank's regulators will examine it and what new or different standards they may apply to the Bank. To date, the Bank's regulators have not announced any details about their plans for the shift in regulatory jurisdiction and, consequently, we are not in a position at this time to know or ascertain what the actual practical implications of the shift will be for the Bank. Because BankUnited does not have plans to convert to a national bank, the existing OTS regulations will continue to apply to BankUnited, although the OCC may decide to modify these regulations.

The Company as a Savings and Loan Holding Company

Any entity that acquires direct or indirect control of a thrift must obtain prior approval of the OTS to become a savings and loan holding company, or SLHC. The Company, which controls BankUnited, received OTS approval on May 21, 2009, to become a SLHC. As a SLHC, the Company is currently subject to ongoing and comprehensive supervision, regulation, examination and enforcement by the OTS. This OTS jurisdiction also extends to any company that is directly or indirectly controlled by us. Recent changes in the law will, in the future, shift principal regulatory jurisdiction over the Company to the Federal Reserve. We are in the process of evaluating the potential practical implications of this shift in regulatory jurisdiction, such as possible changes in how the Company's regulators will examine it and what new or different standards they may apply to the Company; however, as a result of this shift, we expect that BankUnited, Inc. will be subject to specific minimum capital ratios for the first time. To date, the Company's regulators have not announced any details about their plans for the shift in regulatory jurisdiction and, consequently, we are not in a position at this time to know or ascertain what the actual practical implications of the shift will be.

FDIC Deposit Insurance

The FDIC is an independent federal agency that insures the deposits of federally insured depository institutions up to applicable limits. The FDIC also has certain regulatory, examination and enforcement powers with respect to FDIC-insured institutions. The deposits of BankUnited are insured by the FDIC up to applicable limits. As a general matter, the maximum deposit insurance amount is $250,000 per depositor.

Broad Supervision, Examination and Enforcement Powers

A principal objective of the U.S. bank regulatory system is to protect depositors by ensuring the financial safety and soundness of banks. To that end, the banking regulators have broad regulatory, examination, and enforcement authority. The regulators regularly examine the operations of federal thrifts and SLHCs. In addition, federal thrifts and SLHCs are subject to periodic reporting requirements.

The regulators have various remedies available if they determine that the financial condition, capital resources, asset quality, earnings prospects, management, liquidity or other aspects of a banking organization's operations are unsatisfactory. The regulators may also take action if they determine that the banking organization or its management is violating or has violated any law or regulation. The regulators have the power to, among other things:

- enjoin "unsafe or unsound" practices;
- require affirmative actions to correct any violation or practice;
- issue administrative orders that can be judicially enforced;
- direct increases in capital;
- direct the sale of subsidiaries or other assets;
- limit dividends and distributions;
- restrict growth;
- assess civil monetary penalties;
- remove officers and directors; and
- terminate deposit insurance.

The FDIC may terminate a depository institution's deposit insurance upon a finding that the institution's financial condition is unsafe or unsound or that the institution has engaged in unsafe or unsound practices or has violated any applicable rule, regulation, order or condition enacted or imposed by the institution's regulatory agency. Engaging in unsafe or unsound practices or failing to comply with applicable laws, regulations and supervisory agreements could subject the Company, and subsidiaries of the Company, or their officers, directors, and institution-affiliated parties to the remedies described above and other sanctions.

Conditions of Approval Orders

On May 21, 2009, we received approvals from the OTS and FDIC for the organization of BankUnited as a federal thrift, for the Company to become a SLHC, and for BankUnited to obtain federal deposit insurance. Those approval orders contained conditions related to the conduct of our business. Those conditions include, among other things, the following requirements:

- during our first three years of operation, BankUnited must maintain a tier 1 capital to adjusted total assets leverage ratio at not less than eight percent;
- during our first three years of operation, we must operate within the parameters of our business plan and obtain prior written regulatory consent to any material change in our business plan; and
- during our first two years of operation, we must obtain regulatory consent to the appointment of any new director or senior executive officer.

The Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Act into law. The Dodd-Frank Act will have a broad impact on the financial services industry, imposing significant regulatory and compliance changes, including the designation of certain financial companies as systemically significant, the imposition of increased capital, leverage, and liquidity requirements, and numerous other provisions designed to improve supervision and oversight of, and strengthen safety and soundness within, the financial services sector. Additionally, the Dodd-Frank Act establishes a new framework of authority to conduct systemic risk oversight within the financial system to be distributed among new and existing federal regulatory agencies, including the Financial Stability Oversight Council, or Council, the Federal Reserve, the OCC, and the FDIC. Of particular relevance to the Company, the Dodd-Frank Act makes fundamental changes to the federal supervisory oversight structure for federal thrifts and SLHCs.

The following items provide a brief description of certain provisions of the Dodd-Frank Act.

- *Principal changes for federal thrifts and SLHCs.* The Dodd-Frank Act preserves the charter for federal thrifts, but will eliminate the OTS as the primary federal regulator for federal thrifts and SLHCs. The OTS will be abolished by April 2012 and its functions and personnel distributed among the OCC, FDIC, and the Federal Reserve. Primary jurisdiction for the supervision and regulation of federal thrifts, including BankUnited, will be transferred to the OCC; supervision and regulation of SLHCs, including the Company, will be transferred to the Federal Reserve. Although the Dodd-Frank Act maintains the federal thrift charter, it eliminates certain benefits of the charter and imposes new penalties for failure to comply with the qualified thrift lender, or QTL, test. Under the Dodd-Frank Act, the risk-based and leverage capital standards currently applicable to U.S. insured depository institutions will be imposed on U.S. bank holding companies and SLHCs, and depository institutions and their holding companies will be subject to minimum risk-based and leverage capital requirements on a consolidated basis. In addition, the Dodd-Frank Act requires that SLHCs be well-capitalized and well managed in the same manner as bank holding companies in order to engage in the expanded financial activities permissible only for a financial holding company.

- *Source of strength.* The Dodd-Frank Act requires all companies, including SLHCs, that directly or indirectly control an insured depository institution to serve as a source of strength for the institution. Under this requirement, the Company in the future could be required to provide financial assistance to BankUnited should BankUnited experience financial distress.

- *Limitation on federal preemption.* The Dodd-Frank Act significantly reduces the ability of national banks and federal thrifts to rely upon federal preemption of state consumer financial laws. Although the OCC, as the new primary regulator of federal thrifts, will have the ability to make preemption determinations where certain conditions are met, the broad rollback of federal preemption has the potential to create a patchwork of federal and state compliance obligations. This could, in turn, result in significant new regulatory requirements applicable to us, with potentially significant changes in our operations and increases in our compliance costs. It could also result in uncertainty concerning compliance, with attendant regulatory and litigation risks.

- *Mortgage loan origination and risk retention.* The Dodd-Frank Act contains additional regulatory requirements that may affect our operations and result in increased compliance costs. For example, the Dodd-Frank Act imposes new standards for mortgage loan originations on all lenders, including banks and thrifts, in an effort to require steps to verify a borrower's ability to repay. In addition, the Dodd-Frank Act generally requires lenders or securitizers to retain an economic interest in the credit risk relating to loans the lender sells or mortgage and other asset-backed securities that the securitizer issues. The risk retention requirement generally will be 5%, but could be increased or decreased by regulation.

- *Imposition of restrictions on certain activities.* The Dodd-Frank Act requires new regulations for the over-the-counter derivatives market, including requirements for clearing, exchange trading, capital, margin, and reporting. Additionally, the Dodd-Frank Act requires that certain swaps and derivatives activities be "pushed out" of insured depository institutions and conducted in non-bank affiliates, significantly restricts the ability of a member of a depository institution holding company group to invest in or sponsor certain private funds, and broadly restricts such entities from engaging in "proprietary trading," subject to limited exemptions. These restrictions may affect our ability to manage certain risks in our business.

- *Expanded FDIC resolution authority.* While insured depository institutions have long been subject to the FDIC's resolution process, the Dodd-Frank Act creates a new mechanism for the FDIC to conduct the orderly liquidation of certain "covered financial companies," including bank and thrift holding companies and systemically significant non-bank financial companies. Upon certain findings being made, the FDIC may be appointed receiver for a covered financial company, and would be tasked to conduct an orderly liquidation of the entity. The FDIC liquidation process is modeled on the existing Federal Deposit Insurance Act, or FDI Act, bank resolution regulations, and generally gives the FDIC more discretion than in the traditional bankruptcy context.

- *Consumer Financial Protection Bureau (CFPB).* The Dodd-Frank Act creates a new independent CFPB within the Federal Reserve. The CFPB is tasked with establishing and implementing rules and regulations under certain federal consumer protection laws with respect to the conduct of providers of certain consumer financial products and services. The CFPB has rulemaking authority over many of the statutes governing products and services offered to bank and thrift consumers. For banking organizations with assets of $10 billion or more, the CFPB has exclusive rule making and examination, and primary enforcement authority under federal consumer financial law. In addition, the Dodd-Frank Act permits states to adopt consumer protection laws and regulations that are stricter than those regulations promulgated by the CFPB. Compliance with any such new regulations would increase our cost of operations.

- *Deposit insurance.* The Dodd-Frank Act makes permanent the general $250,000 deposit insurance limit for insured deposits. The Dodd-Frank Act also extends until January 1, 2013, federal deposit coverage for the full net amount held by depositors in non-interest bearing transaction accounts. Amendments to the FDI Act also revise the assessment base against which an insured depository institution's deposit insurance premiums paid to DIF will be calculated. Under the amendments, the assessment base will no longer be the institution's deposit base, but rather its average consolidated total assets less its average tangible equity. Additionally, the Dodd-Frank Act makes changes to the minimum designated reserve ratio of the DIF, increasing the minimum from 1.15 percent to 1.35 percent of the estimated amount of total insured deposits, and eliminating the requirement that the FDIC pay dividends to depository institutions when the reserve ratio exceeds certain thresholds. Several of these provisions could increase the FDIC deposit insurance premiums paid by BankUnited.

- *Transactions with affiliates and insiders.* The Dodd-Frank Act generally enhances the restrictions on transactions with affiliates under Section 23A and 23B of the Federal Reserve Act, including an expansion of the definition of "covered transactions" and an increase in the amount of time for which collateral requirements regarding covered credit transactions must be satisfied. Insider transaction limitations are expanded through the strengthening of loan restrictions to insiders and the expansion of the types of transactions subject to the various limits, including derivatives transactions, repurchase agreements, reverse repurchase agreements and securities lending or borrowing transactions. Restrictions are also placed on certain asset sales to and from an insider to an institution, including requirements that such sales be on market terms and, in certain circumstances, approved by the institution's board of directors.

- *Enhanced lending limits.* The Dodd-Frank Act strengthens the existing limits on a depository institution's credit exposure to one borrower. Federal banking law currently limits a federal thrift's ability to extend credit to one person (or group of related persons) in an amount exceeding certain thresholds. The Dodd-Frank Act expands the scope of these restrictions to include credit exposure arising from derivative transactions, repurchase agreements, and securities lending and borrowing transactions.

- *Corporate governance.* The Dodd-Frank Act addresses many investor protection, corporate governance and executive compensation matters that will affect most U.S. publicly traded companies, including the Company. The Dodd-Frank Act (1) grants stockholders of U.S. publicly traded companies an advisory vote on executive compensation; (2) enhances independence requirements for compensation committee members; (3) requires companies listed on national securities exchanges to adopt incentive-based compensation clawback policies for executive officers; and (4) provides the SEC with authority to adopt proxy access rules that would allow stockholders of publicly traded companies to nominate candidates for election as a director and have those nominees included in a company's proxy materials.

Many of the requirements of the Dodd-Frank Act will be implemented over time and most will be subject to regulations implemented over the course of several years. Given the uncertainty associated with the manner in which the provisions of the Dodd-Frank Act will be implemented by the various regulatory agencies and through regulations, the full extent of the impact such requirements will have on our operations is unclear. The changes resulting from the Dodd-Frank Act may impact the profitability of our business activities, require changes to certain of our business practices, impose upon us more stringent capital, liquidity and leverage requirements or otherwise adversely affect our business. These changes may also require us to invest significant management attention and resources to evaluate and make any changes necessary to comply with new statutory and regulatory requirements. Failure to comply with the new requirements may negatively impact our results of operations and financial condition. While we cannot predict what effect any presently contemplated or future changes in the laws or regulations or their interpretations would have on us, these changes could be materially adverse to our investors.

Notice and Approval Requirements Related to Control

Banking laws impose notice, approval, and ongoing regulatory requirements on any stockholder or other party that seeks to acquire direct or indirect "control" of an FDIC-insured depository institution. These laws include the Savings and Loan Holding Company Act, the Bank Holding Company Act of 1956 and the Change in Bank Control Act. Among other things, these laws require regulatory filings by a stockholder or other party that seeks to acquire direct or indirect "control" of an FDIC-insured depository institution. The determination whether an investor "controls" a depository institution is based on all of the facts and circumstances surrounding the investment. As a general matter, a party is deemed to control a depository institution or other company if the party owns or controls 25% or more of any class of voting stock. Subject to rebuttal, a party may be presumed to control a depository institution or other company if the investor owns or controls 10% or more of any class of voting stock. Ownership by affiliated parties, or parties acting in concert, is typically aggregated for these purposes. If a party's ownership of the Company were to exceed certain thresholds, the investor could be deemed to "control" the Company for regulatory purposes. This could subject the investor to regulatory filings or other regulatory consequences.

Permissible Activities and Investments

Banking laws generally restrict the ability of the Company and its subsidiaries from engaging in activities other than those determined by the Federal Reserve to be so closely related to banking as to be a proper incident thereto. The Gramm-Leach-Bliley Financial Modernization Act of 1999, or GLB

Act, expanded the scope of permissible activities for a bank holding company that qualifies as a financial holding company. Under the regulations implementing the GLB Act, a financial holding company may engage in additional activities that are financial in nature or incidental or complementary to a financial activity. Those activities include, among other activities, certain insurance and securities activities. Qualifications for becoming a financial holding company include, among other things, meeting certain specified capital standards and achieving certain management ratings in examinations. Under the Dodd-Frank Act, SLHCs like the Company must be well-capitalized and well managed in the same manner as bank holding companies in order to engage in the expanded financial activities permissible only for a financial holding company.

In addition, as a general matter, the establishment or acquisition by the Company of a depository institution or, in certain cases, a non-banking financing entity, requires prior regulatory approval.

Regulatory Capital Requirements and Prompt Corrective Action

The regulators view capital levels as important indicators of an institution's financial soundness. As a general matter, FDIC-insured depository institutions and their holding companies are required to maintain minimum capital relative to the amount and types of assets they hold. The final supervisory judgment on an institution's capital adequacy is based on the regulator's individualized assessment of numerous factors.

BankUnited is subject to various regulatory capital adequacy requirements. The FDICIA requires that the federal regulatory agencies adopt regulations defining five capital tiers for depository institutions: well-capitalized, adequately capitalized, undercapitalized, significantly undercapitalized and critically undercapitalized. Failure to meet minimum capital requirements can initiate certain mandatory, and possibly additional discretionary, actions by regulators that could have a direct material adverse effect on our financial condition.

The regulators have established quantitative measures that require that an FDIC-insured depository institution (such as BankUnited) to maintain minimum ratios of capital to risk-weighted assets. There are two main categories of capital under the guidelines. Tier 1 capital includes common equity holders' equity, qualifying preferred stock and trust preferred securities, less goodwill and certain other deductions (including a portion of servicing assets and the unrealized net gains and losses, after taxes, on securities available for sale). Tier 2 capital includes preferred stock not qualifying as tier 1 capital, subordinated debt, the allowance for credit losses and net unrealized gains on marketable equity securities, subject to limitations by the guidelines. Tier 2 capital is limited to the amount of tier 1 capital (i.e., at least half of the total capital must be in the form of tier 1 capital). Under the risk-based guidelines, capital is compared with the relative risk related to the balance sheet. To derive the risk included in the balance sheet, a risk weighting is applied to each balance sheet asset and off-balance sheet item, primarily based on the relative credit risk of the counterparty. For example, claims guaranteed by the U.S. government or one of its agencies are risk-weighted at 0% and certain real-estate related loans risk-weighted at 50%. Off-balance sheet items, such as loan commitments and derivatives, are also applied a risk weight after calculating balance sheet equivalent amounts.

In order to be deemed well-capitalized, FDIC-insured depository institutions (such as BankUnited) currently are required to (i) maintain a total risk-based capital ratio of 10% or greater, a tier 1 risk-based capital ratio of 6% or greater and a tier 1 leverage ratio of 5% or greater (measured as tier 1 capital to adjusted total assets) and (ii) not be subject to any written agreement, order, capital directive or prompt corrective action issued by its banking regulator(s) to meet and maintain a specific capital level for any capital measure. The regulators may set higher capital requirements for an individual institution when particular circumstances warrant. The OTS requires BankUnited to maintain a tier 1 capital to adjusted total assets leverage ratio of not less than 8% for the first three years of its operation. At September 30, 2010, the Bank's tier 1 leverage ratio was equal to 10.1%.

By January 2012, the OCC will assume the OTS' powers with respect to federal savings associations (like BankUnited), as well as rulemaking authority over all savings associations (except for the limited rulemaking authority transferred to the Federal Reserve). Although the federal banking agencies have substantially similar capital adequacy standards and utilize the same accounting standards, some differences in capital standards exist, such as the regulatory treatment of noncumulative perpetual preferred stock and the risk-weightings assigned to certain assets. The OCC also limits the amount of subordinated debt and intermediate-term preferred stock that may be treated as part of tier 2 capital to 50% of tier 1 capital, whereas the OTS does not prescribe such a restriction. Finally, the OCC recognizes an additional category, "tier 3 capital," consisting of forms of unsecured, subordinated debt that can be allocated for market risk and is included in the total risk-based capital ratio numerator.

At this time the bank regulatory agencies are more inclined to impose higher capital requirements in order to meet well-capitalized standards, and future regulatory change could impose higher capital standards as a routine matter. The regulators may also set higher capital requirements for holding companies whose circumstances warrant it. For example, holding companies experiencing internal growth or making acquisitions are expected to maintain strong capital positions substantially above the minimum supervisory levels, without significant reliance on intangible assets.

As an additional means to identify problems in the financial management of depository institutions, the FDI Act requires federal bank regulatory agencies to establish certain non-capital safety and soundness standards for institutions for which they are the primary federal regulator. The standards relate generally to operations and management, asset quality, interest rate exposure and executive compensation. The agencies are authorized to take action against institutions that fail to meet such standards.

OTS regulations do not require savings and loan holding companies, such as the Company, to maintain specific minimum capital ratios. As a result of the Dodd-Frank Act, the risk-based and leverage capital standards currently applicable to U.S. insured depository institutions and U.S. bank holding companies will in the future become applicable to savings and loan holding companies (such as the Company). The Dodd-Frank Act generally authorizes the Federal Reserve to promulgate capital requirements for savings and loan holding companies.

The Federal Reserve requires bank holding companies to maintain a minimum tier 1 leverage ratio, tier 1 risk-based capital ratio and total risk-based capital ratio. In addition, the Federal Reserve requires bank holding companies that engage in trading activities to adjust their risk-based capital ratios to take into consideration market risks that may result from movements in market prices of covered trading positions in trading accounts, or from foreign exchange or commodity positions, whether or not in trading accounts, including changes in interest rates, equity prices, foreign exchange rates or commodity prices. Any capital required to be maintained under these provisions may consist of tier 3 capital. Also, the Federal Reserve considers a "tangible tier 1 leverage ratio" (deducting all intangibles) and other indications of capital strength in evaluating proposals for expansion or engaging in new activities.

In addition, the Dodd-Frank Act further requires the federal banking agencies to adopt capital requirements which address the risks that the activities of an institution poses to the institution and the public and private stakeholders, including risks arising from certain enumerated activities. The federal banking agencies will likely change existing capital guidelines or adopt new capital guidelines in the future pursuant to the Dodd-Frank Act, the implementation of Basel III (described below) or other regulatory or supervisory changes.

The FDI Act requires federal bank regulatory agencies to take "prompt corrective action" with respect to FDIC-insured depository institutions that do not meet minimum capital requirements. A depository institution's treatment for purposes of the prompt corrective action provisions will depend upon how its capital levels compare to various capital measures and certain other factors, as established by regulation. Under this system, the federal banking regulators have established five capital categories, well-capitalized, adequately capitalized, undercapitalized, significantly undercapitalized and critically undercapitalized, in which all institutions are placed. The federal banking regulators have also specified by regulation the relevant capital levels for each of the other categories. Federal banking regulators are required to take various mandatory supervisory actions and are authorized to take other discretionary actions with respect to institutions in the three undercapitalized categories. The severity of the action depends upon the capital category in which the institution is placed. Generally, subject to a narrow exception, the banking regulator must appoint a receiver or conservator for an institution that is critically undercapitalized.

Basel, Basel II and Basel III Accords

The current risk-based capital guidelines that apply to the Bank are based on the 1988 capital accord of the International Basel Committee on Banking Supervision, a committee of central banks and bank supervisors, as implemented by the OTS. In 2008, the OTS began to phase-in capital standards based on a second capital accord, referred to as Basel II, for large or "core" international banks (total assets of $250 billion or more or consolidated foreign exposures of $10 billion or more). Basel II emphasizes internal assessment of credit, market and operational risk, as well as supervisory assessment and market discipline in determining minimum capital requirements.

On September 12, 2010, the Group of Governors and Heads of Supervision, the oversight body of the Basel Committee, announced agreement on the calibration and phase-in arrangements for a strengthened set of capital requirements, known as Basel III. Basel III increases the minimum tier 1 common equity ratio to 4.5%, net of regulatory deductions, and introduces a capital conservation buffer of an additional 2.5% of common equity to risk-weighted assets, raising the target minimum common equity ratio to 7%. Basel III increases the minimum tier 1 capital ratio to 8.5% inclusive of the capital conservation buffer, increases the minimum total capital ratio to 10.5% inclusive of the capital buffer and introduces a countercyclical capital buffer of up to 2.5% of common equity or other fully loss absorbing capital for periods of excess credit growth. Basel III also introduces a non-risk adjusted tier 1 leverage ratio of 3%, based on a measure of total exposure rather than total assets, and new liquidity standards. The Basel III capital and liquidity standards will be phased in over a multi-year period. The final package of Basel III reforms will be submitted to the Seoul G20 Leaders Summit in November, 2010 for endorsement by G20 leaders, and then will be subject to individual adoption by member nations, including the United States. The federal banking agencies will likely implement changes to the capital adequacy standards applicable to the insured depository institutions and their holding companies in light of Basel III.

Qualified Thrift Lender Test

Federal banking laws require a thrift to meet the QTL test by maintaining at least 65% of its "portfolio assets" in certain "qualified thrift investments," such as residential housing related loans, certain consumer and small business loans and residential mortgage-backed securities, on a monthly average basis in at least nine months out of every twelve months. A thrift that fails the QTL test must either operate under certain restrictions on its activities or convert to a bank charter. The Dodd-Frank Act imposes additional restrictions on the ability of any thrift that fails to become or remain a QTL to pay dividends. Specifically, the thrift is not only subject to the general dividend restrictions as would apply to a national bank (as under prior law), but also is prohibited from paying dividends at all (regardless of its financial condition) unless required to meet the obligations of a company that controls the thrift, permissible for a national bank and specifically approved by the OCC and the Federal Reserve. In addition, violations of the QTL test now are treated as violations of federal banking laws subject to remedial enforcement action. At September 30, 2010, BankUnited was in compliance with the QTL test.

HOLA limits the amount of non-residential mortgage loans a federal savings association, such as BankUnited, may make. Separate from the QTL test, the law limits a federal savings association to a maximum of 20% of its total assets in commercial loans not secured by real estate, however, only 10% can be large commercial loans not secured by real estate (defined as loans in excess of $2 million). Commercial loans secured by real estate can be made in an amount up to four times an institution's total capital. An institution can also have leases, in addition to the above items, up to 10% of its assets. Commercial paper, corporate bonds, and consumer loans taken together cannot exceed 35% of a savings association's assets. For this purpose, however, residential mortgage loans and credit card loans are not considered consumer loans, and are both unlimited in amount. The foregoing limitations are established by statute, and cannot be waived by the OTS. At September 30, 2010, BankUnited was in compliance with all these limits.

Regulatory Limits on Dividends and Distributions

Federal law currently impose limitations upon certain capital distributions by thrifts, such as certain cash dividends, payments to repurchase or otherwise acquire its shares, payments to stockholders of another institution in a cash-out merger and other distributions charged against capital. The OTS regulates all capital distributions by BankUnited directly or indirectly to us, including dividend payments. BankUnited currently must file an application to receive the approval of the OTS for any proposed capital distribution.

BankUnited may not pay dividends to us if, after paying those dividends, it would fail to meet the required minimum levels under risk-based capital guidelines and the minimum leverage and tangible capital ratio requirements, or in the event the OTS notified BankUnited that it was in need of more than normal supervision. Under the FDI Act, an insured depository institution such as BankUnited is prohibited from making capital distributions, including the payment of dividends, if, after making such distribution, the institution would become "undercapitalized." Payment of dividends by BankUnited also may be restricted at any time at the discretion of the appropriate regulator if it deems the payment to constitute an unsafe and unsound banking practice. Additionally, the Dodd-Frank Act imposes additional restrictions on the ability of any thrift that fails to become or remain a QTL to pay dividends.

Reserve Requirements

Pursuant to regulations of the Federal Reserve, all banks and thrifts are required to maintain average daily reserves at mandated ratios against their transaction accounts. In addition, reserves must be maintained on certain non-personal time deposits. These reserves must be maintained in the form of vault cash or in an account at a Federal Reserve Bank.

Limits on Transactions with Affiliates and Insiders

Banks and thrifts are subject to restrictions on their ability to conduct transactions with affiliates and other related parties. Section 23A of the Federal Reserve Act imposes quantitative limits, qualitative requirements, and collateral requirements on certain transactions by a bank or thrift with, or for the benefit of, its affiliates. Transactions covered by Section 23A include loans, extensions of credit, investment in securities issued by an affiliate, and acquisitions of assets from an affiliate. Section 23B of the Federal Reserve Act requires that most types of transactions by a bank or thrift with, or for the benefit or, an affiliate be on terms at least as favorable to the bank or thrift as if the transaction were conducted with an unaffiliated third party.

The Dodd-Frank Act generally enhances the restrictions on transactions with affiliates under Section 23A and 23B of the Federal Reserve Act, including an expansion of the definition of "covered transactions" and an increase in the amount of time for which collateral requirements regarding covered credit transactions must be satisfied. The ability of the Federal Reserve to grant exemptions from these restrictions is also narrowed by the Dodd-Frank Act, including by requiring coordination with other bank regulators.

The Federal Reserve's Regulation O and OTS regulations impose restrictions and procedural requirements in connection with the extension of credit by a bank or thrift to directors, executive officers, principal stockholders, and their related interests.

Examination Fees

The OTS currently charges fees to recover the costs of examining federal thrifts and their affiliates, processing applications and other filings, and covering direct and indirect expenses in regulating thrifts and their affiliates. The Dodd-Frank Act provides various agencies with the authority to assess additional supervision fees.

Deposit Insurance Assessments

FDIC-insured depository institutions are required to pay deposit insurance assessments to the FDIC. The amount of a particular institution's deposit insurance assessment is based on that institution's risk classification under an FDIC risk-based assessment system. An institution's risk classification is assigned based on its capital levels and the level of supervisory concern the institution poses to the regulators. Deposit insurance assessments fund the DIF, which is currently under-funded. The FDIC recently raised assessment rates to increase funding for the DIF.

The Dodd-Frank Act changes the way an insured depository institution's deposit insurance premiums are calculated. The assessment base will no longer be the institution's deposit base, but rather its average consolidated total assets less its average tangible equity. The Dodd-Frank Act also makes changes to the minimum designated reserve ratio of the DIF, increasing the minimum from 1.15 percent to 1.35 percent of the estimated amount of total insured deposits, eliminating the upper limit for the reserve ratio designated by the FDIC each year, and eliminating the requirement that the FDIC pay dividends to depository institutions when the reserve ratio exceeds certain thresholds.

Continued action by the FDIC to replenish the DIF as well as the changes contained in the Dodd-Frank Act may result in higher assessment rates, which could reduce our profitability or otherwise negatively impact our operations.

Depositor Preference

The FDI Act provides that, in the event of the "liquidation or other resolution" of an insured depository institution, the claims of depositors of the institution (including the claims of the FDIC as subrogee of insured depositors) and certain claims for administrative expenses of the FDIC as a receiver will have priority over other general unsecured claims against the institution. If we invest in or acquire an insured depository institution that fails, insured and uninsured depositors, along with the FDIC, will have priority in payment ahead of unsecured, non-deposit creditors, including us, with respect to any extensions of credit they have made to such insured depository institution.

Federal Home Loan Bank System

BankUnited is a member of the Federal Home Loan Bank of Atlanta, which is one of the twelve regional FHLB's composing the FHLB system. Each FHLB provides a central credit facility primarily for its member institutions as well as other entities involved in home mortgage lending. Any advances from a FHLB must be secured by specified types of collateral, and all long-term advances may be obtained only for the purpose of providing funds for residential housing finance. As a member of the FHLB of Atlanta, BankUnited is required to acquire and hold shares of capital stock in the FHLB of Atlanta. BankUnited has always been in compliance with this requirement with an investment in FHLB of Atlanta stock.

Anti-Money Laundering and OFAC

Under federal law, financial institutions must maintain anti-money laundering programs that include established internal policies, procedures and controls; a designated compliance officer; an ongoing employee training program; and testing of the program by an independent audit function. Financial institutions are also prohibited from entering into specified financial transactions and account relationships and must meet enhanced standards for due diligence and customer identification in their dealings with foreign financial institutions and foreign customers. Financial institutions must take reasonable steps to conduct enhanced scrutiny of account relationships to guard against money laundering and to report any suspicious transactions, and law enforcement authorities have been granted increased access to financial information maintained by financial institutions. Bank regulators routinely examine institutions for compliance with these obligations and they must consider an institution's compliance in connection with the regulatory review of applications, including applications for banking mergers and acquisitions. The regulatory authorities have imposed "cease and desist" orders and civil money penalty sanctions against institutions found to be violating these obligations.

The Office of Foreign Assets Control, or OFAC, is responsible for helping to insure that U.S. entities do not engage in transactions with certain prohibited parties, as defined by various Executive Orders and Acts of Congress. OFAC sends bank regulatory agencies lists of persons and organizations suspected of aiding, harboring or engaging in terrorist acts, known as Specially Designated Nationals and Blocked Persons. If the Company or BankUnited find a name on any transaction, account or wire transfer that is on an OFAC list, the Company or BankUnited must freeze such account, file a suspicious activity report and notify the appropriate authorities.

Consumer Laws and Regulations

Thrifts and other financial institutions are subject to numerous laws and regulations intended to protect consumers. These laws include, among others:

- Truth in Lending Act;
- Truth in Savings Act;
- Electronic Funds Transfer Act;
- Expedited Funds Availability Act;
- Equal Credit Opportunity Act;
- Fair and Accurate Credit Transactions Act;
- Fair Housing Act;
- Fair Credit Reporting Act;
- Fair Debt Collection Act;
- Gramm-Leach-Bliley Act;
- Home Mortgage Disclosure Act;
- Right to Financial Privacy Act;

- Real Estate Settlement Procedures Act;
- laws regarding unfair and deceptive acts and practices; and
- usury laws.

Many states and local jurisdictions have consumer protection laws analogous, and in addition, to those listed above. These federal, state and local laws regulate the manner in which financial institutions deal with customers when taking deposits, making loans, or conducting other types of transactions. Failure to comply with these laws and regulations could give rise to regulatory sanctions, customer rescission rights, action by state and local attorneys general, and civil or criminal liability. The creation of the CFPB by the Dodd-Frank Act is likely to lead to enhanced and strengthened enforcement of consumer financial protection laws.

The Community Reinvestment Act

The CRA is intended to encourage banks to help meet the credit needs of their service areas, including low and moderate-income neighborhoods, consistent with safe and sound operations. The bank regulators examine and assign each bank a public CRA rating. The CRA then requires bank regulators to take into account the federal banking bank's record in meeting the needs of its service area when considering an application by a bank to establish or relocate a branch or to conduct certain mergers or acquisitions. The Federal Reserve is required to consider the CRA records of a bank holding company's (BHC) controlled banks when considering an application by the BHC to acquire a bank or thrift or to merge with another BHC. When the Company or BankUnited applies for regulatory approval to make certain investments, the regulators will consider the CRA record of target institutions and the Company's depository institution subsidiaries. An unsatisfactory CRA record could substantially delay approval or result in denial of an application. The regulatory agency's assessment of the institution's record is made available to the public. Since the Acquisition, bank regulators have not conducted a CRA exam of BankUnited.

Changes in Laws, Regulations or Policies

Federal, state and local legislators and regulators regularly introduce measures or take actions that would modify the regulatory requirements applicable to banks, thrifts, their holding companies and other financial institutions. Changes in laws, regulations or regulatory policies could adversely affect the operating environment for the Company in substantial and unpredictable ways, increase our cost of doing business, impose new restrictions on the way in which we conduct our operations or add significant operational constraints that might impair our profitability. We cannot predict whether new legislation will be enacted and, if enacted, the effect that it, or any implementing regulations, would have on our business, financial condition or results of operations. The Dodd-Frank Act imposes substantial changes to the regulatory framework applicable to us and our subsidiaries. The majority of these changes will be implemented over time by various regulatory agencies. The full effect that these changes will have on us remains uncertain at this time and may have a material adverse effect on our business and results of operations.

MANAGEMENT

Executive Officers and Directors

The following table sets forth information regarding our directors and executive officers as of January 10, 2011.

Name	Age	Position
John A. Kanas	64	Chairman, President and Chief Executive Officer
John Bohlsen	68	Vice Chairman, Chief Lending Officer and Director
Douglas J. Pauls	52	Chief Financial Officer
Rajinder P. Singh	40	Chief Operating Officer
Chinh E. Chu	44	Director
Ambassador Sue M. Cobb	73	Director
Eugene F. DeMark	63	Director
Richard S. LeFrak	63	Director
Wilbur L. Ross, Jr.	73	Director
Pierre Olivier Sarkozy	41	Director
Lance N. West	49	Director

John A. Kanas has served on our Board since its inception in May 2009. He has also served as our Chairman, President and Chief Executive Officer since May 2009. Mr. Kanas serves as the Committee Chairman of our Executive Committee. Prior to joining BankUnited, Mr. Kanas was President and Chief Executive Officer of North Fork Bancorporation, Inc. from 1977 until its acquisition by Capital One in December 2006, at which time North Fork was one of the top 25 bank holding companies in the United States. He also served as Chairman of North Fork from 1986 to 2006. In December 2006, he became President of Capital One's banking segment, which included North Fork, the former Hibernia Bank in Louisiana and Texas and Capital One Direct Bank in Richmond, Virginia. Mr. Kanas retired from that position in August 2007. Between August 2007 and May 2009, Mr. Kanas was an independent consultant. Mr. Kanas holds a B.A. degree from Long Island University. He is a past president of the New York State Bankers Association. Mr. Kanas was also a member of the NYSE Listed Company Advisory Committee and is currently a member of the board of trustees of Long Island University and Weill Cornell Medical College. In 2005, Mr. Kanas was recognized by "Institutional Investor" as the best regional bank CEO in America. In May 2007, Mr. Kanas received the Woodrow Wilson Award for Corporate Citizenship and was also conferred an Honorary Doctorate of Humane Letters by Dowling College. Mr. Kanas' qualifications to serve on our Board include his 29-year career at North Fork, his extensive experience in the banking industry and his long-standing relationships within the business, political and charitable communities.

John Bohlsen has served on our Board since its inception in May 2009. He is also our Vice Chairman and has served as Chief Lending Officer since May 2009. From December 2006 until August 2007, Mr. Bohlsen led the Commercial Banking division for Capital One's banking subsidiary, which included North Fork, the former Hibernia Bank in Louisiana and Texas and Capital One Direct Bank in Richmond, Virginia. Mr. Bohlsen was a part of North Fork's management team when they were acquired by Capital One in December 2006. During his tenure at North Fork from January 1986 to December 2006, he served on the board of directors, and became Vice Chairman in 1989. Mr. Bohlsen also served as Chairman of several bank management committees during that time. Between August 2007 and May 2009, Mr. Bohlsen was active in other business activities involving restaurants and other real estate endeavors. He is active in various outside businesses involving real estate and construction, and is president of a restaurant operating company doing business in the New York metropolitan area. Mr. Bohlsen has a B.S. and a M.B.A. from Michigan State University. In addition, he is a veteran of the U.S. Navy, having served as an officer during the Vietnam War. Mr. Bohlsen has served on many professional, academic and community boards and organizations, and he and his family are well known for their philanthropic endeavors. Mr. Bohlsen's qualifications to serve on our Board include his extensive experience in the banking industry and his previous experience serving as a director on the board of a public company.

Douglas J. Pauls has been our Chief Financial Officer since September 2009. Between March 2009 and August 2009, Mr. Pauls was self-employed as a consultant. From April 2008 until February 2009, Mr. Pauls served as Executive Vice President of Finance for TD Bank, NA following TD Bank's acquisition of Commerce Bancorp, Inc. in March 2008. Mr. Pauls served as Chief Financial Officer of Commerce Bancorp from March 2002 up until the acquisition by TD Bank in April 2008. Mr. Pauls was a member of the three person Office of the Chairman, responsible for overall management, policy making and strategic direction of Commerce Bancorp. From October 1995 to March 2002, Mr. Pauls served as the Chief Accounting Officer of Commerce Bancorp, its Senior Vice President from January 1999 to April 2006 and its Executive Vice President from April 2006 to April 2008. Earlier in his career, Mr. Pauls was a Senior Manager in the Audit Department of Ernst & Young in Philadelphia and Pittsburgh, Pennsylvania. Mr. Pauls received a B.A. in Economics magna cum laude from Dickinson College. Mr. Pauls currently serves on the board of trustees of Dickinson College and as a Member of the Committees on Finance, Budget and Audit, and Student Life.

Rajinder P. Singh is our Chief Operating Officer and has been with us since our inception in May 2009. Prior to joining us, Mr. Singh led the financial services practice of WL Ross & Co., a private equity firm and investor in BankUnited from April 2008 to May 2009. From December 2006 through April 2008, Mr. Singh served as Executive Vice President for Capital One's banking segment which includes retail, small business and commercial banking businesses in New York, New Jersey, Connecticut, Louisiana and Texas and a national direct deposit gathering franchise. Mr. Singh was a member of Capital One's Bank Leadership Team and chaired the Deposit Pricing Committee. He also served on Capital One's ALCO and brand board. Previously, Mr. Singh served as Head of Corporate Development and Strategy for North Fork from February 2005 to December 2006. During his tenure, North Fork was acquired by Capital One for $13.2 billion. Prior to joining North Fork in February 2005, Mr. Singh spent nine years at FleetBoston Financial Corporation and last served as Managing Director of Corporate Development and Strategy. Mr. Singh earned his M.B.A. from Carnegie Mellon University in Pittsburgh and his B.S. in chemical engineering from the Indian Institute of Technology in New Delhi.

Chinh E. Chu has served on our Board since its inception in May 2009. He is a Senior Managing Director in the Blackstone Private Equity Group, or Blackstone, one of our principal investors. Since joining Blackstone in 1990, Mr. Chu has led Blackstone's investments in Stiefel Laboratories, ReAble Therapeutics' acquisition of DJ Orthopedics, Biomet, Catalent Pharma Solutions, Alliant, ReAble Therapeutics, Celanese, Nalco, SunGard Data Systems, Nycomed and LIFFE. He has also been involved in Blackstone's investments in FGIC, Sirius Satellite Radio, StorageApps, Haynes International, Prime Succession/Rose Hills, Interstate Hotels, HFS and Alco Holdings. Mr. Chu is currently a director of Alliant, Graham Packaging Company Inc., Healthmarkets, DJO Incorporated, Catalent Pharma Solutions, SunGard Data Systems, Allied Barton and Bayview, and previously served on the board of directors of Celanese Corporation. Before joining Blackstone, Mr. Chu worked at Salomon Brothers in the Mergers and Acquisitions Department. Mr. Chu received a B.S. in Finance from the University of Buffalo, where he graduated summa cum laude. Mr. Chu's qualifications to serve on our Board include his significant experience overseeing the business of Blackstone's numerous portfolio companies, including significant public company experience, and his significant financial, investment and strategic business planning experience.

Sue M. Cobb, Ambassador of the United States of America, ret., has served on our Board since January 2010. Since February 2007, Ambassador Cobb has been engaged in private sector business activities with Cobb Partners, Inc., a privately held Florida-based investment firm. From September 2001 to February 2005, she served as the United States Ambassador to Jamaica. Ambassador Cobb was Secretary of State of Florida from December 2005 to January 2007. From 2002 to 2008, Ambassador Cobb was engaged at the U.S. Department of State's Leadership and Management School as co-chair of periodic mandatory seminars for newly designated U.S. ambassadors. Ambassador Cobb served seven years as chair of the board of the Federal Reserve Bank, Miami Branch. She was the founding partner of the Public Finance Department of the Greenberg Traurig law firm where she practiced as a public finance attorney. She currently sits on the board of directors of the Durango Mountain Resort and Kirkwood Associates Inc., both private resort development companies. Ambassador Cobb is President of the American Friends of Jamaica, a New York-based charitable institution, and President of Miami-based Cobb Family Foundation. She is an active member of the Center for Strategic and International Studies, The Council of American Ambassadors, and the Council on Foreign Relations. Ambassador Cobb has also been an officer and director of many civic and charitable organizations and has received numerous awards including national honors from the nations of Jamaica and Iceland. Previously, she has been the University of Miami Alumnus of the year, the Red Cross Humanitarian of the Year and the Silver Medallion Awardee from the National Conference of Christians and Jews for contributions to civic causes and humanity. Ambassador Cobb received a B.A. from Stanford University and a J.D. from the University of Miami School of Law. Ambassador Cobb's qualifications to serve on our Board include her broad and diverse background in leadership and management, including experience with public companies as the Audit Committee Chair of the LNR Property Corporation, a public real estate investment, finance and management company.

Eugene F. DeMark has served on our Board since September 2010. From June 1969 until his retirement in October 2009, Mr. DeMark worked for KPMG LLP, a global professional services firm. Mr. DeMark served as the Advisory Northeast Area Managing Partner at KPMG LLP from October 2005 until his retirement. Since his retirement, Mr. DeMark has been an independent consultant. Starting in January 2010, Mr. DeMark has advised our Audit and Compensation Committees. Between 1988 and 2001, Mr. DeMark had been the Northeast Area Managing Partner of the Information, Communications and Entertainment Practice and the KPMG's Long Island Office Managing Partner. During his career at KPMG, Mr. DeMark has had responsibilities to lead a number of specialized practices in Banking, High Technology, Media and Entertainment and Aerospace and Defense. He joined the Firm in 1969 and was elected to its partnership in 1979. On special assignments, he worked on the research staff of the Commission on Auditor's Responsibilities, the predecessor to the Treadway Commission, formed to assess increases in fraudulent financial reporting. Mr. DeMark also developed the firm's first study guide on SEC reporting. Mr. DeMark holds a B.B.A. degree from Hofstra University and is a Certified Public Accountant and is a member of the American Institute of Certified Public Accountants (AICPA) and the New York State Society of Certified Public Accountants. Mr. DeMark has served as chairman of the Long Island chapter of multiple sclerosis, president of the Nassau County council of the Boy Scouts of America and Northeast Regional board member of the National organization, president of the Nassau Chapter of the National Association of Accountants, Treasurer of the New Long Island Partnership and chairman of the Economic Development Task Force—Project Long Island. Mr. DeMark also was active in the United Way on Long Island and New York and served on its board of directors and chaired the nominating committee. Mr. DeMark's qualifications to serve on our Board include his 40 years of financial experience at KPMG LLP, including 35 years in various positions in the firm's audit practice.

Richard S. LeFrak has served on our Board since its inception in May 2009. He also serves as the Committee Chairman of our Compensation Committee. Mr. LeFrak is currently the Chairman and CEO of the LeFrak Organization, a privately held real estate and development company. He joined the LeFrak Organization in 1968, was appointed its President in 1975, and was elected Chairman of its board of directors and CEO in 2003. Mr. LeFrak serves on the board of a number of organizations, including the board of trustees of Amherst College, and the board of trustees of the Prostate Cancer

Foundation. He also has served as a member of the board of trustees of the American Museum of Natural History, the board of trustees of the Trinity School, and as a Member of the New York State Banking board. Mr. LeFrak also presides over the LeFrak Foundation, a private philanthropy whose mission encompasses a broad, but focused agenda, including the support of charitable organizations, institutions of higher learning, hospitals, research facilities and cultural programs that sustain and encourage literary, performing and visual arts. Mr. LeFrak graduated cum laude from Amherst College in 1967, and went on to study law at Columbia University, from which he received his J.D. in 1970. In 1998, Mr. LeFrak received an Honorary Doctorate Degree from Amherst College. Mr. LeFrak's qualifications to serve on our Board include his 35 years of experience in the development, rehabilitation and marketing of real estate as well as his long-standing relationships within the business, political and charitable communities.

Wilbur L. Ross, Jr. has served on our Board since its inception in May 2009. Mr. Ross is the Chairman and Chief Executive Officer of WL Ross & Co. LLC, or WL Ross, a private equity firm and one of our principal investors, a position he has held since April 2000. Mr. Ross is also the managing member of the general partner of WL Ross Group, L.P., which in turn is the managing member of the general partner of WLR Recovery Fund L.P., WLR Recovery Fund II L.P., WLR Recovery Fund III L.P., WLR Recovery Fund IV L.P., Asia Recovery Fund L.P., Asia Recovery Co-Investment Fund L.P., Absolute Recovery Hedge Fund L.P., India Asset Recovery Fund and Japan Real Estate Recovery Fund, the Chairman of the Investment Committee of the Taiyo Fund and the Chairman of Invesco Private Capital. Mr. Ross is also non-executive Chairman of: International Coal Group, Inc., a leading producer of coal in Northern and Central Appalachia and the Illinois basin; International Textile Group, Inc., a global, diversified textile provider that produces automotive safety, apparel, government uniform, technical and specialty textiles; Nano-Tex, Inc., a fabric innovations company located in the United States; IPE-Ross Management Ltd., an investment partnership investing in middle market European buyouts; and the International Automotive Components Group SL, a joint venture company with interests in automotive interior plastics. Mr. Ross is also an executive officer of Invesco Private Equity; American Home Mortgage Services, Inc. and Plascar Participacoes SA. Mr. Ross is a board member of: Arcelor Mittal N.V.; Compagnie Européenne de Wagons SARL in Luxembourg; Insuratex, Ltd., an insurance company in Bermuda; Plascar Participacoes SA; Phoenix International Insurance Company; The Greenbrier Companies, a supplier of transportation equipment and services to the railroad industry; IAC Acquisition Corporation Limited; IAC Group SARL; and Masters Capital Nanotechnology Fund. Mr. Ross is also a member of the Business Roundtable. Previously, Mr. Ross served as the Executive Managing Director at Rothschild Inc., an investment banking firm, from October 1974 to March 2000. Mr. Ross was previously a director of Mittal Steel Co. N.V. from April 2005 to June 2006, a director of International Steel Group from February 2002 to April 2005, a director of Montpelier Re Holdings Ltd. from 2006 to March 2010, and a director of Syms Corp. from 2000 through 2007. Mr. Ross was also formerly Chairman of the Smithsonian Institution National board and currently is a board member of Whitney Museum of American Art, the Japan Society, the Yale University School of Management and Chairman of the Palm Beach Fire Fighters Retirement Fund. He holds an A.B. from Yale University and an M.B.A., with distinction, from Harvard University. Mr. Ross' qualifications to serve on our Board include his significant experience in finance and his knowledge of the capital markets.

Pierre Olivier Sarkozy has served on our Board since its inception in May 2009. Since March 2008, Mr. Sarkozy has served as Managing Director of the Carlyle Group, or Carlyle, one of our principal investors, and head of the Carlyle Global Financial Services Partners fund, one of the Carlyle affiliated funds that has invested in us. From January 2003 until March 2008, Mr. Sarkozy was Global Co-Head of the Financial Institutions Group at UBS Investment Bank. Prior to joining UBS, Mr. Sarkozy worked for 11 years at Credit Suisse First Boston, where he was the Managing Director in charge of the Depository Institutions Group. Mr. Sarkozy received his Masters in Medieval History (with Honors) from St. Andrews University in Scotland. Mr. Sarkozy's qualifications to serve on our Board include his extensive experience working with depository institutions and his expertise in structuring bank mergers and acquisitions.

Lance N. West has served on our Board since its inception in May 2009. Since May 2006, Mr. West has been a Partner and Senior Managing Director of Centerbridge Partners LP, or Centerbridge, a $10 billion multi-strategy, private investment management company that focuses on distressed debt and private equity opportunities and one of our principal investors. From January 1999 until May 2006, Mr. West was a Partner and Managing Director at Goldman, Sachs & Co., where he was head of the firm's Principal Finance Group, a proprietary investment platform focusing on a variety of private and public equity and debt investments in the Americas, with a particular emphasis on real estate and financial institutions. Mr. West was a member of Goldman's Asian Special Situations Group and was a member of the Investment Committees for Goldman's American Special Situations and Specialty Lending Groups. From January 1992 until January 1999, Mr. West served as Chairman and CEO of Greenthal Realty Partners LP and GRP Financial in New York, which Mr. West founded as a Resolution Trust Company Standard Asset Management and Disposition Contracts Asset Manager providing real estate asset management, special servicing and distressed debt investment management. Prior to founding GRP, Mr. West was an executive vice president with The Charles H. Greenthal Group, Inc., a real estate asset management and investment company, and a member of the technical staff at AT&T Bell Laboratories from 1982 to 1984. Mr. West earned his M.S. in Electrical Engineering from the California Institute of Technology in 1983 and graduated magna cum laude with a B.S. in Electrical Engineering from Tufts University in 1982. Mr. West is currently chairman of Green Tree Investment Holdings LLC, a credit focused mortgage loan servicer. Mr. West is a member of the board of overseers of Tufts University, and a member of the Chair's Council for the Humanities and Social Sciences division at the California Institute of Technology. Mr. West's qualifications to serve on our Board include his extensive financial and investment experience as well as his real estate experience.

Composition of Board

The Board currently consists of nine members, Messrs. Kanas, Bohlsen, Chu, DeMark, LeFrak, Ross, Sarkozy and West and Ambassador Cobb. Following the completion of this offering, our Board will consist of nine directors, seven of whom will qualify as independent directors under the corporate governance standards of the New York Stock Exchange, or the NYSE.

Each member of the Board will hold office for a one year term until the next annual meeting or until their successor has been elected and qualified.

See "Certain Relationships and Related Party Transactions—Director Nomination Agreement." The Board has determined that our Chief Executive Officer will continue to serve as the Chairman of our Board of Directors.

Risk Management and Oversight

Our Board oversees our risk management process, including the company-wide approach to risk management, carried out by our management. Our full Board determines the appropriate risk for us generally, assesses the specific risks faced by us, and reviews the steps taken by management to manage those risks. While our full Board maintains the ultimate oversight responsibility for the risk management process, its committees oversee risk in certain specified areas. In particular, our compensation committee is responsible for overseeing the management of risks relating to our executive compensation plans and arrangements, and the incentives created by the compensation awards it administers. Our audit committee oversees management of enterprise risks as well as financial risks and, effective upon the consummation of this offering, will also be responsible for overseeing potential conflicts of interests. Effective upon the listing of our common stock on an exchange, our nominating and corporate governance committee will be responsible for overseeing the management of risks associated with the independence of our Board. Pursuant to our Board's instruction, management regularly reports on applicable risks to the relevant committee or the full Board, as appropriate, with additional review or reporting on risks conducted as needed or as requested by our Board and its committees.

Committees of Our Board of Directors

Upon completion of this offering, the standing committees of our Board will include the executive committee, audit committee, compensation committee, and nominating and corporate governance committee.

Executive Committee. The executive committee acts on behalf of our Board between regularly scheduled Board meetings, usually when time is critical. At the time of this offering, the members of the committee will be Messrs. Kanas (Chairman), Bohlsen, Chu, Ross, Sarkozy and West.

Audit Committee. The audit committee will assist our Board in its oversight of the integrity of our financial statements, our independent registered public accounting firm's qualifications and independence and the performance of our independent registered public accounting firm. The audit committee will review the audit plans and findings of our independent registered public accounting firm and our internal audit and risk review staff, as well as the results of regulatory examinations, and track management's corrective action plans where necessary; review our financial statements, including any significant financial items and/or changes in accounting policies, with our senior management and independent registered public accounting firm; review our financial risk and control procedures, compliance programs and significant tax, legal and regulatory matters; and have the sole discretion to appoint annually our independent registered public accounting firm, and set clear hiring policies for employees or former employees of the independent registered public accounting firm. Our audit committee will also review and approve all related party transactions and review reports and disclosures regarding the Company's compliance with applicable laws, rules and regulations. At the time of this offering, the members of the committee will be Messrs. DeMark (Chairman) and Ross and Ambassador Cobb, each of whom qualifies as an "independent" director as defined under the NYSE rules and Rule 10A-3 of the Securities Exchange Act of 1934, or the Exchange Act.

Compensation Committee. The compensation committee reviews and recommends policies relating to compensation and benefits of our officers and directors and is further responsible for determining the compensation of the Chief Executive Officer. The compensation committee reviews and approves corporate goals and objectives relevant to compensation of our Chief Executive Officer and other executive officers, evaluates the performance of these officers in light of those goals and objectives, and recommends the compensation of these officers based on such evaluations. The compensation committee also administers the issuance of stock options and other awards under our stock plans. The compensation committee will review and evaluate, at least annually, the performance of the compensation committee and its members, including compliance of the compensation committee with its charter. At the time of this offering, the members of the committee will be Messrs. LeFrak (Chairman), Sarkozy and West and Ambassador Cobb, each of whom qualifies as an "independent" director as defined under the applicable rules and regulations of the SEC, the NYSE and the Internal Revenue Service.

Nominating and Corporate Governance Committee. The nominating and corporate governance committee will be responsible for making recommendations to our Board regarding candidates for directorships and the size and composition of our Board. In addition, the nominating and corporate governance committee will be responsible for overseeing our corporate governance guidelines and reporting and making recommendations to our Board concerning governance matters. At the time of this offering, the members of the committee will be Messrs. Chu, Ross, Sarkozy and West, each of whom qualifies as an "independent" director as defined under the applicable rules and regulations of the SEC, the NYSE and the Internal Revenue Service.

Compensation Committee Interlocks and Insider Participation

During 2009, our compensation committee consisted of Messrs. LeFrak, Sarkozy, West and Ambassador Cobb. None of them has at any time in the last fiscal year been one of our officers or employees, and none has had any relationships with our company of the type that is required to be disclosed under Item 404 of Regulation S-K. None of our executive officers serves or has served as a member of the board of directors, compensation committee or other board committee performing equivalent functions of any entity that has one or more executive officers serving as one of our directors or on our compensation committee.

Corporate Governance Guidelines, Code of Conduct and Code of Ethics

Our Board has adopted Corporate Governance Guidelines, which set forth a flexible framework within which our Board, assisted by Board committees, directs the affairs of the Company. The Guidelines address, among other things, the composition and functions of the Board, director independence, compensation of directors, management succession and review, Board committees and selection of new directors.

We have a Code of Conduct, which is applicable to all directors, officers, employees, agents (including consultants and contractors) and temporary personnel of the Company. We have a separate Code of Ethics for Principal Executive and Senior Financial Officers, which contains provisions specifically applicable to our principal executive officer, principal financial officer, principal accounting officer and controller (or persons performing similar functions).

The Corporate Governance Guidelines, the Code of Conduct and the Code of Ethics for Principal Executive and Senior Financial Officers will be available on our website at www.bankunited.com. We expect that any amendments to these codes, or any waivers of their requirements, will be disclosed on our website.

COMPENSATION DISCUSSION AND ANALYSIS

Executive Compensation

The following Compensation Discussion and Analysis provides information regarding the objectives and elements of our compensation philosophy, policies and practices with respect to the compensation of our executive officers who appear in the "—Summary Compensation Table" below (referred to collectively throughout this section as our "named executive officers"). Our named executive officers for the fiscal year ended December 31, 2010 were:

- John A. Kanas, Chairman, President and Chief Executive Officer
- Douglas J. Pauls, Chief Financial Officer
- John Bohlsen, Vice Chairman and Chief Lending Officer
- Rajinder P. Singh, Chief Operating Officer

Messrs. Kanas and Pauls are named executive officers based on their roles as our Chief Executive Officer and Chief Financial Officer, respectively, and Messrs. Bohlsen and Singh are named executive officers by reason of being our two most highly compensated executive officers (other than our Chief Executive Officer and Chief Financial Officer) who were serving as executive officers at the end of the last fiscal year.

Objectives of Our Executive Compensation Program

Our executive compensation philosophy is primarily based on pay-for-performance. Accordingly, our executive compensation programs are designed to achieve the following objectives:

- *Align the interests of our executives with those of our stockholders.* We link a meaningful portion of compensation to the achievement of our long-term goals by rewarding executive officers if and when stockholder value increases. To that end, a significant portion of the compensation awarded to our executives is in the form of equity-based compensation.
- *Retain management.* Compensation for executives is designed such that we retain them by having meaningful vesting long-term equity compensation.
- *Motivate through ownership.* We believe that the best way to inspire leadership and performance is by distributing ownership in the form of equity-based compensation throughout our ranks and requiring executive management to retain meaningful exposure to our Company's stock.

Setting Executive Compensation

Our current executive compensation program is largely based on arrangements that were negotiated at the time that our Company was founded. BankUnited, Inc. was organized by a management team led by Messrs. Kanas, Singh, Bohlsen and our former Chief Financial Officer on April 28, 2009. At that time, the founding members of the management team directly negotiated the terms of their compensation with the investors. Mr. Pauls replaced our former Chief Financial Officer, and as a result, Mr. Pauls' compensation components are similar to those provided to our former Chief Financial Officer prior to his departure. The level of Mr. Pauls' compensation was negotiated by him and the Company and was ultimately subject to approval by our Board.

Role of Compensation Committee

Since our inception, our compensation committee has been responsible for such matters as the determination of discretionary bonus amounts, if any, to be paid to our named executive officers, the implementation of our Stock Option Plan in which executives other than our named executive officers participate, including the determination of grant amounts, vesting terms and exercise prices and the approval of a new Omnibus Equity Incentive Plan to be implemented in connection with this offering. In addition, our compensation committee was responsible for vetting and approving our 401(k) plan and Nonqualified Deferred Compensation Plan.

Role of Compensation Consultant

We have not engaged any compensation consultants. However, we may revisit the use of a compensation consultant following completion of this offering.

Risk Oversight

The audit committee of our Board, which is comprised of non-employee directors, is currently responsible for risk oversight within our Company, including with respect to compensation practices. Our Enterprise Risk Officer has been mandated to develop an Enterprise Risk Management framework to identify, manage and mitigate risks across our Company. This framework, which involves ongoing participation and oversight by our Board, captures compensation-related risk amongst various other dimensions of risk. In addition, our Company is subject to oversight by the OTS. To date, the OTS has played a role in our executive compensation practice, including reviewing and commenting on the employment agreements we have entered into with our named executive officers, and going forward, we will comply with the rules and regulations developed by the OTS. We do not believe that our overall compensation policies and practices create risks that are reasonably likely to have a material adverse effect on our Company.

Executive Officer Compensation

Principal Components of Compensation of Our Named Executive Officers

The compensation package offered to our executive officers, including our named executive officers, consists of:

- *Base salary.* Base salaries for our executive officers are designed to compensate the executive for the experience, education, personal qualities and other qualifications of that individual that are essential for the specific role the executive serves within our Company, while remaining competitive with the market.

- *Discretionary cash bonuses.* Our executives, including our named executive officers, are eligible to receive discretionary cash bonuses as determined by our Board. To date, our Board has not awarded any discretionary cash bonuses to our named executive officers. To the extent that bonuses are awarded in the future, the determination of the amounts of such bonuses will be determined in accordance with the BankUnited, Inc. Policy on Incentive Compensation Arrangements, which provides that bonus amounts are to be based upon the following: overall individual performance, organizational performance, individual contribution to organizational performance, business segment performance, and level of individual responsibilities. To date, our Board has not awarded discretionary cash bonuses to our named executive officer and has not established any performance targets for such awards.

- *Long-term equity-based compensation.* In general, we provide a significant portion of the compensation due to our named executive officers in the form of long-term equity-based compensation. We believe that providing compensation that is contingent on our long-term performance and that is at-risk serves to align the long-term interests of our named executive officers with the long-term interests of our stockholders. To date, long-term equity-based compensation has been granted to our executives upon commencement of employment.

- *Limited perquisites and other benefits.* Our executive officers, including our named executive officers, are eligible to participate in our 401(k) retirement plan and Messrs. Kanas, Pauls, Bohlsen and Singh are also eligible to participate in our Nonqualified Deferred Compensation Plan. Messrs. Kanas, Pauls, Bohlsen and Singh receive a car allowance and, in addition, Messrs. Kanas and Bohlsen are provided with a company-paid driver.

Compensation Mix

Our current compensation package is designed to provide a strong link between the compensation of our executives and the success of our Company and our stockholders generally. The cash components—base salary and discretionary cash bonus compensation—collectively represent what we believe is appropriate pay for expected performance during the year. The equity-based compensation component is designed to encourage high performance by closely aligning an executive's pay with the interests of our stockholders. The allocation between different elements of compensation with respect to our named executive officers has been a product of individual negotiations to date.

Employment Agreements

We have entered into employment agreements with each of our named executive officers. The employment agreements set forth the compensatory terms of each of our named executive officers' employment. For additional information regarding each named executive officer's employment agreement see "—Employment Agreements with Named Executive Officers."

Base Salary

We provide our executive officers and other employees with base salary to compensate them for services rendered during the year. We believe that, with respect to our named executive officers, base salary should compensate the executives for their service and performance but that superior contributions and performance should be rewarded by other forms of compensation, including long-term equity-based compensation. The base salary for each of our named executive offers was set in his employment agreement when the named executive officer commenced employment with us. To date, we have not granted any increase in base salary for any of our named executive officers.

Discretionary Cash Bonuses

Pursuant to their employment agreements, Messrs. Kanas, Pauls, Bohlsen and Singh are eligible to receive discretionary cash bonuses, as determined in the sole discretion of our Board. To date, our Board has not awarded bonuses to these executives and has not established any performance targets for such awards. To the extent that bonuses are awarded in the future, the determination of the amounts of such bonuses will be determined in accordance with the BankUnited, Inc. Policy on Incentive Compensation Arrangements, which provides that bonus amounts are to be based upon the past, present, and expected future contributions of an employee or group of employees to the overall success, safety, and soundness of the organization. Factors considered in evaluating those contributions will include, among other things: overall individual performance, organizational performance, individual contribution to organizational performance, business segment performance, and level of individual responsibilities. The BankUnited, Inc. Policy on Incentive Compensation Arrangements is designed to balance risk and financial results in a manner that does not encourage employees to expose the Company to imprudent risks.

Equity-Based Compensation

Profits Interest Units

Pursuant to the LLC Agreement and related award agreements, Messrs. Kanas, Pauls, Bohlsen and Singh each received equity-based compensation in the form of PIUs in the LLC upon commencement of employment with us. The PIUs represent the right of the holder to share in distributions from the LLC after our investors have received certain returns on their investment. At the time of the inception of our Company, PIUs representing the right to receive an amount equal to ten percent of the increase in the value of our Company after returns to our investors have been made were allocated to a pool for grants to the founding members of our management team. Mr. Pauls, who was not employed by us at the time of our inception, received his PIUs when he commenced employment with us in September 2009.

The PIUs are divided into two equal types of profits interests units. Half of the PIUs are Time-based PIUs and the remaining half of the PIUs are IRR-based PIUs. All of the PIUs available for grant under the LLC Agreement have been granted to Messrs. Kanas, Pauls, Bohlsen and Singh.

The Time-based PIUs generally vest in equal annual installments on each of the first three anniversaries of the date of grant. One-third of the Time-based PIUs granted to each of Messrs. Kanas, Pauls, Bohlsen and Singh are currently vested. With respect to Messrs. Kanas, Bohlsen and Singh, one-third of their Time-based PIUs will become vested in accordance with their terms on each of May 21, 2011 and May 21, 2012, if such individuals remain employed by us as of such date. With respect to Mr. Pauls, one-third of his Time-based PIUs will become vested in accordance with their terms on each of September 1, 2011 and September 1, 2012, if he remains employed by us as of such date. The unvested Time-based PIUs would vest on an accelerated basis upon the occurrence of certain events, such as change in control.

The IRR-based PIUs generally vest after our investors have received certain returns on their investment. In addition, pursuant to the terms of the LLC Agreement, following an initial public offering, the IRR-based PIUs would become eligible to vest commencing on the date that is four months after the initial public offering based on the trading price of our common stock four months after the effective date of this offering. Based on the anticipated offering price and the implied equity value of the Company resulting from such offering price, the Board of Directors of the LLC determined that the IRR-based PIUs would vest in accordance with their terms on the date that is four months after the consummation of this offering and as a result no longer provided a significant retention benefit. As a result, the Board of Directors of the LLC approved, contingent upon consummation of this offering, the vesting in full of IRR-based PIUs that were issued pursuant to the LLC Agreement and related award agreements such that, immediately prior to the consummation of the Reorganization, all IRR-based PIUs will be vested.

The PIUs are described further below following "—Grants of Plan-Based Awards—2010 Grants of Plan-Based Awards."

Immediately prior to the consummation of this offering, as part of the Reorganization, our named executive officers will receive a combination of common stock (both shares not subject to vesting schedules and restricted shares that are subject to vesting schedules) and options to purchase common stock (both vested and unvested) as well as certain dividend equivalent rights, in each case, in respect of the PIUs held by our named executive officers. Such shares of common stock to be received by our named executive officers will not be newly issued shares that are dilutive to stockholders, but will be allocated from the pool of shares currently held by the LLC that would otherwise have been distributed pro rata to certain funds affiliated with Blackstone, Carlyle, Centerbridge and WL Ross, whom we refer to as the Sponsors, as well as the other unit holders of the LLC in respect of their units as part of the liquidation of the LLC. Any such shares later forfeited by our named executive officers would be distributed pro rata back to the then-unit holders and not to us. Such shares have not been registered under the Securities Act and may only be sold pursuant to registration under the Securities Act or an exemption therefrom. The shares issuable upon exercise of options will be newly issued shares that will be issued under the BankUnited, Inc. 2010 Omnibus Equity Incentive Plan described below, which will be covered by a registration statement on Form S-8 that we intend to file upon consummation of this offering.

In addition, in connection with the IPO, the BankUnited, Inc. 2010 Omnibus Equity Incentive Plan, which is more suitable for a public company, will become effective and post-IPO we will no longer issue new options under the BankUnited, Inc. 2009 Stock Option Plan.

The Board of Directors of the LLC approved, contingent upon consummation of this offering, the vesting in full of the IRR-based PIUs that are held by our named executive officers such that, immediately prior to the consummation of the Reorganization, all IRR-based PIUs will be vested. In addition, each of our named executive officers will be permitted to sell the same fractional amount of common stock (including shares to be received upon the liquidation of the LLC and the corresponding conversion of PIUs to stock and options) as the Sponsors are permitted to sell in connection with this offering.

Holdback Agreements

Post-offering, each of (1) Mr. Kanas and certain funds affiliated with Blackstone, Carlyle, Centerbridge and WL Ross have separately agreed during the 18 months from the date of this prospectus and (2) our other executive officers have separately agreed during the 12 months from the date of this prospectus not to effect any sales pursuant to Rule 144 under the Securities Act of any of our equity securities. See "Description of Our Capital Stock—Registration Rights."

Liquidation of the LLC and Treatment of Interests in the LLC

Any liquidation of the LLC in connection with, or in order to facilitate, an initial public offering of our common stock must be implemented in accordance with the terms of the LLC Agreement, which contemplates the Reorganization. In accordance with the terms of the LLC Agreement, the following transactions will occur immediately prior to the consummation of this offering in connection with the liquidation of the LLC (based on an assumed initial offering price of $24.00 per share, the midpoint of the price range set forth on the cover of this prospectus, and after deducting estimated underwriting discounts and commissions):

- 3,348,357 shares of our common stock held by the LLC will be distributed to our named executive officers in respect of their common equity investment in the LLC at the time of its formation (or, in the case of Mr. Pauls, at the time his employment with us commenced);

- in respect of the vested IRR-based PIUs (after giving effect to the acceleration of vesting described above) and vested Time-based PIUs held by our named executive officers, our named executive officers will receive:

  - 3,571,662 shares of our common stock held by the LLC;

  - fully vested and exercisable options under the Omnibus Equity Incentive Plan to acquire 3,315,142 shares of our common stock, which options will have an exercise price per share equal to the initial public offering price per share in this offering and will expire on the tenth anniversary of the date of grant; and

  - a dividend equivalent right that will entitle the holder thereof to receive the economic benefit, for a period of ten years following the date of grant, of any dividends paid with respect to our common stock after this offering as though such holder owned the number of shares of our common stock that would be issuable upon exercise of the options received by such holder described above; and

- in respect of the unvested Time-based PIUs held by our named executive officers, our named executive officers will receive:

  - 1,785,831 shares of our common stock held by the LLC that will be restricted shares of common stock, which vesting restrictions will lapse and cease to exist in accordance with the same time-based vesting schedule as existed for the corresponding Time-based PIUs as described above;

  - a payment from us at the time the vesting restrictions applicable to the restricted shares received by our named executive officers described above lapse in an amount equal to the amount of all dividends that would have been paid to such restricted shares between the date of this offering and the date that the vesting restrictions lapse had such restricted shares not been subject to such vesting restrictions and were instead entitled to participate in dividends on the same basis as our common stock;

  - unvested and unexercisable options under the Omnibus Equity Incentive Plan to acquire 1,657,571 shares of our common stock, which options will (i) have an exercise price per share equal to the initial public offering price per share in this offering, (ii) expire on the tenth anniversary of the date of grant and (iii) vest in accordance with the same time-based vesting schedule as existed for the corresponding Time-based PIUs as described above; and

  - a dividend equivalent right that will only entitle the holder thereof to an aggregate payment from us at the time the unvested options vest in accordance with their terms in an amount equal to the amount of all dividends that would have been paid in respect of such unvested options after the date of this offering and prior to such vesting date as though such holder owned the number of shares of our common stock that would be issuable upon the vesting and exercise of the options.

The allocation between shares of our common stock (whether or not restricted) and options (but not the aggregate number of shares of our common stock and shares subject to options) will be different from what is set forth above to the extent the actual initial public offering price per share in this offering, after deducting underwriting discounts and commissions, differs from the assumed initial public offering price, after deducting estimated underwriting discounts and commissions. In general, the higher the actual initial offering price, our named executive officers will be allocated more shares and less options; the lower the actual initial offering price, less shares and more options. If the actual initial public offering price per share in this offering, after deducting underwriting discounts and commissions, is $1.00 greater than the assumed initial public offering price, after deducting estimated underwriting discounts and commissions:

- 3,342,223 shares of our common stock held by the LLC would be distributed to our named executive officers in respect of their common equity investment in the LLC at the time of its formation (or, in the case of Mr. Pauls, at the time his employment with us commenced);

- in respect of the vested IRR-based PIUs and vested Time-based PIUs held by our named executive officers, our named executive officers would receive:

  - 3,676,720 shares of our common stock held by the LLC;

  - fully vested and exercisable options under the Omnibus Equity Incentive Plan to acquire 3,210,084 shares of our common stock, which options will have an exercise price per share equal to the initial public offering price per share in this offering and will expire on the tenth anniversary of the date of grant; and

  - a dividend equivalent right that will entitle the holder thereof to receive the economic benefit, for a period of ten years following the date of grant, of any dividends paid with respect to our common stock after this offering as though such holder owned the number of shares of our common stock that would be issuable upon exercise of the options received by such holder described above; and

- in respect of the unvested Time-based PIUs, our named executive officers would receive:

  - 1,838,360 shares of our common stock held by the LLC that will be restricted shares of common stock, which vesting restrictions will lapse and cease to exist in accordance with the same time-based vesting schedule as existed for the corresponding Time-based PIUs as described above;

  - payment from us at the time the vesting restrictions applicable to the restricted shares received by our named executive officers described above lapse in an amount equal to the amount of all dividends that would have been paid to such restricted shares between the date of this offering and the date that the vesting restrictions lapse had such restricted shares not been subject to such vesting restrictions and were instead entitled to participate in dividends on the same basis as our common stock;

  - unvested and unexercisable options under the Omnibus Equity Incentive Plan to acquire 1,605,042 shares of our common stock, which options will (i) have an exercise price per share equal to the initial public offering price per share in this offering, (ii) expire on the tenth anniversary of the date of grant and (iii) vest in accordance with the same time-based vesting schedule as existed for the corresponding Time-based PIUs as described above; and

  - a dividend equivalent right that will only entitle the holder thereof to an aggregate payment from us at the time the unvested options vest in accordance with their terms in an amount equal to the amount of all dividends that would have been paid in respect of such unvested options after the date of this offering and prior to such vesting date as though such holder owned the number of shares of our common stock that would be issuable upon the vesting and exercise of the options.

If the actual initial public offering price per share in this offering, after deducting underwriting discounts and commissions, is $1.00 less than the assumed initial public offering price per share in this offering, after deducting estimated underwriting discounts and commissions:

- 3,355,025 shares of our common stock held by the LLC would be distributed to our named executive officers in respect of their common equity investment in the LLC at the time of its formation (or, in the case of Mr. Pauls, at the time his employment with us commenced);

- in respect of the vested IRR-based PIUs and vested Time-based PIUs held by our named executive officers, our named executive officers would receive:

  - 3,457,468 shares of our common stock held by the LLC;

  - fully vested and exercisable options under the Omnibus Equity Incentive Plan to acquire 3,429,336 shares of our common stock, which options will have an exercise price per share equal to the initial public offering price per share in this offering and will expire on the tenth anniversary of the date of grant; and

    - a dividend equivalent right that will entitle the holder thereof to receive the economic benefit, for a period of ten years following the date of grant, of any dividends paid with respect to our common stock after this offering as though such holder owned the number of shares of our common stock that would be issuable upon exercise of the options received by such holder described above; and

- in respect of the unvested Time-based PIUs, our named executive officers would receive:

    - 1,728,734 shares of our common stock held by the LLC that will be restricted shares of common stock, which vesting restrictions will lapse and cease to exist in accordance with the same time-based vesting schedule as existed for the corresponding Time-based PIUs as described above;

    - a payment from us at the time the vesting restrictions applicable to the restricted shares received by our named executive officers described above lapse in an amount equal to the amount of all dividends that would have been paid to such restricted shares between the date of this offering and the date that the vesting restrictions lapse had such restricted shares not been subject to such vesting restrictions and were instead entitled to participate in dividends on the same basis as our common stock;

    - unvested and unexercisable options under the Omnibus Equity Incentive Plan to acquire 1,714,668 shares of our common stock, which options will (i) have an exercise price per share equal to the initial public offering price per share in this offering, (ii) expire on the tenth anniversary of the date of grant and (iii) vest in accordance with the same time-based vesting schedule as existed for the corresponding Time-based PIUs as described above; and

    - a dividend equivalent right that will only entitle the holder thereof to an aggregate payment from us at the time the unvested options vest in accordance with their terms in an amount equal to the amount of all dividends that would have been paid in respect of such unvested options after the date of this offering and prior to such vesting date as though such holder owned the number of shares of our common stock that would be issuable upon the vesting and exercise of the options.

Equity Ownership Requirements

In connection with the formation of our Company, certain of our named executive officers were required to invest a portion of their personal assets in our Company. Mr. Kanas invested $23,500,000, Mr. Bohlsen invested $10,000,000 and Mr. Singh invested $1,000,000. Mr. Pauls invested $1,000,000 in our Company in connection with the commencement of his employment. The amounts that our named executive officers were initially required to invest vary and each executive's investment amount is in relation to his net worth.

In connection with this offering and in exchange for the PIU vesting described above, we adopted a policy to which our named executive officers agreed relating to the minimum amount of equity securities that such named executive officers must retain for so long as they are employed by us. This policy, which may be waived from time to time by the Compensation Committee, will provide that so long as Mr. Kanas is CEO, he will not sell equity if, after giving effect to such sale, his retained equity (including vested and unvested equity, including options) has a value that is less than twelve times his base salary. Additionally, for Messrs. Pauls, Bohlsen and Singh, so long as they are employed and are named executive officers of the Company, they will not sell equity if, after giving effect to such sale, their respective retained equity (including vested and unvested equity, including options) has a value that is less than five times their respective base salary. We believe that requiring members of our senior management to invest and maintain ownership in our Company serves to align their interests with the interests of our stockholders generally.

Tax and Accounting Implications

The employment agreement of each of Messrs. Kanas, Pauls, Bohlsen, and Singh provides that prior to the time our Company undergoes an initial public offering, we and the applicable executive agree to discuss the structure of his base salary and bonus compensation in order to maintain the deductibility of compensation under Section 162(m) of the Internal Revenue Code. In addition, transition provisions under Section 162(m) may apply for a period of three years following the consummation of this offering to certain compensation arrangements that were entered into by a corporation before it was publicly held.

Summary Compensation Table

The following summary compensation table sets forth the total compensation paid or accrued for the year ended December 31, 2010, to our Chief Executive Officer, Chief Financial Officer and our two other most highly compensated executive officers who were serving as executive officers on December 31, 2010. We refer to these officers as our "named executive officers."

Name and Principal Position	Year	Salary ($)	Bonus ($)	Stock Awards ($)(5)	Change In Pension Value and Nonqualified Deferred Compensation Earnings ($)(6)	All Other Compensation ($)(7)	Total ($)
John A. Kanas,	2010	2,250,000	—	131,276	7,139	107,283	2,495,698
Chairman, President and	2009	1,377,620	—	35,763,663	238	83,980	37,225,501
Chief Executive Officer(1)							
Douglas J. Pauls,	2010	650,000	—	10,592	2,044	44,250	706,886
Chief Financial Officer(2)	2009	267,941	—	2,914,076	62	59,521	3,241,600
John Bohlsen,	2010	1,250,000	—	67,338	3,071	62,283	1,382,692
Vice Chairman and Chief	2009	765,345	—	18,279,207	102	50,886	19,095,540
Lending Officer(3)							
Rajinder P. Singh,	2010	1,000,000	—	58,448	3,071	55,218	1,116,737
Chief Operating Officer(4)	2009	612,276	—	15,894,969	102	23,302	16,530,649

(1) Mr. Kanas receives an annual base salary of $1,125,000 pursuant to the terms of his amended and restated employment agreement with BankUnited and an annual base salary of $1,125,000 pursuant to the terms of his employment agreement with the LLC and BankUnited, Inc.

(2) Mr. Pauls receives an annual base salary of $552,500 pursuant to the terms of his amended and restated employment agreement with BankUnited and an annual base salary of $97,500 pursuant to the terms of his employment agreement with the LLC and BankUnited, Inc.

(3) Mr. Bohlsen receives an annual base salary of $1,062,500 pursuant to the terms of his amended and restated employment agreement with BankUnited and an annual base salary of $187,500 pursuant to the terms of his employment agreement with the LLC and BankUnited, Inc.

(4) Mr. Singh receives an annual base salary of $750,000 pursuant to the terms of his amended and restated employment agreement with BankUnited and an annual base salary of $250,000 pursuant to the terms of his employment agreement with the LLC and BankUnited, Inc.

(5) Represents the value of the PIUs granted to the named executive officers in accordance with FASB ASC Topic 718.

(6) Represents the value of above-market earnings on nonqualified deferred compensation amounts credited with respect to each applicable named executive officer. Pursuant to our Nonqualified Deferred Compensation Plan, amounts deferred thereunder are credited with interest at a rate of 6% per annum. According to IRS guidelines, as of December 2010, interest above 2.45% is considered above market.

(7) $11,025 and $78,975 represent contributions made by us on Mr. Kanas' behalf to our 401(k) plan and Nonqualified Deferred Compensation Plan, respectively, $4,283 for an automobile allowance and $13,000 for a driver allowance. $11,025 and $18,225 represent contributions made by us on Mr. Pauls' behalf to our 401(k) plan and Nonqualified Deferred Compensation Plan, respectively, and $15,000 for an automobile allowance. $11,025 and $33,975 represent contributions made by us on Mr. Bohlsen's behalf to our 401(k) plan and Nonqualified Deferred Compensation Plan, respectively, $4,283 for an automobile allowance and $13,000 for a driver allowance. $11,025 and $33,975 represent contributions made by us on Mr. Singh's behalf to our 401(k) plan and Nonqualified Deferred Compensation Plan, respectively, and $10,218 for an automobile allowance.

Grants of Plan-Based Awards

The following table sets forth certain information with respect to the plan-based awards granted to each of our named executive officers during 2010:

2010 Grants of Plan-Based Awards

Name	Grant Date	All Other Stock Awards: Number of Shares of Stock or Units (#)(1)	Closing Price on Date of Grant ($/Sh)(2)	Grant Date Fair Value of Stock and Option Awards ($)(3)
Mr. Kanas	3/11/2010	134	850	113,940
	9/30/2010	14	1,238	17,336
Mr. Pauls	3/11/2010	11	850	9,354
	9/30/2010	1	1,238	1,238
Mr. Bohlsen	3/11/2010	69	850	58,671
	9/30/2010	7	1,238	8,667
Mr. Singh	3/11/2010	60	850	51,018
	9/30/2010	6	1,238	7,430

(1) Represents grants of PIUs to the named executive officers pursuant to the anti-dilution protection described below. Each of these anti-dilution grants vest in accordance with the same vesting schedule as the original PIU grants described below.

(2) $850 represents the price per PIU as of December 31, 2009, which was the most recent date the PIUs were valued prior to the March 11, 2010 grants, and $1,238 represents the price per PIU as of September 30, 2010.

(3) Represents the value of the PIUs granted to the applicable named executive officer on March 11, 2010 based on a PIU valuation as of December 31, 2009, which was the most recent date the PIUs were valued prior to the March 11, 2010 grants, and as of September 30, 2010 with respect to the grants on such date in accordance with FASB ASC Topic 718.

Management Profits Interest Units

On May 21, 2009, we granted management PIUs to certain of our named executive officers. Each PIU represents the right of the holder to share in distributions from the LLC after certain preferred allocations have been made. Mr. Pauls received his PIUs on September 1, 2009, after commencing employment with us on August 4, 2009. Half of the PIUs vest with the passage of time and half vest upon attainment of certain investment returns.

With regard to the Time-based PIUs, in general: one-third vested on May 21, 2010, and one-third will become vested on each of May 21, 2011 and May 21, 2012. With respect to Mr. Pauls' PIUs, one-third vested on September 1, 2010, and one-third will become vested on each of September 1, 2011 and September 1, 2012.

IRR-based PIUs will become vested pursuant to the terms of LLC Agreement.

In the event of a change of control, all of the unvested Time-based PIUs will vest. "Change of control" means either: the sale or disposition of substantially all of our assets to persons other than our investor members and outside members and their respective affiliates; or the date upon which persons other than our investor members or outside members gain 50% or more of the voting power of our Company. In the event that a named executive officer's (other than Mr. Pauls) employment is terminated without cause or he resigns for good reason, 100% of his Time-based PIUs will vest as of the termination date.

If a named executive officer's employment with us terminates due to his death or disability and, in the case of Mr. Pauls, due to his termination without cause or resignation for good reason, he shall become entitled to the number of Time-based PIUs that would have vested over the twelve-month period following the termination date.

Each named executive officer who holds PIUs is subject to certain anti-dilution protection whereby he will receive additional grants of PIUs upon the issuance of additional units in the LLC. The anti-dilution protection ensures that the economic value of the PIUs granted to the executive remains unaffected by subsequent events.

Employment Agreements with Named Executive Officers

On July 10, 2009, Messrs. Kanas, Bohlsen, and Singh entered into employment agreements with the LLC, BankUnited, Inc. and BankUnited, which set forth the terms of their employment. On September 1, 2009, Mr. Pauls entered into employment agreements with the LLC, BankUnited, Inc. and BankUnited, which set forth the terms of his employment. On August 18, 2010, we amended and restated the original employment agreements with each of our named executive officers to remove the LLC and BankUnited, Inc. as parties to the agreement, leaving BankUnited as the sole employer. In addition, on August 18, 2010, each of our named executive officers entered into new employment agreements with the LLC and BankUnited, Inc. Our named executive officers did not become entitled to new or additional compensation as a result of the amendments and entry into the new employment agreements; rather the compensation and benefits provided to our named executive officers under the original employment agreements was allocated between the amended and restated employment agreements with BankUnited and the new employment agreements with the LLC and BankUnited, Inc.

In general, the initial term of employment provided under each named executive officer's amended and restated employment agreement with BankUnited and employment agreement with the LLC and BankUnited, Inc. expires on July 10, 2012 (in the case of Mr. Pauls, who commenced his employment later than our other named executive officers, the initial term of employment expires on September 1, 2012). The Board of BankUnited or the LLC and BankUnited, Inc., as applicable, may elect to extend the term of employment for additional one-year periods unless either BankUnited, the LLC and

BankUnited, Inc., as applicable, or the named executive officer gives the other party at least ninety days' notice of intent not to renew.

In addition, each named executive officer's amended and restated employment agreement with BankUnited contains certain regulatory language required by the OTS, which provides for the suspension or termination of BankUnited's obligations under the agreement in the event of certain events affecting the executive's ability to work for BankUnited or if BankUnited is in default of certain of its regulatory obligations.

Each named executive officer's employment agreement with BankUnited, as amended and restated, and new employment agreement with the LLC and BankUnited, Inc. are summarized below.

John Kanas

Amended and Restated Agreement with BankUnited

The agreement provides Mr. Kanas an annual base salary of $1,125,000, which may be increased (but not decreased) at the sole discretion of the board of directors of BankUnited. During each full fiscal year, Mr. Kanas will be eligible to earn a discretionary bonus as determined by the board of directors of BankUnited.

Mr. Kanas is entitled to participate in BankUnited's employee benefit plans (other than annual bonus and incentive plans) on the same basis as those benefits are available to BankUnited's other senior executives. Those benefits include: participation in group life, hospitalization, medical, dental, health, accident and short and long term disability plans, four weeks annual paid vacation, and reimbursement for reasonable business expenses. In addition, Mr. Kanas is eligible for payment of professional dues and professional membership fees, participation in an excess 401(k) plan, an automobile allowance, and a driver (at market cost).

Agreement with the LLC and BankUnited, Inc.

The agreement provides Mr. Kanas an annual base salary of $1,125,000, which may be increased (but not decreased) at the sole discretion of the board of directors of the LLC and BankUnited, Inc. During each full fiscal year, Mr. Kanas will be eligible to earn a discretionary bonus as determined by the board of directors of the LLC and BankUnited, Inc.

Douglas Pauls

Amended and Restated Agreement with BankUnited

The agreement provides Mr. Pauls an annual base salary of $552,500, which may be increased (but not decreased) at the sole discretion of the board of directors of BankUnited. During each full fiscal year, Mr. Pauls will be eligible to earn a discretionary bonus as determined by the board of directors of BankUnited.

Mr. Pauls is entitled to participate in BankUnited's employee benefit plans (other than annual bonus and incentive plans) on the same basis as those benefits are available to BankUnited's other senior executives. In addition, Mr. Pauls is eligible to participate in our excess 401(k) plan and to receive an automobile allowance.

Agreement with the LLC and BankUnited, Inc.

The agreement provides Mr. Pauls an annual base salary of $97,500, which may be increased (but not decreased) at the sole discretion of the board of directors of the LLC and BankUnited, Inc. During each full fiscal year, Mr. Pauls will be eligible to earn a discretionary bonus as determined by the board of directors of the LLC and BankUnited, Inc.

John Bohlsen

Amended and Restated Agreement with BankUnited

The agreement provides Mr. Bohlsen an annual base salary of $1,062,500, which may be increased (but not decreased) at the sole discretion of the board of directors of BankUnited. During each full fiscal year, Mr. Bohlsen will be eligible to earn a discretionary bonus as determined by the board of directors of BankUnited.

Mr. Bohlsen will be entitled to participate in BankUnited's employee benefit plans (other than annual bonus and incentive plans) on the same basis as those benefits are available to BankUnited's other senior executives. In addition, Mr. Bohlsen is eligible for payment of professional dues and professional membership fees, participation in an excess 401(k) plan, an automobile allowance, and a driver (at market cost).

Agreement with the LLC and BankUnited, Inc.

The agreement provides Mr. Bohlsen an annual base salary of $187,500, which may be increased (but not decreased) at the sole discretion of the board of directors of the LLC and BankUnited, Inc. During each full fiscal year, Mr. Bohlsen will be eligible to earn a discretionary bonus as determined by the board of directors of the LLC and BankUnited, Inc.

Rajinder Singh

Amended and Restated Agreement with BankUnited

The agreement provides Mr. Singh an annual base salary of $750,000, which may be increased (but not decreased) at the sole discretion of the board of directors of BankUnited. During each full fiscal year, Mr. Singh will be eligible to earn a discretionary bonus as determined by the board of directors of BankUnited.

Mr. Singh will be entitled to participate in BankUnited's employee benefit plans (other than annual bonus and incentive plans) on the same basis as those benefits are available to BankUnited's other senior executives. In addition, Mr. Singh is eligible for payment of professional dues and professional membership fees, participation in an excess 401(k) plan, and an automobile allowance.

Agreement with the LLC and BankUnited, Inc.

The agreement provides Mr. Singh an annual base salary of $250,000, which may be increased (but not decreased) at the sole discretion of the board of directors of the LLC and BankUnited, Inc. During each full fiscal year, Mr. Singh will be eligible to earn a discretionary bonus as determined by the board of directors of the LLC and BankUnited, Inc.

For a description of severance payments and benefits made available under the employment agreements, see the section below entitled "—Potential Payments Upon Termination or Change-in-Control."

BankUnited, Inc. 2010 Omnibus Equity Incentive Plan

In connection with this offering, we have adopted the BankUnited, Inc. 2010 Omnibus Equity Incentive Plan, or the Plan, which will become effective upon the later to occur of the effectiveness of this offering and our common stock being listed and approved for listing upon notice of issuance on the New York Stock Exchange, and will continue in effect until the tenth anniversary of that date.

Purpose

The purposes of the Plan are to provide additional incentives to selected employees, directors, or independent contractors of and consultants to us or certain of our affiliates, in order to strengthen their commitment, motivate them to faithfully and diligently perform their responsibilities and to attract and retain competent and dedicated persons who are essential to the success of our business and whose efforts will impact our long-term growth and profitability.

The Plan provides for the grant of share options (all share options granted under the Plan are intended to be non-qualified share options and are not intended to qualify as "incentive stock options" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "*Internal Revenue Code*")), share appreciation rights ("*SARs*"), restricted shares, deferred shares, performance shares, unrestricted shares and other share-based awards.

Plan Administration

The Plan may be administered by our Board or by a committee of directors designated by our Board (the "*Administrator*"). The Administrator has broad administrative authority to interpret the Plan and may prescribe, amend and rescind rules and make all other determinations necessary or desirable for the administration of the Plan. Pursuant to its administrative authority, the Administrator may, among other things: select the persons who will receive awards and determine the types of awards to be granted; determine the terms and conditions of those awards, and amend the terms and conditions of outstanding awards.

Shares of Common Stock Subject to Awards

The number of shares of our common stock available for issuance under the Plan is 7,500,000. Once the Plan becomes subject to Section 162(m) of the Internal Revenue Code, the aggregate awards granted during any single year to a person who is likely to be a "covered employee" (within the meaning of Section 162(m) of the Internal Revenue Code) may not exceed 1,000,000 shares of our common stock.

The shares of our common stock issued under the Plan may consist of authorized but unissued shares or shares that we may reacquire in the open market, in private transactions, or otherwise. If any shares of common stock subject to an award granted under the Plan are forfeited, cancelled, exchanged or surrendered or if an award otherwise terminates or expires without a distribution of shares to the participant, those shares will again be available for awards under the Plan.

The Plan provides that, in the event of a merger, consolidation, recapitalization, share dividend or other change in corporate structure affecting our common stock, the Administrator will make, in its sole discretion, an equitable substitution or proportional adjustment in (i) the aggregate number of shares of common stock reserved for issuance under the Plan, (ii) the maximum number of shares of common stock that may be subject to awards granted to a participant in any calendar year, (iii) the kind, number and exercise price subject to outstanding share options and SARs granted under the Plan, and (iv) the kind, number and purchase price of shares of common stock subject to outstanding awards of restricted shares, deferred shares, performance shares or other share-based awards granted under the Plan. In addition, in the event of a merger, amalgamation, consolidation, reclassification, spin-off, spin-out, repurchase, reorganization, recapitalization, share dividend or other change in corporate structure affecting the common stock, the Administrator may, in its discretion, terminate all awards in exchange for the payment of cash or in-kind consideration.

Awards

General. The terms and conditions of each award granted under the Plan will be set forth in an award agreement in a form to be determined by the Administrator.

Share Options. The exercise period of a share option may not exceed ten years from the date of grant and the exercise price may not be less than 100% of the fair market value of a share of common stock on the date of grant.

An optionee will have no rights to dividends or distributions or other rights of a stockholder with respect to the shares of common stock subject to a share option until the optionee has given written notice of exercise and paid the exercise price and applicable withholding taxes.

Unless the award agreement provides otherwise, in the event of an optionee's termination of employment or service for any reason other than for cause, retirement, disability or death, the optionee's share options (to the extent exercisable at the time of such termination) generally will remain exercisable until 90 days after such termination and will then expire. Unless the applicable share option agreement provides otherwise, in the event of an optionee's termination of employment or service due to retirement, disability or death, the optionee's share options (to the extent exercisable at the time of such termination) generally will remain exercisable until one year after such termination and will then expire. Share options that were not exercisable on the date of termination of the optionee's employment or service for any reason other than for cause will expire at the close of business on the date of such termination. In the event of an optionee's termination of employment or service for cause, the optionee's outstanding share options will expire at the commencement of business on the date of such termination.

Share Appreciation Rights. SARs may be granted under the Plan either alone ("*free-standing SAR*") or in conjunction with all or part of any share option granted under the Plan ("*tandem SAR*"). A free-standing SAR granted under the Plan will entitle its holder to receive, at the time of exercise, an amount per share equal to the excess of the fair market value (at the date of exercise) of a share of common stock over a specified price fixed by the Administrator on the date of grant (which shall be no less than fair market value at the date of grant). A tandem SAR granted under the Plan will entitle its holder to receive, at the time of exercise of the SAR and surrender of the applicable portion of the related share option, an amount per share equal to the excess of the fair market value (at the date of exercise) of a share of common stock over the exercise price of the related share option. The exercise price of a SAR may not be less than 100% of the fair market value of a share of common stock on the date of grant. The exercise period of a free-standing SAR may not exceed ten years from the date of grant. The exercise period of a tandem SAR will expire upon the expiration of its related award.

Participants who are granted SARs shall have no rights as stockholders of BankUnited, Inc. with respect to the grant or exercise of such rights.

In the event of a participant's termination of employment or service, free-standing SARs will be exercisable at such times and subject to such terms and conditions as determined by the Administrator in the applicable award agreement, while tandem SARs will be exercisable at such times and subject to the terms and conditions applicable to the related share option.

Restricted Shares, Deferred Shares and Performance Shares. Restricted shares, deferred shares and performance shares may be issued either alone or in addition to other awards granted under the Plan. The Administrator will determine the purchase price and performance objectives, if any, with respect to the grant of restricted shares, deferred shares and performance shares. Subject to the provisions of the Plan and the applicable award agreement, the Administrator has the sole discretion to provide for the lapse of restrictions in installments or the acceleration or waiver of restrictions (in whole or part) under certain circumstances, including the attainment of certain performance goals, a participant's termination of employment or service or a participant's death or disability.

Unless the award agreement provides otherwise, participants with restricted shares and performance shares will generally have all of the rights of a shareholder, including dividend or distribution rights. Participants with deferred shares will generally not have the rights of stockholders, but, during the restricted period, deferred shares may be credited with dividend or distribution equivalent rights, if the award agreement so provides.

The rights of a participant with respect to restricted shares, deferred shares and performance shares upon termination of the participant's employment or service will be set forth in the applicable award agreement.

Performance shares may be subject to the achievement of one or more of the following performance goals: (i) earnings, including one or more of operating income, earnings before or after taxes, earnings before or after interest, depreciation, amortization, adjusted EBITDA, economic earnings, or extraordinary or special items or book value per share (which may exclude nonrecurring items); (ii) pre-tax income or after-tax income; (iii) earnings per share (basic or diluted); (iv) operating profit; (v) revenue, revenue growth or rate of revenue growth; (vi) return on assets (gross or net), return on investment, return on capital, or return on equity; (vii) operating expenses; (viii) share price or total shareholder return; (ix) implementation or completion of critical projects or processes; (x) cumulative earnings per share growth; (xi) net interest margin, operating margin or profit margin; (xii) efficiency ratio, cost targets, reductions and savings, productivity and efficiencies; (xiii) strategic business criteria, consisting of one or more objectives based on meeting specified market penetration, geographic business expansion, customer satisfaction, employee satisfaction, human resources management, supervision of litigation, information technology, and goals relating to acquisitions, divestitures, joint ventures and similar transactions, and budget comparisons; (xiv) personal professional objectives, including any of the foregoing performance goals, the implementation of policies and plans, the negotiation of transactions, the development of long term business goals, formation of joint ventures, and the completion of other corporate transactions; and (xv) any combination of, or a specified increase in, any of the foregoing. Performance goals not specified in the Plan may be used to the extent that an award is not intended to comply with Section 162(m) of the Internal Revenue Code. If required to deduct the compensation under Section 162(m) of the Internal Revenue Code, no payment shall be made to a participant that is likely to be a "covered employee" (within the meaning of Section 162(m) of the Internal Revenue Code) prior to the certification by a committee composed entirely of individuals that meet the qualifications of an "outside director" within the meaning of Section 162(m) of the Internal Revenue Code that the performance goals have been attained.

Other Share-Based Awards. The Administrator may grant other share-based awards upon terms and conditions determined by the Administrator at the date of grant or thereafter.

Treatment of Outstanding Awards upon a Change in Control

The Plan provides that, unless otherwise determined by the Administrator and evidenced in an award agreement, if a change in control occurs, then (i) any unvested or unexercisable portion of an award carrying a right to exercise shall become fully vested and exercisable and (ii) the restrictions, deferral limitations, payment conditions and forfeiture conditions applicable to any other award granted under the Plan will lapse and such unvested awards will be deemed fully vested and any performance conditions imposed with respect to such awards will be deemed to be fully achieved.

For purposes of the Plan a "change in control" means, in general: (i) a person or entity acquires securities representing 50% or more of our voting power; (ii) certain mergers or amalgamations involving us or any of our subsidiaries and another corporation; (iii) an unapproved change in the majority membership of our Board; (iv) the approval by stockholders of a plan of complete liquidation or dissolution of our company; or (v) the consummation of an agreement for certain sales or dispositions of all or substantially all of our assets.

Determination of Fair Market Value

The fair market value of a share of common stock will be determined by the Administrator in its sole discretion, subject to certain limitations, including if our common stock is admitted to trading on a national securities exchange, the fair market value of a share of common stock will be the closing sales price per share on the applicable date, or if no sale was reported on that date, for the last preceding date on which there was a sale of shares of common stock on the exchange.

BankUnited, Inc. 2009 Stock Option Plan

We also maintain the BankUnited, Inc. 2009 Stock Option Plan, pursuant to which awards of stock options have been granted to employees other than our named executive officers. In connection with this offering and the adoption of the BankUnited, Inc. 2010 Omnibus Equity Incentive Plan, all future grants of stock options will be made under the new plan.

Option Exercises and Stock Vested

The following table contains information regarding PIUs held by our named executive officers, which vested during fiscal year 2010:

2010 Option Exercises and Stock Vested

	Stock Awards	
Name	Number of Shares Acquired on Vesting (#)(1)	Value Realized on Vesting ($)(2)
Mr. Kanas	8,444	7,123,821
Mr. Pauls	688	708,514
Mr. Bohlsen	4,316	3,640,999
Mr. Singh	3,753	3,166,190

(1) For Messrs. Kanas, Bohlsen, and Singh, one-third of the Time-based PIUs, including the 2010 grants of PIUs, pursuant to the anti-dilution protection described above, vested on May 21, 2010. For Mr. Pauls, one-third of the Time-based PIUs, including the 2010 grants, vested on September 1, 2010.

(2) For Messrs. Kanas, Bohlsen, and Singh, based on the March 31, 2010 value of $844, the most recent valuation date prior to vesting. For Mr. Pauls, based on the June 30, 2010 value of $1,030, the most recent valuation date prior to vesting.

Outstanding Equity Awards at Fiscal Year-End

The following table shows grants of equity awards outstanding on December 31, 2010 for each of our named executive officers:

Outstanding Equity Awards at 2010 Fiscal Year-End

	Stock Awards	
Name	Number of Shares or Units of Stock That Have Not Vested (#)(1)	Market Value of Shares or Units of Stock That Have Not Vested ($)(2)
Mr. Kanas	42,268	52,338,911
Mr. Pauls	3,444	4,264,560
Mr. Bohlsen	21,603	26,750,517
Mr. Singh	18,786	23,262,082

(1) One-half of the PIUs granted to each named executive officer is comprised of Time-based PIUs and the other half is comprised of IRR-based PIUs. With regard to the Time-based PIUs, in general: one-third vested on May 21, 2010, and one-third will become vested on each of May 21, 2011 and May 21, 2012. With respect to Mr. Pauls' PIUs, one-third vested on September 1, 2010, and one-third will become vested on each of September 1, 2011 and September 1, 2012. IRR-based PIUs will become vested pursuant to the terms of LLC Agreement.

(2) Based on the value of the PIUs at September 30, 2010, the most recent available valuation date.

Nonqualified Deferred Compensation

Messrs. Kanas, Pauls, Bohlsen and Singh are eligible to participate in our Nonqualified Deferred Compensation Plan, which allows each executive the ability to defer compensation in excess of annual IRS limits (for 2009 and 2010, the limit is $16,500) that are applicable to our qualified 401(k) plan. Each executive is also eligible to receive company matching contributions under the plan. For the 2010 plan year, we contributed an amount equal to four and one-half percent of each executive's eligible compensation to the plan on his behalf. For subsequent plan years, we will contribute one hundred percent of the first one percent plus seventy percent of the next five percent of eligible compensation that the executive elects to defer under the plan. Amounts deferred by the executive are vested at all times and amounts that we contribute on his behalf will become vested upon the earlier to occur of a change in control (as defined in the plan), the executive's death, disability, attainment of "Normal Retirement Age" under our 401(k) plan or completion of two years of service. Amounts deferred under our Nonqualified Deferred Compensation Plan are distributed upon a date specified by the executive, which may be no earlier than January 1 of the third plan year following the plan year in which the compensation would have otherwise been paid to the executive, or upon the earliest to occur of the executive's separation from service, disability or a change in control.

The table below shows contributions to our Nonqualified Deferred Compensation Plan by our named executive officers and by us on behalf of our named executive officers during 2010.

Nonqualified Deferred Compensation Table

Name	Executive Contributions in Last FY ($)	Registrant Contributions in Last FY ($)	Aggregate Earnings in Last FY ($)	Aggregate Withdrawals/ Distributions ($)	Aggregate Balance at Last FYE ($)
Mr. Kanas	105,300	78,975	12,087	—	309,619
Mr. Pauls	40,500	18,225	3,446	—	91,498
Mr. Bohlsen	45,300	33,975	5,200	—	133,198
Mr. Singh	45,300	33,975	5,200	—	133,198

Potential Payments upon Termination or Change-in-Control

Each named executive officer's amended and restated employment agreement with BankUnited and new employment agreement with the LLC and BankUnited, Inc. provide for severance payments and benefits, to the extent applicable, in the event of a termination of employment. The following description of the severance payments and benefits apply generally with respect to each named executive officer's amended and restated employment agreement with BankUnited and employment agreement with the LLC and BankUnited, Inc. except as specifically noted.

A named executive officer's employment may be terminated at any time and for any reason upon at least thirty days' notice. A named executive officer's employment may also be terminated for "cause" (as defined below).

If a named executive officer's employment is terminated for cause, or if he resigns at a time when grounds for cause exist, or if he resigns without "good reason" (as defined below) he is entitled to receive:

(A) the base salary accrued through the date of termination, which must be paid within fifteen days following the date of such termination;

(B) any annual bonus awarded but unpaid at the time of the termination for the preceding fiscal year (unless payment is otherwise deferred, in which case it will be paid at the earliest possible time); and

(C) any fully vested employee benefits to which he is entitled.

Together, (A)-(C) will be referred to as the "accrued rights."

In the event that a named executive officer dies, his employment will automatically terminate. If he becomes disabled, BankUnited or the LLC and BankUnited, Inc., as applicable, may terminate his employment. For purposes of the employment agreement, "disability" means the failure of a named executive officer to perform his duties for six consecutive months, or for an aggregate of nine months in any consecutive twelve-month period.

In the event that a named executive officer's employment is terminated due to death or disability, his estate is entitled to receive the accrued rights. In addition, the named executive officer (to the extent applicable) and his dependents are generally entitled to receive continued coverage under the group health plans of BankUnited or the LLC and BankUnited, Inc., as applicable, at the sole expense of BankUnited or the LLC and BankUnited, Inc., as applicable, for twenty-four months following his disability or death. If the continued coverage cannot be provided for longer than eighteen months, BankUnited or the LLC and BankUnited, Inc., as applicable, shall pay the named executive officer or his estate, on the first business day of every month, an amount equal to the premium we would otherwise have paid. In the case of Mr. Pauls, he (to the extent applicable) and his dependents are entitled to receive continued coverage under the group health plans of BankUnited or the LLC and BankUnited, Inc., as applicable, at the sole expense of BankUnited or the LLC and BankUnited, Inc., as applicable, for six months following the disability or death.

A named executive officer's employment may be terminated by BankUnited or the LLC and BankUnited, Inc., as applicable, without cause or voluntarily by him for good reason.

If Messrs. Kanas' or Bohlsen's employment is terminated without cause or for good reason, he is entitled to receive:

(A) the accrued rights;

(B) two times the sum of his base salary and any bonus paid to him for the preceding fiscal year (minus $250,000 under the amended and restated employment agreement with BankUnited), minus the present value of any other cash severance benefits, payable within sixty days following his termination; and

(C) continued coverage under the group health plans of BankUnited or the LLC and BankUnited, Inc., as applicable, for the named executive officer and his dependents until the earlier of twenty-four months from his date of termination, and the date upon which the named executive officer becomes eligible for comparable coverage from another employer. If coverage cannot be provided for longer than eighteen months, the named executive officer will receive the premium amounts in cash on the first business day of every month.

If Mr. Pauls' employment is terminated without cause or if he resigns for good reason, he is entitled to receive:

(A) the accrued rights;

(B) the number of months, up to a maximum of twelve, in which Mr. Pauls was employed with us, multiplied by his monthly base salary, minus the present value of any other cash severance benefits, payable within sixty days following his termination; and

(C) continued coverage under the group health plans of BankUnited or the LLC and BankUnited, Inc., as applicable, for Mr. Pauls and his dependents until the earlier of six months from his date of termination, and the date upon which Mr. Pauls becomes eligible for comparable coverage from another employer.

If Mr. Singh's employment is terminated without cause or if he resigns for good reason, he is entitled to receive:

(A) the accrued rights;

(B) two times the sum of Mr. Singh's base salary and any bonus paid to him for the preceding fiscal year, minus the present value of any other cash severance benefits, payable within sixty days following his termination; and

(C) continued coverage under the group health plans of BankUnited or the LLC and BankUnited, Inc., as applicable, for Mr. Singh and his dependents until the earlier of twenty-four months from his date of termination, and the date upon which Mr. Singh becomes eligible for comparable coverage from another employer. If coverage cannot be provided for longer than eighteen months, Mr. Singh will receive the premium amounts in cash on the first business day of every month.

Payment of the amounts other than the accrued rights are contingent upon the named executive officer executing a general release of claims in favor of BankUnited or the LLC and BankUnited, Inc., as applicable.

If any compensation paid to a named executive officer becomes subject to the excise tax under Section 4999 of the Internal Revenue Code, BankUnited will pay the named executive officer an amount equal to half of the amount that would be necessary to put him in the same position as he would have been in had he not been subject to the excise tax.

Each named executive officer is subject to non-competition and non-solicitation covenants for eighteen months post-termination. In addition, he is subject to perpetual non-disparagement and confidentiality covenants.

For purposes of the employment agreements, "cause" generally means a named executive officer's: (A) personal dishonesty, (B) incompetence or willful misconduct, (C) willful or intentional failure to perform certain duties, (D) willful violation of any law, rule, or regulation or (E) willful and material breach of any material provision of the employment agreement.

"Good reason" generally means a material reduction in the named executive officer's salary or benefits, a material diminution in his reporting relationship or responsibilities (in the case of Messrs. Bohlsen or Singh, such a diminution will not constitute good reason so long as Mr. Kanas is the Chief Executive Officer of the Company or Chairman of our Board if the diminution was approved by Mr. Kanas), the failure of BankUnited or the LLC and BankUnited, Inc., as applicable, to pay compensation, or notice by BankUnited or the LLC and BankUnited, Inc., as applicable, that it or they will not be extending his term. In the case of Mr. Kanas, "good reason" also includes his removal as Chief Executive Officer or Chairman of our Board (except, in the case of the latter, for regulatory reasons). In order for any of the above events to constitute "good reason," the named executive officer must provide notice of his intention to resign within sixty days of the occurrence of the event.

The following tables show the severance payments and benefits that would have become payable to each named executive officer assuming the termination of his employment or a change in control occurred as of December 31, 2010.

Mr. Kanas

	Cash Severance ($)(1)	Continued Benefits ($)(2)	Value of Accelerated Equity ($)(3)	Excise Tax Gross-Up ($)(4)	Total ($)
Death/Disability	—	30,121	10,467,782	—	10,497,903
For Cause/Without Good Reason	—	—	—	—	—
Without Cause/For Good Reason	4,000,000	30,121	20,935,564	—	24,965,685
Change in Control	—	—	52,338,911	—	52,338,911

Mr. Pauls

	Cash Severance ($)(1)	Continued Benefits ($)(2)	Value of Accelerated Equity ($)(3)	Excise Tax Gross-Up ($)(4)	Total ($)
Death/Disability	—	7,530	852,912	—	860,442
For Cause/Without Good Reason	—	—	—	—	—
Without Cause/For Good Reason	650,000	7,530	852,912	—	1,510,442
Change in Control	—	—	4,264,560	—	4,264,560

Mr. Bohlsen

	Cash Severance ($)(1)	Continued Benefits ($)(2)	Value of Accelerated Equity ($)(3)	Excise Tax Gross-Up ($)(4)	Total ($)
Death/Disability	—	30,121	5,350,103	—	5,380,224
For Cause/Without Good Reason	—	—	—	—	—
Without Cause/For Good Reason	2,000,000	30,121	10,700,207	—	12,730,328
Change in Control	—	—	26,750,517	—	26,750,517

Mr. Singh

	Cash Severance ($)(1)	Continued Benefits ($)(2)	Value of Accelerated Equity ($)(3)	Excise Tax Gross-Up ($)(4)	Total ($)
Death/Disability	—	30,121	4,652,416	—	4,682,537
For Cause/Without Good Reason	—	—	—	—	—
Without Cause/For Good Reason	2,000,000	30,121	9,304,833	—	11,334,954
Change in Control	—	—	23,262,082	—	23,262,082

(1) The cash severance provided to each named executive officer is described in each of named executive officer's employment agreements.

(2) Each named executive officer's employment agreements for continued coverage under the group health plans of BankUnited or the LLC and BankUnited, Inc., as applicable, at its or their sole expense, as described above.

(3) For a description of equity acceleration upon certain terminations and a change in control, see the above section entitled "—Grants of Plan-Based Awards." We have assumed that performance conditions applicable to the vesting of IRR-based PIUs would have been met assuming a change in control occurred as of December 31, 2010 and that as of such date, the value of each PIU was $1,238.25.

(4) Assuming a termination of employment or a change in control occurred as of December 31, 2010, we would have sought the requisite stockholder approval such that none of our named executive officers would have become liable for payment of any excise tax. Accordingly, we did not include any amount for excise tax gross-up.

Director Compensation

The following table shows compensation paid, earned or awarded to each of the non-employee members of our Board for 2010.

Director Compensation Tables

Name	Fees Earned or Paid in Cash ($)	Stock Awards ($)	Option Awards ($)	Non-Equity Incentive Plan Compensation ($)	Change in Pension Value and Nonqualified Deferred Compensation Earnings ($)	All Other Compensation ($)	Total ($)
Chinh E. Chu	—	—	—	—	—	—	—
Richard S. LeFrak	—	—	—	—	—	—	—
Wilbur L. Ross, Jr.	—	—	—	—	—	—	—
P. Olivier Sarkozy	—	—	—	—	—	—	—
Lance N. West	—	—	—	—	—	—	—
Eugene F. DeMark	32,917	—	—	—	—	—	32,917
Ambassador Sue M. Cobb.	50,000	—	—	—	—	—	50,000
Steven J. Saiontz(1)	45,695	—	—	—	—	—	45,695

(1) Mr. Saiontz served on our Board from May 21, 2009 until July 20, 2010 when he resigned from our Board for personal reasons. The amount reported represents a *pro rata* portion of the $75,000 annual retainer fee to which Mr. Saiontz was entitled to receive, based on his time served during 2010.

In general, the members of our Board are either investors or agents of investors in our Company and, other than Mr. DeMark and Ambassador Cobb, they do not receive any compensation from us for service on our Board. Mr. DeMark is entitled to receive an annual retainer fee equal to $100,000 and Ambassador Cobb is entitled to receive an annual retainer fee equal to $50,000. Mr. Kanas and Mr. Bohlsen are also members of our Board but do not receive any additional compensation for their services on our Board.

The following table sets forth the compensation for future services expected to be paid to our non-employee directors following the completion of this offering.

Name	Retainer Fees
Chinh E. Chu	—
Ambassador Sue M. Cobb	50,000
Eugene F. DeMark	100,000
Richard S. LeFrak	—
Wilbur L. Ross, Jr.	—
Pierre Olivier Sarkozy	—
Lance N. West	—

Directors who are also our employees have not received and will not receive any compensation from us for service on our Board or Board committees.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

In addition to the director and executive officer compensation arrangements discussed above under "Compensation Discussion and Analysis—Executive Officer Compensation," the following is a summary of material provisions of various transactions we have entered into with our executive officers, directors (including nominees), 5% or greater stockholders and any of their immediate family members since April 28, 2009, the date BankUnited, Inc. was incorporated. We believe the terms and conditions set forth in such agreements are reasonable and customary for transactions of this type.

Registration Rights Agreement

The LLC Agreement entered into in connection with the Acquisition contains registration rights provisions with respect to sales of shares of the applicable holding company of BankUnited that is used as the public vehicle in connection with any initial public offering. In accordance with the LLC Agreement, in connection with this offering, BankUnited, Inc., the Sponsors, and Messrs. Kanas, Bohlsen, Singh and Pauls, who we collectively refer to as the Management Members, expect to enter into a registration rights agreement that will, among other things, amend and restate these registration rights provisions. For a further description of these rights, see "Description of Our Capital Stock—Registration Rights."

Transaction Fee Agreement

In connection with the Acquisition, we entered into a Transaction Fee Agreement with each of our Sponsors. In consideration for the Sponsors conducting financial and structural analysis, due diligence investigations and negotiations related to the Acquisition, the following transaction fees were paid to each of the Sponsors at the closing of the Acquisition on May 21, 2009:

- to Blackstone a fee of $5.3 million;
- to Carlyle a fee of $5.3 million;
- to Centerbridge a fee of $4.1 million; and
- to WL Ross a fee of $5.3 million.

We also reimbursed our Sponsors for certain expenses related to the Acquisition in an aggregate amount of $2.5 million.

Director Nomination Agreement

In connection with this offering, we will enter into a director nomination agreement with each of our Sponsors and Mr. Kanas that will provide for the rights of our Sponsors and Mr. Kanas to nominate individuals to our Board. The Sponsors and Mr. Kanas will have the right to nominate individuals to our Board at each meeting of stockholders where directors are to be elected and, subject to limited exceptions, we will include in the slate of nominees recommended to our stockholders for election as directors the number of individuals designated by the Sponsors and Mr. Kanas as follows:

- so long as Blackstone owns more than 40% of the common stock owned by Blackstone immediately prior to the consummation of this offering, one individual nominated by Blackstone;
- so long as Carlyle owns more than 40% of the common stock owned by Carlyle immediately prior to the consummation of this offering, one individual nominated by Carlyle;
- so long as WL Ross owns more than 40% of the common stock owned by WL Ross immediately prior to the consummation of this offering, one individual nominated by WL Ross;

- so long as Centerbridge owns more than 40% of the common stock owned by Centerbridge immediately prior to the consummation of this offering, one individual nominated by Centerbridge; and
- so long as Mr. Kanas is our Chief Executive Officer, two individuals (one of which will be Mr. Kanas) nominated by Mr. Kanas.

In addition, each of Blackstone, Carlyle, WL Ross and Centerbridge has the right to appoint one non-voting observer to attend all meetings of our Board until such time as such Sponsor ceases to own 5% of our outstanding common stock.

Statement of Policy Regarding Transactions with Related Persons

Transactions by us with related parties are subject to a formal written policy, as well as regulatory requirements and restrictions. These requirements and restrictions include Sections 23A and 23B of the Federal Reserve Act (which govern certain transactions by BankUnited with its affiliates) and the Federal Reserve's Regulation O (which governs certain loans by BankUnited to its executive officers, directors, and principal stockholders). We have adopted policies to comply with these regulatory requirements and restrictions. In addition, certain of our investors entered into Rebuttal of Control Agreements with the OTS in connection with their initial investments in us. The Rebuttal of Control Agreements limit the ability of these investors to conduct transactions with us or our affiliates. We have adopted a policy to assist these investors in complying with this aspect of their respective Rebuttal of Control Agreements.

Our Board has also adopted a written policy governing the approval of related party transactions that complies with all applicable requirements of the SEC and the NYSE concerning related party transactions. Related party transactions are transactions in which our Company is a participant, the amount involved exceeds $120,000 and a related party has or will have a direct or indirect material interest. Related parties of our Company include directors (including nominees for election as directors), executive officers, 5% stockholders of our Company and the immediate family members of these persons. The General Counsel of BankUnited, in consultation with management and outside counsel, as appropriate, will review potential related party transactions to determine if they are subject to our Related Party Transactions Policy. If so, the transaction will be referred for approval or ratification to the Nominating and Corporate Governance Committee. In determining whether to approve a related party transaction, the Corporate Governance Committee will consider, among other factors, the fairness of the proposed transaction, the direct or indirect nature of the director's, executive officer's or related party's interest in the transaction, the direct or indirect nature of the director's, executive officer's or related party's interest in the transaction, the appearance of an improper conflict of interests for any director or executive officer of the Company taking into account the size of the transaction and the financial position of the director, executive officer or related party, whether the transaction would impair an outside director's independence, the acceptability of the transaction to the Company's regulators and the potential violations of other Company policies. Our Related Party Transactions Policy will be available on our website at www.bankunited.com, as Annex B to our Corporate Governance Guidelines.

Table of Contents

PRINCIPAL AND SELLING STOCKHOLDERS

The following table sets forth information about the beneficial ownership of our common stock at January 10, 2011 and as adjusted to reflect the sale of the shares of common stock by us and the selling stockholders in this offering, for:

- each person known to us to be the beneficial owner of more than 5% of our common stock;
- each named executive officer;
- each of our directors;
- all of our executive officers and directors as a group; and
- each selling stockholder.

Unless otherwise noted below, the address of each beneficial owner listed on the table is c/o BankUnited, Inc., 14817 Oak Lane, Miami Lakes, FL 33016. We have determined beneficial ownership in accordance with the rules of the SEC. Except as indicated by the footnotes below, we believe, based on the information furnished to us, that the persons and entities named in the tables below have sole voting and investment power with respect to all shares of common stock that they beneficially own, subject to applicable community property laws. We have based our calculation of the percentage of beneficial ownership on 92,971,850 shares of common stock outstanding on January 10, 2011, and 96,971,850 shares of common stock outstanding after the completion of this offering.

In computing the number of shares of common stock beneficially owned by a person and the percentage ownership of that person, we deemed outstanding shares of common stock subject to options or warrants held by that person that are currently exercisable or exercisable within sixty days of January 10, 2011. We, however, did not deem these shares outstanding for the purpose of computing the percentage ownership of any other person. Beneficial ownership representing less than 1% is denoted with an asterisk (*).

The LLC is currently our sole stockholder. Immediately prior to the consummation of this offering, the LLC will be liquidated and all interests in us will be distributed to the members of the LLC in accordance with the LLC Agreement. This section, including the column "Shares Beneficially Owned Before the Offering", gives effect to the Reorganization (including any shares of common stock and options to purchase shares of our common stock to be received in respect of PIUs held by our named executive officers), which information (including the allocation between shares of common stock and options to be received by our named executive officers in respect of their PIUs and the number of shares to be distributed to the unit holders of the LLC as part of the liquidation of the LLC) depends on the actual initial public offering price per share in this offering. See "Reorganization" and "Compensation Discussion and Analysis—Executive Officer Compensation—Equity-Based Compensation."

	Shares Beneficially Owned Before the Offering		Shares being offered	Shares Beneficially Owned After the Offering	
Name of beneficial owner	Number	%		Number	%
Executive Officers and Directors:					
John A. Kanas(1)	6,473,993	6.8%	988,662	5,485,331	5.6%
John Bohlsen(2)	3,119,242	3.3%	458,076	2,661,166	2.7%
Douglas J. Pauls(3)	441,225	*	59,069	382,156	*
Rajinder P. Singh(4)	1,986,531	2.1%	217,560	1,768,971	1.8%
Chinh E. Chu(5)	—	—	—	—	—
Ambassador Sue M. Cobb(6)	170,206	*	42,388	127,818	*
Eugene F. DeMark	24,709	*	6,154	18,555	*
Richard S. LeFrak(7)	1,935,364	2.1%	481,984	1,453,380	1.5%
Wilbur L. Ross, Jr.(8)	20,551,724	22.1%	5,118,216	15,433,508	15.9%

Name of beneficial owner	Shares Beneficially Owned Before the Offering		Shares being offered	Shares Beneficially Owned After the Offering	
	Number	%		Number	%
Pierre Olivier Sarkozy(9)	—	—	—	—	—
Lance N. West(10)	—	—	—	—	—
All executive officers and directors as a group (11 persons)(11)	34,702,995	36.0%	7,372,109	27,330,885	27.3%
Greater than 5% Stockholders:					
Investment funds affiliated with WL Ross & Co. LLC(8)	20,551,724	22.1%	5,118,216	15,433,508	15.9%
Investment funds affiliated with The Carlyle Group:					
DBD Cayman Holdings, Ltd.(12)	11,335,704	12.2%	2,823,052	8,512,652	8.8%
TCG Holdings, L.L.C.(13)	9,216,020	9.9%	2,295,164	6,920,856	7.1%
Investment funds affiliated with Centerbridge Partners, L.P.(14)	16,128,035	17.3%	4,016,537	12,111,498	12.5%
Investment funds affiliated with The Blackstone Group(15)	20,551,724	22.1%	5,118,216	15,433,508	15.9%
Other Selling Stockholders:					
LF Moby LLC(7)	1,935,364	2.1%	481,984	1,453,380	1.5%
Cobb Family Twenty-Second Century Fund I(6)	59,572	*	14,836	44,736	*
Cobb Family Foundation(6)	25,531	*	6,358	19,173	*
Investment funds affiliated with East Rock Capital, LLC:					
EREF Special Situations, LLC(16)	1,658,884	1.8%	413,130	1,245,754	1.3%
East Rock Focus Fund, L.P(17)	184,320	*	45,903	138,417	*
Davy Global Opportunities Fund(18)	460,801	*	114,758	346,043	*
Rishi Bansal(19)	172,314	*	35,234	137,080	*
Scott J. Skorobohaty(20)	50,261	*	10,597	39,664	*
Raymond Barbone(21)	28,986	*	5,299	23,687	*

(1) Includes options to purchase 1,627,434 shares of common stock to be received in the Reorganization.

Also includes 1,250,000 shares of common stock held by the Kanas 2010 Annuity Trust, which is a grantor retained annuity trust. Mr. Kanas is the trustee of the Kanas 2010 Annuity Trust. Mr. Kanas disclaims any beneficial ownership of these shares except to the extent of his pecuniary interests therein, if any. The Kanas 2010 Annuity Trust is not expected to be a selling stockholder in this offering. Mr. Kanas intends to sell shares in this offering from shares of common stock he directly holds and shares of vested common stock he will receive in respect of his PIUs in the Reorganization. The Kanas 2010 Annuity Trust may only be a selling stockholder to the extent the number of shares Mr. Kanas will sell in this offering exceeds the number of shares he directly holds and shares of vested common stock and options he will receive in respect of his PIUs in the Reorganization. The address of the Kanas 2010 Annuity Trust is 32 Adelaide Ave., East Moriches, NY 11940.

(2) Includes options to purchase 831,799 shares of common stock to be received in the Reorganization.

Also includes 1,000,000 shares of common stock held by the Bohlsen 2010 Annuity Trust, which is a grantor retained annuity trust. Mr. Bohlsen is the trustee of the Bohlsen 2010 Annuity Trust.

Mr. Bohlsen disclaims any beneficial ownership of these shares except to the extent of his pecuniary interests therein, if any. The Bohlsen 2010 Annuity Trust is not expected to be a selling stockholder in this offering. Mr. Bohlsen intends to sell shares in this offering from shares of vested common stock he will receive in respect of his PIUs in the Reorganization. The Bohlsen 2010 Annuity Trust may only be a selling stockholder to the extent the number of shares Mr. Bohlsen will sell in this offering exceeds the number of shares of vested common stock and options he will receive in respect of his PIUs in the Reorganization. The address of the Bohlsen 2010 Annuity Trust is 135 The Helm, East Islip, NY 11730.

(3) Includes options to purchase 132,606 shares of common stock to be received in the Reorganization.

(4) Includes options to purchase 723,304 shares of common stock to be received in the Reorganization.

(5) Does not include shares of common stock held by investment funds affiliated with The Blackstone Group. Mr. Chu is a member of our Board and is a Senior Managing Director of The Blackstone Group. Mr. Chu disclaims beneficial ownership of the shares held by investment funds affiliated with The Blackstone Group.

(6) Includes 59,572 shares of common stock held by the Cobb Family Twenty-Second Century Fund I and 25,531 shares of common stock held by the Cobb Family Foundation. Ambassador Cobb is a member of our Board and Ambassador Cobb is a voting director of the Cobb Family Foundation and a trustee of the Cobb Twenty-Second Century Fund. Ambassador Cobb disclaims beneficial ownership of such shares. The address of each of the entities and persons identified in this note is c/o Cobb Partners Limited, 355 Alhambra Circle, Suite 1500, Coral Gables, FL 33134.

(7) Includes 1,935,364 shares of common stock held by LF Moby LLC. LF Moby LLC is beneficially owned by Richard S. LeFrak and his sons Harrison T. LeFrak and James T. LeFrak via various LLCs and trusts. Richard LeFrak is a member of our Board. The address of each of the entities and persons identified in this note is c/o The LeFrak Organization, 40 West 57th Street, New York, NY 10019.

(8) Includes 18,633,686 shares of common stock held by WLR Recovery Fund IV, L.P., 74,834 shares of common stock held by WLR IV Parallel ESC, L.P., and 1,843,204 shares of common stock held by WLR/GS Master Co-Investment, L.P. (collectively, the "WL Ross Funds"). WLR Recovery Associates IV, LLC is the general partner of WLR Recovery Fund IV, L.P. Invesco WLR IV Recovery Associates, LLC is the general partner of WLR IV Parallel ESC, L.P. WLR Master Co-Investment GP, LLC, is the general partner of WLR/GS Master Co-Investment, L.P. Mr. Ross is a member of the investment committee of each WL Ross Fund's general partner, which has investment and voting control over the shares held or controlled by each of the WL Ross Funds. Mr. Ross disclaims beneficial ownership of such shares except for his pecuniary interest therein. Mr. Ross is a member of our Board and Mr. Ross is the Chairman and Chief Executive Officer of WL Ross & Co. LLC. The address of each of the entities and persons identified in this note is c/o WL Ross & Co. LLC, 1166 Avenue of the Americas, New York, NY 10036.

(9) Does not include shares of common stock held by investment funds affiliated with The Carlyle Group. Mr. Sarkozy is a member of our Board and is a Managing Director of The Carlyle Group. Mr. Sarkozy disclaims beneficial ownership of the shares held by investment funds affiliated with The Carlyle Group.

(10) Does not include shares of common stock held by investment funds affiliated with Centerbridge Partners, L.P. Mr. West is a member of our Board and Mr. West is a Senior Managing Director of Centerbridge Partners, L.P. Mr. West disclaims beneficial ownership of the shares held by investment funds affiliated with Centerbridge Partners, L.P.

(11) Includes shares beneficially owned by WL Ross & Co. LLC. See footnote 8 above.

(12) Includes 9,216,020 shares of common stock held by Carlyle Financial Services BU, L.P., 2,048,480 shares of common stock held by Carlyle Strategic Partners II, L.P., and 71,204 shares of common stock held by CSP II Co-Investment, L.P. (collectively, the "DBD Holdings Cayman Shares"). DBD Cayman Holdings, Ltd. ("DBD Cayman Holdings") is the sole shareholder of DBD Cayman, Ltd. ("DBD Cayman"), which is the general partner of TCG Holdings Cayman II, L.P., which is the general partner of TC Group Cayman Investment Holdings, L.P. ("TCGIH"). TCGIH is the sole shareholder of Carlyle Financial Services, Ltd., which is the general partner of TCG Financial Services, L.P., which is the general partner of Carlyle Financial Services BU, L.P. TCGIH is also the managing member of TC Group CSP II, LLC, which is the general partner of CSP II General Partner, LP, which is the general partner of Carlyle Strategic Partners II, L.P. and CSP II Co-Investment, L.P. DBD Cayman Holdings is controlled by its ordinary members, William E. Conway, Jr., Daniel A. D'Aniello and David M. Rubenstein and all action relating to the investment and disposition of the DBD Cayman Holdings Shares requires their approval. William E. Conway, Jr., Daniel A. D'Aniello and David M. Rubenstein each disclaim beneficial ownership of the DBD Cayman Holdings Shares. The address of each of the entities and persons identified in this note is c/o The Carlyle Group, 1001 Pennsylvania Avenue NW, Suite 220 South, Washington, D.C. 20004.

(13) Includes 8,673,951 shares of common stock held by Carlyle Partners V, L.P., 345,969 shares of common stock held by CP V Coinvestment A, L.P., 21,586 shares of common stock held by CP V Coinvestment B, L.P., and 174,515 shares of common stock held of record by Carlyle Partners V-A, L.P. (the "TCG Holdings Shares"). TCG Holdings, L.L.C. is the managing member of TC Group, L.L.C., which is the sole managing member of TC Group V Managing GP, L.L.C., which is the sole general partner of TC Group V, L.P., which is the sole general partner of Carlyle Partners V, L.P, Carlyle Partners V-A, L.P., CP V Coinvestment A, L.P and CP V Coinvestment B, L.P. TCG Holdings, L.L.C. is managed by a three person managing board, consisting of William E. Conway, Jr., Daniel A. D'Aniello and David M. Rubenstein, and all board action relating to the voting or disposition of the TCG Holdings Shares requires approval of a majority of the board. William E. Conway, Jr., Daniel A. D'Aniello and David M. Rubenstein each disclaim beneficial ownership of the TCG Holdings Shares. The address of each of the entities and persons identified in this note is c/o The Carlyle Group, 1001 Pennsylvania Avenue NW, Suite 220 South, Washington, D.C. 20004.

(14) Includes 13,754,128 shares of common stock held by Centerbridge Capital Partners, L.P., 508,065 shares of common stock held by Centerbridge Capital Partners Strategic, L.P., 22,638 shares of common stock Centerbridge Capital Partners SBS, L.P., 875,522 shares of common stock held by CB BU Investors, LLC., 506,881 shares of common stock held by CB BU Investors II, LLC and 460,801 shares of common stock held by CB BU Investors III, LLC (collectively, the "Centerbridge Funds"). Centerbridge Associates, L.P. is the general partner of each of such entities. Mr. West is a member of Centerbridge Associates, L.P., which has investment and voting control over the shares held or controlled by each of the Centerbridge Funds. Mr. West disclaims beneficial ownership of such shares. Mr. West is a member of our Board and Mr. West is a Senior Managing Director of Centerbridge Partners, L.P. The address of each of the entities and persons identified in this note is c/o Centerbridge Partners, L.P., 375 Park Avenue, 12th Floor, New York, NY 10152.

(15) Includes 15,623,215 shares of common stock held by Blackstone Capital Partners V L.P., 4,885,350 shares of common stock held by Blackstone Capital Partners V-AC, L.P., 27,296 shares of common stock held by Blackstone Family Investment Partnership V, L.P. and 15,862 shares of common stock held by Blackstone Participation Partnership V, L.P. Blackstone Management Associates V L.L.C. is the general partner of Blackstone Capital Partners V L.P. and Blackstone Capital Partners V-AC L.P. BCP V Side-by-Side GP L.L.C. is the general partner of Blackstone Family Investment

Partnership V, L.P. and Blackstone Participation Partnership V, L.P. Mr. Chu is a member of Blackstone Management Associates V L.L.C., which has investment and voting control over the shares held or controlled by Blackstone Capital Partners V L.P. and Blackstone Capital Partners V-AC L.P., and Mr. Chu is a member of BCP V Side-by-Side GP L.L.C., which has investment and voting control over the shares held or controlled by Blackstone Family Investment Partnership V, L.P. and Blackstone Participation Partnership V, L.P. Mr. Chu disclaims beneficial ownership of such shares. Mr. Chu is a member of our Board and Mr. Chu is a Senior Managing Director of The Blackstone Group. The address of each of the entities and persons identified in this note is c/o The Blackstone Group, 345 Park Avenue, New York, NY 10154.

(16) Includes 1,658,884 shares of common stock held of record by EREF Special Situations, LLC ("EREF SS"). EREF SS is a wholly owned subsidiary of the East Rock Endowment Fund, LP ("EREF"). The general partner of EREF is East Rock Capital GP, LLC ("ERC GP") and its investment advisor and manager is East Rock Capital, LLC ("ERC"). The managing member of ERC GP and ERC is D Partners Management, LLC. The managing principals of ERC GP and ERC are Adam Shapiro and Graham Duncan and all action relating to the investment and disposition of the shares held by EREF SS requires their approval. Graham Duncan is the sole owner of D Partners Management, LLC. Adam Shapiro and Graham Duncan each disclaim beneficial ownership of the shares held by EREF SS except to the extent of their pecuniary interest therein. Steven Saiontz served on our Board from May 21, 2009 until his resignation on July 20, 2010 and Mr. Saiontz is one of the beneficial owners of the family vehicle that owns 99% of EREF SS. The address of each of the entities and persons identified in this note is c/o East Rock Capital, LLC, 10 East 53rd Street, 31st Floor, New York, NY 10022.

(17) Includes 184,320 shares of common stock held of record by East Rock Focus Fund, LP ("ERFF"). The general partner of ERFF is East Rock Focus Fund GP, LLC ("ERFF GP") and its investment advisor and manager is East Rock Focus Fund Management, LLC ("ERFF Management"). The managing member of ERFF GP and ERFF Management is Graham Duncan. The managing principals of ERFF GP and ERFF Management are Adam Shapiro and Graham Duncan and all action relating to the investment and disposition of the shares held by ERFF requires their approval. Adam Shapiro and Graham Duncan each disclaim beneficial ownership of the shares held by ERFF except to the extent of their pecuniary interest therein. The address of each of the entities and persons identified in this note is c/o East Rock Capital, LLC, 10 East 53rd Street, 31st Floor, New York, NY 10022.

(18) Davy Global Opportunities Fund Plc is an investment company with variable capital incorporated in Ireland and authorized and regulated by the Financial Regulator as a designated investment company pursuant to Section 256 of Part XIII of the Companies Act 1990. The company as part of its assets includes 460,801 shares of common stock of BankUnited, Inc. (formerly JAK Holdings) within its portfolio. J&E Davy is the appointed Investment Manager to the company and the registered address of the company is Davy House, 49 Dawson Street, Dublin 2, Ireland. This opportunity was initially reviewed by Greenaap Consultants on behalf of Davy Global Opportunities Fund Plc. The address of Davy Global Opportunities Fund is c/o Greenaap Consultants, 66 Merrion Square, Dublin 2, Ireland.

(19) Consists of (i) 141,480 shares of our common stock and (ii) options to purchase 30,834 shares of our common stock that are currently exercisable. Mr. Bansal is an Executive Vice President at BankUnited, Inc.

(20) Consists of (i) 42,551 shares of our common stock and (ii) options to purchase 7,710 shares of our common stock that are currently exercisable. Mr. Skorobohaty is an Executive Vice President at BankUnited.

(21) Consists of (i) 21,276 shares of our common stock and (ii) options to purchase 7,710 shares of our common stock that are currently exercisable. Mr. Barbone is an Executive Vice President at BankUnited.

DESCRIPTION OF OUR CAPITAL STOCK

The following descriptions include summaries of the material terms of our amended and restated certificate of incorporation and by-laws, which will become effective prior to completion of this offering. Reference is made to the more detailed provisions of, and the descriptions are qualified in their entirety by reference to, the amended and restated certificate of incorporation and by-laws, copies of which are filed with the SEC as exhibits to the registration statement of which this prospectus is a part, and applicable law. The descriptions of the common stock and preferred stock reflect changes to our capital structure that will occur upon the closing of this offering.

General

Upon the closing of this offering, our amended and restated certificate of incorporation will authorize us to issue up to 400,000,000 shares of common stock, $0.01 par value per share, and 100,000,000 shares of preferred stock, $0.01 par value per share.

At January 10, 2011, there were outstanding:

- 92,971,850 shares of our common stock held by approximately 36 stockholders; and
- zero shares of our preferred stock.

Upon completion of this offering, there will be outstanding 96,971,850 shares of common stock and no outstanding shares of preferred stock.

Common Stock

Voting Rights

Each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of the holders of our common stock, voting together as a single class, including the election of directors. Our stockholders do not have cumulative voting rights in the election of directors. Accordingly, holders of a majority of the voting shares are able to elect all of the directors.

Dividends

Subject to the prior rights of holders of preferred stock, holders of our common stock are entitled to receive dividends, if any, as may be declared from time to time by our Board.

Liquidation

Subject to the prior rights of our creditors and the satisfaction of any liquidation preference granted to the holders of any then outstanding shares of preferred stock, in the event of our liquidation, dissolution or winding up, holders of our common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders.

Preferred Stock

Our Board has the authority, without action by our stockholders, to issue preferred stock and to fix voting powers for each class or series of preferred stock, and to provide that any class or series may be subject to redemption, entitled to receive dividends, entitled to rights upon dissolution, or convertible or exchangeable for shares of any other class or classes of capital stock. The rights with respect to a series or class of preferred stock may be greater than the rights attached to our common stock. It is not possible to state the actual effect of the issuance of any shares of our preferred stock on the rights of holders of our common stock until our Board determines the specific rights attached to that preferred stock. The effect of issuing preferred stock could include, among other things, one or more of the following:

- restricting dividends with respect to our common stock;
- diluting the voting power of our common stock or providing that holders of preferred stock have the right to vote on matters as a class;
- impairing the liquidation rights of our common stock; or
- delaying or preventing a change of control of us.

Registration Rights

The LLC Agreement contains registration rights provisions with respect to sales of shares of the applicable holding company of BankUnited that is used as the public vehicle in connection with any initial public offering. In accordance with the LLC Agreement and in connection with this offering, BankUnited, Inc., the Sponsors and the Management Members expect to enter into a registration rights agreement that will, among other things, amend and restate these registration rights provisions.

Pursuant to the registration rights agreement, Blackstone, Carlyle, Centerbridge and WL Ross will be provided with demand registration rights, which will be exercisable after expiration of the lockup provisions applicable to them described in the section entitled "Underwriters." The demand registration rights require us to register the shares of common stock beneficially owned by the demanding Sponsor with the SEC for sale by it to the public, provided that the value of the registrable securities proposed to be sold by such demanding Sponsor is at least the lesser of $50.0 million or the value of all registrable securities held by such Sponsor. The registration rights provisions also provide that we may be required under certain circumstances to file a shelf registration statement for an offering to be made on a continuous basis pursuant to Rule 415 of the Securities Act. We may postpone the filing of such a registration statement or suspend the effectiveness of any registration statement for a reasonable "blackout period" not in excess of 90 days if our Board determines that such registration or offering could materially interfere with a bona fide business or financing transaction of the Company or is reasonably likely to require premature disclosure of material, non-public information, the premature disclosure of which the Board reasonably determines in the exercise of its good faith judgment would not be in the best interests of the Company; provided that we shall not postpone the filing of a registration statement or suspend the effectiveness of any registration statement for more than 90 days in the aggregate in any 360-day period.

In addition, pursuant to the registration rights provisions, in the event that we are registering additional shares of common stock for sale to the public, whether on our own behalf (except in connection with a registration on Form S-4 or Form S-8 or any successor or similar form or in a registration of securities solely relating to an offering and sale to employees pursuant to any employee stock plan or other employee benefit plan arrangement) or through a demand registration on behalf of a Sponsor (as described above), we are required to give notice of such registration to all parties to the registration rights agreement that hold registrable securities (which includes members of our management that hold shares of our common stock) of the intention to effect such a registration. Such notified persons have piggyback registration rights providing them the right to have us include the shares of common stock owned by them in any such registration if we have received written requests for inclusion therein within prescribed time limits, subject to other provisions under the registration rights agreement.

Pursuant to the registration rights agreement, post-offering, each of (1) Mr. Kanas and certain funds affiliated with Blackstone, Carlyle, Centerbridge and WL Ross have separately agreed during the 18 months from the date of this prospectus and (2) our other executive officers have separately agreed during the 12 months from the date of this prospectus not to effect any sales pursuant to Rule 144 under the Securities Act of any of our equity securities.

FDIC Warrant

In connection with the Acquisition, we issued a warrant to the FDIC allowing the FDIC to participate in the economic upside of the transaction if we achieve certain valuation levels upon an IPO or sale. We granted the FDIC certain registration rights pursuant to a registration rights agreement in connection with the warrant. The warrant becomes exercisable upon the occurrence of an IPO or exit event in which the total tangible equity value arising from the IPO or exit event (as calculated pursuant to the terms of the warrant) exceeds the valuation that would be implied if we were valued at the average price-to-tangible-book-value multiple for the top quartile of publicly-traded U.S. banks and thrifts with assets in excess of $10 billion, as published by SNL Financial (the "Incremental Value"). The warrant is redeemable by us for cash after it becomes exercisable at a redemption price equal to the warrant value, which is equal to 10% of the Incremental Value. In October 2010, we and the FDIC agreed to amend the warrant to guarantee a minimum value to the FDIC from the warrant in the amount of $25.0 million. We expect to redeem the warrant in cash shortly after this offering, at which time the warrant and its attendant registration rights will terminate.

Corporate Opportunity

Our amended and restated certificate of incorporation provides that the doctrine of "corporate opportunity" will not apply against the Sponsors, any of their affiliates or any of our directors or officers, and that the Company renounces any interest or expectancy in any business opportunities that are presented to any of the Sponsors or any of their affiliates or to any of the directors or officers of the Company, even if such opportunity is of a character that could be taken by the Company. To the extent that the Sponsors, any of their affiliates, or any of our directors and officers participate in any such business opportunity, they may have differing interests than our other stockholders.

Anti-Takeover Considerations and Special Provisions of our Certificate of Incorporation, By-Laws and Delaware Law

The following sets forth certain provisions of the Delaware General Corporation Law, or DGCL, and our amended and restated certificate of incorporation and our amended and restated by-laws. Banking laws also impose notice approval and ongoing regulatory requirements on any stockholder or other party that seeks to acquire direct or indirect "control" of an FDIC-insured depository institution. For additional information, see the section entitled "Regulation and Supervision—Notice and Approval Requirements Related to Control."

Requirements for Advance Notification of Stockholder Nominations and Proposals

Our amended and restated certificate of incorporation and amended and restated by-laws will establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of our Board or a committee of our Board.

Stockholder Meetings

Our amended and restated certificate of incorporation and amended and restated by-laws will provide that special meetings of the stockholders may be called for any purpose or purposes at any time by a majority of our Board or by the Chief Executive Officer or the President. In addition, our amended and restated certificate of incorporation will provide that a holder, or a group of holders, of capital stock holding 25.0% or more of the total voting power of the outstanding shares of our capital stock may cause us to call a special meeting of the stockholders for any purpose or purposes at any time.

No Action by Stockholders Without a Meeting

Our amended and restated certificate of incorporation and amended and restated by-laws will provide that stockholders are not entitled to act by written consent.

Amendments to our Amended and Restated By-Laws

Our Board, by the affirmative vote of at least a majority of the Board, has the power without the assent or vote of the stockholders to adopt, amend, alter or repeal the by-laws. The by-laws also may be adopted, amended, altered or repealed by the affirmative vote of the holders of a majority of the votes entitled to be cast by the shares of outstanding capital stock entitled to vote thereon, subject to a specified exception relating to indemnification and advancement of expenses.

No Cumulative Voting

The DGCL provides that stockholders are not entitled to the right to cumulate votes in the election of directors unless an entity's certificate of incorporation provides otherwise. Our amended and restated certificate of incorporation and amended and restated by-laws do not provide for cumulative voting in the election of directors.

Director Removal

Except as may otherwise be required by applicable law and subject to the rights of holders of preferred stock then outstanding, our amended and restated certificate of incorporation and amended and restated by-laws will provide that stockholders may not remove directors without cause.

"Blank Check" Preferred Stock

Our amended and restated certificate of incorporation and amended and restated by-laws will authorize the issuance of "blank check" preferred stock with such designations, rights and preferences as may be determined from time to time by our Board.

Section 203

We have elected to "opt out" of Section 203 of the DGCL, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, our Board approved either the business combination or the transaction that resulted in the stockholder becoming an interested holder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85.0% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of the holders of at least 66 $^{2}/_{3}$% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge, or other disposition of 10.0% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges, or other financial benefits by or through the corporation.

In general, Section 203 defines an "interested stockholder" as an entity or person who, together with the person's affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status did own, 15.0% or more of the outstanding voting stock of the corporation.

A Delaware corporation may "opt out" of Section 203 with an expressed provision in its original certificate of incorporation or an expressed provision in its certificate of incorporation or by-laws resulting from amendments approved by holders of at least a majority of the corporation's outstanding voting shares.

Limitations on Liability and Indemnification of Directors and Officers

The DGCL authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breaches of directors' fiduciary duties. Our certificate of incorporation includes a provision that eliminates the personal liability of directors for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by Delaware law.

Section 102(b)(7) of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL (regarding, among other things, the payment of unlawful dividends or unlawful stock purchases or redemptions), or (iv) for any transaction from which the director derived an improper personal benefit. Our amended and restated certificate of incorporation will provide for such limitation of liability.

Section 145(a) of the DGCL empowers a corporation to indemnify any director, officer, employee or agent, or former director, officer, employee or agent, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of such person's service as a director, officer, employee or agent of the corporation, or such person's service, at the corporation's request, as a director, officer, employee or agent of another corporation or enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding; provided that such director or officer acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding; provided that such director or officer had no reasonable cause to believe his conduct was unlawful.

Section 145(b) of the DGCL empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another enterprise, against expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit; provided that such director or officer acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which such director or officer shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such director or officer is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. Notwithstanding the preceding sentence, except as otherwise provided in the by-laws, we shall be required to indemnify any such person in connection with a proceeding (or part thereof) commenced by such person only if the commencement of such proceeding (or part thereof) by any such person was authorized by our Board.

In addition, our amended and restated certificate of incorporation will provide that we must indemnify our directors and officers to the fullest extent authorized by law. We will also be required to advance certain expenses to our directors and officers and carry directors' and officers' insurance providing indemnification for our directors and officers for some liabilities. We believe that these indemnification provisions and the directors' and officers' insurance are useful to attract and retain qualified directors and executive officers.

Prior to completion of this offering, we intend to enter into separate indemnification agreements with each of our directors and officers. Each indemnification agreement is expected to provide, among other things, for indemnification to the fullest extent permitted by law and our amended and restated certificate of incorporation and by-laws against (i) any and all expenses and liabilities, including judgments, fines, penalties, interest and amounts paid in settlement of any claim with our approval and counsel fees and disbursements, (ii) any liability pursuant to a loan guarantee, or otherwise, for any of our indebtedness, and (iii) any liabilities incurred as a result of acting on behalf of us (as a fiduciary or otherwise) in connection with an employee benefit plan. The indemnification agreements will provide for the advancement or payment of expenses to the indemnitee and for reimbursement to us if it is found that such indemnitee is not entitled to such indemnification under applicable law and our amended and restated certificate of incorporation and by-laws. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Listing

Our common stock has been approved for listing on the NYSE under the symbol "BKU."

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is expected to be the Registrar and Transfer Company.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock, and we cannot predict the effect, if any, that sales of shares or availability of any shares for sale will have on the market price of our common stock prevailing from time to time. Sales of substantial amounts of common stock (including shares issued on the exercise of options, warrants or convertible securities, if any), or the perception that such sales could occur, could adversely affect the market price of our common stock and our ability to raise additional capital through a future sale of securities.

Upon completion of this offering, we will have 96,971,850 shares of common stock issued and outstanding. All of the 26,250,000 shares of our common stock sold in this offering (or 30,187,500 shares if the underwriters exercise their over-allotment option in full) will be freely tradable without restriction or further registration under the Securities Act, except that any shares held by any of our "affiliates" as that term is defined in Rule 144 under the Securities Act generally may be sold in the public market only in compliance with Rule 144 as described below. Upon completion of this offering, approximately 69.1% of our outstanding common stock (or 65.1% if the underwriters' over-allotment option is exercised in full) will be held by "affiliates" as that terms is defined in Rule 144.

In addition to the issued and outstanding shares of our common stock, we intend to file a registration statement on Form S-8 to register an aggregate of approximately 8.5 million shares of common stock reserved for issuance under our incentive and stock option programs. That registration statement will become effective upon filing, and shares of common stock covered by such registration statement are eligible for sale in the public market immediately after the effective date of such registration statement, subject to the lock-up agreements described below.

Lock-Up Agreements

See the section entitled "Underwriters" for a description of lock-up agreements in connection with this offering.

Holdback Agreements

See the section entitled "Description of Our Capital Stock—Registration Rights" for a description of the holdback agreements to which our named executive officers and certain funds affiliated with Blackstone, Carlyle, Centerbridge and WL Ross have agreed in connection with this offering.

Equity ownership requirements

See the section entitled "Compensation Discussion and Analysis—Executive Officer Compensation—Equity Ownership Requirements" for a description of the minimum equity ownership requirements to which our executive officers have agreed.

Rule 144

In general, under Rule 144 under the Securities Act, a person (or persons whose shares are aggregated) who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale, and who has beneficially owned restricted securities within the meaning of Rule 144 for at least six months (including any period of consecutive ownership of preceding non-affiliated holders) would be entitled to sell those shares, subject only to the availability of current public information about us. A non-affiliated person who has beneficially owned restricted securities within the meaning of Rule 144 for at least one year would be entitled to sell those shares without regard to the provisions of Rule 144.

A person (or persons whose shares are aggregated) who is deemed to be an affiliate of ours and who has beneficially owned restricted securities within the meaning of Rule 144 for at least six months would be entitled to sell within any three-month period a number of shares that does not exceed the greater of one percent of the then outstanding shares of our common stock or the average weekly trading volume of our common stock reported through the NYSE during the four calendar weeks preceding such sale. Such sales are also subject to certain manner of sale provisions, notice requirements and the availability of current public information about us.

Rule 701

In general, under Rule 701 of the Securities Act, most of our employees, consultants or advisors who purchased shares from us in connection with a qualified compensatory stock plan or other written agreement are eligible to resell those shares 90 days after the date of this prospectus in reliance on Rule 144, but without compliance with the holding period or certain other restrictions contained in Rule 144.

Registration Rights

Following the completion of this offering, our existing stockholders will have rights, subject to certain conditions, to require us to include their shares in registration statements that we may file for ourselves or other existing stockholders and the Sponsors will have demand registration rights. Registration of these shares under the Securities Act will result in these shares becoming freely tradable without restriction under the Securities Act upon effectiveness of the registration statement. See the section of this prospectus entitled "Description of Our Capital Stock—Registration Rights."

CERTAIN MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES FOR NON-U.S. HOLDERS OF COMMON STOCK

The following is a summary of certain U.S. federal income tax consequences relevant to non-U.S. Holders (as defined below) of the ownership and disposition of our common stock. The following summary is based on current provisions of the Internal Revenue Code of 1986, as amended, or the Code, Treasury regulations and judicial and administrative authority, all of which are subject to change, possibly with retroactive effect. State, local, estate and foreign tax consequences are not summarized, nor are tax consequences to special classes of investors including, but not limited to, tax-exempt organizations, insurance companies, banks or other financial institutions, partnerships or other entities classified as partnerships for U.S. federal income tax purposes, dealers in securities, persons liable for the alternative minimum tax, traders in securities that elect to use a mark-to-market method of accounting for their securities holdings, persons who have acquired our common stock as compensation or otherwise in connection with the performance of services, or persons that will hold our common stock as a position in a hedging transaction, "straddle," "conversion transaction" or other risk reduction transaction. Tax consequences may vary depending upon the particular status of an investor. The summary is limited to non-U.S. Holders who will hold our common stock as "capital assets" (generally, property held for investment). Each potential investor should consult its own tax advisor as to the U.S. federal, state, local, foreign and any other tax consequences of the purchase, ownership and disposition of our common stock.

You are a non-U.S. Holder if you are a beneficial owner of our common stock for U.S. federal income tax purposes that is neither an entity or arrangement treated as a partnership nor (i) a citizen or individual resident of the United States; (ii) a corporation (or other entity that is taxable as a corporation) created or organized in the United States or under the laws of the United States or of any State (or the District of Columbia); (iii) an estate if the income of such estate falls within the federal income tax jurisdiction of the United States regardless of the source of such income; nor (iv) a trust (a) if a United States court is able to exercise primary supervision over its administration and one or more United States persons have the authority to control all of the substantial decisions of the trust, or (b) that has in effect a valid election under applicable Treasury regulations to be treated as a U.S. person.

If an entity or arrangement treated as a partnership for U.S. federal income tax purposes holds our common stock, the tax consequences to a partner relating to an investment in our common stock will generally depend upon the status of the partner and the activities of the partnership. If you are treated as a partner in such an entity holding our common stock, you should consult your tax advisor as to the particular U.S. federal income tax consequences applicable to you.

Distributions

Distributions with respect to our common stock will be treated as dividends when paid to the extent of our current or accumulated earnings and profits as determined for U.S. federal income tax purposes. Generally, distributions treated as dividends paid to a non-U.S. holder with respect to our common stock will be subject to a 30% U.S. withholding tax, or such lower rate as may be specified by an applicable income tax treaty. Distributions that are effectively connected with such non-U.S. holder's conduct of a trade or business in the United States (and, if a tax treaty applies, are attributable to a U.S. permanent establishment of such holder) are generally subject to U.S. federal income tax on a net income basis and are exempt from the 30% withholding tax (assuming compliance with certain certification requirements). Any such effectively connected distributions received by a non-U.S. holder that is a corporation may also, under certain circumstances, be subject to an additional "branch profits tax" at a 30% rate or such lower rate as may be applicable under an income tax treaty.

For purposes of obtaining a reduced rate of withholding under an income tax treaty, a non-U.S. holder will generally be required to provide a U.S. taxpayer identification number as well as certain information concerning the holder's country of residence and entitlement to tax treaty benefits. A non-U.S. holder can generally meet the certification requirement by providing a properly executed IRS Form W-8BEN (if the holder is claiming the benefits of an income tax treaty) or Form W-8ECI (if the dividends are effectively connected with a trade or business in the United States) or suitable substitute form.

Sale or Redemption

A non-U.S. holder generally will not be subject to U.S. federal income or withholding tax on gain realized on the sale, exchange or other disposition (other than a redemption, which may be subject to withholding tax or certification requirements under certain circumstances) of our common stock except for (i) in the case of certain non-resident alien individuals that are present in the United States for 183 or more days in the taxable year of the sale or disposition, or (ii) if the gain is effectively connected with the conduct by the non-U.S. holder of a trade or business within the United States (and, if a tax treaty applies, is attributable to a U.S. permanent establishment maintained by such non-U.S. holder).

Information Reporting and Backup Withholding

Payment of dividends, and the tax withheld with respect thereto, is subject to information reporting requirements. These information reporting requirements apply regardless of whether withholding was reduced or eliminated by an applicable income tax treaty. Under the provisions of an applicable income tax treaty or agreement, copies of the information returns reporting such dividends and withholding may also be made available to the tax authorities in the country in which the non-U.S. holder resides. U.S. backup withholding will generally apply on payment of dividends to non-U.S. holders unless such non-U.S. holders furnish to the payor a Form W-8BEN (or other applicable form), or otherwise establish an exemption and the payor does not have actual knowledge or reason to know that the holder is a U.S. person, as defined under the Code, that is not an exempt recipient.

Payment of the proceeds of a sale of our common stock within the United States or conducted through certain U.S.-related financial intermediaries is subject to information reporting and, depending on the circumstances, backup withholding, unless the non-U.S. holder, or beneficial owner thereof, as applicable, certifies that it is a non-U.S. holder on Form W-8BEN (or other applicable form), or otherwise establishes an exemption and the payor does not have actual knowledge or reason to know the holder is a U.S. person, as defined under the Code, that is not an exempt recipient.

Any amount withheld under the backup withholding rules from a payment to a non-U.S. holder is allowable as a credit against such non-U.S. holder's U.S. federal income tax, which may entitle the non-U.S. holder to a refund, provided that the non-U.S. holder timely provides the required information to the IRS. Moreover, certain penalties may be imposed by the IRS on a non-U.S. holder who is required to furnish information but does not do so in the proper manner. Non-U.S. holders should consult their tax advisors regarding the application of backup withholding in their particular circumstances and the availability of and procedure for obtaining an exemption from backup withholding under current Treasury regulations.

Recent Legislation Relating to Foreign Accounts

Recently enacted legislation will require, after December 31, 2012, withholding at a rate of 30 percent on dividends in respect of, and gross proceeds from the sale of, our common stock held by or through certain foreign financial institutions (including investment funds), unless such institution enters into an agreement with the Secretary of the Treasury to report, on an annual basis, information with respect to shares in the institution held by certain United States persons and by certain non-U.S. entities that are wholly- or partially-owned by United States persons. Accordingly, the entity through which our common stock is held will affect the determination of whether such withholding is required. Similarly, dividends in respect of, and gross proceeds from the sale of, our common stock held by an investor that is a non-financial non-U.S. entity will be subject to withholding at a rate of 30 percent, unless such entity either (i) certifies to us that such entity does not have any "substantial United States owners" or (ii) provides certain information regarding the entity's "substantial United States owners," which we will in turn provide to the Secretary of the Treasury. **Non-U.S. Holders are encouraged to consult with their tax advisors regarding the possible implications of the legislation on their investment in our common stock.**

UNDERWRITERS

Under the terms and subject to the conditions in an underwriting agreement dated the date of this prospectus, the underwriters named below, for whom Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated are acting as representatives, have severally agreed to purchase, and we and the selling stockholders have agreed to sell to them, severally, the number of shares indicated below:

Name	Number of Shares
Morgan Stanley & Co. Incorporated	
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Deutsche Bank Securities Inc.	
Goldman, Sachs & Co.	
Keefe, Bruyette & Woods, Inc.	
RBC Capital Markets, LLC	
UBS Securities LLC	
Total	26,250,000

The underwriters and the representatives are collectively referred to as the "underwriters" and the "representatives," respectively. The underwriters are offering the shares of common stock subject to their acceptance of the shares from us and the selling stockholders and subject to prior sale. The underwriting agreement provides that the obligations of the several underwriters to pay for and accept delivery of the shares of common stock offered by this prospectus are subject to the approval of certain legal matters by their counsel and to certain other conditions. The underwriters are obligated to take and pay for all of the shares of common stock offered by this prospectus if any such shares are taken. However, the underwriters are not required to take or pay for the shares covered by the underwriters' over-allotment option described below.

The underwriters initially propose to offer part of the shares of common stock directly to the public at the offering price listed on the cover of this prospectus and part to certain dealers at a price that represents a concession not in excess of $ a share under the public offering price. After the initial offering of the shares of common stock, the offering price and other selling terms may from time to time be varied by the representatives. The offering of the shares by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part.

The selling stockholders have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to 3,937,500 additional shares of common stock at the public offering price listed on the cover of this prospectus, less underwriting discounts and commissions. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with the offering of the shares of common stock offered by this prospectus. To the extent the option is exercised, each underwriter will become obligated, subject to certain conditions, to purchase about the same percentage of the additional shares of common stock as the number listed next to the underwriter's name in the preceding table bears to the total number of shares of common stock listed next to the names of all underwriters in the preceding table.

The following table shows the per share and total public offering price, underwriting discounts and commissions, and proceeds before expenses to us and the selling stockholders. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase up to an additional shares of common stock.

	Per Share	Total	
		No Exercise	Full Exercise
Public offering price	$	$	$
Underwriting discounts and commissions to be paid by:			
Us	$	$	$
The selling stockholders	$	$	$
Proceeds, before expenses, to us	$	$	$
Proceeds, before expenses, to the selling stockholders	$	$	$

We estimate that the total offering expenses, exclusive of the underwriting discounts and commissions, are approximately $5.0 million. We have agreed with the underwriters to pay all fees and expenses related to the review and qualification of this offering by the Financial Industry Regulatory Authority, Inc. and "blue sky" expenses in an aggregate amount not to exceed $75,000 and to split the cost of any aircraft chartered in connection with the road show for this offering.

The underwriters have informed us that they do not intend sales to discretionary accounts to exceed 5% of the total number of shares of common stock offered by them.

Our common stock has been approved for listing on the NYSE under the symbol "BKU."

We, our executive officers and directors, and the selling stockholders have agreed that, subject to specified exceptions, without the prior written consent of Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated on behalf of the underwriters, we and they will not, during the period ending 180 days after the date of this prospectus:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for shares of common stock;

- file any registration statement with the SEC relating to the offering of any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock; or

- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock.

whether any such transaction described above is to be settled by delivery of common stock or such other securities, in cash or otherwise. In addition, each such person agrees that, without the prior written consent of Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated on behalf of the underwriters, it will not, during the period ending 180 days after the date of this prospectus, make any demand for, or exercise any right with respect to, the registration of any shares of common stock or any security convertible into or exercisable or exchangeable for common stock.

The 180-day restricted period described in the preceding paragraph will be extended if:

- during the last 17 days of the 180-day restricted period we issue an earnings release or material news event relating to us occurs, or
- prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day period,

in which case the restrictions described in the preceding paragraph will continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

With respect to us, the restrictions described above do not apply to:

- the sale of shares to the underwriters and any shares or options issued in connection with the reorganization transactions described in the section of this prospectus entitled "Reorganization;"
- the issuance by us of shares of common stock upon the exercise of an option or warrant granted under stock incentive, compensation or similar plans, of which the representatives have been advised in writing, or issuances or transfers in accordance with the terms of any stock incentive, compensation or similar plan in effect on the date of this prospectus and as described in this prospectus, of which the representatives have been advised in writing;
- the filing by us of a registration statement with the SEC on Form S-8 relating to the offering of securities by us pursuant to terms of any stock incentive, compensation or similar plan in effect on the date of this prospectus and as described in this prospectus;
- the filing of a registration statement on Form S-4 or other appropriate form with respect to the issuance by us of common stock or securities convertible into or exercisable or exchangeable for common stock in connection with an acquisition or business combination (or the entering into of an acquisition agreement or other offer or contract to sell with respect thereto), provided that no such common stock or other securities are issued in connection with any such acquisition or business combination during the 180-day restricted period.

With respect to our directors, officers and the selling stockholders, the restrictions described above do not apply to:

- the sale of shares to the underwriters;
- transactions relating to shares of our common stock or other securities acquired in open market transactions after the completion of this offering (provided that no filing under Section 16(a) of the Exchange Act (other than a filing on a Form 5 made after the expiration of the 180-day period referred to above) shall be required or shall be voluntarily made in connection with subsequent sales of common stock or other securities acquired in such open market transactions);
- transfers of shares of common stock or any security convertible into common stock as a bona fide gift or gifts;
- transfers of shares of common stock or any security convertible into common stock to any trust for the direct or indirect benefit of the director, officer or such selling stockholder or an immediate family member of such individual;
- transfers by testate succession or intestate distribution;
- distributions or transfers (other than for value) by the director, officer or such selling stockholder to limited partners, members, or stockholders of the director, officer or such selling

stockholder or transfers (other than for value) to any corporation, partnership or other business entity that is the direct or indirect affiliate of the director, officer or such selling stockholder;

- transfers (other than for value) of shares to any corporation, partnership or other business entity with whom the director, officer or such selling stockholder shares in common an investment manager or advisor which has investment discretionary authority with respect to the director's, officer's or such selling stockholder's and the entity's investments pursuant to an investment advisory or similar agreement; and

- the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of common stock, provided that such plan does not provide for the transfer of common stock during the restricted period and no public announcement or filing under the Exchange Act regarding the establishment of such plan shall be required of or voluntarily made by or on behalf of the director, officer or such selling stockholder or us;

provided that in the case of any transfer or distribution pursuant to the third, fourth, fifth, sixth or seventh bullet above, (x) each donee, distributee or transferee shall sign and deliver a lock-up letter substantially in the form of the letter signed by our directors, officers and selling stockholders, and (y) no filing under Section 16(a) of the Exchange Act (other than a filing on a Form 5 made after the expiration of the 180-day period referred to above), reporting a reduction in beneficial ownership of shares of common stock, shall be required or shall be voluntarily made during the restricted period referred to in the foregoing sentence.

In order to facilitate the offering of the common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock. Specifically, the underwriters may sell more shares than they are obligated to purchase under the underwriting agreement, creating a short position. A short sale is covered if the short position is no greater than the number of shares available for purchase by the underwriters under the over-allotment option. The underwriters can close out a covered short sale by exercising the over-allotment option or purchasing shares in the open market. In determining the source of shares to close out a covered short sale, the underwriters will consider, among other things, the open market price of shares compared to the price available under the over-allotment option. The underwriters may also sell shares in excess of the over-allotment option, creating a naked short position. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in this offering. As an additional means of facilitating this offering, the underwriters may bid for, and purchase, shares of common stock in the open market to stabilize the price of the common stock. These activities may raise or maintain the market price of the common stock above independent market levels or prevent or retard a decline in the market price of the common stock. The underwriters are not required to engage in these activities and may end any of these activities at any time.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have purchased shares sold by or for the account of such underwriter in stabilizing or other short covering transaction.

We, the selling stockholders and the several underwriters have agreed to indemnify each other against certain liabilities under the Securities Act.

A prospectus in electronic format may be made available on websites maintained by one or more underwriters, or selling group members, if any, participating in this offering. The representatives may agree to allocate a number of shares of common stock to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives to underwriters that may make Internet distributions on the same basis as other allocations.

Pricing of the Offering

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be determined by negotiations between us, the selling stockholders and the representatives. Among the factors considered in determining the initial public offering price will be our future prospects and those of our industry in general, our revenues, earnings and certain other financial and operating information in recent periods, and the price-earnings ratios, price-revenues ratios, market prices of securities, and certain financial and operating information of companies engaged in activities similar to ours.

Selling Restrictions

European Economic Area

In relation to each member State of the European Economic Area which has implemented the Prospectus Directive (each, a "**Relevant Member State**") an offer to the public of any shares which are the subject of the offering contemplated by this prospectus (the "**Shares**") may not be made in that Relevant Member State, except that an offer to the public in that Relevant Member State of any Shares may be made at any time under the following exemptions under the Prospectus Directive, if they have been implemented in that Relevant Member State:

(a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;

(b) to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporation for any such offer; or

(c) in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of Shares shall result in a requirement for the publication by us or any underwriter of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an "**offer to the public**" in relation to any Shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any Shares to be offered so as to enable an investor to decide to purchase any Shares, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, the expression "**Prospectus Directive**" means Directive 2003/71/EC (and the amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State, and the expression "**2010 PD Amending Directive**" means Directive 2010/73/EU.

United Kingdom

Each initial purchaser has represented and agreed that:

(a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the Shares in circumstances in which Section 21(1) of the FSMA does not apply to us; and

(b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Shares in, from or otherwise involving the United Kingdom.

Hong Kong

The shares may not be offered or sold by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made thereunder.

Japan

The securities have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the Financial Instruments and Exchange Law) and each underwriter has agreed that it will not offer or sell any securities, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore, or SFA, (ii) to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 by a relevant person which is: (a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust shall not be transferable for 6 months after that corporation or that trust has acquired the shares under Section 275 except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; or (3) by operation of law.

Switzerland

We have not and will not register with the Swiss Financial Market Supervisory Authority, or FINMA, as a foreign collective investment scheme pursuant to Article 119 of the Federal Act on Collective Investment Scheme of 23 June 2006, as amended, or CISA, and accordingly the securities being offered pursuant to this prospectus have not and will not be approved, and may not be licenseable, with FINMA. Therefore, the securities have not been authorized for distribution by FINMA as a foreign collective investment scheme pursuant to Article 119 CISA and the securities offered hereby may not be offered to the public (as this term is defined in Article 3 CISA) in or from Switzerland. The securities may solely be offered to "qualified investors," as this term is defined in Article 10 CISA, and in the circumstances set out in Article 3 of the Ordinance on Collective Investment Scheme of 22 November 2006, as amended, or CISO, such that there is no public offer. Investors, however, do not benefit from protection under CISA or CISO or supervision by FINMA. This prospectus and any other materials relating to the securities are strictly personal and confidential to each offeree and do not constitute an offer to any other person. This prospectus may only be used by those qualified investors to whom it has been handed out in connection with the offer described herein and may neither directly or indirectly be distributed or made available to any person or entity other than its recipients. It may not be used in connection with any other offer and shall in particular not be copied and/or distributed to the public in Switzerland or from Switzerland. This prospectus does not constitute an issue prospectus as that term is understood pursuant to Article 652a and/or 1156 of the Swiss Federal Code of Obligations. We have not applied for a listing of the securities on the SIX Swiss Exchange or any other regulated securities market in Switzerland, and consequently, the information presented in this prospectus does not necessarily comply with the information standards set out in the listing rules of the SIX Swiss Exchange and corresponding prospectus schemes annexed to the listing rules of the SIX Swiss Exchange.

Dubai International Financial Centre

This prospectus relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority, or DFSA. This prospectus is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus nor taken steps to verify the information set forth herein and has no responsibility for the prospectus. The securities to which this prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the securities offered should conduct their own due diligence on the securities. If you do not understand the contents of this prospectus you should consult an authorized financial advisor.

Relationships with Underwriters

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing, valuation and brokerage activities. From time to time, the underwriters and/or their respective affiliates have directly and indirectly engaged, or may engage, in various financial advisory, investment banking and commercial banking services for us and our affiliates, for which they received, or may receive, customary compensation, fees and expense reimbursement. In the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers, and such investment and securities activities may involve securities and/or instruments of ours. The underwriters and their respective affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments. In addition, Merrill Lynch, Pierce, Fenner & Smith Incorporated provided investment banking advice to the investors in the Acquisition who, for the most part, make up the selling stockholders in this offering.

Relationship with Solebury Capital LLC

Pursuant to an engagement agreement, we engaged Solebury Capital LLC, or Solebury, a FINRA member, to provide certain financial consulting services (which do not include underwriting services) in connection with this offering. We agreed to pay Solebury, only upon successful completion of this offering, a fee of $600,000 and, at our sole discretion, an additional potential incentive fee of $200,000. We also agreed to reimburse Solebury for reasonable and documented out-of-pocket expenses up to a maximum of $10,000 and have provided indemnification of Solebury pursuant to the engagement agreement. Solebury's services include an initial analysis of the market for new security issuances, an assessment of our financial position and business model and assistance in preparing presentation materials. Solebury is not acting as an underwriter and has no contact with any public or institutional investor on behalf of the Company or the underwriters. In addition, Solebury will not underwrite or purchase any of the offered securities or otherwise participate in any such undertaking.

LEGAL MATTERS

The validity of the common stock and other certain legal matters will be passed upon for us by Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York. The underwriters are being represented by Davis Polk & Wardwell LLP, New York, New York.

EXPERTS

The consolidated financial statements of BankUnited, Inc. and subsidiaries as of December 31, 2009, and for the period from April 28, 2009 (date of inception) through December 31, 2009, have been included herein in reliance upon the report of KPMG LLP, independent registered public accounting firm, appearing elsewhere herein, and upon the authority of said firm as experts in accounting and auditing.

The consolidated financial statements of BankUnited, FSB as of May 21, 2009 and for the period from October 1, 2008 to May 21, 2009, and the consolidated financial statements of BankUnited, FSB as of September 30, 2008 and 2007, and for each of the two years in the period ended September 30, 2008, all included in this prospectus, have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered certified public accounting firm, given on the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the common stock offered hereby. This prospectus does not contain all of the information set forth in the registration statement and the exhibits and schedules thereto. For further information with respect to us and our common stock, reference is made to the registration statement and the exhibits and any schedules filed therewith. Statements contained in this prospectus as to the contents of any contract or other document referred to are not necessarily complete and in each instance, if such contract or document is filed as an exhibit, reference is made to the copy of such contract or other document filed as an exhibit to the registration statement, each statement being qualified in all respects by such reference. A copy of the registration statement, including the exhibits and schedules thereto, may be read and copied at the SECs Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Information on the operation of the Public Reference Room may be obtained by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains an Internet website that contains reports, proxy statements and other information about issuers, like us, that file electronically with the SEC. The address of that site is www.sec.gov.

As a result of the offering, we will become subject to the full informational requirements of the Exchange Act. We will fulfill our obligations with respect to such requirements by filing periodic reports and other information with the SEC. We intend to furnish our stockholders with annual reports containing consolidated financial statements certified by an independent public accounting firm. We also maintain an Internet site at www.bankunited.com. Information on, or accessible through, our website is not part of this prospectus.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

BANKUNITED, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS

(Dollars in thousands, except per share data)

	September 30, 2010 (Unaudited)	December 31, 2009 (Derived from audited financial statements)
ASSETS		
Cash and due from banks	$ 54,575	$ 60,593
Due from Federal Reserve Bank	437,215	290,192
Federal funds sold	2,796	5,430
Cash and cash equivalents	494,586	356,215
Investment securities available for sale, at fair value (including covered securities of $270,254 and $275,726)	3,088,504	2,243,143
Federal Home Loan Bank stock	225,902	243,334
Loans held for sale	534	—
Loans (including covered loans of $3,794,612 and $4,486,878)	4,137,041	4,611,519
Allowance for loan losses	(57,807)	(22,621)
Loans, net	4,079,234	4,588,898
FDIC indemnification asset	2,723,059	3,279,165
Bank owned life insurance	135,993	132,330
Other real estate owned, covered by loss sharing agreements	194,286	120,110
Deferred tax asset, net	—	22,533
Income tax receivable	48,359	—
Goodwill and other intangible assets	60,759	60,981
Other assets	100,085	83,252
Total assets	$ 11,151,301	$ 11,129,961
LIABILITIES AND STOCKHOLDER'S EQUITY		
Liabilities:		
Demand deposits:		
Non-interest bearing	$ 492,495	$ 332,941
Interest bearing	306,208	222,052
Savings and money market	3,022,752	2,592,642
Time	3,479,005	4,519,140
Total deposits	7,300,460	7,666,775
Securities sold under agreements to repurchase	386	2,972
Federal Home Loan Bank advances	2,260,006	2,079,051
Due to FDIC	111,056	114,006
Income taxes payable	—	82,701
Deferred tax liability, net	15,691	—
Advance payments by borrowers for taxes and insurance	55,896	31,237
Other liabilities	164,967	58,959
Total liabilities	9,908,462	10,035,701
Commitments and contingencies		
Stockholder's equity:		
Common Stock, par value $0.01 per share:		
Authorized, 110,000,000 shares; 92,971,850 and 92,767,310 shares issued and outstanding	930	928
Paid-in capital	949,320	946,822
Paid-in capital from stock-based compensation	1,083	210
Retained earnings	261,968	119,046
Accumulated other comprehensive income	29,538	27,254
Total stockholder's equity	1,242,839	1,094,260
Total liabilities and stockholder's equity	$ 11,151,301	$ 11,129,961

The accompanying notes are an integral part of these condensed consolidated financial statements

BANKUNITED, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF INCOME—UNAUDITED

(Dollars in thousands, except per share data)

	Nine Months Ended September 30 2010	Period from April 28, 2009 Through September 30 2009
Interest income:		
Interest and fees on loans	$ 320,092	$ 172,003
Interest and dividends on investment securities available for sale	93,382	21,651
Other	1,485	1,962
Total interest income	414,959	195,616
Interest expense:		
Interest on deposits	83,631	33,509
Interest on borrowings	43,864	15,001
Total interest expense	127,495	48,510
Net interest income before provision for loan losses	287,464	147,106
Provision for loan losses	45,157	2,288
Net interest income after provision for loan losses	242,307	144,818
Non-interest income:		
Accretion of discount on FDIC indemnification asset	116,915	89,449
Income from resolution of covered assets, net	112,777	79,560
Net loss on indemnification asset resulting from net recoveries	(44,932)	(51,123)
FDIC reimbursement of costs of resolution of covered assets	22,393	2,489
Service charges	7,899	3,949
Loss on sale or exchange of investment securities available for sale	(2,292)	—
Mortgage insurance income	12,097	630
Gain on extinguishment of debt	—	31,303
Other non-interest income	12,663	2,735
Total non-interest income	237,520	158,992
Non-interest expense:		
Employee compensation and benefits	100,334	35,813
Occupancy and equipment	19,843	11,672
Impairment of other real estate owned	12,164	8,716
Foreclosure expense	28,384	9,248
Other real estate owned related expense	10,903	3,670
Deposit insurance expense	10,420	8,873
Professional fees	7,668	4,690
Telecommunications and data processing	8,772	3,646
Other non-interest expense	21,560	5,511
Loss on FDIC receivable	—	69,444
Acquisition related costs	—	39,685
Total non-interest expense	220,048	200,968
Income before income taxes	259,779	102,842
Provision for income taxes	102,857	41,191
Net income	$ 156,922	$ 61,651
Earnings per common share:		
Basic and diluted	$ 1.69	$ .67
Weighted average number of common shares outstanding:		
Basic and diluted	92,943,620	92,600,000

The accompanying notes are an integral part of these condensed consolidated financial statements

BANKUNITED, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS—UNAUDITED

(Dollars in thousands)

	Nine Months Ended September 30 2010	Period from April 28, 2009 Through September 30 2009
Cash flows from operating activities:		
Net income	$ 156,922	$ 61,651
Adjustments to reconcile net income to net cash used in operating activities:		
Accretion of fair values of assets acquired and liabilities assumed	(336,219)	(232,183)
Amortization of fees, discounts and premiums, net	(24,591)	(10,649)
Provision for loan losses	45,157	2,288
Accretion of FDIC indemnification asset	(116,915)	(89,449)
Income from resolution of covered assets	(112,777)	(79,560)
Net loss on indemnification asset resulting from net recoveries	44,932	51,123
Increase in cash surrender value of bank owned life insurance	(3,836)	(1,904)
Loss on sale or exchange of investment securities available for sale, net	2,292	—
Income from life insurance proceeds	(544)	—
Gain on sale of real estate owned, net	(2,270)	(486)
Loss on disposal of properties and equipment	316	—
Stock-based compensation	873	—
Change in fair value of equity awards classified as liabilities	24,490	4,963
Depreciation and amortization	1,765	6
Impairment of other real estate owned	12,164	8,716
Deferred income taxes	38,884	(913)
Gain on extinguishment of debt	—	(31,303)
Loss on FDIC receivable	—	69,444
Other:	—	—
Loans originated for sale, net of repayments	(534)	—
(Increase) decrease in other assets	(46,811)	24,660
(Decrease) increase in other liabilities	(76,845)	35,100
Decrease in due to FDIC	(2,950)	(16,781)
Net cash used in operating activities	(396,497)	(205,277)
Cash flows from investing activities:		
Net cash acquired in a business combination	—	1,160,321
Cash received from FDIC related to business combination, net	—	2,274,206
Purchase of investment securities available for sale	(1,331,883)	(227,172)
Proceeds from repayments of investment securities available for sale	494,324	64,227
Proceeds from sale of investment securities available for sale	67,867	6,801
Maturities and calls of investment securities available for sale	10,000	20,000
Loan repayments and resolutions, net of originations	594,343	369,246
Proceeds from redemption of FHLB stock	17,432	—
Decrease in FDIC indemnification asset for claims filed	628,089	68,975
Bank owned life insurance proceeds	717	—
Purchase of office properties and equipment	(20,979)	(801)
Proceeds from sale of other real estate owned	197,173	122,788
Net cash provided by investing activities	657,083	3,858,591
Cash flows from financing activities:		
Net (decrease) increase in deposits	(347,989)	38,245
Additions to Federal Home Loan Bank advances	605,000	—
Repayments of Federal Home Loan Bank advances	(405,000)	(2,795,112)
Net decrease in securities sold under agreements to repurchase	(2,586)	(30)
Increase in advances from borrowers for taxes and insurance	25,860	19,232
Capital contribution	2,500	947,000
Net cash used in financing activities	(122,215)	(1,790,665)
Net increase in cash and cash equivalents	138,371	1,862,649
Cash and cash equivalents, beginning of period	356,215	—
Cash and cash equivalents, end of period	$ 494,586	$ 1,862,649
Supplemental disclosure of cash flow activity:		
Interest paid on deposits and borrowings	$ 168,200	$ 157,537
Income taxes paid	$ 197,166	$ —
Supplemental schedule of non-cash investing and financing activities:		
Transfers from loans to real estate owned	$ 283,220	$ 49,431
Dividends declared on common stock	$ 14,000	$ —
Restructuring of Federal Home Loan Bank advances	$ —	$ 505,000

The accompanying notes are an integral part of these condensed consolidated financial statements

BANKUNITED, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDER'S EQUITY AND COMPREHENSIVE INCOME—UNAUDITED

(Dollars in thousands)

	Common Stock	Paid-in Capital	Paid-in Capital From Stock Based Compensation	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total Stockholder's Equity
Balance at December 31, 2009	$ 928	$ 946,822	$ 210	$ 119,046	$ 27,254	$ 1,094,260
Comprehensive income:						
Net income	—	—	—	156,922	—	156,922
Other comprehensive income:						
Unrealized gains on investment securities available for sale arising during the period, net of taxes of $23,511	—	—	—	—	37,437	37,437
Reclassification adjustment for:						
Realized losses on investment securities available for sale, net of tax benefit of $884	—	—	—	—	1,408	1,408
Unrealized losses on cash flow hedges, net of tax benefit of $24,034	—	—	—	—	(38,270)	(38,270)
Reclassification adjustment for:						
Realized losses on cash flow hedges, net of tax benefit of $1,070	—	—	—	—	1,709	1,709
Total comprehensive income						159,206
Capital contribution	2	2,498	—	—	—	2,500
Dividends	—	—	—	(14,000)	—	(14,000)
Stock-based compensation	—	—	873	—	—	873
Balance at September 30, 2010	$ 930	$ 949,320	$ 1,083	$ 261,968	$ 29,538	$ 1,242,839
Balance at April 28, 2009 (date of inception)	$ —	$ —	$ —	$ —	$ —	$ —
Initial capital contribution	925	924,075	—	—	—	925,000
Additional capital contributions	2	21,998	—	—	—	22,000
Comprehensive income:						
Net income	—	—	—	61,651	—	61,651
Other comprehensive income:						
Unrealized gains on investment securities available for sale arising during the period, net of taxes of $13,448	—	—	—	—	21,414	21,414
Unrealized losses on cash flow hedges arising during the period, net of tax benefit of $3,756	—	—	—	—	(5,980)	(5,980)
Total comprehensive income						77,085
Balance at September 30, 2009	$ 927	$ 946,073	$ —	$ 61,651	$ 15,434	$ 1,024,085

The accompanying notes are an integral part of these condensed consolidated financial statements

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED

September 30, 2010

Note 1 Basis of Presentation

BankUnited, Inc., formerly known as BU Financial Corporation, was organized on April 28, 2009 as the holding company for BankUnited ("BankUnited" or the "Bank"), a federally-chartered, federally-insured savings association, and is headquartered in Miami Lakes, Florida. After the close of business on May 21, 2009, BankUnited acquired certain assets and assumed certain liabilities of BankUnited, FSB from the Federal Deposit Insurance Corporation ("FDIC"). Business operations began on May 22, 2009. BankUnited, Inc.'s wholly-owned subsidiaries include BankUnited and BankUnited Investment Services, Inc. (collectively the "Company"). BankUnited provides a full range of banking and bank-related services to individual and corporate customers through 78 branch offices located in 13 Florida counties. The Company is a wholly-owned subsidiary of BU Financial Holdings LLC ("BUFH"), which was formed on April 27, 2009 as a limited liability company under the laws of the State of Delaware.

The condensed consolidated financial statements included herein have been prepared without audit pursuant to the instructions to Form S-1 and Article 10 of Regulation S-X of the Securities and Exchange Commission (the "SEC") and should be read in conjunction with the Company's audited consolidated financial statements and the notes thereto as of and for the period ended December 31, 2009 included in the Company's registration statement on Form S-1. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") have been condensed or omitted pursuant to such rules and regulations.

These condensed consolidated financial statements were compiled in accordance with the accounting policies set forth in Note 1—Summary of Significant Accounting Policies of the Notes to Consolidated Financial Statements in the Company's Consolidated Financial Statements as of and for the period ended December 31, 2009 included in the Company's registration statement on Form S-1. The accompanying condensed consolidated financial statements reflect all adjustments, consisting of normal recurring adjustments that, in the opinion of management, are necessary to reflect a fair statement of the Company's consolidated financial condition, results of operations and cash flows. Operating results for the nine months ended September 30, 2010 are not necessarily indicative of the results that may be expected for the year ended December 31, 2010.

The condensed consolidated financial statements include the accounts of the Company and its consolidated subsidiaries. All significant intercompany transactions have been eliminated.

Accounting Estimates

In preparing the condensed consolidated financial statements, management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities, revenues, and expenses and disclosures of contingent assets and liabilities. Management has made significant estimates in certain areas, such as the allowance for loan losses, the amount and timing of expected cash flows from covered assets and the FDIC indemnification asset, the valuation of other real estate owned, the valuation of Profits Interest Units and the warrant issued to the FDIC, the valuation of deferred tax assets, the evaluation of investment securities for other-than-temporary impairment and the fair values of financial instruments. Management has used information provided by third parties to assist in the determination of estimates of the fair values of investment securities, stock options and other equity awards.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 1 Basis of Presentation (Continued)

Significant estimates were also made in the determination of the fair values of assets acquired and liabilities assumed in the BankUnited FSB acquisition, including loans acquired with evidence of credit impairment since origination, the FDIC indemnification asset, goodwill and other intangible assets. Actual results could differ from these estimates. The current economic environment has increased the degree of uncertainty inherent in these estimates and assumptions.

Recent Accounting Pronouncements

In June 2009, the Financial Accounting Standards Board ("FASB") issued guidance modifying the accounting for transfers and servicing of financial assets and removing the concept of a Qualifying Special Purpose Entity. This guidance was effective for transfers of financial assets occurring after December 31, 2009 and was adopted by the Company as of January 1, 2010. The adoption of this guidance did not have a material impact on the Company's financial position, results of operations, or cash flows.

In June 2009, the FASB issued guidance impacting the determination of whether an entity is a variable interest entity ("VIE") and identification of the primary beneficiary of a VIE. The objective of this guidance was to improve financial reporting by enterprises involved with VIE's. This guidance was adopted by the Company as of January 1, 2010. Adoption did not have a material impact on the Company's financial position, results of operations, or cash flows.

In January 2010, the FASB issued new guidance to improve disclosures about fair value measurements. Disclosure requirements were enhanced to require additional information regarding transfers to and from Levels 1 and 2 of the fair value hierarchy and the reasons for the transfers, and a gross presentation of activity within the rollforward of Level 3 fair value measurements. The guidance clarifies existing disclosure requirements as to the level of disaggregation of classes of assets and liabilities. In addition, enhanced disclosure is required concerning inputs and valuation techniques used to determine Level 2 and Level 3 fair value measurements. This guidance is generally effective for interim and annual reporting periods beginning after December 15, 2009; however, requirements to disclose separately purchases, sales, issuances, and settlements in the Level 3 rollforward are effective for interim and annual reporting periods beginning after December 15, 2010. The adoption of this guidance did not have a material impact on the Company's financial position, results of operations, or cash flows.

In March 2010, the FASB issued new guidance clarifying that a modification of a loan that is part of a pool of loans acquired with deteriorated credit quality should not result in the removal of the loan from the pool. This guidance was effective for any modifications of loans accounted for within a pool in the first interim or annual reporting period ending after July 15, 2010. The adoption of this guidance did not have a material impact on the Company's financial position, results of operations, or cash flows.

In July 2010, the FASB issued new guidance requiring expanded disclosures about the credit quality of financing receivables and the allowance for loan losses. Disclosures must be disaggregated by portfolio segment and class and include, among other things, a rollforward of the allowance for loan losses, credit quality indicators, expanded information about past due and impaired loans and the related allowance, an aging of past due loans, and information about troubled debt restructurings. The required disclosures of information as of the end of a reporting period will be effective for the

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 1 Basis of Presentation (Continued)

Company in its annual financial statements for the year ending December 31, 2010. Required disclosures about activity that occurs during a reporting period will be effective for the Company in the quarter ending March 31, 2011. The new guidance will result in additional financial statement disclosures but will not affect the Company's financial condition, results of operations or cash flows.

Note 2 Acquisition

On May 21, 2009, BankUnited entered into a purchase and assumption agreement (the "FSB Agreement") with the FDIC, as receiver, pursuant to which BankUnited acquired certain assets and assumed substantially all of the deposits and liabilities of BankUnited, FSB (the "Acquisition").

Prior to the Acquisition, BankUnited, FSB was a community bank headquartered in Coral Gables, Florida and operated 85 banking branches in 13 counties in Florida. Excluding the effects of purchase accounting adjustments, the Bank acquired $13.6 billion in assets and assumed $12.8 billion of the deposits and liabilities of BankUnited, FSB. The Bank received net consideration in the amount of $2.2 billion, net of liabilities due to the FDIC in the amount of $156.8 million.

In connection with the Acquisition, the Bank entered into loss sharing agreements with the FDIC that cover single family residential mortgage loans, commercial real estate, commercial and industrial and consumer loans, certain investment securities and other real estate owned ("OREO"), collectively referred to as the "covered assets". The Bank acquired other BankUnited, FSB assets that are not covered by the loss sharing agreements with the FDIC including cash balances of $1.2 billion, certain investment securities purchased at fair value and other tangible assets. Pursuant to the terms of the loss sharing agreements, the covered assets are subject to a stated loss threshold whereby the FDIC will reimburse the Bank for 80% of losses of up to $4.0 billion, and 95% of losses in excess of this amount. The Bank will reimburse the FDIC for its share of recoveries with respect to losses for which the FDIC paid the Bank a reimbursement under the loss sharing agreements. The FDIC's obligation to reimburse the Company for losses with respect to covered assets begins with the first dollar of loss incurred. The expected reimbursements under the loss sharing agreements were recorded as an indemnification asset at its estimated fair value of $3.4 billion on the acquisition date. The indemnification asset reflects the present value of the expected net cash reimbursement related to the loss sharing agreements.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 3 Investment Securities Available for Sale

Investment securities available for sale at September 30, 2010 and December 31, 2009, consisted of the following (in thousands):

	September 30, 2010							
	Covered Securities				Non-Covered Securities			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. Government agency and sponsored enterprise residential mortgage-backed securities	$ —	$ —	$ —	$ —	$ 1,344,928	$ 23,331	$ (20)	$ 1,368,239
Other residential collateralized mortgage obligations	1,729	97	—	1,826	691,669	13,852	(1,067)	704,454
Residential mortgage pass-through certificates	183,374	64,284	(1,601)	246,057	116,078	2,404	—	118,482
Nonmortgage asset backed securities	—	—	—	—	426,018	1,988	(75)	427,931
Mutual funds and preferred stocks	16,408	—	(936)	15,472	105,176	3,633	—	108,809
State and municipal obligations	—	—	—	—	23,473	211	(6)	23,678
Small Business Administration securities	—	—	—	—	66,355	354	(52)	66,657
Other debt securities	3,594	3,305	—	6,899	—	—	—	—
Total	$ 205,105	$ 67,686	$ (2,537)	$ 270,254	$ 2,773,697	$ 45,773	$ (1,220)	$ 2,818,250

	December 31, 2009							
	Covered Securities				Not Covered Securities			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. Treasury securities	$ —	$ —	$ —	$ —	$ 10,066	$ 6	$ —	$ 10,072
U.S. Government agency and sponsored enterprise residential mortgage-backed securities	—	—	—	—	1,288,277	3,581	(3,215)	1,288,643
Other residential collateralized mortgage obligations	1,747	89	—	1,836	508,731	1,007	(4,735)	505,003
Residential mortgage pass-through certificates	199,402	51,196	(480)	250,118	118,616	—	(4,062)	114,554
Mutual funds and preferred stocks	18,094	338	(698)	17,734	25,250	661	(122)	25,789
State and municipal obligations	—	—	—	—	23,214	143	(1)	23,356
Other debt securities	3,331	2,707	—	6,038	—	—	—	—
Total	$ 222,574	$ 54,330	$ (1,178)	$ 275,726	$ 1,974,154	$ 5,398	$ (12,135)	$ 1,967,417

Investment securities available for sale at September 30, 2010 by contractual maturity, adjusted for anticipated prepayments of mortgage-backed and other pass-through securities, are shown below (in thousands):

	Amortized Cost	Fair Value
Due in one year or less	$ 599,604	$ 621,522
Due after one year through five years	1,431,860	1,481,307
Due after five years through ten years	462,241	482,643
Due after ten years	363,513	378,751
Mutual funds and preferred stocks	121,584	124,281
Total	$ 2,978,802	$ 3,088,504

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 3 Investment Securities Available for Sale (Continued)

Based on the Company's proprietary model and prepayment assumptions, the weighted average life of the mortgage-backed securities portfolio as of September 30, 2010 and December 31, 2009 was 4.42 and 4.50 years, respectively. The model results are based on assumptions that may differ from the eventual outcome.

Information pertaining to investment securities available for sale with gross unrealized losses aggregated by investment category follows. All of the securities in unrealized loss positions have been in continuous unrealized loss positions for less than twelve months at September 30, 2010 and December 31, 2009 (in thousands):

	September 30, 2010		December 31, 2009	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
U.S. Government agency and sponsored enterprise residential mortgage-backed securities	$ 640	$ (20)	$ 812,669	$ (3,215)
Other residential collateralized mortgage obligations	188,849	(1,067)	340,846	(4,735)
Residential mortgage pass-through certificates	7,835	(1,601)	115,872	(4,542)
Nonmortgage asset backed securities	76,050	(75)	—	—
Mutual funds and preferred stocks	15,472	(936)	27,257	(820)
State and municipal obligations	3,458	(6)	1,109	(1)
Small Business Administration securities	7,141	(52)	—	—
Total	$ 299,445	$ (3,757)	$ 1,297,753	$ (13,313)

The Company monitors its investment securities available for sale for other than temporary impairment, or OTTI, on an individual security basis considering numerous factors including the Company's intent to hold securities in an unrealized loss position, the likelihood that the Company will be required to sell these securities before an anticipated recovery in value, the length and severity of impairment, the earnings performance, credit rating, asset quality, and business prospects of the issuer, and changes in the regulatory and economic environment. The relative significance of each of these factors varies depending on the circumstances related to each security.

The Company does not intend to sell securities that are in an unrealized loss position and it is more likely than not that it will not be required to sell these securities prior to recovery of the amortized cost basis. Management has completed an assessment of each security in an unrealized loss position for credit impairment and concluded that no OTTI exists at September 30, 2010.

During the nine months ended September 30, 2010, the Company exchanged certain non-covered trust preferred securities for preferred stock of the same issuer to achieve higher returns and more favorable tax treatment. Based on the market value of the trust preferred securities at the time of the exchange, the Company recognized a gross realized loss of $2.8 million. During the nine months ended September 30, 2010, proceeds from sale of investment securities available for sale amounted to $67.9 million, resulting in gross realized losses of $46.4 thousand and gross realized gains of $565.2 thousand.

The carrying value of securities pledged as collateral for borrowings from the Federal Home Loan Bank ("FHLB"), public deposits, interest rate swaps and securities sold under agreements to repurchase and to secure borrowing capacity at the Federal Reserve Bank, totaled $614.7 million at September 30, 2010.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 4 Loans and Allowance for Loan Losses

At September 30, 2010 and December 31, 2009, loans receivable consisted of the following (dollars in thousands):

	September 30, 2010				
	Covered Loans				
	Acquired Credit Impaired	Non-ACI	Non-Covered Loans	Total	Percent of Total
Real Estate Loans:					
1-4 single family residential	$ 2,765,552	$ 160,784	$ 71,234	$ 2,997,570	71.9%
Home equity loans and lines of credit	102,320	210,451	1,693	314,464	7.5%
Multi-family	68,205	5,686	15,719	89,610	2.1%
Commercial real estate	317,533	36,555	73,930	428,018	10.3%
Construction	9,563	—	1,348	10,911	0.3%
Land	50,600	172	1,591	52,363	1.2%
Total real estate loans	3,313,773	413,648	165,515	3,892,936	93.3%
Other Loans:					
Commercial	59,384	35,764	175,022	270,170	6.5%
Consumer	4,517	—	3,728	8,245	0.2%
Total commercial and consumer loans	63,901	35,764	178,750	278,415	6.7%
Total loans	3,377,674	449,412	344,265	4,171,351	100.0%
Unearned discount and deferred fees and costs, net	—	(32,474)	(1,836)	(34,310)	
Loans net of discount and deferred costs	3,377,674	416,938	342,429	4,137,041	
Allowance for loan losses	(37,342)	(16,587)	(3,878)	(57,807)	
Loans, net	$ 3,340,332	$ 400,351	$ 338,551	$ 4,079,234	

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 4 Loans and Allowance for Loan Losses (Continued)

	December 31, 2009				
	Covered Loans				
	Acquired Credit Impaired	Non-ACI	Non-Covered Loans	Total	Percent of Total
Real Estate Loans:					
1-4 single family residential	$ 3,306,306	$ 184,669	$ 43,110	$ 3,534,085	76.0%
Home equity loans and lines of credit	113,578	215,591	1,615	330,784	7.1%
Multi-family	71,321	4,971	700	76,992	1.7%
Commercial real estate	363,965	39,733	24,460	428,158	9.2%
Construction	44,812	377	—	45,189	1.0%
Land	43,903	173	—	44,076	0.9%
Total real estate loans	3,943,885	445,514	69,885	4,459,284	95.9%
Other Loans:					
Commercial	81,765	48,635	51,565	181,965	3.9%
Consumer	7,065	—	3,151	10,216	0.2%
Total commercial and consumer loans	88,830	48,635	54,716	192,181	4.1%
Total loans	4,032,715	494,149	124,601	4,651,465	100.00%
Unearned discount and deferred fees and costs, net	—	(39,986)	40	(39,946)	
Loans net of discount and deferred costs	4,032,715	454,163	124,641	4,611,519	
Allowance for loan losses	(20,021)	(1,266)	(1,334)	(22,621)	
Loans, net	$ 4,012,694	$ 452,897	$ 123,307	$ 4,588,898	

Covered loans represent loans acquired from the FDIC subject to the loss sharing agreements. Covered loans are further broken out into (i) loans acquired with evidence of credit impairment, which we call acquired credit impaired, or ACI loans and (ii) loans that did not evidence credit impairment at acquisition, or non-ACI loans. Loans originated by the Company after May 21, 2009 are excluded from the loss sharing agreement and are classified as non-covered loans. The unpaid principal balance of ACI loans as of September 30, 2010 and December 31, 2009 was $7.9 billion and $9.3 billion, respectively.

The accretable yield on ACI loans represents the amount by which undiscounted expected future cash flows exceed carrying value of the loans. Changes in accretable yield on ACI loans for the nine

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 4 Loans and Allowance for Loan Losses (Continued)

months ended September 30, 2010 and the period ended September 30, 2009 were as follows (in thousands):

	September 30, 2010	September 30, 2009
Balance at beginning of period	$ 1,734,234	$ 2,004,337
Reclassifications from non-accretable difference	315,255	—
Accretion during the period	(291,565)	(161,454)
Balance at end of period	$ 1,757,924	$ 1,842,883

The following tables present total 1-4 single family residential loans categorized between fixed rate mortgages and adjustable rate mortgages ("ARMs") as of September 30, 2010 and December 31, 2009 (dollars in thousands):

	September 30, 2010				
	Covered Loans				
	Acquired Credit Impaired	Non-ACI	Non-Covered Loans	Total	Percent of Total
1-4 single family residential loans:					
Fixed rate loans	$ 680,074	$ 65,310	$ 55,805	$ 801,189	26.7%
ARM Loans	2,085,478	95,474	15,429	2,196,381	73.3%
Total(1)	$ 2,765,552	$ 160,784	$ 71,234	$ 2,997,570	100%

	December 31, 2009				
	Covered Loans				
	Acquired Credit Impaired	Non-ACI	Non-Covered Loans	Total	Percent of Total
1-4 single family residential loans:					
Fixed rate loans	$ 569,529	$ 76,342	$ 42,577	$ 688,448	19.5%
ARM Loans	2,736,777	108,327	533	2,845,637	80.5%
Total(1)	$ 3,306,306	$ 184,669	$ 43,110	$ 3,534,085	100%

(1) Before deferred costs, unearned discounts, premiums and allowance for loan losses

At September 30, 2010, based on unpaid principal balance, 65.3% of all outstanding loans were to customers domiciled in Florida. Loans to customers domiciled in California, Illinois, New Jersey, Virginia and Arizona represented 6.1%, 4.8%, 4.8%, 3.3% and 3.2%, respectively. No other state represented borrowers with more than 3.0% of loans outstanding.

As of September 30, 2010, the Company had pledged real estate loans with unpaid principal balances of approximately $5.3 billion and a carrying amount of approximately $2.4 billion, representing lendable collateral value of approximately $2.6 billion, as security for FHLB advances.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 4 Loans and Allowance for Loan Losses (Continued)

The allowance for loan losses reflects management's estimate of credit losses inherent in the loan portfolio at the balance sheet date and an amount management considers to be appropriate under the requirements of GAAP. The computation of the allowance for loan losses includes elements of judgment and high levels of subjectivity.

The following table summarizes changes in the allowance for loan losses for the nine months ended September 30, 2010 and the period ended September 30, 2009 (in thousands):

	September 30, 2010	September 30, 2009
Balance at beginning of period	$ 22,621	$ —
Provision for loan losses:		
ACI loans	26,973	2,288
Non-ACI loans	15,565	—
Non-Covered Loans	2,619	—
Total	45,157	2,288
Charge-offs:		
ACI loans	(9,652)	—
Non-ACI loans	(244)	—
Non-Covered Loans	(75)	—
Total	(9,971)	—
Recoveries	—	—
Balance at end of period	$ 57,807	$ 2,288

At December 31, 2009, our evaluation of expected cash flows from ACI loans was indicative of credit deterioration in certain residential ACI loan pools and an allowance for loan losses of approximately $20.0 million was established related to those pools. As of September 30, 2010, our analysis evidenced a significant improvement in expected cash flows related to these ACI residential pools and a decrease in expected cash flows due to credit related assumptions related to ACI home equity loan pools. As a result, the allowance of $20.0 million established at December 31, 2009 related to ACI residential pools was reversed and a provision for loan losses of $9.4 million was recorded related to ACI home equity loan pools during the nine months ended September 30, 2010. In addition, for the nine months ended September 30, 2010, our analysis indicated a decrease in expected cash flows from certain commercial and commercial real estate loans evaluated individually for credit impairment, resulting in a provision for loan losses of $37.5 million related to these ACI loans. In the aggregate, the provision for losses related to ACI loans was $27.0 million for the nine months ended September 30, 2010.

Increases in the indemnification asset of $23.0 million and $1.6 million were reflected as a component of net loss on indemnification asset resulting from net recoveries in non-interest income for the nine months ended September 30, 2010 and the period ended September 30, 2009, respectively, related to the provision for loan losses on covered loans, including both ACI and non-ACI loans.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 4 Loans and Allowance for Loan Losses (Continued)

The following tables present the Company's investment in impaired loans as of and for the nine months ended September 30, 2010 and period ended December 31, 2009 (in thousands):

	September 30, 2010			
	Impaired loans in accrual status	Loans in non-accrual status	Specific allowance allocated to impaired loans	Average recorded investment in impaired loans
Covered loans:				
1-4 single family residential	$ —	$ 13,895	$ —	$ 187,006
Home equity loans and lines of credit	102,892	9,496	9,421	34,899
Multi-family	43,798	377	3,650	16,018
Commercial real estate	142,246	2,170	15,504	54,907
Construction	—	—	—	593
Land	16,752	—	5,923	7,963
Commercial and industrial	13,897	2,052	3,348	8,007
Consumer	—	—	—	—
Subtotal	319,585	27,990	37,846	309,393
Non-covered loans:				
Commercial	—	34	—	—
Total	$ 319,585	$ 28,024	$ 37,846	$ 309,393

	December 31, 2009			
	Impaired loans in accrual status	Loans in non-accrual status	Specific allowance allocated to impaired loans	Average recorded investment in impaired loans
Covered loans:				
1-4 single family residential	$ 567,253	$ 14,495	$ 20,021	$ 13,295
Home equity loans and lines of credit	—	2,726	—	1,418
Commercial	—	150	30	37
Total	$ 567,253	$ 17,371	$ 20,051	$ 14,750

Impaired loans in accrual status in the table above include 1-4 single family residential and home equity ACI loans accounted for in pools for which impairment is evaluated on the expected aggregate cash flows of the pools as well as commercial and commercial real estate loans evaluated individually for impairment based on estimates of future cash flows at the individual loan level. These loans are classified as accruing loans due to discount accretion. Discount accretion is being recorded as there continues to be an expectation of future cash flows from these loans and pools.

1-4 single family residential and home equity ACI loans that are contractually delinquent by more than 90 days and accounted for in pools that have not been identified as impaired and on which discount continues to be accreted totaled $0.8 billion and $1.2 billion at September 30, 2010 and December 31, 2009, respectively. The carrying amount of commercial and commercial real estate ACI loans that are contractually delinquent in excess of ninety days but not identified as impaired because there has been no significant deterioration in cash flows expected at acquisition totaled $86.9 million at September 30, 2010.

Substantially all of the nonaccrual loans consist of non-ACI loans that have been placed on non-accrual status.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 4 Loans and Allowance for Loan Losses (Continued)

Interest income foregone on non-accrual loans, including interest income reversed when loans were placed on non-accrual status, totaled $752.2 thousand and $336.0 thousand for the nine months ended September 30, 2010 and period ended September 30, 2009, respectively.

Note 5 FDIC Indemnification Asset

Covered loans may be resolved through repayment, short sale of the underlying collateral, foreclosure or, for the non-residential portfolio, charge-offs, or sale of loans. For loans resolved through repayment, short sale or foreclosure, the difference between the payments received in satisfaction of the loans and the carrying value of the loans is recognized in the income statement line item "Income from resolution of covered assets, net." Losses from the resolution of covered loans increase the amount recoverable from the FDIC under the loss sharing agreements. Gains from the resolution of covered loans reduce the amount recoverable from the FDIC under the loss sharing agreements. These additions to or reductions in amounts recoverable from the FDIC related to the resolution of covered loans are recorded in the income statement line item "Net loss on indemnification asset resulting from net recoveries" and reflected as corresponding increases or decreases in the FDIC indemnification asset.

Changes in the FDIC indemnification asset for the nine months ended September 30, 2010 and the period ended September 30, 2009 were as follows (in thousands):

	September 30, 2010	September 30, 2009
Balance at beginning of period	$ 3,279,165	$ 3,442,890
Accretion	116,915	89,449
Reduction for claims filed	(628,089)	(68,975)
Loss on indemnification asset resulting from net recoveries	(44,932)	(51,123)
Balance at end of period	$ 2,723,059	$ 3,412,241

The Company recognizes additional covered losses or recoveries on FDIC indemnified assets through earnings. The following table summarizes the pre-tax components of the gains and losses

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 5 FDIC Indemnification Asset (Continued)

associated with the resolution of FDIC indemnified assets, plus the provision for loan losses on non-covered loans, for the nine months ended September 30, 2010 (in thousands):

	September 30, 2010		
	Transaction income (loss)	Net loss on indemnification asset from net recoveries	Net impact on pre-tax earnings
Provision for losses on covered loans	$ (42,538)	$ 22,979	$ (19,559)
Provision for losses on non-covered loans	(2,619)	—	(2,619)
Total provision for loan losses	(45,157)	22,979	(22,178)
Income from resolution of covered assets, net	112,777	(76,978)	35,799
Gain (loss) on sale of OREO	2,270		
Loss due to impairment of OREO	(12,164)		
	(9,894)	9,067	(827)
Total	$ 57,726	$ (44,932)	$ 12,794

For the period ended September 30, 2009, income from resolution of covered assets, net totaled $79.6 million, offset by an FDIC indemnification loss of $59.7 million. The provision for losses on covered loans totaled $2.3 million and impairment charges on OREO totaled $8.7 million for the period ended September 30, 2009. These transactions were offset by FDIC indemnification income of $8.6 million.

For the nine months ended September 30, 2010 and the period ended September 30, 2009 non-interest expense includes approximately $41.6 million and $12.0 million, respectively, of disbursements subject to reimbursement under the loss sharing agreements. For those same periods, $30.1 million and $4.0 million, respectively, of those disbursements were submitted to the FDIC for reimbursement at the 80% level. As of September 30, 2010, $27.3 million of those disbursements remain to be submitted for reimbursement from the FDIC in future periods.

Note 6 Other Real Estate Owned

An analysis of other real estate owned ("OREO") for the nine months ended September 30, 2010 and the period ended September 30, 2009 follows (in thousands):

	September 30, 2010	September 30, 2009
Balance at beginning of period	$ 120,110	$ 177,679
Transfers from loan portfolio	283,220	49,431
Sales	(194,903)	(122,302)
Impairment	(12,164)	(8,716)
(Decrease) Increase from resolution of covered loans	(1,977)	19,282
Balance at end of period	$ 194,286	$ 115,374

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 6 Other Real Estate Owned (Continued)

All of the Company's other real estate owned is covered under the loss sharing agreements.

Note 7 Regulatory Capital

BankUnited's regulatory capital levels as of September 30, 2010 and December 31, 2009 were as follows (dollars in thousands):

	September 30, 2010					
	Actual		Required to be considered well capitalized		Required to be considered adequately capitalized	
	Ratio	Amount	Ratio	Amount	Ratio	Amount
Tier 1 leverage ratio(1)	10.09%	$ 1,108,019	8.00%	$ 878,509	8.00%	$ 878,509
Tier 1 risk-based capital ratio	42.46%	$ 1,108,019	6.00%	$ 156,574	4.00%	$ 104,382
Total risk-based capital ratio	43.27%	$ 1,129,295	10.00%	$ 260,988	8.00%	$ 208,790

	December 31, 2009					
	Actual		Required to be considered well capitalized		Required to be considered adequately capitalized	
	Ratio	Amount	Ratio	Amount	Ratio	Amount
Tier 1 leverage ratio(1)	8.78%	$ 966,749	8.00%	$ 880,865	8.00%	$ 880,865
Tier 1 risk-based capital ratio	40.42%	$ 966,749	6.00%	$ 143,506	4.00%	$ 95,670
Total risk-based capital ratio	40.55%	$ 969,716	10.00%	$ 239,141	8.00%	$ 191,313

(1) A condition for approval of the application for Federal Deposit Insurance requires the Bank to maintain a Tier 1 leverage ratio of no less than eight percent throughout the first three years of operation.

Note 8 Derivatives and Hedging Activities

The Company uses interest rate swaps to manage interest rate risk related to certain products and instruments used to finance its operations that expose the Company to variability in cash flows due to changes in interest rates. These instruments include FHLB advances and certificates of deposits with maturities of one year.

Management believes it is prudent to limit the variability of its interest payments. To meet this objective, management enters into LIBOR-based interest rate swaps to manage fluctuations in cash flows resulting from interest rate risk attributable to changes in the benchmark interest rate of LIBOR.

In addition to using derivative instruments as an interest rate risk management tool, the Company enters into interest rate swaps to help certain of its borrowers manage their exposure to interest rate fluctuations. To mitigate interest rate risk associated with these derivative contracts, the Company enters into offsetting derivative contract positions with financial institution counterparties. The Company manages credit risk, or the risk of default by its borrowers, though its normal loan underwriting and credit monitoring policies and procedures. These interest rate swap contracts are not

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 8 Derivatives and Hedging Activities (Continued)

designated as hedging instruments; therefore, changes in the fair value of these derivatives are recognized immediately in earnings.

The following tables set forth certain information concerning the Company's derivative financial instruments and related hedged items at September 30, 2010 and December 31, 2009 (dollars in thousands):

	September 30, 2010							
	Hedged item	Pay rate	Receive rate	Remaining life in years	Notional amount	Balance sheet location	Fair value Gain	Fair value Loss
Derivatives designated as cash flow hedges								
Pay-fixed interest rate swaps	Variability of interest cash flows on certificates of deposit	3.11%	12-Month Libor	5.1	$ 225,000	Other liabilities	$ —	$ (21,281)
Purchased interest rate forward-starting swaps:	Variability of interest cash flows on FHLB advances	3.42% - 3.76%	3-Month Libor	4.6 - 6.5	405,000	Other liabilities	—	(46,459)
Derivatives not designated as hedges								
Pay-fixed interest rate swaps		3.68%	69% of 1-Month Libor	5.0	9,404	Other liabilities	—	(224)
Pay-variable interest rate swaps		69% of 1-Month Libor	3.68%	5.0	9,404	Other assets	224	—
Total					$ 648,808		$ 224	$ (67,964)

	December 31, 2009							
	Hedged item	Pay rate	Receive rate	Remaining life in years	Notional amount	Balance sheet location	Fair value Gain	Fair value Loss
Derivatives Designated as Cash Flow Hedges								
Pay-fixed interest rate swaps	Variability of interest cash flows on certificates of deposit	3.11%	12-Month Libor	5.9	$ 225,000	Other assets	$ 1,517	$ —
Purchased interest rate forward-starting swaps:	Variability of interest cash flows on FHLB advances	3.42% - 3.76%	3-Month Libor	5.0 - 7.0	405,000	Other liabilities	—	(4,016)
Total					$ 630,000		$ 1,517	$ (4,016)

Interest expense for the nine months ended September 30, 2010 includes $279.1 thousand of losses due to hedge ineffectiveness arising from differences between the critical terms of interest rate swaps and the hedged debt obligations. There were no losses due to hedge ineffectiveness for the period ended September 30, 2009.

Changes in the fair value of interest rate swaps designated as hedging instruments of the variability of cash flows associated with floating-rate debt obligations are reported in accumulated other comprehensive income ("AOCI"). These amounts subsequently are reclassified into interest expense as a yield adjustment in the same period in which the related interest on the floating-rate debt obligations affects earnings. Effective hedge results initially recorded in AOCI and subsequently reclassified into earnings increased interest expense by $8.9 million in the nine months ended September 30, 2010. There was no impact on earnings for the period ended September 30, 2009.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 8 Derivatives and Hedging Activities (Continued)

During the nine months ended September 30, 2010 and the period ended September 30, 2009, no derivative positions were discontinued, and none of the gains and losses reported in AOCI were reclassified into earnings as a result of the discontinuance of cash flow hedges or because of the early extinguishment of debt.

Note 9 Equity Awards

Profits Interest Units

BUFH has a class of authorized membership interests identified as Profits Interest Units ("PIU"). PIU are only issued to management members of the Company who own common units of BUFH. As such, the related liability and expense are recorded in the consolidated financial statements of the Company. There are two types of PIU: Time-Based PIU and IRR-Based PIU. The holders of PIU have no voting rights with respect to their PIU but have certain rights with respect to profits of the Company and distributions of profits from the Company. The holders of PIU are not required to make any capital contribution to the Company in exchange for their PIU. Furthermore, the holders of PIU are entitled to receive priority distribution catch-up payments in respect of Time-Based PIU that have become vested and which did not participate in earlier interim distributions of profits.

The Company has classified these equity awards as a liability to BUFH in the accompanying condensed consolidated balance sheet. At September 30, 2010, the estimated fair value of the IRR-Based PIU was $63.9 million. Included in compensation expense is approximately $20.0 million and $4.3 million associated with the Time-based PIU for the nine months ended September 30, 2010 and the period ended September 30, 2009, respectively.

The following table summarizes information about Time-Based and IRR-Based PIU at September 30, 2010:

	Outstanding	
	Number of units awarded	Fair value per unit
Time-based PIU	51,651.03	$ 1,238.25
IRR-based PIU	51,651.03	$ 1,238.25
Total awards	103,302.06	
Total fair value	$ 127,913,776	
Cumulative expense through September 30, 2010	$ 28,780,435	
Unrecognized compensation expense	$ 99,133,341	

Warrant to FDIC

In connection with the Acquisition of BankUnited, FSB, BUFH issued a warrant to the FDIC. The related liability and expense are recorded in the condensed consolidated financial statements of the Company. The warrant becomes exercisable upon the occurrence of an IPO or exit event in which the total tangible equity value arising from the IPO or exit event exceeds a threshold value. At September 30, 2010, the warrant has a remaining contractual term of 8.64 years.

Note 9 Equity Awards (Continued)

The warrant is redeemable by BUFH or the Company for cash after it becomes exercisable at a redemption price equal to the warrant value. The Company has classified this warrant as a liability to BUFH in the accompanying condensed consolidated balance sheet. Included in other liabilities is approximately $7.7 million and $3.2 million at September 30, 2010 and December 31, 2009, respectively, representing the fair value of this instrument. The Company has recognized expense of $4.5 million and $0.7 million related to the increase in fair value of this instrument for the nine months ended September 30, 2010 and the period ended September 30, 2009, respectively.

See Note 12, Subsequent Events, for additional discussion of the IRR-Based PIU and the warrant issued to the FDIC.

Note 10 Fair Value Measurements

The Company categorizes its assets and liabilities measured at fair value in three levels within a fair value hierarchy, based on the markets in which the assets and liabilities are traded and the reliability and transparency of the assumptions used to determine fair value. These levels are as follows:

Level 1—Assets or liabilities for which the identical item is traded on an active exchange, such as publicly-traded instruments or futures contracts.

Level 2—Assets and liabilities valued based on observable market data for similar instruments.

Level 3—Assets or liabilities for which significant valuation assumptions are not readily observable in the market. These instruments are valued based on the best available data, some of which is internally-developed, and considering risk premiums that a market participant would require. Valuation techniques include use of option pricing models, discounted cash flow models and similar techniques.

In instances where there is limited or no observable market data, fair value measurements for assets and liabilities are based primarily upon the Company's own estimates or a combination of such estimates and independent vendor or broker pricing. When determining fair value measurements for assets and liabilities and the related level within the fair value hierarchy in which those measurements should be categorized, the Company considers the principal or most advantageous market in which it would transact and considers assumptions that market participants would use when pricing the asset or liability. When possible, the Company looks to active and observable markets to price identical assets or liabilities and when identical assets and liabilities are not traded in active markets, the Company looks to observable market data for similar assets and liabilities. It is the Company's policy to maximize the use of observable inputs and minimize the use of unobservable inputs. Unobservable inputs are only used to measure fair value to the extent that observable inputs are not available. The need to use unobservable inputs generally results from the lack of market liquidity resulting in diminished observability of both actual trades and assumptions that would otherwise be available to value these instruments, or the lack of observable indicators of the value of underlying collateral. Although third party price indications may be available for a security, limited trading activity would make it difficult to support the observability of these quotations.

The following is a description of the methodologies used to estimate the fair values of financial instruments measured at fair value on a recurring basis, and the level within the fair value hierarchy in which those measurements are typically classified.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 10 Fair Value Measurements (Continued)

Assets and Liabilities Measured at Fair Value on a Recurring Basis:

Investment securities available for sale—When available, fair value measurements are based on quoted prices in active markets and as such, are classified within Level 1. These securities typically include U.S. Government treasury or agency securities, preferred stock of U.S. Government agencies and mutual funds. If quoted market prices are not available, fair values are estimated using quoted prices of securities with similar characteristics, discounted cash flows or other pricing models. Investment securities available for sale that the Company classifies within Level 2 include U.S. Government Agency mortgage-backed securities and collateralized mortgage obligations, preferred stock of other issuers, nonmortgage asset backed securities, state and municipal obligations and small business administration securities. Investment securities available for sale classified within Level 3 of the fair value hierarchy include private label mortgage pass-through certificates and collateralized mortgage obligations, certain nonmortgage asset backed securities and other debt securities for which fair value estimation requires the use of unobservable inputs. The Company values these securities using third party proprietary pricing models that incorporate observable and unobservable inputs.

Derivative financial instruments—Interest rate swaps are predominantly traded in over-the-counter markets and, as such, values are determined using widely accepted discounted cash flow models, or Level 2 measurements. These discounted cash flow models use projections of future cash payments and receipts that are discounted at mid-market rates. These valuations are adjusted for credit risk at the reporting date, considering collateral posted and the impact of master netting agreements.

Equity awards classified as liabilities—The estimated fair value of equity awards is derived primarily using the Black-Sholes option pricing model. Since the Company's Common Stock is not publicly traded on an exchange, significant inputs to the model are not observable, resulting in Level 3 classification.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 10 Fair Value Measurements (Continued)

The following table presents financial instruments measured at fair value on a recurring basis as of September 30, 2010 and December 31, 2009 (in thousands):

	September 30, 2010			
	Level 1	Level 2	Level 3	Total
Investment Securities Available for Sale:				
U.S. Government agency and sponsored enterprise residential mortgage-backed securities	$ —	$ 1,368,239	$ —	$ 1,368,239
Other residential collateralized mortgage obligations	—	—	706,280	706,280
Residential mortgage pass-through certificates	—	—	364,539	364,539
Nonmortgage asset backed securities	—	295,126	132,805	427,931
Mutual funds and preferred stocks	25,832	98,449	—	124,281
State and municipal obligations	—	23,428	250	23,678
Small Business Administration securities	—	66,657	—	66,657
Other debt securities	—	2,857	4,042	6,899
Derivative assets	—	224	—	224
Total assets at fair value	$ 25,832	$ 1,854,980	$ 1,207,916	$ 3,088,728
Equity awards classified as liabilities	$ —	$ —	$ 36,451	$ 36,451
Derivative liabilities	—	67,964	—	67,964
Total liabilities at fair value	$ —	$ 67,964	$ 36,451	$ 104,415

	December 31, 2009			
	Level 1	Level 2	Level 3	Total
Investment Securities Available for Sale:				
U.S. Treasury securities	$ 10,072	$ —	$ —	$ 10,072
U.S. Government agency and sponsored enterprise residential mortgage-backed securities	—	1,288,643	—	1,288,643
Other residential collateralized mortgage obligations	—	—	506,839	506,839
Residential mortgage pass-through certificates	—	—	364,672	364,672
Mutual funds and preferred stocks	17,646	25,877	—	43,523
State and Municipal obligations	—	23,106	250	23,356
Other debt securities	—	2,760	3,278	6,038
Derivative assets	—	1,517	—	1,517
Total assets at fair value	$ 27,718	$ 1,341,903	$ 875,039	$ 2,244,660
Equity awards classified as liabilities	$ —	$ —	$ 11,961	$ 11,961
Derivative liabilities	—	4,016	—	4,016
Total liabilities at fair value	$ —	$ 4,016	$ 11,961	$ 15,977

The following table includes changes in Level 3 financial instruments that are measured at fair value on a recurring basis for the nine months ended September 30, 2010 and the period ended September 30, 2009. Level 3 financial instruments typically include unobservable components, but may

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 10 Fair Value Measurements (Continued)

also include some observable components that may be validated to external sources. The gains or (losses) in the following table may include changes to fair value due in part to observable factors that may be part of the valuation methodology (in thousands):

	September 30, 2010					
	Other residential collateralized mortgage obligations	Residential mortgage pass-thru certificates	State and municipal obligations	Other debt securities	Nonmortgage asset backed securities	Equity awards
Balance at December 31, 2009	$ 506,839	$ 364,672	$ 250	$ 3,278	$ —	$ (11,961)
Net gains (losses) for the period included in:						
Net income	—	—	—	—	—	(24,490)
Other comprehensive income	16,520	18,432	—	740	675	—
Reclassifications	(30,000)	—	—	—	30,000	—
Purchases, sales and settlements, net	212,921	(18,565)	—	24	102,130	—
Balance at September 30, 2010	$ 706,280	$ 364,539	$ 250	$ 4,042	$ 132,805	$ (36,451)

	September 30, 2009					
	Other residential collateralized mortgage obligations	Residential mortgages pass-thru certificates	State and municipal Obligations	Other debt securities	Nonmortgage asset backed securities	Equity awards
Balance at May 22, 2009	$ 1,785	$ 230,092	$ 250	$ 1,676	$ —	$ (1,464)
Net gains (losses) for the period included in:						
Net income	—	—	—	—	—	(4,963)
Other comprehensive income	(9,105)	35,836	—	996	—	—
Purchases, sales and settlements, net	220,031	(23,738)	—	411	—	—
Balance at September 30, 2009	$ 212,711	$ 242,190	$ 250	$ 3,083	$ —	$ (6,427)

Financial Instruments Measured at Fair Value on a Non-Recurring Basis:

The measurement of impairment of collateral dependent impaired loans is based on the fair value of the underlying collateral. The carrying amount of OREO is initially measured based on the fair value of the real estate owned and subsequently carried at the lower of cost or estimated fair value. Fair value of the loan collateral or real estate owned property is generally estimated using both market and income approach valuation techniques incorporating observable market data to formulate an opinion of the estimated fair value. When current appraisals are not available, we use our judgment

Note 10 Fair Value Measurements (Continued)

regarding changes in market conditions, based on observable market inputs, to adjust the latest appraised value available. As a result, the estimated fair value is classified within level 3 of the fair value hierarchy. As of September 30, 2010 and December 31, 2009, the Company had $194.3 million and $120.1 million, respectively, of OREO and did not have any collateral dependent impaired loans. Impairment write-downs on OREO for the nine months ended September 30, 2010 and the period ended September 30, 2009 totaled $12.2 million and $8.7 million, respectively.

Goodwill, other intangible assets and the FDIC indemnification asset were initially recorded at estimated fair value and are reviewed for impairment annually, or more frequently if events or changes in circumstances indicate the carrying amount maybe impaired. Any adjustments to fair value resulting from impairment incorporate significant assumptions that are not observable in the market. The resulting fair value measurements are therefore classified within level 3 of the fair value hierarchy. No such fair value measurements were recorded during the nine months ended September 30, 2010 or the period ended September 30, 2009.

The following table presents the carrying value and fair value of financial instruments as of September 30, 2010 and December 31, 2009 (in thousands):

	September 30, 2010		December 31, 2009	
	Carrying value	Fair value	Carrying value	Fair value
Assets:				
Cash and cash equivalents	$ 494,586	$ 494,586	$ 356,215	$ 356,215
Investment securities available for sale	3,088,504	3,088,504	2,243,143	2,243,143
Federal Home Loan Bank stock	225,902	225,902	243,334	243,334
Loans held for sale	534	534	—	—
Loans:				
Covered	3,740,683	3,794,809	4,465,591	5,138,549
Non-covered	338,551	343,864	123,307	128,778
FDIC Indemnification asset	2,723,059	2,708,171	3,279,165	3,279,165
Income tax receivable	48,359	48,359	—	—
Accrued interest receivable	13,908	13,908	9,591	9,591
Derivative assets	224	224	1,517	1,517
Liabilities:				
Deposits	$ 7,300,460	$ 7,333,718	$ 7,666,775	$ 7,690,422
Securities sold under agreements to repurchase	386	386	2,972	2,972
Federal Home Loan Bank advances	2,260,006	2,384,680	2,079,051	2,114,431
Due to FDIC	111,056	111,056	114,006	114,006
Accrued interest payable	9,557	9,557	12,561	12,561
Income taxes payable	—	—	82,701	82,701
Advance payments by borrowers for taxes and insurance	55,896	55,896	31,237	31,237
Equity awards classified as liabilities	36,451	36,451	11,961	11,961
Derivative liabilities	67,964	67,964	4,016	4,016

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 10 Fair Value Measurements (Continued)

The following methods and assumptions were used to estimate the fair value of each class of financial instruments:

Certain financial instruments are carried at amounts that approximate fair value due to their short-term nature and generally negligible credit risk. These financial instruments include cash and cash equivalents, income tax receivable, accrued interest receivable, securities sold under agreements to repurchase, due to FDIC, accrued interest payable, accrued income taxes, and advance payments by borrowers for taxes and insurance.

Investment securities available for sale:

Fair value measurements are based upon quoted market prices for identical assets when available. If quoted market prices are not available, fair values are measured using quoted prices of securities with similar characteristics, discounted cash flows or other pricing models.

Federal Home Loan Bank stock:

There is no market for this stock, which is subject to redemption by the FHLB under certain circumstances. The stock is carried at par, which has historically represented the redemption price and is therefore considered to approximate fair value. FHLB stock is evaluated quarterly for potential impairment.

Covered loans:

Fair values are estimated based on a discounted cash flow analysis. Estimates of future cash flows incorporate various factors including the type of loan and related collateral, classification status, whether the interest rate is fixed or variable, term of loan and whether or not the loan is amortizing. The fair values of loans accounted for in pools are estimated on a pool basis. Other loans may be grouped based on risk characteristics and fair value estimated in the aggregate when applying the discounted cash flow valuation techniques. Discount rates are based on current market rates for new originations of comparable loans and include adjustments for liquidity concerns. Estimated credit losses are encompassed in projected future cash flows, therefore the discount rate does not include a factor for credit losses.

Non-covered loans:

Fair values are estimated using a discounted cash flow analysis with a discount rate based on interest rates currently being offered for loans with similar terms to borrowers of similar credit quality. The allowance for loan losses is considered a reasonable estimate of the required adjustment to fair value to reflect the impact of credit risk. The fair value of loans held for sale is based on secondary market pricing and approximated carrying value at September 30, 2010.

FDIC indemnification asset:

The fair value of the FDIC indemnification asset has been estimated using a discounted cash flow technique incorporating assumptions about the timing and amount of future projected cash payments from the FDIC related to the resolution of covered assets. The discount rate was determined by

Note 10 Fair Value Measurements (Continued)

adjusting the risk free rate to incorporate credit risk, uncertainty in the estimate of future cash flows and illiquidity.

Deposits:

The fair value of demand deposits, savings accounts and money market deposits is the amount payable on demand at the reporting date. The fair value of time deposits is estimated using discounted cash flow analysis based on rates currently offered for deposits of similar remaining maturities.

FHLB advances:

The fair value of the borrowings is estimated by discounting the future cash flows using the current rate at which similar borrowings with similar remaining maturities could be obtained.

Equity awards:

Equity awards are valued using Black-Scholes and binomial option pricing models incorporating assumptions about the remaining term of the awards and the value and volatility of the Company's common stock.

Derivative assets and liabilities:

Derivative assets and liabilities consist of interest rate swaps that are valued using discounted cash flow models.

Note 11 Earnings per Share

Basic earnings per common share are computed by dividing income available to common shareholders by the weighted-average number of common shares outstanding during each period. Diluted earnings per common share are based on the weighted-average number of common shares outstanding during the period, plus the dilutive effect of securities or other contracts to issue common shares ("Common Stock Equivalents"). CSE are excluded from the computation of earnings per common share in periods in which they have an anti-dilutive effect. Outstanding stock options are potentially dilutive securities, but are not included in the calculation of diluted earnings per common share because to do so would be anti-dilutive. Shares that the Company may be obligated to issue pursuant to BUFH's PIU and the FDIC warrant represent contingently issuable shares and are not included in the calculation of diluted earnings per common share because the conditions necessary to issue the shares have not been satisfied as of the end of the reporting period. Therefore, at September 30, 2010 and 2009, the weighted average number of shares used to compute basic and diluted earnings per common share is the same.

Note 12 Subsequent Events

Subsequent events have been evaluated through the date that the condensed consolidated financial statements were issued.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

September 30, 2010

Note 12 Subsequent Events (Continued)

Settlement of dispute with the FDIC:

In October 2010, the Company reached a settlement with the FDIC regarding a dispute related to the purchase price assigned to certain investment securities acquired in the Acquisition of BankUnited FSB. Under the terms of the settlement, the Company received $24.1 million from the FDIC. The Company will recognize the results of this settlement in earnings during the quarter ending December 31, 2010.

Minimum guaranteed value of the FDIC warrant:

In October 2010, the Company and the FDIC agreed to amend the warrant issued to the FDIC to guarantee a minimum value to the FDIC of $25.0 million. The Company will recognize the difference between the recorded liability of $7.7 million at September 30, 2010 and the guaranteed minimum value of the warrant in earnings during the quarter ending December 31, 2010.

Dividends declared:

In October 2010, the Company declared a dividend payable to BUFH in the amount of $6.0 million. In December 2010, we declared a quarterly dividend of $14.0 million.

IRR-Based PIU:

In October 2010, the Board of Directors of BUFH approved, contingent upon consummation of an IPO, the vesting of all issued and outstanding IRR-Based PIU immediately prior to the IPO.

Sale of Covered Loans

Under its loss sharing agreement with the FDIC, BankUnited is permitted to sell up to 2.5% of the unpaid principal balance of the residential and commercial loan portfolio acquired in the Acquisition of BankUnited FSB, with certain restrictions, on an annual basis without prior consent from the FDIC. In November 2010, BankUnited entered into an agreement to sell covered loans with an unpaid principal balance of approximately $272.2 million and a carrying amount of approximately $143.8 million for a price of approximately $66.7 million. A loss of approximately $77.1 million will be incurred on the sale, partly mitigated by an increase in the FDIC indemnification asset of approximately $61.7 million.

Stock Split:

The Board of Directors authorized a 10-for-1 split of the Company's outstanding common shares effective January 10, 2011. Stockholder's equity has been retroactively adjusted to give effect to the stock split for all periods presented by reclassifying from paid-in capital to common stock the par value of the additional shares issued. All share and per share data have been retroactively restated for all periods presented to reflect this stock split.

Table of Contents

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholder
BankUnited, Inc.:

We have audited the accompanying consolidated balance sheet of BankUnited, Inc. and subsidiaries (the Company) as of December 31, 2009, and the related consolidated statements of income, stockholder's equity and comprehensive income, and cash flows for the period from April 28, 2009 (date of inception) through December 31, 2009. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of BankUnited, Inc. and subsidiaries as of December 31, 2009, and the results of their operations and their cash flows for the period from April 28, 2009 (date of inception) through December 31, 2009, in conformity with U.S. generally accepted accounting principles.

/s/ KPMG LLP

October 25, 2010, except for Note 22,
as to which the date is January 10, 2011
Miami, Florida
Certified Public Accountants

BANKUNITED, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

December 31, 2009

(Dollars in thousands, except per share amounts)

ASSETS		
Cash and due from banks	$	60,593
Due from Federal Reserve Bank		290,192
Federal funds sold		5,430
Cash and cash equivalents		356,215
Investment securities available for sale, at fair value (including covered securities of $275,726)		2,243,143
Federal Home Loan Bank stock		243,334
Loans held in portfolio, net of discounts, premiums and deferred costs (including covered loans of $4,486,878)		4,611,519
Allowance for loan losses		(22,621)
Loans held in portfolio, net		4,588,898
Federal Deposit Insurance Corporation ("FDIC") indemnification asset, net		3,279,165
Bank owned life insurance		132,330
Other real estate owned, covered by loss sharing agreements		120,110
Deferred tax asset, net		22,533
Goodwill and other intangible assets, net		60,981
Other assets		83,252
Total assets	$	11,129,961
LIABILITIES AND STOCKHOLDER'S EQUITY		
Liabilities:		
Demand deposits:		
Non-interest bearing	$	332,941
Interest bearing		222,052
Savings and money market		2,592,642
Time Deposits		4,519,140
Total deposits		7,666,775
Securities sold under agreements to repurchase		2,972
Federal Home Loan Bank advances		2,079,051
Due to FDIC		114,006
Income taxes payable		82,701
Advance payments by borrowers for taxes and insurance		31,237
Other liabilities		58,959
Total liabilities		10,035,701
Commitments and contingencies		
Stockholder's equity:		
Common Stock, par value $0.01 per share:		
Authorized, 110,000,000 shares; 92,767,310 shares issued and outstanding		928
Paid-in capital		946,822
Non-vested stock options		210
Retained earnings		119,046
Accumulated other comprehensive income, net of tax		27,254
Total stockholder's equity		1,094,260
Total liabilities and stockholder's equity	$	11,129,961

The accompanying notes are an integral part of these consolidated financial statements.

BANKUNITED, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF INCOME

For the Period from April 28, 2009 (date of inception) through December 31, 2009

(In thousands, except per share data)

Interest income:	
Interest and fees on loans	$ 287,460
Interest and dividends on investment securities available for sale	45,142
Interest and dividends on other interest-earning assets	2,922
Total interest income	335,524
Interest expense:	
Interest on deposits	57,829
Interest on borrowings	26,027
Total interest expense	83,856
Net interest income before provision for loan losses	251,668
Provision for loan losses	22,621
Net interest income after provision for loan losses	229,047
Non-interest income:	
Accretion of discount on FDIC indemnification asset	149,544
Income from resolution of covered assets, net	120,954
Loss on sale of loans, net	(47,078)
Gain on extinguishment of debt	31,303
Net loss on indemnification asset resulting from net recoveries	(22,568)
FDIC reimbursement of costs of resolution of covered assets	8,095
Service charges	6,753
Other non-interest income	5,825
Total non-interest income	252,828
Non-interest expense:	
Employee compensation and benefits	62,648
Occupancy and equipment	19,925
Impairment of other real estate owned	21,055
Professional fees	14,854
Foreclosure expense	16,632
Deposit insurance expense	11,850
Other real estate owned related expense	7,576
Telecommunications and data processing	6,440
Other non-interest expense	12,230
Loss on FDIC receivable	69,444
Acquisition related costs	39,800
Total non-interest expense	282,454
Income before income taxes	199,421
Provision for income taxes	80,375
Net income	$ 119,046
Earnings Per Common Share: Basic and diluted	$ 1.29
Weighted average number of common shares outstanding: Basic and diluted	92,664,910

The accompanying notes are an integral part of these consolidated financial statements.

BANKUNITED, INC. SUBSIDIARIES

CONSOLIDATED STATEMENT OF CASH FLOWS

For the Period from April 28, 2009 (date of inception) through December 31, 2009

(In thousands)

Cash flows from operating activities:	
Net income	$ 119,046
Adjustments to reconcile net income to net cash used in operating activities:	
Accretion of fair values of assets acquired	(273,488)
Accretion of fees, discounts and premiums, net	(19,107)
Accretion of fair values of liabilities assumed	(105,045)
Provision for loan losses	22,621
Accretion of discount on FDIC indemnification asset	(149,544)
Income from resolution of covered assets, net	(120,954)
Loss on sale of loans, net	47,078
Gain on extinguishment of debt	(31,303)
Net loss on indemnification asset resulting from net recoveries	22,568
Increase in bank owned life insurance cash surrender value	(3,219)
Loss on sale of investment securities available for sale, net	337
Loss on sale of other real estate owned, net	807
Compensation expense on non-vested stock options	210
Expense on equity awards classified as liabilties	10,497
Depreciation and amortization	1,201
Impairment of other real estate owned	21,055
Loss on FDIC receivable	69,444
Deferred income tax benefit	(2,325)
Other:	
Increase in other assets	(20,675)
Increase in other liabilities	67,111
Decrease in due to FDIC	(9,447)
Net cash used in operating activities	(353,132)
Cash flows from investing activities:	
Net cash acquired in a business combination	1,160,321
Cash received from FDIC related to business combination, net	2,274,206
Purchases of investment securities available for sale	(1,824,870)
Proceeds from repayments of investment securities available for sale	177,074
Proceeds from sale of investment securities available for sale	9,271
Net decrease in loans held in portfolio	525,934
Proceeds from sale of loans	79,635
Decrease in FDIC indemnification asset for claims filed	290,701
Purchases of office properties and equipment	(4,890)
Proceeds from sale of other real estate owned	176,601
Net cash provided by investing activities	2,863,983

BANKUNITED, INC. SUBSIDIARIES

CONSOLIDATED STATEMENT OF CASH FLOWS (Continued)

For the Period from April 28, 2009 (date of inception) through December 31, 2009

(In thousands)

Cash flows from financing activities:	
Net decrease in deposits	(587,811)
Additions to Federal Home Loan Bank advances	300,000
Repayments of Federal Home Loan Bank advances	(2,795,112)
Net increase in other borrowings	1,662
Decrease in advances from borrowers for taxes and insurance	(21,125)
Capital contribution	947,750
Net cash used in financing activities	(2,154,636)
Net increase in cash and cash equivalents	356,215
Cash and cash equivalents at beginning of period	—
Cash and cash equivalents at end of period	$ 356,215
Supplemental disclosures of cash flow activities:	
Interest paid on deposits and borrowings	$ 227,421
Income taxes paid	$ —
Supplemental disclosures of non-cash investing and financing activities:	
Transfers from loans to real estate owned	$ 115,192
Restructuring of Federal Home Loan Bank advances	$ 505,000

The accompanying notes are an integral part of these consolidated financial statements.

BANKUNITED, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF STOCKHOLDER'S EQUITY AND COMPREHENSIVE INCOME

For the Period from April 28, 2009 (date of inception) through December 31, 2009

(In thousands)

	Common Stock Par Value	Paid-in Capital	Non-vested Stock Options	Retained Earnings	Accumulated Other Comprehensive Income, net of tax	Total Stockholder's Equity
Balance at April 28, 2009 (date of inception)	$ —	$ —	$ —	$ —	$ —	$ —
Initial capital contribution	925	924,075	—	—	—	925,000
Additional capital contribution	3	22,747	—	—	—	22,750
Net income	—	—	—	119,046	—	119,046
Other comprehensive income, net of tax						
Unrealized gains on investment securities available for sale, net of taxes of $17,870	—	—	—	—	28,546	28,546
Unrealized losses on cash flow hedges, net of tax benefit of $(1,070)	—	—	—	—	(1,709)	(1,709)
Less reclassification adjustment for:						
Realized losses on cash flow hedges, net of tax benefit of $261	—	—	—	—	417	417
Total comprehensive income, net of tax	—	—	—	119,046	27,254	146,300
Non-vested stock options	—	—	210	—	—	210
Balance at December 31, 2009	$ 928	$ 946,822	$ 210	$ 119,046	$ 27,254	$ 1,094,260

The accompanying notes are an integral part of these consolidated financial statements.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2009

Note 1 Summary of Significant Accounting Policies

BankUnited, Inc., formerly known as BU Financial Corporation, was organized on April 28, 2009 as the holding company for BankUnited ("BankUnited" or the "Bank") a federally-chartered, federally-insured savings association and is headquartered in Miami Lakes, Florida. After the close of business on May 21, 2009, BankUnited acquired certain assets and assumed certain liabilities of BankUnited, FSB from the Federal Deposit Insurance Corporation ("FDIC"). Business operations began on May 22, 2009. BankUnited, Inc.'s wholly-owned subsidiaries include BankUnited and BankUnited Investment Services, Inc. (collectively, the "Company"). BankUnited provides a full range of banking and bank-related services to individual and corporate customers through 78 branch offices located in 13 Florida counties. BankUnited, Inc. is a wholly-owned subsidiary of BU Financial Holdings LLC ("BUFH"), which was formed on April 27, 2009 as a limited liability company under the laws of the State of Delaware.

The accounting and reporting policies of the Company and the methods of applying those policies that materially affect the accompanying consolidated financial statements conform with accounting principles generally accepted in the United States ("GAAP") and where applicable to general practices in the banking industry or guidelines prescribed by bank regulatory agencies.

Effective July 1, 2009, the Financial Accounting Standards Board ("FASB") established the Accounting Standards Codification ("ASC" or "Codification") as the source of authoritative GAAP for companies to use in the preparation of financial statements. The guidance contained in the Codification supersedes all existing accounting and reporting standards for public and non-public companies. The Company has adopted the Codification, as required, and as a result, references to accounting literature contained in its Consolidated Financial Statement disclosures reflect the new ASC structure.

Accounting Estimates and Assumptions

In preparing the consolidated financial statements, management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and valuation and disclosures of contingent assets and liabilities. Management has made significant estimates in certain areas, such as the allowance for loan losses, accounting for covered loans, the valuation of other real estate owned, the accounting for Profits Interest Units and the determination of the valuation allowance for deferred tax assets.

Other estimates are also made in the determination of the fair value of assets acquired and liabilities assumed, including estimates of loans acquired with evidence of credit impairment since origination, the FDIC indemnification asset, goodwill and other intangible assets associated with the BankUnited, FSB acquisition, other-than-temporary impairment of investment securities and fair value of financial instruments. In addition, management has used information provided by third parties to assist in the determination of estimates regarding costs and fair values associated with the Company's investment securities, stock options and equity awards. Actual results could differ from those estimates. The current economic environment has increased the degree of uncertainty inherent in those estimates and assumptions.

Fair Value Measurements

The Company uses fair value measurements to record fair value adjustments to certain assets and liabilities and to determine fair value disclosures. Fair value is defined as the price that would be

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 1 Summary of Significant Accounting Policies (Continued)

received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Securities available for sale, derivative instruments and certain equity awards are recorded at fair value on a recurring basis. Additionally, from time to time, the Company may be required to record other assets at fair value on a nonrecurring basis. Such assets would include collateral dependent impaired loans, other real estate owned, goodwill and other intangible assets. These nonrecurring fair value adjustments typically involve application of lower-of-cost-or-market accounting or impairment write-downs of individual assets.

ASC Topic 825, *Financial Instruments* allows the Company an irrevocable option for measurement of eligible financial assets or financial liabilities at fair value on an instrument by instrument basis (the fair value option). Subsequent to the initial adoption of ASC Topic 825, the Company may elect to account for eligible financial assets and financial liabilities at fair value. Such an election may be made at the time an eligible financial asset, financial liability or firm commitment is recognized or when certain specified reconsideration events occur. The Company has not elected the fair value option for any eligible financial instrument as of December 31, 2009.

Transfers of Financial Assets

Transfers of financial assets are accounted for as sales, when control over the assets has been surrendered. A gain or loss is recognized in earnings upon completion of the sale based on the difference between the sales proceeds and the carrying value of the assets. Control over the transferred assets is deemed to have been surrendered when: (i) the assets have been isolated from the Company, (ii) the transferee obtains the right (free of conditions that constrain it from taking advantage of that right) to pledge or exchange the transferred assets, and (iii) the Company does not maintain effective control over the transferred assets through an agreement to repurchase them before their maturity.

Principles of Consolidation

The consolidated financial statements of the Company include the accounts of BankUnited, Inc., and its wholly-owned subsidiaries, BankUnited and BankUnited Investment Services, Inc. All significant intercompany balances and transactions have been eliminated in consolidation.

Cash and Cash Equivalents

Cash and cash equivalents include cash and due from banks, amounts deposited at the Federal Reserve Bank and federal funds sold. Cash equivalents have original maturities of three months or less and, accordingly, the carrying amount of these instruments is deemed to be a reasonable estimate of fair value.

The Bank must comply with Federal Reserve Board regulations requiring the maintenance of reserves against its net transaction accounts. As of December 31, 2009, cash reserves maintained by the Bank at the Federal Reserve Bank for this purpose exceeded this requirement.

Investment Securities Available for Sale

Investment securities for which the Company may not have the intent or ability to hold to maturity, and marketable equity securities, are classified as available for sale. Securities designated as available for sale are carried at fair value with unrealized gains and losses, net of any tax effect,

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 1 Summary of Significant Accounting Policies (Continued)

included in accumulated other comprehensive income as a component of stockholder's equity. Interest income and dividends on securities are recognized in interest income on an accrual basis. Premiums and discounts on debt securities are amortized as an adjustment to yield over the expected life of the security using the level yield method. Realized gains and losses on sales of available for sale securities are determined using the specific identification method and are recognized in earnings for the period.

The Company reviews available for sale securities for impairment on a quarterly basis or more frequently if events and circumstances indicate that a potential loss may have occurred. An investment security is impaired if its fair value is lower than its amortized cost basis. The Company considers many factors in determining whether the decline in fair value below amortized cost is an other-than-temporary impairment ("OTTI"), including, but not limited to, adverse changes in expected cash flows, the length of time and extent to which the fair value has been less than amortized cost, the Company's intent and ability to hold the security for a period of time sufficient for a recovery in value and issuer-specific factors such as the issuer's financial condition, external credit ratings and general market conditions. For a debt security for which there has been a decline in the fair value below amortized cost basis, the Company recognizes OTTI if (i) management has the intent to sell the security, (ii) it is more likely than not that the Company will be required to sell the security before recovery of its amortized cost basis, or (iii) the Company does not expect to recover the entire amortized cost basis of the security. For any debt securities that are considered other-than-temporarily impaired, the OTTI write-down is separated into an amount representing the credit loss, which is recognized in earnings, and the amount related to all other factors, which is recognized in other comprehensive income. If the Company intends to sell the security, or if it is more likely than not it will be required to sell the security before recovery, an OTTI write-down is recognized in earnings equal to the entire difference between the amortized cost basis and fair value of the security. The measurement of the credit loss component is equal to the difference between the debt security's amortized cost basis and the present value of its expected future cash flows discounted at the security's effective yield. For marketable equity securities, OTTI evaluations focus on whether evidence exists that supports recovery of the unrealized loss within a timeframe consistent with temporary impairment.

The Company uses third party sources to assist in the determination of the fair value of its investment securities, which are subject to validation procedures performed by management. The third-party pricing sources use proprietary models to determine the fair value of the Company's collateralized mortgage obligations and mortgage pass-through certificates. Management performs validation procedures related to these fair value estimates using a third-party developed model, and proprietary behavioral assumptions which incorporate observable and unobservable inputs that it believes market participants would use in valuing these securities. These inputs take into account market-based observable inputs that are available and are reflective of the structural and collateral characteristics of the respective securities.

FHLB Stock

The Company's investment in the stock of the Federal Home Loan Bank of Atlanta ("FHLB") is carried at cost, since these securities are restricted. Because of the nature of this investment, carrying value approximates fair value. Periodically and as conditions warrant, the Company reviews its investment in FHLB stock for impairment and adjusts the carrying value of the investment if it is determined to be impaired.

Note 1 Summary of Significant Accounting Policies (Continued)

Loans

The Company's loans held in portfolio consists primarily of real estate loans collateralized by first mortgages and also includes home equity loans and lines of credit, multi-family, commercial real estate, construction, land and other commercial and consumer loans. Loans held in portfolio are loans which management has the intent and ability to hold for the foreseeable future and are considered held for investment. Changes in events and circumstances related to these assets, as well as developments regarding management's view of the foreseeable future, may result in a change in the intent to hold such assets for investment. A significant portion of the Company's loans held in portfolio consist of loans acquired on May 21, 2009, from the FDIC which may be covered under the loss sharing agreements with the FDIC. The Company segregates its loan portfolio between covered and not covered.

Covered Loans

A significant portion of the Company's covered loans consist of loans acquired on May 21, 2009 with evidence of deterioration of credit quality since origination (acquired credit-impaired or "ACI" loans). Consequently, it is probable that, at acquisition, the Company will be unable to collect all contractual payments due. These loans were initially recorded at fair value, which represents the present value of all cash flows expected to be received, including estimated prepayments. The difference between the total contractual payments due and the cash flows expected to be received at acquisition is recognized as non-accretable difference. The excess of all cash flows expected at acquisition over the Company's initial investment in the loans is recognized as interest income on a level-yield basis over the life of the loans (accretable yield).

The Company is required to have reasonable expectations about the timing and amount of cash flows to be collected and continue to estimate the cash flows expected to be collected over the life of the loan. Acquired credit-impaired loans are reviewed each reporting period to determine whether any material changes occurred in expected cash flows that would result in a reclassification between non-accretable difference and accretable yield. If it is probable that the Company will be unable to collect all the cash flows expected at acquisition, plus additional cash flows expected to be collected arising from changes in estimates after acquisition, the loan is considered impaired and a valuation allowance is established by a charge to earnings. If, based on current information and events, it is probable that there is a material increase in cash flows previously expected to be collected or if actual cash flows are materially greater than cash flows previously expected, the Company first reduces any valuation allowance previously established by the increase in the present value of cash flows expected to be collected and recalculates the amount of accretable yield for the loan. The adjustment due to an increase in expected cash flows is accounted for as a change in estimate and the amount of periodic accretion is adjusted over the remaining life of the loan.

The Company has aggregated certain loans that were acquired on May 21, 2009 and have similar risk characteristics into homogenous pools, and uses a composite interest rate and expectations of cash flows expected to be collected for each pool. Loans that do not have similar risk characteristics are analyzed on a loan by loan basis, based on interest rates and expectations of cash flows expected to be collected for each individual loan. The total acquisition price of the loans is assigned to each individual pool or loan on the basis of its relative fair value at acquisition date.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 1 Summary of Significant Accounting Policies (Continued)

The Company may resolve a covered ACI loan through a sale of the loan, by working with the customer and obtaining partial or full pre-payment, by short sale of the underlying collateral, by foreclosure of the underlying collateral, or, for the non-residential portfolio, by charge-off. In the event of a sale of the loan, the Company recognizes a gain or loss on sale of loans, based on the difference between the sales proceeds and the carrying value of the loan. For loans resolved through agreed pre-payments, short sale or foreclosure the Company recognizes the difference between the payment received in satisfaction of the loan and the carrying value of the loan in the income statement line item "Income from resolution of covered assets, net." Gains and losses from the resolution of covered loans are included in this line item. The accretable discount related to loans sold that are not treated as pools is recognized in earnings immediately as interest income.

Acquired loans with no evidence of deterioration of credit quality since origination are recorded at the estimated fair value on the acquisition date and are subsequently carried at the principal amount outstanding, net of premiums, discounts, unearned income, deferred loan fees and costs, and allowance for loan losses.

Loans not Covered

Loans originated by the Company are carried at the principal amount outstanding, net of premiums, discounts, unearned income, deferred loan fees and costs, and allowance for loan losses.

Interest income on non-ACI and originated loans is accrued based on the principal amount outstanding, except for those loans classified as non-accrual. Non-refundable loan origination and commitment fees, net of direct costs of originating or acquiring loans, and fair value adjustments for acquired loans, are deferred and recognized over the estimated lives of the related loans as an adjustment to the loans' effective yield.

Impaired Loans

An ACI pool or loan is considered to be impaired when it is probable that the Company will be unable to collect all the cash flows expected at acquisition, plus additional cash flows expected to be collected arising from changes in estimates after acquisition. All other loans are considered impaired when, based on current information and events, it is probable that the Company will be unable to collect the scheduled payments of principal or interest when due, according to the contractual terms of the loan agreement. Factors considered by management in determining impairment include payment status, collateral value, and the probability of collecting expected or scheduled principal and interest payments when due.

In certain situations due to economic or legal reasons related to a borrower's financial difficulties, the Company may grant a concession to the borrower for other than an insignificant period of time that it would not otherwise consider. At that time, the related loan is classified as a troubled-debt restructuring ("TDR") and considered impaired. The concessions granted may include rate reductions, principal forgiveness, payment forbearance and other actions intended to minimize the economic loss and to avoid foreclosure or repossession of the collateral. Troubled-debt restructured loans are placed on non-accrual status at the time of the modifications unless the borrower has no history of missed payments for six months prior to the restructuring. If borrowers perform pursuant to the modified loan terms for at least six months and the remaining loan balances are considered collectible, the loans are

Note 1 Summary of Significant Accounting Policies (Continued)

returned to accrual status. Modified loans that form part of an established pool of ACI loans are not considered TDRs and are not separated from the pool and classified as impaired loans.

Nonaccrual Loans

Except for ACI loans accounted for on a pool basis, loans are placed on non-accrual status when management has determined that (i) full payment of all contractual principal and interest is in doubt, and for ACI loans not accounted for on a pool basis, when it is probable that the Company will be unable to collect all the cash flows expected at acquisition plus additional cash flows expected to be collected arising from changes in estimates after acquisition, or (ii) the loan is past due 90 days or more as to principal and/or interest unless the loan is well-secured and in the process of collection.

Except for ACI loans accounted for on a pool basis, when a loan is placed on non-accrual status, uncollected interest accrued in the current year is reversed and charged to interest income. Subsequent payments of interest are recognized as income on a cash basis, or if collection of principal is doubtful, they are applied to principal on a cost recovery basis. For residential mortgage loans and consumer loans not treated as pools, the accrued interest at the date the loan is placed on nonaccrual status, and forgone interest during the nonaccrual period, are recorded as interest income as of the date the loan is no longer delinquent in excess of 90 days. Commercial real estate and commercial loans are returned to accruing status only after all past due principal and interest have been collected.

Allowance for Loan Losses

The Company's allowance for loan losses ("ALL") is established for both performing loans and non-performing loans. The Company's ALL is the amount considered adequate to absorb probable losses within the portfolio based on management's evaluation of the size and current risk characteristics of the loan portfolio and is an amount management considers to be appropriately determined in accordance with GAAP. Such evaluation considers numerous factors, including, but not limited to, internal risk ratings, loss forecasts, collateral values, geographic location, borrower FICO scores, delinquency rates, non-performing and restructured loans, origination channels, product mix, underwriting practices, industry conditions, economic trends and net charge-off trends.

For ACI loans, a valuation allowance is established when it is probable that the Company will be unable to collect all the cash flows expected at acquisition plus additional cash flows expected to be collected arising from changes in estimate after acquisition. A specific allowance is established when subsequent evaluations of expected cash flows from ACI loans reflect a decrease in those estimates.

For all other loans, specific allowances for loan losses are established for large commercial, corporate, and commercial real estate impaired loans that are evaluated on an individual basis. The specific allowance established for these loans is based on a thorough analysis of the most probable source of repayment, including the present value of the loan's expected future cash flows, the loan's estimated market value, or the estimated fair value of the underlying collateral less costs of disposition. General allowances are established for loans grouped based on similar characteristics. In this process, general allowance factors established are based on an analysis of historical loss and recovery experience and expected loss given default derived from the Company's internal risk rating process and proprietary roll-to-loss model. Other adjustments for qualitative factors may be made to the allowance for the pools after an assessment of internal and external influences on credit quality and loss severity that are

Note 1 Summary of Significant Accounting Policies (Continued)

not fully reflected in the historical loss or risk rating data. For these measurements, the Company uses assumptions and methodologies that are relevant to estimating the level of impairment and probable losses in the loan portfolio. To the extent that the data supporting such assumptions has limitations, management's judgment and experience play a key role in recording the allowance estimates.

Additions to the ALL are made by provisions charged to earnings. Furthermore, an improvement in the expected cash flows related to ACI loans would result in a reduction of the required specific allowance with a corresponding credit to the provision. The allowance is decreased by charge-offs due to losses and increased by recoveries. Losses on unsecured consumer loans are recognized at 90-days past due. Residential real estate loans and secured consumer loans are typically charged-off when they become 120 to 180-days past due, depending on the collateral type. Secured loans may be written-down to the collateral's fair value less estimated disposition costs, with previously accrued unpaid interest reversed. Subsequent charge-offs may be required as a result of changes in the fair value of collateral or other repayment prospects. The Company reports recoveries at the time received on a cash basis.

FDIC Indemnification Asset

An FDIC indemnification asset results from the loss sharing agreement with the FDIC and is measured separately from the related covered assets. It is not contractually embedded in the covered assets and it is not transferrable with the covered assets should the Company choose to dispose of them.

The FDIC indemnification asset is initially recorded at fair value which represents the present value of the estimated cash payments expected from the FDIC for probable losses on covered assets, past due interest and reimbursement of certain expenses. Covered assets consist primarily of loans acquired from the FDIC. The discount rate in this calculation was determined using a risk-free yield curve plus a premium reflecting the uncertainty related to the collection, amounts and timing of the cash flows and other liquidity concerns. The accretion due to discounting and changes in cash flows expected is included in non-interest income for the period. Decreases in cash flows expected to be collected from the FDIC are generally recognized in income prospectively consistent with the approach taken to recognize increases in expected cash flows on covered loans. Increases to the FDIC indemnification asset that result from impairment of cash flows on covered loans are recognized in income in the same period that the allowance for credit losses on the related loans is recognized. The ultimate collectability of this asset is dependent upon the performance of the underlying covered assets, the passage of time and claims paid by the FDIC.

Excess cash received over carrying value and the excess of carrying value over cash received from the resolution of ACI loans are netted and recognized as income from resolution of covered assets, net in the accompanying consolidated statement of income. Decreases and increases to the estimated cash flows to be received from the FDIC related to the resolution of assets are recognized separately as a net loss on indemnification asset resulting from net recoveries in the consolidated statement of income and as corresponding decreases or increases in the FDIC indemnification asset.

Office Properties and Equipment, net

Included in other assets are office properties and equipment which are carried at cost less accumulated depreciation and amortization. Depreciation is calculated based on the straight line

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 1 Summary of Significant Accounting Policies (Continued)

method using the estimated service lives of the assets. Repair and maintenance costs are charged to operations as incurred, and improvements are capitalized. The lives of improvements to existing buildings are based on the lesser of the estimated remaining life of the building or the estimated useful life of the improvements. Leasehold improvements are amortized over the shorter of the expected term of the lease at inception, considering options to extend that are reasonably assured, or their useful lives. The estimated useful life for branch buildings is 30 years, for furniture, fixtures and equipment is 5-7 years, and for computer equipment and software is 3 years.

Bank Owned Life Insurance

Bank owned life insurance is carried at an amount that could be realized under the insurance contracts as of the date of the consolidated balance sheet, which is the cash surrender value adjusted for charges or other amounts due that are probable at settlement. Changes in the cash surrender value of the policy are recorded in earnings.

Other Real Estate Owned

Assets acquired through, or in lieu of loan foreclosure are held for sale and are initially recorded at the estimated fair value of the collateral at the date of foreclosure based on estimates, including some obtained from third parties, less estimated costs to sell, establishing a new cost basis. Subsequent to foreclosure, valuations are periodically performed by management, and the assets are carried at the lower of cost or fair value, less estimated costs to sell. Significant property improvements, which enhance the salability of the property, are capitalized to the extent that the carrying value does not exceed their estimated realizable values. Legal fees, maintenance and other direct costs of foreclosed properties are expensed as incurred.

Goodwill and Other Intangible Assets

Goodwill is an asset representing the future economic benefits from other assets acquired that are not individually identified and separately recognized. Goodwill is measured as the excess of the consideration transferred, net of the fair value of identifiable assets acquired and liabilities assumed at the acquisition date. Goodwill is assigned to the units that are expected to benefit from the synergies of the business combination. The Company's goodwill was assigned to BankUnited at the acquisition date. Goodwill and other identifiable intangible assets with indefinite lives are not amortized and instead are tested for impairment. The Company performs its impairment testing annually in the third quarter of the fiscal year or more frequently if events or circumstances exist that indicate a possible reduction in the fair value of the business below its carrying value. The Company measures impairment using the present value of estimated future cash flows. The analysis is based upon available information regarding expected future cash flows and discount rates. Discount rates are based upon the cost of capital specific to the industry in which the Company operates. If the carrying value of the reporting unit exceeds its fair value, a second analysis is performed to measure the fair value of all assets and liabilities. If, based on the second analysis, it is determined that the fair value of the assets and liabilities of the reporting unit is less than the carrying value, the Company would recognize impairment for the excess of carrying value over fair value.

Other intangible assets consist of core deposit intangible assets. Core deposit intangible assets, initially recorded at fair value, are amortized on a straight-line basis over their estimated useful lives

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 1 Summary of Significant Accounting Policies (Continued)

and evaluated for impairment whenever events or changes in circumstances indicate the carrying amount of the asset may not be recoverable.

Income Taxes

As a corporation, the Company and its subsidiaries, other than BU REIT, Inc., file a consolidated federal corporate income tax return, as well as combined state corporate income tax returns where combined filings are required for companies that are considered to be unitary with related entities. BU REIT, Inc., an indirect wholly-owned subsidiary of BankUnited, files a separate federal income tax return.

The Company accounts for income taxes under the asset and liability method. Income tax expense or benefit is comprised of the current and deferred tax provisions for the period. The current tax provision represents amounts that are payable to or receivable from taxing authorities based on current period taxable income or loss. The deferred tax provision reflects changes in deferred tax assets and liabilities during the period as a result of current period operations. Deferred income tax assets and liabilities result from temporary differences between assets and liabilities measured for financial reporting purposes and for income tax return purposes. These assets and liabilities are measured using the enacted tax rates and laws that are currently in effect.

The Company recognizes a liability for uncertain tax positions. An uncertain tax position is defined as a position in a previously filed tax return or a position expected to be taken in a future tax return that is not based on clear and unambiguous tax law and which is reflected in measuring current or deferred income tax assets and liabilities for interim or annual periods. The Company must recognize the tax benefit from an uncertain tax position only if it is more-likely-than-not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The Company measures the tax benefits recognized based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution. The Company recognizes interest and penalties related to uncertain tax benefits in its provision for income taxes. At December 31, 2009, there were no significant uncertain tax positions.

Stock-Based Compensation

The Company sponsors a stock plan under which nonqualified stock options may be granted periodically to key employees of the Company or its affiliates at an exercise price at or above the estimated fair market value of the underlying stock on the date of the grant.

Compensation cost is measured based on the estimated fair value of the award at the grant date and is recognized in the consolidated financial statements on a straight-line basis over the requisite service period. The fair value of stock options is estimated at the date of grant using a Black-Scholes option pricing model to calculate the fair values of options awarded. This model requires assumptions as to expected volatility, dividends, terms, and risk free rates. Since the Company's Common Stock is not currently traded in an exchange, expected volatility is measured based on the volatility of the common stock of peer companies. The expected term represents the period of time that options are expected to be outstanding from the grant date. The risk free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant for the appropriate life of each option. The expected dividend yield was determined based on the expected dividends to be declared.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 1 Summary of Significant Accounting Policies (Continued)

Due to BUFH for Other Equity Awards Classified as Liabilities

Due to BUFH for other equity awards classified as liabilities consist of instruments with characteristics of both equity and liabilities. They include a warrant to the FDIC and Profits Interest Units ("PIU") issued by BUFH, and are recorded in other liabilities, at fair value, in the accompanying consolidated balance sheet.

Compensation expense related to PIU awards is based on the fair value of the underlying unit on the date of the consolidated financial statements. Time-based PIU expense, which is serviced-based, is recognized over the vesting period using the straight-line method. IRR-based PIU expense, which is performance-based, is recognized upon consummation of an IPO or change in control liquidity event. See Note 15, *Due to BUFH for Equity Awards Classified as Liabilities*, and Note 22, *Subsequent Events*.

Derivative Financial Instruments and Hedging Activities

The Company records all contracts that satisfy the definition of a derivative financial instrument ("derivative") at fair value in the consolidated financial statements. A derivative is a financial instrument that derives its cash flows and therefore, its value, by reference to an underlying instrument, index or referenced interest rate. The Company does not hold any derivatives for trading purposes.

Derivatives are used as a risk management tool to hedge the Company's exposure to changes in interest rates or other identified market risks. When a derivative is entered into, the Company prepares written hedge documentation and designates the derivative as (i) a hedge of the fair value of a recognized asset or liability (fair value hedge) or (ii) a hedge of a forecasted transaction, such as the variability of cash flows to be received or paid related to a recognized asset or liability (cash flow hedge). The written hedge documentation includes identification of, among other items, the risk management objective, hedging instrument, hedged item and methodologies for assessing and measuring hedge effectiveness and ineffectiveness, along with support for management's assertion that the hedge will be highly effective.

Methodologies related to assessing hedge effectiveness are consistent between similar types of hedge transactions and have included (i) statistical regression analysis, and (ii) comparison of the critical terms of the hedged item and the hedging derivative. Changes in the fair value of a derivative that is highly effective and that has been designated and qualifies as a fair value hedge are recorded in current period earnings, along with the changes in the fair value of the hedged item that are attributable to the hedged risk. Changes in the fair value of a derivative that is highly effective and that has been designated and qualifies as a cash flow hedge are initially recorded in accumulated other comprehensive income and reclassified to earnings in the same period that the hedged item impacts earnings; and any ineffective portion is recorded in current period earnings. Assessments of hedge effectiveness and measurements of hedge ineffectiveness are performed at least quarterly for ongoing effectiveness.

The Company discontinues hedge accounting prospectively when it is determined that the derivative is no longer effective in offsetting changes in the fair value or cash flows of the hedged item, the derivative expires or is sold, terminated, or exercised, or management determines that the designation of the derivative as a hedging instrument is no longer appropriate. When hedge accounting is discontinued because it is determined that the derivative no longer qualifies as an effective fair value

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 1 Summary of Significant Accounting Policies (Continued)

hedge, the Company continues to carry the derivative on the balance sheet at its fair value, with any changes to the fair value recognized in earnings.

Earnings per Common Share

Basic earnings per common share are computed by dividing income available to common shareholders by the weighted-average number of common shares outstanding during each period. Diluted earnings per common share are based on the weighted-average number of common shares outstanding during the period, plus the dilutive effect of securities or other contracts to issue common shares ("common stock equivalents"). Common stock equivalents are excluded from the computation of earnings per common share in periods in which they have an anti-dilutive effect. Non-vested stock options are potentially dilutive securities, but are not included in the calculation of diluted earnings per common share because to do so would be antidilutive. The Company's obligation for BUFH's PIUs and common units that may be issued related to the FDIC warrant represents contingently issuable units and are not included in the calculation of net income per common share because the conditions necessary to issue the units have not been satisfied as of the end of the reporting period. Therefore, at December 31, 2009, the weighted average number of shares used to compute basic and diluted income per common unit is the same.

Segment Reporting

The Company operates one reportable segment of business, Community Banking, which includes BankUnited, the Company's banking subsidiary. Through BankUnited, the Company provides a broad range of retail and commercial banking services. Management makes operating decisions and assesses performance based on an ongoing review of these banking operations, which constitute the Company's only operating segment.

Accounting Policies Recently Adopted and Pending Adoption

In June 2009, the FASB issued new guidance impacting transfers and servicing of financial assets. The objective of this guidance is to improve the relevance, representational faithfulness, and comparability of the information that a reporting entity provides in its financial reports about a transfer of financial assets; the effects of a transfer on its financial position, financial performance, and cash flows; and a transferor's continuing involvement in transferred financial assets. This guidance is effective for financial asset transfers occurring after December 31, 2009. The adoption of this guidance is not expected to be material to the Company's financial position, results of operations, or cash flows.

In May 2009, the FASB issued new guidance regarding subsequent events. The new guidance establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. The adoption of this guidance was not material to the Company's financial position, results of operations, or cash flows.

In June 2009, the FASB issued new guidance impacting consolidation of variable interest entities. The objective of this guidance is to improve financial reporting by enterprises involved with variable interest entities and to provide more relevant and reliable information to users of financial statements.

Note 1 Summary of Significant Accounting Policies (Continued)

This guidance was effective as of January 1, 2010. The adoption of this guidance was not material to the Company's financial position, results of operations, or cash flows.

In August 2009, the FASB amended the measurement of liabilities at fair value and related disclosures. The amendment provides additional guidance on how to measure the fair value of a liability. The amendment clarifies that when estimating the fair value of a liability the entity is not required to include a separate adjustment to other inputs relating to the existence of a restriction that prevents the transfer of a liability. The amendment also clarifies that the quoted price in an active market at the measurement date of a liability when traded as an asset represents a Level 1 fair value measurement. The adoption of this guidance is not expected to be material to the Company's financial position, results of operations, or cash flows.

In September 2009, the FASB issued new guidance that creates a practical expedient to measure the fair value of an alternative investment that does not have a readily determinable fair value. This guidance also requires certain additional disclosures. This guidance was effective for interim and annual periods ending after December 15, 2009. The adoption of this guidance did not have a material impact on the Company's financial position, results of operations, or cash flows.

In January 2010, the FASB issued new guidance to improve disclosures regarding fair value measurements and disclosures. Fair value measurements and disclosures were enhanced to require additional information regarding transfers to and from Level 1 and 2 and the reasons for the transfers, and a gross presentation of activity within the rollforward of Level 3. The guidance clarifies existing disclosure requirements on the level of disaggregation of classes of assets and liabilities. In addition, enhanced disclosure is required concerning inputs and valuation techniques used to determine Level 2 and Level 3 measurements. This guidance is generally effective for interim and annual reporting periods beginning after December 15, 2009; however, requirements to disclose separately purchases, sales, issuances, and settlements in the Level 3 reconciliation are effective for fiscal years beginning after December 15, 2010 (and for interim periods within such years). The adoption of this guidance is not expected to have a material impact on the Company's financial position, results of operations, or cash flows.

In March 2010, the FASB issued new guidance impacting receivables. The new guidance clarifies that a modification to a loan that is part of a pool of loans that were acquired with deteriorated credit quality should not result in the removal of the loan from the pool. This guidance is effective for any modifications of loans accounted for within a pool in the first interim or annual reporting period ending after July 15, 2010. The adoption of this guidance is not expected have a material effect on the Company's financial position, results of operations, or cash flows.

In July 2010, the FASB issued new guidance to provide additional information to assist financial statement users in assessing an entity's credit risk exposures and evaluating the adequacy of its allowance for loan losses. The new guidance requires disclosures regarding loans and the allowance for loan losses that are disaggregated by portfolio segment and class of financing receivable. A portfolio segment is defined as the level at which an entity develops and documents a systematic method for determining its allowance for loan losses. Classes of financing receivables are a disaggregation of portfolio segments. Existing disclosure requirements were amended to require a rollforward of the allowance for loan losses by portfolio segment, with the ending balance broken out by basis of

Note 1 Summary of Significant Accounting Policies (Continued)

impairment method, as well as the recorded investment in the respective loans. Nonaccrual and impaired loans by class must also be shown. The update also requires disclosures regarding: (1) credit quality indicators by class, (2) aging of past due loans by class, (3) TDRs by class and their effect on the allowance for loan losses, (4) TDRs during the previous 12 months that defaulted during the reporting period by class and their effect on the allowance for loan losses, and (5) significant purchases and sales of loans disaggregated by portfolio segment. For public entities, disclosures as of the end of a period are effective for interim and annual reporting periods ending on or after December 15, 2010. Activity related disclosures are effective for interim and annual reporting periods beginning on or after December 15, 2010. For non-public entities, the disclosures are effective for annual reporting periods ending on or after December 15, 2011. The adoption of this guidance is not expected to have a material impact on the Company's financial position, results of operations or cash flows.

Note 2 Acquisition

On May 21, 2009, BankUnited, a wholly-owned subsidiary of the Company, entered into a purchase and assumption agreement (the "FSB Agreement") with the FDIC, as receiver, pursuant to which BankUnited acquired certain assets and assumed substantially all of the deposits and liabilities of BankUnited, FSB (the "Acquisition").

Prior to the Acquisition, BankUnited, FSB was a community bank headquartered in Coral Gables, Florida and operated 85 banking branches in 13 counties in Florida. Excluding the effects of purchase accounting adjustments, the Bank acquired $13.6 billion in assets and assumed $12.8 billion of the deposits and liabilities of BankUnited, FSB. The Bank received net consideration in the amount of $2.2 billion partially offset by liabilities due to the FDIC in the amount of $156.8 million.

In connection with the Acquisition, the Bank entered into a loss sharing agreement with the FDIC that covers single family residential mortgage loans, commercial real estate and commercial and industrial loans, certain investment securities and other real estate owned ("OREO") collectively, referred to as the "covered assets". The Bank acquired other BankUnited, FSB assets that are not covered by the loss sharing agreement with the FDIC including cash balances of $1.2 billion, certain investment securities purchased at fair market value and other tangible assets. Pursuant to the terms of the loss sharing agreement, the covered assets are subject to a stated loss threshold whereby the FDIC will reimburse the Bank for 80% of losses of up to $4.0 billion, and 95% of losses in excess of this amount. The Bank will reimburse the FDIC for its share of recoveries with respect to losses for which the FDIC paid the Bank a reimbursement under the loss sharing agreement. The FDIC's obligation to reimburse the Company for losses with respect to covered assets begins with the first dollar of loss incurred. The expected reimbursements under the loss sharing agreements were recorded as an indemnification asset at its estimated fair value of $3.4 billion on the acquisition date. The indemnification asset reflects the present value of the expected net cash reimbursement related to the loss sharing agreement described above.

The amounts covered by the loss sharing agreement are the pre-acquisition book values of the underlying covered assets, the contractual balance of unfunded commitments that were acquired, plus certain interest and expenses. The loss sharing agreement is subject to certain servicing procedures as specified in the agreement with the FDIC. The loss sharing agreement applicable to single family residential mortgage loans provide for FDIC loss sharing and the Bank's reimbursement of recoveries

Note 2 Acquisition (Continued)

to the FDIC for ten years. The loss sharing agreements applicable to all other covered assets provide for FDIC loss sharing for five years and the Bank reimbursement of recoveries to the FDIC for 8 years. Under the loss sharing agreement, the Bank may sell up to 2.5% of the acquired residential and commercial loan portfolio, with certain restrictions, based on the unpaid principal balance ("UPB") on an annual basis without prior consent from FDIC. If the Bank seeks to sell residential or non-residential loans in excess of the agreed 2.5% threshold, nine months prior to the tenth anniversary or fifth anniversary, respectively, and does not receive approval from the FDIC, the loss sharing agreements are extended for a period of two years after the respective anniversaries. The loss sharing term is extended only with respect to the loans to be included in such sales. The Bank will have the right to sell all or any portion of such loans without FDIC consent, at any time within nine months prior to the respective extended termination dates.

In connection with the pre-approval of loan sales under the loss sharing agreement, the Bank may sell, in 2010, up to approximately $280 million of covered residential and commercial loans. Management has not concluded as to whether they will exercise the right and, if so, which covered loans may be sold. As such, the Company is unable to quantify any potential gain or loss related to this provision of the agreement. Any gain or loss will be significantly offset by a corresponding adjustment to the FDIC indemnification asset.

The Bank has determined that the Acquisition of the net assets of BankUnited, FSB constitutes a business combination as defined by the FASB ASC Topic 805, *Business Combinations*. Accordingly, the assets acquired and liabilities assumed were recorded at their fair values. Fair values were determined based on the requirements of FASB ASC Topic 820, *Fair Value Measurements*. The determination of the initial fair value of loans purchased in the acquisition and the initial fair value of the related FDIC indemnification asset involves a high degree of judgment and complexity. The carrying value of the acquired loans and the FDIC indemnification asset reflect management's best estimate of the amount to be realized on each of these assets. However, the amount the Company realizes on these assets could differ materially from the carrying value reflected in these consolidated financial statements, based upon the timing and amount of collections on the acquired loans in future periods. The fair value estimates require that management make assumptions about discount rates, future expected cash flows, market conditions and other future events that are highly subjective in nature and subject to change.

The Company believes that the FDIC loss-sharing agreement mitigates the Company's risk of loss on assets acquired. Nonetheless, to the extent the actual values realized for the acquired assets are different from the estimates, the FDIC indemnification asset will generally be impacted in an offsetting manner due to the loss sharing support from the FDIC. Additionally, the tax treatment of FDIC assisted acquisitions is complex and subject to interpretations that may result in future adjustments of deferred taxes as of the acquisition date.

The Bank recognized approximately $59.4 million of goodwill and a $1.8 million core deposit intangible in connection with this transaction. The amount of goodwill recorded represents the residual difference in the fair value of the net assets acquired by the Bank.

Note 2 Acquisition (Continued)

The following table summarizes the reconciliation of the carrying amount of the acquired assets and assumed liabilities to their fair value as of the acquisition date (in thousands):

	As Recorded by BankUnited FSB	Acquisition Fair Value Adjustments	As Recorded by the Company
Assets			
Cash and cash equivalents	$ 1,160,321	$ —	$ 1,160,321
Investment securities, at fair value	608,388	(69,444)	538,944
FHLB stock	243,334	—	243,334
Loans held in portfolio, net	11,174,232	(6,163,904)	5,010,328
FDIC receivable	—	69,444	69,444
FDIC indemnification asset	—	3,442,890	3,442,890
Bank owned life insurance	129,111	—	129,111
Other real estate owned	199,819	(22,140)	177,679
Deferred tax asset, net	—	37,269	37,269
Goodwill and other intangible assets	—	61,150	61,150
Other assets	95,171	(44,696)	50,475
Total assets	13,610,376	(2,689,431)	10,920,945
Liabilities			
Deposits	8,225,916	108,566	8,334,482
Securities sold under agreements to repurchase	1,310	—	1,310
FHLB advances	4,429,350	201,264	4,630,614
Advance payments by borrowers for taxes and insurance	52,362	—	52,362
Other liabilities	59,137	(567)	58,570
Total liabilities	12,768,075	309,263	13,077,338
Due to (from) FDIC for net assets acquired (liabilities assumed)	$ 842,301	$ (2,998,694)	$ (2,156,393)

The following is a description of the methods used to determine the fair values of significant assets and liabilities presented above.

Cash and cash equivalents, other assets, securities sold under agreements to repurchase and escrows:

The carrying amount of these assets is a reasonable estimate of fair value based on the short-term nature of these assets.

Investment securities:

Fair values for securities are based on quoted market prices, where available. If quoted market prices are not available, fair value estimates are based on observable inputs including quoted market prices for similar instruments, quoted market prices that are not in an active market or other inputs that are observable in the market. In the absence of observable inputs, fair value is estimated based on pricing models and/or discounted cash flow methodologies.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 2 Acquisition (Continued)

FHLB stock:

Investment in FHLB stock is recognized at cost as a reasonable estimate for fair value, as these instruments represent restricted securities that had no evidence of impairment.

Loans:

Fair values for loans were based on a discounted cash flow methodology that considered factors including the type of loan and related collateral, delinquency and credit classification status, fixed or variable interest rate, term of loan and whether or not the loan was amortizing, and current discount rates. Additional assumptions used include default rates, loss severity, payment curves, loss curves and prepayment speeds. Certain residential loans were grouped together according to similar characteristics and were treated in the aggregate when applying various valuation techniques. The discount rates used for loans are based on market rates for new originations of comparable loans at the time of acquisition, and include adjustments for liquidity concerns.

FDIC receivable:

The FDIC receivable represents the amount due from the FDIC related to a dispute of the purchase price of certain investment securities for which the FDIC assigned a value that the Company believes is higher than the price required by the FSB Agreement.

The purchase and assumption agreement with the FDIC incorporates dispute resolution procedures that describe the process by which disputes regarding interpretation, application, calculation of loss or calculation of payments regarding the loss share must be resolved. The Company recognized a receivable from the FDIC in the amount of $69.4 million representing the purchase price dispute related to certain investment securities which the Company believes were assigned a value by the FDIC that was higher than required by the FSB Agreement. In 2009, the Company recognized an impairment charge on the full amount of the FDIC receivable due to concerns over collectability.

See Note 22, *Subsequent Events*, for additional discussion of the purchase price dispute.

FDIC indemnification asset:

Fair value was estimated using projected cash flows related to the loss sharing agreements based on the expected reimbursements of the losses and the applicable loss sharing percentages. These cash flows were discounted using a risk-free yield curve plus a premium reflecting the uncertainty related to the collection, amounts and timing of the cash flows and other liquidity concerns.

Bank owned life insurance:

The fair value of bank owned life insurance is based on the cash surrender value of the underlying insurance contract.

OREO:

OREO is presented at the estimated fair value, net of related costs of disposal.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 2 Acquisition (Continued)

Deferred tax asset, net:

Deferred tax asset, net represents the net tax-effected differences between the book basis and tax basis of certain acquired assets and liabilities including the acquired investment securities and loans, loss share receivable, time deposits and FHLB advances.

Goodwill and other intangible assets:

Goodwill:

The amount of goodwill recorded reflects the market share and related benefits that are expected to result from the acquisition, and represents the residual difference in the fair value of the net liability assumed by Company along with the payment from the FDIC for assuming this liability. The goodwill was assigned to BankUnited, as the Company's community banking segment.

Core deposit intangible:

This intangible asset represents the value of the relationships with deposit customers. The fair value of this intangible asset was estimated based on the present value of the expected cost savings attributable to the core deposit funding relative to an alternative source of funding. In determining the value, proper consideration was given to expected customer attrition rates, cost of the deposit base, reserve requirements and the net maintenance cost attributable to customer deposits.

Other assets:

The fair value of other assets was determined based on management's assessment of the collectability and realizability of such assets at acquisition date.

Deposits:

The fair values used for the demand and savings deposits that comprise the transaction accounts acquired equal the amount payable on demand at the acquisition date. The fair values for time deposits are estimated using a discounted cash flow calculation that applies interest rates being offered at the acquisition date to the contractual cash flows on such deposits.

Advances from FHLB:

The fair values of the FHLB advances are estimated using a discounted cash flow calculation that applies interest rates being offered at the acquisition date to the contractual cash flows on such advances.

Other liabilities:

The fair value of other liabilities is based primarily on the carrying amounts, which is a reasonable estimate based on the short-term nature of these liabilities. Included in other liabilities is the estimated fair value of the warrant issued to the FDIC in connection with the acquisition, amounting to $1.5 million.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 2 Acquisition (Continued)

A summary of the covered loans acquired as of May 21, 2009 and the related discount is as follows (in thousands):

	Acquired Credit-Impaired				
	Unpaid Principal Balance	Additional Contractual Cash Flows	Total Estimated Contractual Cash Flows on Acquired Credit-Impaired Loans	Other Loans	Total
Real Estate Loans:					
One-to-four family residential	$ 9,114,641	$ 4,047,208	$ 13,161,849	$ 212,847	$ 13,374,696
Home equity loans and lines of credit	284,222	82,164	366,386	220,434	586,820
Multi-family	124,785	48,072	172,857	6,032	178,889
Commercial real estate	566,990	245,204	812,194	40,582	852,776
Construction	187,025	99,338	286,363	377	286,740
Land	220,100	54,636	274,736	173	274,909
Total real estate loans	10,497,763	4,576,622	15,074,385	480,445	15,554,830
Other Loans					
Commercial	131,590	21,746	153,336	51,434	204,770
Consumer	13,000	348	13,348	—	13,348
Total commercial and consumer loans	144,590	22,094	166,684	51,434	218,118
	$ 10,642,353	$ 4,598,716	15,241,069	531,879	15,772,948
Less: Non-accretable difference			8,714,344	—	8,714,344
Cash flows expected to be collected			6,526,725		
Accretable discount			2,004,337	43,939	2,048,276
Total			$ 4,522,388	$ 487,940	$ 5,010,328

The estimated contractual cash flows for the acquired non-credit-impaired loans, at acquisition date was $713.0 million.

At December 31, 2009, the Company concluded that, other than new instances of impairment of certain ACI loans, there had been no material changes in the assumptions utilized to determine the fair value of assets acquired and liabilities assumed. Except for the aforementioned instances of impairment on ACI loans requiring specific reserves of $20.0 million described herein, expected cash flows and the present value of future cash flows related to assets acquired have not changed materially since the analysis performed at acquisition on May 21, 2009. Unpaid principal balances of acquired loans were reduced during the period ended December 31, 2009 by approximately $1.4 billion since the acquisition date through repayments by borrowers, loan sales, transfers to OREO and charge-offs of customer loan balances.

Note 2 Acquisition (Continued)

The following table presents the components of the FDIC indemnification asset at May 21, 2009 (in thousands):

	Loans	OREO	Total
Estimated portion of gross losses subject to FDIC indemnification			
Residential	$ 4,119,357	$ 18,860	$ 4,138,217
Commercial	411,095	—	411,095
Estimated portion of gross losses subject to FDIC indemnification	4,530,452	18,860	4,549,312
Fair value discount	1,103,681	2,741	1,106,422
FDIC indemnification asset at May 21, 2009	$ 3,426,771	$ 16,119	$ 3,442,890

Changes in the FDIC indemnification asset for the period from May 22, 2009 through December 31, 2009 were as follows (in thousands):

Balance May 22, 2009	$ 3,442,890
Accretion	149,544
Reduction for claims filed	(290,701)
Loss on indemnification asset resulting from net recoveries	(22,568)
Balance December 31, 2009	$ 3,279,165

The Company recognizes additional covered losses or recoveries on FDIC indemnified assets through charges or credits, respectively, in the consolidated statement of income. The following table summarizes the components of the gains and losses associated with the resolution of covered FDIC indemnified assets (in thousands):

	Transaction Income (Loss)	FDIC Indemnification Income (Loss)	Net Impact to Pre-Tax Earnings
Provision on covered loans	$ (21,287)	$ 14,433	$ (6,854)
Provision on loans not covered	(1,334)	—	(1,334)
Total	(22,621)	14,433	(8,188)
Income from resolution of covered assets, net	120,954		
Net loss on sale of loans	(47,078)		
Total	73,876	(51,201)	22,675
Net loss due to impairment of OREO	(21,055)	14,200	(6,855)
Total	$ 30,200	$ (22,568)	$ 7,632

In connection with the loss sharing agreements with the FDIC, the Company will be reimbursed for a portion of certain expenses associated with covered assets, for which a loss has been incurred. This may result in the expenses and the related income from reimbursement being recorded in different periods. During the period ended December 31, 2009, the Company recognized $26.1 million of expenses subject to reimbursement under the loss sharing agreement and $8.1 million of

Note 2 Acquisition (Continued)

reimbursement income associated with such expenses. The Company estimates that an additional $15.8 million, related to expenses incurred during the period ended December 31, 2009, will be filed for reimbursement with the FDIC in future periods.

Note 3 Investment Securities Available for Sale

Investment securities available for sale at December 31, 2009, are summarized as follows (in thousands):

	Covered Securities				Not Covered Securities			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. Treasury securities	$ —	$ —	$ —	$ —	$ 10,066	$ 6	$ —	$ 10,072
U.S. Government agencies and sponsored enterprises mortgage-backed securities	—	—	—	—	1,288,277	3,581	(3,215)	1,288,643
Other collateralized mortgage obligations	1,747	89	—	1,836	508,731	1,007	(4,735)	505,003
Mortgage pass-through certificates	199,402	51,196	(480)	250,118	118,616	—	(4,062)	114,554
Mutual funds and preferred stocks	18,094	338	(698)	17,734	25,250	661	(122)	25,789
State and Municipal obligations	—	—	—	—	23,214	143	(1)	23,356
Other debt securities	3,331	2,707	—	6,038	—	—	—	—
Total	$ 222,574	$ 54,330	$ (1,178)	$ 275,726	$ 1,974,154	$ 5,398	$ (12,135)	$ 1,967,417

Investment securities available for sale at December 31, 2009, by contractual maturity, and adjusted for anticipated prepayments, are shown below (in thousands):

	Amortized Cost	Fair Value
Due in one year or less	$ 426,872	$ 435,292
Due after one year through five years	1,045,895	1,067,208
Due after five years through ten years	444,442	453,503
Due after ten years	236,175	243,617
Mutual funds and preferred stock	43,344	43,523
Total	$ 2,196,728	$ 2,243,143

Based on BankUnited's proprietary model and assumptions, the weighted average life of the mortgage-backed securities portfolio as of December 31, 2009 was 4.5 years. The model results are based on assumptions that may differ from the eventual outcome.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 3 Investment Securities Available for Sale (Continued)

The Company monitors its investment securities available for sale for OTTI. Impairment is evaluated on an individual security basis considering numerous factors, and their relative significance varies depending on the situation. The following table shows aggregate fair value and the aggregate amount by which cost exceeds fair value of investments that are in a loss position at December 31, 2009 (in thousands):

	Fair Value	Unrealized Losses
Available for sale securities:		
U.S. Government agencies and sponsored enterprises mortgage-backed securities	$ 812,669	$ (3,215)
Other collateralized mortgage obligations	340,846	(4,735)
Mortgage pass-through certificates	115,872	(4,542)
Mutual funds and preferred stocks	27,257	(820)
State and municipal obligations	1,109	(1)
Total	$ 1,297,753	$ (13,313)

The Company has evaluated the nature of unrealized losses in the available for sale securities to determine if OTTI exists. The unrealized losses relate to specific market conditions and do not represent credit-related impairments. Furthermore, the Company does not intend to sell these securities and it is more likely than not that it will be able to retain the securities for a period of time sufficient for a recovery in value to the amortized cost basis. Management has completed an assessment of each security for credit impairment and has determined that no individual security had OTTI as of December 31, 2009. The following describes the basis under which the Company has evaluated OTTI.

U.S. Government agencies and sponsored enterprises mortgage-backed securities ("MBS"):

The unrealized losses associated with U.S. Government agencies and Sponsored Enterprises MBS are primarily driven by changes in interest rates. These securities have either an explicit or implicit government guarantee.

Other collateralized mortgage obligations ("CMO") and mortgage pass-through certificates:

These securities are assessed for impairment using a third-party developed model, and proprietary behavioral assumptions using default and loss severity levels, and Voluntary Annual Prepayment Rates ("VPRs"). The results of this evaluation were not indicative of deterioration in expected cash flows or OTTI at December 31, 2009.

Mutual funds and preferred stock:

The Company evaluates its investment in mutual funds for OTTI based on the quoted market value per share. The preferred stock in the investment portfolio was issued by U.S. Government sponsored enterprises.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 3 Investment Securities Available for Sale (Continued)

State and municipal obligations:

The securities were generally underwritten in accordance with the Company's own investment standards prior to the decision to purchase, without relying on a bond issuer's guarantee in making the investment decision. These investments are mostly investment grade and will continue to be monitored as part of our ongoing impairment analysis, but are expected to perform in accordance with terms, even if the rating agencies reduce the credit rating of the bond issuers.

The fair values of the Company's investment securities could decline in the future if the underlying performance of the collateral for the residential MBS or other securities deteriorate and the Company's credit enhancement levels do not provide sufficient protection to the Company's contractual principal and interest. As a result, there is a risk that OTTI may occur in the future.

Proceeds from sale of investment securities available for sale during the period ended December 31, 2009 amounted to $9.3 million, resulting in gross realized losses of $381,000 and gross realized gains of $44,000, respectively, which is included in other non-interest income in the consolidated statement of income.

As part of the Company's liquidity management strategy, the Company pledges securities to secure borrowings from the FHLB. The Company also pledges securities to collateralize public deposits and securities sold under agreements to repurchase and due to the Federal Reserve. The carrying value of pledged securities totaled $618.0 million at December 31, 2009.

Note 4 FHLB Stock

BankUnited, as a member institution of the Federal Home Loan Bank of Atlanta, is required to own capital stock in the FHLB. The required stock ownership is based generally on (i) membership requirement and (ii) activity based requirement related to the levels that BankUnited borrows from the FHLB. In connection therewith, the Bank holds stock with the aggregate carrying value of $243.3 million. The stock is restricted and can only be repurchased by the FHLB. No market exists for this stock and there is no quoted market price. Redemption of FHLB stock has historically been at par value, which is BankUnited's carrying value. The redemption of any excess stock BankUnited holds is at the discretion of the FHLB. Stock redemptions have recently been limited due to the FHLB's objective of increasing liquidity.

While the Company currently has no intentions to terminate its FHLB membership, the ability to redeem its investment in FHLB stock would be subject to the conditions imposed by the FHLB. Based on the capital adequacy and the liquidity position of the FHLB, management believes there is no impairment related to the carrying amount of the Company's FHLB stock as of December 31, 2009. The Company will continue to monitor its investment in FHLB stock through the review of recent financial results, dividend payment history and information from credit agencies.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 5 Loans

At December 31, 2009, loans receivable consisted of the following (amounts in thousands):

	December 31, 2009				
	Covered Loans				
	Acquired Credit Impaired	Non-ACI	Non-Covered Loans	Total	Percent of Total
Real Estate Loans:					
1-4 single family residential	$ 3,306,306	$ 184,669	$ 43,110	$ 3,534,085	75.98%
Home equity loans and lines of credit	113,578	215,591	1,615	330,784	7.11%
Multi-family	71,321	4,971	700	76,992	1.66%
Commercial real estate	363,965	39,733	24,460	428,158	9.20%
Construction	44,812	377	—	45,189	0.97%
Land	43,903	173	—	44,076	0.95%
Total real estate loans	3,943,885	445,514	69,885	4,459,284	95.87%
Other Loans:					
Commercial	81,765	48,635	51,565	181,965	3.91%
Consumer	7,065	—	3,151	10,216	0.22%
Total commercial and consumer loans	88,830	48,635	54,716	192,181	4.13%
Total loans	4,032,715	494,149	124,601	4,651,465	100.00%
Unearned discounts and deferred fees and costs, net	—	(39,986)	40	(39,946)	
Loans net of discount and deferred costs	4,032,715	454,163	124,641	4,611,519	
Allowance for loan losses	(20,021)	(1,266)	(1,334)	(22,621)	
Loans, net	$ 4,012,694	$ 452,897	$ 123,307	$ 4,588,898	

Covered loans represent loans acquired from the FDIC subject to the loss sharing agreements. Loans originated by the company after May 21, 2009 are excluded from the loss sharing agreement and are classified as other loans (not covered). At December 31, 2009, ACI loans had unpaid principal balances of $9.3 billion.

At December 31, 2009, the majority of all outstanding loans were to customers domiciled in Florida (63.8%), California (6.8%), Illinois (4.8%) New Jersey (4.7%) and Arizona (4.1%). No other state represented borrowers with more than 4.0% of loans outstanding.

During the period from May 22, 2009 through December 31, 2009, the Company sold acquired credit-impaired loans to various third parties on a non-recourse basis with a carrying value of $129.8 million for total gross cash proceeds of $84.6 million, including $3.1 million in escrow advances. The Company incurred transaction costs of $1.9 million and recognized a loss on sale of $47.1 million.

As part of the Company's liquidity management strategy, the Company pledges loans to secure FHLB borrowings. Pledged loans must meet specific requirements of eligibility and the unpaid principal balance is discounted based on criteria established by the FHLB. As of December 31, 2009, the

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 5 Loans (Continued)

Company had pledged real estate loans with a carrying value and unpaid principal balance of approximately $2.8 billion and $6.1 billion, respectively, ($3.0 billion in lendable collateral value) for advances from the FHLB.

The following table presents total 1-4 single family residential loans categorized between fixed rate mortgages and adjustable rate mortgages ("ARMs") as of December 31, 2009 (amounts in thousands):

	December 31, 2009				
	Covered Loans				
	Acquired Credit Impaired	Non-ACI	Non-Covered Loans	Total	Percent of Total
1-4 single family residential loans:					
Fixed rate loans	$ 569,529	$ 76,342	$ 42,577	$ 688,448	19.5%
ARM Loans	2,736,777	108,327	533	2,845,637	80.5%
Total(1)	$ 3,306,306	$ 184,669	$ 43,110	$ 3,534,085	100%

(1) Excluding deferred costs, unearned discounts, premiums and allowance for loan losses.

Included in ARM loans above are payment option ARMs representing 46.8% of total loans outstanding, excluding deferred costs, unearned discounts, premiums and allowance for loan losses as of December 31, 2009.

The accretable yield on credit-impaired loans represents the amount by which the undiscounted expected cash flows exceed the carrying value. The following table presents the changes in the accretable yield related to acquired credit-impaired loans for the period from May 22, 2009 through December 31, 2009 (in thousands):

	Accretable Yield
Balance at May 22, 2009	$ 2,004,337
Accretion during the period	(270,104)
Balance at December 31, 2009	$ 1,734,233

The Company has established a process to determine the adequacy of the allowance for loan losses that assesses the risks and losses inherent in the portfolio. As of December 31, 2009, the Company evaluated the expected cash flows for ACI loans and determined that credit deterioration had occurred in certain residential pools. As a result, a provision for loan losses amounting to $20.0 million was recorded applicable to ACI loans. The Bank recorded $14.4 million in non-interest income (included in net loss on indemnification asset resulting from net recoveries), representing the estimated present value increase in the FDIC indemnification asset.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 5 Loans (Continued)

The following table summarizes changes in the allowance for loan losses for the period from May 22, 2009 through December 31, 2009 (in thousands):

Balance as of May 22, 2009	$ —
Provision for losses on ACI loans	20,021
Provision for losses on non-ACI loans	1,266
Provision for losses on non-covered loans	1,334
Net charge-offs/recoveries	—
Balance as of December 31, 2009	$ 22,621

The total allowance reflects management's estimate of credit losses inherent in the loan portfolio at the balance sheet date. The computation of the allowance for loan losses includes elements of judgment and high level of subjectivity. The Company considers the allowance for loan losses to be adequate to cover credit losses inherent in the loan portfolio at December 31, 2009.

Certain loans have been classified as impaired based on the Company's inability to collect all amounts due under the contractual terms of the loan. The following table shows the Company's investment in impaired and non-performing loans as of and for the period ended December 31, 2009 (in thousands):

	Acquired Credit Impaired Loans on Accrual Status(1)	Non-ACI Impaired Loans on Non-Accrual Status	Specific Allowance Allocated to Impaired Loans	Average Recorded Investment in Impaired Loans
Covered loans:				
1-4 single family residential	$ 567,253	$ 14,495	$ 20,021	$ 13,295
Home equity loans and lines of credit	—	2,726	—	1,418
Commercial	—	150	30	37
Total	$ 567,253	$ 17,371	$ 20,051	$ 14,750

(1) Included in impaired loans on accrual status are ACI loans that are being accounted for as pools and for which impairment is evaluated on the cumulative cash flows of the pool.

1-4 single family residential ACI loans are treated as pools and are classified as accruing loans due to discount accretion. In addition, the total carrying value of ACI loans accounted for as pools that are past due in excess of ninety days for either principal or interest or both amounts to $1.2 billion at December 31, 2009.

Had loans in non-accrual status been in accrual, the Company would have recognized additional interest income of approximately $636,000 for the period ended December 31, 2009.

Note 6 Office Properties and Equipment, net

Included in other assets are office properties and equipment, net. At December 31, 2009 office properties and equipment, net are summarized as follows (in thousands):

Branch buildings	$ 2,130
Leasehold improvements	7
Furniture, fixtures and equipment	6,034
Computer equipment and software	3,676
Total	11,847
Less: accumulated depreciation	(1,201)
Office properties and equipment, net	$ 10,646

In connection with the acquisition of certain assets and assumption of certain liabilities of BankUnited, FSB, the Company purchased assets from the FDIC for a total purchase price of $6.9 million. Depreciation expense was $1.2 million during the period ended December 31, 2009.

The Company and its subsidiaries lease premises and equipment under cancelable and non-cancelable leases, some of which contain renewal options under various terms. The leased properties are used primarily for banking purposes. Total rental expense on operating leases for the period ended December 31, 2009, was $9.3 million.

As of December 31, 2009, the Company had entered into non-cancelable operating leases with approximate minimum future rentals as follows (in thousands):

Years Ending December 31,	
2010	$ 8,665
2011	8,728
2012	8,451
2013	7,214
2014	5,196
Thereafter through 2019	13,583
Total	$ 51,837

Note 7 Other Real Estate Owned

An analysis of other real estate owned for the period from May 22, 2009 through December 31, 2009 follows (in thousands):

Balance at May 22, 2009	$ 177,679
Transfers from loan portfolio, net	115,192
Income from resolution of covered assets	25,702
Sales	(177,408)
Impairment loss	(21,055)
Balance at December 31, 2009	$ 120,110

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 7 Other Real Estate Owned (Continued)

As of December 31, 2009, all of the Company's other real estate owned was covered under the loss sharing agreements.

Note 8 Deposits

At December 31, 2009, BankUnited had outstanding non-interest bearing deposits of $332.9 million and interest bearing deposits of $7.3 billion.

The following table sets forth average amounts and weighted average rates paid on each of BankUnited's deposit categories for the period ended December 31, 2009 (amounts in thousands):

	Amount	Rate
Transaction accounts, demand:		
Non-interest bearing	$ 303,810	0.00%
Interest bearing	183,416	0.79%
Money market accounts	1,205,446	1.93%
Savings accounts	948,000	1.94%
Time deposits	5,506,320	3.32%
Total average deposits	$ 8,146,992	2.77%

Time deposits accounts with balances of $100,000 or more totaled approximately $1.9 billion at December 31, 2009, including $463.1 million with balances of $250,000 or more. The following table sets forth maturities of time deposits equal to or greater than $100,000 as of December 31, 2009 (in thousands):

Three months or less	$ 415,049
Over 3 months through 6 months	394,805
Over 6 months through 12 months	684,966
Over 12 months through 24 months	316,882
Over 24 months through 36 months	44,828
Over 36 months through 48 months	22,099
Over 48 months through 60 months	27,538
Total	$ 1,906,167

Included in the table above are $196.9 million of time deposits issued to the State of Florida which are collateralized by mortgage-backed securities with a fair value of $269.0 million at December 31, 2009.

Interest expense on deposits includes a reduction for amortization of the fair value adjustment for time deposits amounting to $79.9 million during the period from May 22, 2009 through December 31,

Note 8 Deposits (Continued)

2009. Interest expense on deposits for the period ended December 31, 2009, is as follows (in thousands):

Transaction and money market accounts	$ 15,173
Savings accounts	11,295
Time deposits	31,361
Total	$ 57,829

Note 9 Securities Sold under Agreements to Repurchase

The following sets forth information concerning repurchase agreements for the period ended December 31, 2009 (amounts in thousands):

Maximum amount of outstanding agreements at any month end during the period	$ 2,972
Average amount outstanding during the period	$ 2,091
Weighted average interest rate for the period	0.02%

As of December 31, 2009, the Company had pledged mortgage-backed securities with a fair value of approximately $5.1 million for securities sold under agreements to repurchase. The agreements are overnight agreements with an average interest rate of 0.01% at December 31, 2009.

Note 10 Advances from the FHLB

Advances from the FHLB outstanding as of December 31, 2009 incur interest and have contractual repayments as follows (amounts in thousands):

	Amount	Range of Interest Rates	
Repayable during the year ending December 31,			
2010	$ 405,000	4.93%	4.99%
2012	540,000	3.33%	4.83%
2013	565,000	2.38%	4.77%
2014	505,000	3.91%	4.48%
2015	350	0.00%	0.00%
Total contractual outstanding	2,015,350		
Fair value adjustment	63,701		
Total carrying value	$ 2,079,051		

The fair value adjustment is being amortized as a reduction to interest expense over the remaining term of the advances using the effective yield method. The fair value amortization amounted to $25.1 million during the period ended December 31, 2009.

The terms of a security agreement with the FHLB include a specific assignment of collateral that requires the maintenance of qualifying first mortgage, commercial real estate loans, home equity lines of credit and mortgage-backed securities as pledged collateral with unpaid principal amounts at least

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 10 Advances from the FHLB (Continued)

equal to 100% of the FHLB advances, when discounted at various percentages of their unpaid principal balance. As of December 31, 2009 the Company had pledged investment securities and mortgage loans with an aggregate carrying amount of approximately $3.0 billion for advances from the FHLB.

During the period ended December 31, 2009, the Company elected to prepay $2.71 billion of FHLB advances with a carrying value of $2.83 billion, for an aggregate cash payment of $2.80 billion. The Company recognized a gain of $31.3 million on extinguishment of debt.

Also, during the period ended December 31, 2009, the Company restructured $505.0 million in principal amount of FHLB Advances. The original advances had a weighted average interest rate and maturity of 3.69% and 1.8 years at the date of restructuring, respectively, and the new advances have a weighted average interest rate and maturity of 4.22% and 4.8 years, respectively. No gain or loss was recognized on the restructuring transactions.

Note 11 Derivative Financial Instruments and Hedging Activities

The Company uses interest rate swaps to manage interest rate risks. Certain products and instruments used to finance its operations expose the Company to variability in interest payments due to changes in interest rates. These products and instruments include FHLB advances and certain time deposits.

Management believes it is prudent to limit the variability of short and long term interest payments for FHLB advances and certain time deposits. To meet this objective, management enters into LIBOR-based interest rate swaps to manage fluctuations in cash flows resulting from interest rate risk attributable to changes in the benchmark interest rate of LIBOR.

During the period ended December 31, 2009, no derivative positions were discontinued, and hence no amount of the gains and losses reported into Accumulated Other Comprehensive Income ("AOCI") were reclassified into earnings as a result of the discontinuance of cash flow hedges or because of the early extinguishment of debt.

The following tables set forth certain information concerning the Company's derivative financial instruments, which are included in other assets (liabilities) representing a gain or (loss), respectively, in the accompanying consolidated balance sheet, and related hedged items at December 31, 2009 (amounts in thousands):

	Hedged item	Pay Rate	Receive Rate	Remaining Life (years)	Notional Amount	Fair value Gain	Fair value Loss
Derivatives designated as cash flow hedges:							
Pay-fixed interest rate swaps:							
Certificates of deposit	Variability of interest rates	3.11%	12-Month Libor	5.9	$ 225,000	$ 1,517	$ —
Purchased interest rate forward-starting swaps:							
Advances from FHLB	Variability of interest rates	3.42%-3.76%	3-Month Libor	5.0-7.0	405,000	—	(4,016)
Total					$ 630,000	$ 1,517	$ (4,016)

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 11 Derivative Financial Instruments and Hedging Activities (Continued)

Changes in the fair value of interest rate swaps designated as hedging instruments of the variability of cash flows associated with floating-rate debt obligations are reported in AOCI. These amounts subsequently are reclassified into interest expense as a yield adjustment in the same period in which the related interest on the floating-rate debt obligations affects earnings.

Effective hedge results initially recorded in AOCI and subsequently reclassified into earnings increased interest expense by $678,000 in the period ended December 31, 2009. This amount was offset by a gain of $280,000 due to hedge ineffectiveness arising from differences between the critical terms of the interest rate swap and the hedged debt obligation. Net interest expense relating to interest rate swaps was $398,000, representing less than one half of one percent of the Company's total interest expense for the period ended December 31, 2009.

Note 12 Regulatory Capital

BankUnited's regulatory capital levels at December 31, 2009 were as follows (amounts in thousands):

	Actual		Required to be considered well-capitalized		Required to be considered adequately	
	Ratio	Amount	Ratio	Amount	Ratio	Amount
Tier 1 leverage ratio(1)	8.78%	$ 966,749	8.00%	$ 880,865	8.00%	$ 880,865
Tier 1 risk-based capital ratio	40.42%	966,749	6.00%	143,506	4.00%	95,670
Total risk based capital ratio	40.55%	969,716	10.00%	239,141	8.00%	191,313

(1) A condition for approval of the application for Federal Deposit Insurance requires the Bank to maintain a Tier 1 capital to assets leverage ratio at no less than eight percent throughout the first three years of operation.

For purposes of risk based capital computations, the FDIC Indemnification asset, as well as covered assets, are risk-weighted at 20% due to the conditional guarantee represented by the loss sharing agreements.

Regulations from the Office of Thrift Supervision ("OTS") require that savings institutions submit notice to the OTS prior to making a capital distribution if (a) they would not be well-capitalized after the distribution, (b) the distribution would result in the retirement of any of the institution's common or preferred stock or debt counted as its regulatory capital, or (c) like the Bank, the institution is a subsidiary of a holding company.

A savings institution must apply to the OTS to pay a capital distribution if (a) the institution would not be adequately capitalized following the distribution, (b) the institution's total distributions for the calendar year exceeds the institution's net income for the calendar year to date plus its net income (less distributions) for the preceding two years, or (c) the distribution would otherwise violate applicable law or regulation or an agreement with or condition imposed by the OTS.

If neither the savings institution nor the proposed capital distribution meet any of the foregoing criteria, then no notice or application is required to be filed with the OTS before making a capital

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 12 Regulatory Capital (Continued)

distribution. The OTS may disapprove or deny a capital distribution if in the view of the OTS, the capital distribution would constitute an unsafe or unsound practice.

In connection with the approval order for BankUnited, the Company submitted a business plan to the OTS. Under the business plan, the Company has committed to the OTS that the Bank will not declare or pay any dividends during the first year of operations. Subsequent declaration and payment of dividends may be limited by regulation or by guidelines prescribed in the business plan.

Note 13 Stock-Based Compensation and Other Benefit Plans

Stock-Based Compensation

On July 9, 2009, the Company adopted a stock compensation plan (the "Plan") pursuant to which the Company's Board of Directors may grant up to 2,312,500 stock options of the Company to key employees of the Company and its affiliates. Stock options can be granted with an exercise price equal to or greater than the stock's fair value at the date of grant. The Company's Board of Directors determine the time or times (currently 3 years) at which a stock option shall vest or become exercisable, provided however, that each stock option shall expire on the tenth anniversary of the date of the grant, unless it is earlier exercised or forfeited. Shares of Common Stock delivered under the Plan may be authorized but unsold Common Stock, or previously issued Common Stock acquired by the Company. Unvested stock options may vest before the end of the scheduled vesting term in cases of change in control of the Company.

The grant-date fair value of each option award is estimated on the date of grant. Management has used information provided by third parties to assist in the determination of estimates regarding fair values associated with the Company's stock options.

Since the Company's shares are not publicly traded and its shares are not traded privately, expected volatility is estimated based on a range of the average historical volatility of similar entities with publicly traded shares. The risk-free rate for the expected term of the option is based on the U.S. Treasury yield curve at the date of grant. Because the Company has no historical information, the Company used the contractual term as the expected term and no expected forfeitures were assumed. The expected dividend yield was determined based on the expected dividends to be declared. The weighted average assumptions for 2009 are provided in the following table:

Expected volatility	27.30%
Expected dividend yield	3.50%
Expected term (years)	10
Risk-free interest rate	3.85%

Note 13 Stock-Based Compensation and Other Benefit Plans (Continued)

A summary of the status of stock options as of and for the period ended December 31, 2009 is as follows:

		Weighted average		
	Number	Remaining Contractual Term	Fair Value	Excercise Price
Balance April 28, 2009	—	—	$ —	$ —
Granted	384,680	9.74	6.47	11.32
Vested	—	—	—	—
Canceled or forfeited	—	—	—	—
Nonvested options at December 31, 2009	384,680	9.74	$ 6.47	$ 11.32
Remaining options available for grant under the Plan	1,927,820			

The options have an aggregate intrinsic value of $2.5 million. The options have a weighted average fair value at grant date of $2.5 million. As of December 31, 2009, none of the options are vested. At December 31, 2009, there was $2.3 million of total unrecognized compensation cost related to unvested stock options granted under the Plan. That cost is expected to be recognized over a weighted average period of 2.74 years.

Deferred Compensation Plan

Effective October 1, 2009, the Company established a non-qualified deferred compensation plan (the "Deferred Compensation Plan") for a select group of management or highly-compensated employees whereby a participant, upon election, defers a portion of eligible compensation into an account with the Company. The Deferred Compensation Plan provides for Company contributions equal to 4.5% of eligible compensation for the period ended December 31, 2009. For subsequent years, Company contributions are equal to 100% of the first 1%, plus 70% of the next 5% of eligible compensation the participant defers. The Company accrued interest on the deferred obligation at an annual rate of 6% for the period ended December 31, 2009. The Company will continue to credit each participants' account at an annual rate of 6% through the year ending December 31, 2010 and thereafter at an amount determined by the Company's Compensation Committee. A participant's elective deferrals and interest thereon are at all times 100% vested. Company contributions and interest thereon will become 100% vested upon the earlier of a change of control or the participant's death, disability, attainment of normal retirement age or the completion of two years of service. Participant deferrals and any associated earnings shall be paid upon separation from service or the specified distribution year elected. The specified distribution year can be no earlier than the third calendar year after the calendar year in which the participant deferrals and or Company contributions are made. A participant may elect to be paid in a lump sum or in five, ten or fifteen annual installments. Deferred compensation expense for this plan was $103,000 for the period ended December 31, 2009.

BankUnited 401(k) Plan

The Company sponsors the BankUnited 401(k) Plan, a tax-qualified, deferred compensation plan, (the "401(k) Plan"). Under the terms of the 401(k) Plan, eligible employees may contribute up to the

Note 13 Stock-Based Compensation and Other Benefit Plans (Continued)

limits set by law. Employees are eligible to participate in the plan after one month of service. Prior service with BankUnited, FSB counts towards the vesting period. BankUnited's matching contributions are fully vested after two years of service. The 401(k) Plan allows a matching employer contribution equal to 100% of elective deferrals that do not exceed 1% of compensation, plus 70% of elective deferrals that exceed 1% but are less that 6% of compensation. The matching contributions are made in the form of cash and allocated to the 401(k) Plan participants' investments. For the period ended December 31, 2009, BankUnited made matching contributions of approximately $788,000.

Note 14 Stockholder's Equity

On May 21, 2009, the Company's capital structure consisted of 1.0 million authorized and 925,000 issued shares of common stock with a par value of $0.01 per share. The common stock has voting rights of one vote per share. On November 5, 2009, the Board of Directors approved an increase in the number of authorized common shares from 1.0 million shares to 11.0 million shares. On November 5, 2009, the Board of Directors also authorized a 10-for-1 stock split on the outstanding shares resulting in 9,276,731 common shares. All share and per share data have been retroactively restated for all periods presented to reflect this stock split.

Note 15 Due to BUFH for Equity Awards Classified as Liabilities

Profits Interest Units of BUFH

PIU are only issued to management members of the Company who own common units of BUFH. As such, the related liability and expenses are recorded in the consolidated financial statements of the Company. The holders of PIU are not required to make any capital contribution to BUFH or the Company in exchange for their PIU. Furthermore, the holders of PIU are entitled to receive priority distribution catch-up payments in respect of Time-based PIU that have become vested and which did not participate in earlier interim distributions of profits.

The Board of BUFH has discretionary authority, but shall not be required, to allocate to any active management member or other employee of BUFH or the Company or its subsidiaries any unallocated PIU that may exist from time to time, including any PIU that are forfeited.

At December 31, 2009, the pool of IRR-based PIU and Time-based PIU consisted each of 51,500 PIU, all of which have been allocated to management members. In connection with anti-dilution provisions of BUFH, each time additional common units are issued in respect of each additional capital contribution, up to $1.2 billion in aggregate capital contributions, BUFH shall issue an additional number of IRR-based and Time-based PIU in respect of such capital contribution, so that the PIU retain the same relative economic interest as existed prior to the additional contribution. Additional PIU are not issued for capital contributions in excess of $1.2 billion.

Time-based PIU vest over a period of three years from the grant date, with earlier vesting permitted under certain circumstances. IRR-based PIU vest when the common unit holders of BUFH have received aggregate distributions equal to their original investment ($925.0 million) plus an aggregate internal rate of return equal to 15% (the IRR hurdle) per annum, compounded annually, on their original investment in BUFH.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 15 Due to BUFH for Equity Awards Classified as Liabilities (Continued)

If BUFH or the Company completes an Initial Public Offering ("IPO") or change in control liquidity event, unvested IRR-based PIU of BUFH will convert into a combination of restricted shares and unvested stock options. Under the original terms of the IRR-based PIU, beginning four months after the IPO or change in control liquidity event and for each month thereafter, BUFH would have determined whether the IRR hurdle above had been met, assuming, among other things, that distributions were made to the common unit holders based on the volume and weighted average stock price of BUFH's shares in the 90-day period prior to such determination. If the IRR hurdle had been met, the stock options would have vested and the restrictions on the restricted stock would have lapsed. BUFH believes that the likelihood of vesting of the IRR-based PIU prior to an IPO or change in control liquidity event is remote. Therefore, under the original terms of the IRR-based PIU, BUFH and the Company would have recognized compensation expense related to IRR-based PIU upon consummation of an IPO or change in control liquidity event unless it had been less than probable that the IRR hurdle will be met. If and when it would have become probable in the future that the performance IRR hurdle will be met, a catch up adjustment would have been made. However, in October 2010, the Board of Directors of BUFH approved, contingent upon consummation of an IPO, the vesting of all issued and outstanding IRR-based PIU immediately prior to the IPO (See Note 22, *Subsequent Events*). At December 31, 2009, the estimated fair value of the IRR-based PIU was $43.8 million.

Fair value of PIU is estimated using a Black-Scholes option pricing model. This model requires assumptions as to expected volatility, dividends, terms, and risk free rates. Since the BUFH's Common Unit is not currently traded, expected volatility is measured based on the volatility of the common stock of peer companies. The expected term represents the period of time that PIU are expected to be outstanding from the grant date. The risk free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant for the appropriate expected life of each unit. The Company uses the same assumptions in its evaluation of fair value of stock options and PIU.

The PIU agreements include certain provisions under which the holder of the PIU may have the right to sell to BUFH and BUFH has the obligation to purchase from the holder of the PIU, or BUFH may have the right to purchase from the PIU holder and the PIU holder has the obligation to sell to BUFH, the PIUs awarded to that holder at fair value or, under certain circumstances, at the lesser of cost or fair value.

The Company has classified these equity awards as a liability due to BUFH in the accompanying consolidated balance sheet, based on the relevant terms, conditions, and redemption features of these instruments. Included in compensation expense is approximately $8.8 million associated with the Time-based PIU for the period ended December 31, 2009.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 15 Due to BUFH for Equity Awards Classified as Liabilities (Continued)

The following table summarizes information about time-based and performance based PIU at December 31, 2009:

	Outstanding	
	Number of units awarded	Weighted average fair value
Time-based PIU as of December 31, 2009	51,500	$ 850.30
IRR-based PIU as of December 31, 2009	51,500	$ 850.30
Total awards	103,000	

At December 31, 2009, there is $78.8 million, including $35.0 million related to Time-based PIU and $43.8 million related to IRR-based PIU, of total unrecognized compensation cost related to unvested PIU granted.

Warrant to FDIC

In connection with the acquisition of certain assets and assumption of certain liabilities of BankUnited, FSB, BUFH issued a warrant to the FDIC. As such, the related liability and expense is recorded in the consolidated financial statements of the Company. The warrant becomes exercisable upon the occurrence of an IPO or exit event in which the total tangible equity value arising from the IPO or exit event exceeds a threshold value. Specifically, the value of the warrant (the "warrant value") equals 10% of the value BUFH or the Company realizes in an IPO or exit event in excess of the valuation that would be implied if BUFH or the Company was valued at the average price-to-tangible book value multiple for the top quartile of publicly-traded U.S. banks and thrifts in excess of $10 billion.

In the event that the warrant is exercisable due to an IPO, the FDIC will be entitled to acquire a number of common shares of the registrant equal to the amount obtained by dividing (i) the warrant value by (ii) the applicable IPO price minus the exercise price per share. If the exercisability event is an exit event, the FDIC will be entitled to acquire a number of common shares of the entity acquiring BUFH or the Company, equal to the amount obtained by dividing (i) the warrant value (ii) by the applicable exit event price minus the exercise price per share, unless the common shares do not meet certain criteria, in which case the FDIC shall receive substitute securities having an aggregate value of the sum of the warrant value and the exercise price. Nonetheless, in accordance with the terms of the warrant, BUFH or the Company could elect not to issue the required securities and in turn issue securities agreed upon by BUFH or the Company and the FDIC. The warrant has an exercise price equal to par value or if par value is $0.00, the exercise price will be $0.01.

The warrant has an original contractual life of 10 years and an exercise period of 60 days. At December 31, 2009, the warrant has a remaining contractual term of 9.39 years.

The warrant is redeemable by BUFH or the Company for cash after it becomes exercisable at a redemption price equal to the warrant value. The Company has classified this warrant as a liability to BUFH in the accompanying consolidated balance sheet. Included in other liabilities is approximately $3.2 million related the fair value of this instrument as of December 31, 2009. The Company has

Note 15 Due to BUFH for Equity Awards Classified as Liabilities (Continued)

recognized expense of $1.7 million related to the increase in fair value of this instrument for the period since May 22, 2009 through December 31, 2009.

See Note 22, *Subsequent Events*, for additional discussion of the warrant issued to the FDIC.

Note 16 Income Taxes

The components of the provision for income taxes for the period ended December 31, 2009 is as follows (in thousands):

Current income tax expense	
Federal	$ 70,910
State	11,790
Total current income tax expense	82,700
Deferred income tax expense (benefit)	
Federal	(1,994)
State	(331)
Total deferred income tax benefit	(2,325)
	$ 80,375

A reconciliation of the expected income tax expense at the statutory federal income tax rate of 35% to the Company's actual income tax expense and effective tax rate for the period ended December 31, 2009 is as follows (amounts in thousands):

	Amount	%
Tax expense at federal income tax rate	$ 69,797	35.00%
Increases resulting from:		
State tax, net of federal benefit	7,448	3.73%
Liability for PIU	3,078	1.54%
Other, net	52	0.03%
Total	$ 80,375	40.30%

Deferred income tax assets and liabilities result from temporary differences between assets and liabilities measured for financial reporting purposes and for income tax return purposes. These assets and liabilities are measured using the enacted tax rates and laws that are currently in effect and are

Note 16 Income Taxes (Continued)

reported net in the accompanying consolidated balance sheet. The significant components of the net deferred tax assets and liabilities at December 31, 2009 were as follows (in thousands):

Deferred tax assets:	
Excess tax basis of assets acquired over carrying value	
Loans	$ 524,140
Investment securities	15,159
	539,299
Fair value adjustments on liabilities assumed	35,632
Acquisition costs	14,756
Provision for loan loss	3,159
Impairment losses on OREO	1,624
Unrealized losses included in other comprehensive income	1,546
Other	1,234
Gross deferred tax assets	597,250
Deferred tax liabilities:	
Deferred tax gain	448,863
Excess carrying value of investment securities acquired over tax basis	106,617
Unrealized gains included in other comprehensive income	18,607
Other	630
Gross deferred tax liabilities	574,717
Net deferred tax asset	$ 22,533

Realization of tax benefits for deductible temporary differences depends on having sufficient taxable income of an appropriate character within the carryforward periods. Sources of taxable income that may allow for the realization of these tax benefits include: (1) taxable income for the period ended December 31, 2009 that would be available through carryback in future years, (2) future taxable income that will result from reversal of existing taxable temporary differences, including the negative tax on goodwill, and (3) taxable income generated from future operations. Management has evaluated the probability of realization of the deferred tax asset and believes that it is more likely than not that the deferred tax asset will be realized.

Note 17 Commitments and Contingencies

The Company issues off-balance sheet financial instruments in connection with BankUnited's lending activities and to meet the financing needs of its customers. These financial instruments include commitments to fund loans, lines of credit, and commercial and standby letters of credit. These commitments expose the Company to varying degrees of credit and market risk which are essentially the same as those involved in extending loans to customers, and are subject to the Company's credit policies. The Company follows the same credit policies in making commitments as it does for instruments recorded on the Company's consolidated balance sheet. Collateral is obtained based on management's assessment of the customer's credit risk. The Company's exposure to credit loss is represented by the contractual amount of these commitments. Amounts funded under non-cancelable

Note 17 Commitments and Contingencies (Continued)

commitments in effect at the date of acquisition are covered under the loss sharing agreement if certain conditions are met.

Financial Instruments Commitments

Total commitments at December 31, 2009 were as follows (in thousands):

	Commitments		
	Covered	Not Covered	Total
Commitments to fund loans			
Residential	$ —	$ 2,495	$ 2,495
Commercial and commercial real estate	—	21,606	21,606
Construction	19,140	15,528	34,668
Unfunded commitments under lines of credit	229,756	33,201	262,957
Commercial and standby letters of credit	—	11,175	11,175
Total	$ 248,896	$ 84,005	$ 332,901

Commitments to fund loans:

These are agreements to lend funds to customers as long as there is no violation of any condition established in the contract. Commitments to fund loans generally have fixed expiration dates or other termination clauses and may require payment of a fee. Many of these commitments are expected to expire without being funded and, therefore, the total commitment amounts do not necessarily represent future liquidity requirements. The Company evaluates each customer's creditworthiness on a case-by-case basis. The amount of collateral required in connection with an extension of credit is based on management's credit evaluation of the counter-party.

Unfunded commitments under lines of credit:

To accommodate the financial needs of customers, the Company makes commitments under various terms to lend funds to consumers and businesses. Unfunded commitments under lines of credit include consumer, commercial, and commercial real estate lines of credit to existing customers. Many of these commitments have fixed expiration dates or other termination clauses and may require payment of a fee. Since many of these commitments are expected to expire without being funded, the total commitment amounts do not necessarily represent future liquidity requirements. The amount of collateral obtained, if it is deemed necessary by BankUnited, is based on management's credit evaluation of the customer.

Commercial and standby letters of credit:

Letters of credit are conditional commitments issued by the Company to guarantee the performance of a customer to a third party. Those letters of credit are primarily issued to support trade transactions or guarantee arrangements. Fees collected on standby letters of credit represent the fair value of those commitments and are deferred and amortized over their term, which is typically one year or less. The credit risk involved in issuing letters of credit is essentially the same as that involved in

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 17 Commitments and Contingencies (Continued)

extending loan facilities to customers. BankUnited generally holds collateral supporting those commitments if deemed necessary.

Other Commitments

Employment Agreements:

The Company has employment and change in control agreements with certain members of senior management. The employment agreements, which establish the duties and compensation of the executives, have terms ranging from one year to three years, with provisions for extensions, and include specific provisions for salary, bonus, other benefits and termination payments in certain circumstances.

Legal Proceedings

The Company, from time to time, is involved as plaintiff or defendant in various legal actions arising in the normal course of business. While the ultimate outcome of any such proceedings cannot be predicted with certainty, it is the opinion of management, based upon advice of legal counsel, that no proceedings exist, either individually or in the aggregate, which, if determined adversely to the Company, would have a material effect on the Company's consolidated balance sheet, results of operations or cash flows.

Note 18 Related Party Transactions

In association with the acquisition of certain assets and assumption of certain liabilities of BankUnited, FSB on May 21, 2009, the Company paid fees and other costs to related parties in the amount of $20.0 million and $2.5 million, respectively.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 19 BankUnited, Inc.

The following summarizes the major categories of BankUnited, Inc.'s (holding company only) Balance Sheet at December 31, 2009 (in thousands):

Condensed Balance Sheet

Assets:	
Cash and cash equivalents	$ 27,717
Deferred tax asset, net	13,623
Investment in subsidiary	1,055,196
Due from subsidiary	7,323
Other assets	3,167
Total assets	$ 1,107,026
Liabilities and Stockholder's Equity:	
Due to parent—Equity awards classified as liabilities	$ 11,961
Other liabilities	805
Total liabilities	12,766
Stockholder's equity	1,094,260
Total liabilities and stockholder's equity	$ 1,107,026

The following summarizes the major categories of BankUnited, Inc.'s (holding company only) Statement of Income for the period ended December 31, 2009 (in thousands):

Condensed Statement of Income

Non-interest income:	
Service charges	$ 3,183
Equity in income of subsidiary	152,943
Total non-interest income	156,126
Non-interest expense:	
Employee compensation and benefits	12,124
Acquisition related costs	39,800
Other non-interest expense	1,111
Total non-interest expense	53,035
Income before income taxes	103,091
Income tax benefit	(15,955)
Net income	$ 119,046

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 19 BankUnited, Inc. (Continued)

The following summarizes the major categories of BankUnited, Inc.'s (holding company only) Statement of Cash Flows for the period ended December 31, 2009 (in thousands):

Condensed Statements of Cash Flows

Cash flows from operating activities:	
Net income	$ 119,046
Adjustments to reconcile net income to net cash used in operating activities:	
Equity in undistributed earnings of subsidiary	(152,943)
Expense on equity awards classified as liabilities	10,497
Compensation expense on non-vested stock options	210
Deferred income tax benefit	(13,057)
Increase in due from subsidiary	(6,424)
Increase in other assets	(3,167)
Increase in other liabilities	805
Net cash used in operating activities	(45,033)
Cash flows from investing activities:	
Capital contributions to subsidiary	(875,000)
Net cash used in investing activities	(875,000)
Cash flows from financing activities:	
Capital contribution	947,750
Net cash provided by financing activities	947,750
Increase in cash and cash equivalents	27,717
Cash and cash equivalents at beginning of period	—
Cash and cash equivalents at ending of period	$ 27,717

Note 20 Fair Value Measurements

The Company groups its assets and liabilities measured at fair value in three levels, based on the markets in which the assets and liabilities are traded and the reliability of the assumptions used to determine fair value. These levels are as follows:

Level 1—Assets or liabilities for which the identical item is traded on an active exchange, such as publicly-traded instruments or futures contracts.

Level 2—Assets and liabilities valued based on observable market data for similar instruments.

Level 3—Assets or liabilities for which significant valuation assumptions are not readily observable in the market; instruments valued based on the best available data, some of which is internally-developed, and considers risk premiums that a market participant would require. Valuation techniques include use of option pricing models, discounted cash flow models and similar techniques.

Note 20 Fair Value Measurements (Continued)

In instances where there is limited or no observable market data, fair value measurements for assets and liabilities are based primarily upon the Company's own estimates or combination of such estimates and independent vendor or broker pricing. When determining the fair value measurements for assets and liabilities and the related fair value hierarchy, the Company considers the principal or most advantageous market in which it would transact and considers assumptions that market participants would use when pricing the asset or liability (observable inputs). When possible, the Company looks to active and observable markets to price identical assets or liabilities and when identical assets and liabilities are not traded in active markets, the Company looks to market observable data for similar assets and liabilities. It is the Company's policy to maximize the use of observable inputs and minimize the use of unobservable inputs. Unobservable inputs are only used to measure fair value to the extent that observable inputs are not available. The need to use unobservable inputs generally results from the lack of market liquidity, resulting in diminished observability of both actual trades and assumptions that would otherwise be available to value these instruments, or the value of the underlying collateral is not market observable. Although third party price indications may be available for a security, limited trading activity would make it difficult to support the observability of these quotations.

The following is a description of the valuation methodologies used for assets and liabilities measured at fair value on a recurring basis, as well as the general classification of each instrument under the valuation hierarchy:

Assets and Liabilities Carried at Fair Value on a Recurring Basis

Investment securities available for sale—Investment securities available-for-sale are carried at fair value on a recurring basis. When available, fair value is based on quoted prices in an active market and, as such, would be classified as Level 1 (e.g., U.S. Government agencies and sponsored enterprises securities, preferred stock of U.S. Government agencies and mutual funds). If quoted market prices are not available, fair values are estimated using quoted prices of securities with similar characteristics, discounted cash flows or other pricing models. Investment securities available for sale that the Company classifies as Level 2 include U.S. Government agencies mortgage-backed securities and collateralized mortgage obligations, preferred stock of other issuers and State and municipal obligations. All other investment securities available for sale are classified as Level 3 and include private label mortgage pass-through certificates, collateralized debt obligations and other debt securities, for which fair value estimation requires the use of unobservable inputs. The Company values these securities using third party proprietary pricing models that incorporate observable and unobservable inputs.

Derivative financial instruments—Interest rate swaps are predominantly traded in over-the-counter markets and, as such, values are determined using widely accepted discounted cash flow models, or Level 2 measurements. These discounted cash flow models use projections of future cash payments/receipts that are discounted at mid-market rates. These valuations are adjusted for the unsecured credit risk at the reporting date, which considers collateral posted and the impact of master netting agreements.

Equity awards classified as liabilities—The estimated fair value of equity awards is derived primarily using the Black-Scholes option pricing model. Since the Company's Common Stock is not

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 20 Fair Value Measurements (Continued)

publicly traded in an exchange, significant inputs to the model are not market observable, resulting in Level 3 measurement.

The following table presents the financial instruments measured at fair value on a recurring basis as of December 31, 2009, on the consolidated balance sheet utilizing the hierarchy discussed above (in thousands):

	Level 1	Level 2	Level 3	Total
Investment Securities Available for Sale:				
U.S. Treasury securities	$ 10,072	$ —	$ —	$ 10,072
U.S. Government agencies and government sponsored entities mortgage-backed securities	—	1,288,643	—	1,288,643
Other collateralized mortgage obligations	—	—	506,839	506,839
Mortgage pass-through certificates	—	—	364,672	364,672
Mutual funds and preferred stocks	17,646	25,877	—	43,523
State and Municipal obligations	—	23,106	250	23,356
Other debt securities	—	2,760	3,278	6,038
Derivative assets	—	1,517	—	1,517
Total assets at fair value	$ 27,718	$ 1,341,903	$ 875,039	$ 2,244,660
Equity awards classified as liabilities	$ —	$ —	$ 11,961	$ 11,961
Derivative liabilities	—	4,016	—	4,016
Total liabilities at fair value	$ —	$ 4,016	$ 11,961	$ 15,977

The following table includes changes in Level 3 financial instruments that are measured at fair value on a recurring basis as of December 31, 2009. Level 3 financial instruments typically include unobservable components, but may also include some observable components that may be validated to external sources. The gains or (losses) in the following table may include changes to fair value due in part to unobservable factors that may be part of the valuation methodology (in thousands):

	Other Collateralized Mortgage Obligations	Mortgage Pass-thru Certificates	State and Municipal Obligations	Other Debt Securities	Equity Awards classified as liabilities
Balance at May 22, 2009	$ 1,785	$ 230,092	$ 250	$ 1,676	$ (1,464)
Total net gains (losses) for the period included in:					
Net income (losses)	—	—	—	—	(10,497)
Other comprehensive income (loss), gross	(3,639)	46,654	—	1,400	—
Purchases, sales or settlements, net	507,263	69,161	—	(73)	—
Discount amortization	1,430	18,765	—	275	—
Net transfer in/out of Level 3	—	—	—	—	—
Balance at December 31, 2009	$ 506,839	$ 364,672	$ 250	$ 3,278	$ (11,961)

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 20 Fair Value Measurements (Continued)

Assets and Liabilities Measured at Fair Value on a Non-Recurring Basis

Loans and other real estate owned are measured for impairment using the fair value of the collateral or real estate owned and they are carried at the lower of cost or estimated fair value. Fair value of the loan collateral or real estate owned property is primarily determined using estimates which generally use the market and income approach valuation technique and use observable market data to formulate an opinion of the estimated fair value. When current appraisals are not available, we use our judgment regarding changes in market conditions, based on observable market inputs, to adjust the latest appraised value available. As a result, the estimated fair value is considered Level 3. As of December 31, 2009, the Company had $120.1 million of other real estate owned and did not have any collateral dependent impaired loans. Impairment write-downs on real estate owned for the period ended December 31, 2009, amounted to $21.1 million.

Goodwill, other intangible assets and FDIC indemnification asset are initially recorded at estimated fair value and measured for impairment on a non-recurring basis. These assets are reviewed for impairment at least annually, or whenever events or changes in circumstances indicate the carrying amount may not be recoverable. The estimated fair value of these assets are based on the market and income approach using significant assumptions that are unobservable in the market. As a result, the estimated fair value is considered Level 3.

Note 21 Fair Value of Financial Instruments

The following table presents the carrying value and fair value of financial instruments as of December 31, 2009 (in thousands):

	Carrying Value	Fair Value
Assets:		
Cash and cash equivalents	$ 356,215	$ 356,215
Investment securities available for sale	2,243,143	2,243,143
FHLB stock	243,334	243,334
Loans held in portfolio		
Covered	4,465,591	5,138,549
Not covered	123,307	128,778
FDIC Indemnification asset	3,279,165	3,279,165
Bank owned life insurance	132,330	132,330
Accrued interest receivable	9,591	9,591
Derivative assets	1,517	1,517
Liabilities:		
Demand deposits, savings, money market and certificates of deposit	$ 7,666,775	$ 7,690,422
Securities sold under agreements to repurchase	2,972	2,972
Advances from the FHLB	2,079,051	2,114,431
Due to FDIC	114,006	114,006
Accrued interest payable	12,561	12,561
Income taxes payable	82,701	82,701
Advance payments by borrowers for taxes and insurance	31,237	31,237
Other liabilities	30,421	30,421
Equity awards classified as liabilities	11,961	11,961
Derivative liabilities	4,016	4,016

Note 21 Fair Value of Financial Instruments (Continued)

The following methods and assumptions were used to estimate the fair value of each class of financial instruments not carried at fair value on recurring basis:

Certain financial instruments are carried at amounts that approximate fair value, due to their short-term nature or their generally negligible credit risk. The Company's financial instruments for which fair value approximates the carrying amount at December 31, 2009, include cash and cash equivalents, FHLB stock, FDIC indemnification asset, accrued interest receivable, demand deposits, savings and money market accounts, securities sold under agreements to repurchase, due to FDIC, accrued interest payable, income taxes payable, advance payments by borrowers for taxes and insurance and other liabilities.

Investment securities available for sale:

When available, fair value is based on quoted prices in an active market and as such, would be classified as Level 1 (e.g., U.S. Government agencies and sponsored enterprises securities, preferred stock of U.S. Government agencies and mutual funds). If quoted market prices are not available, fair values are estimated using quoted prices of securities with similar characteristics, discounted cash flows or other pricing models. Investment securities available for sale that the Company classifies as Level 2 include U.S. Government agencies, mortgage-backed securities and collateralized mortgage obligations, preferred stock of other issuers and State and municipal obligations. All other investment securities available for sale are classified as Level 3 and include private label mortgage pass-through certificates, collateralized debt obligations and other debt securities, for which fair value estimation requires the use of unobservable inputs. The Company values these securities using third party proprietary pricing models that incorporate observable and unobservable inputs.

Loans receivable, covered:

Fair values for loans were based on a discounted cash flow methodology that considered various factors including the type of loan and related collateral, classification status, fixed or variable interest rate, term of loan and whether or not the loan was amortizing, and current discount rates. Loans were grouped together according to similar characteristics and were treated in the aggregate when applying various valuation techniques. The discount rates used for loans are based on current market rates for new originations of comparable loans and include adjustments for liquidity concerns. The estimated fair value is not an exit price fair value under ASC 820 *Fair Value Measurement and Disclosures*, when this valuation technique is used.

Loans receivable, not covered:

Fair values for all performing loans are estimated using a discounted cash flow analysis, utilizing interest rates currently being offered for loans with similar terms to borrowers of similar credit quality. In addition, the fair value reflects the decrease in loan values as estimated in the allowance for loan losses calculation. The estimated fair value is not an exit price fair value under ASC 820 *Fair Value Measurement and Disclosures*, when this valuation technique is used.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 21 Fair Value of Financial Instruments (Continued)

Bank Owned Life Insurance:

The estimated fair value of Bank Owned Life Insurance is based on the cash surrender value of the underlying insurance contracts.

Deposits:

The fair value of demand deposits, savings accounts and money market deposits is the amount payable on demand at the reporting date. The fair value of fixed-maturity time deposits are estimated using discounted cash flow analysis using the rates currently offered for deposits of similar remaining maturities.

Advances from the FHLB:

The fair value of the borrowings is estimated by discounting the future cash flows using the current rate at which similar borrowings with similar remaining maturities could be made.

Equity awards classified as liabilities:

The estimated fair value of equity awards is derived primarily using the Black-Scholes option pricing model. Since the Company's Common Stock is not publicly traded in an exchange, significant inputs to the model are not market observable.

Derivative financial instruments:

Fair values are determined using discounted cash flow models. These discounted cash flow models use projections of future cash payments/receipts that are discounted at mid-market rates. These valuations are adjusted for the unsecured credit risk at the reporting date, which considers collateral posted and the impact of master netting agreements.

Note 22 Subsequent Events

Subsequent events have been evaluated through the date that the consolidated financial statements were available to be issued. The Company has not identified any events that would have a material impact on the financial position, result of operations or cash flows of the Company as of and for the period ended December 31, 2009. The following items represent significant events that occurred subsequent to December 31, 2009:

Settlement of FDIC dispute:

During October 2010, the Company reached a settlement with the FDIC regarding the Company's dispute on the purchase price assigned to certain investment securities acquired. Under the settlement, the Company received $24.1 million from the FDIC. The Company will recognize the results of this settlement in 2010.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 22 Subsequent Events (Continued)

Minimum guaranteed value on the FDIC warrant:

During October 2010, the Company amended the warrant issued to the FDIC to guarantee a minimum value to the FDIC in the amount of $25.0 million. The Company will recognize the difference between the recorded liability of $3.2 million at December 31, 2009, and the guaranteed minimum value of the warrant in 2010.

Dividends declared:

In September 2010, BankUnited declared a dividend of $30 million to BankUnited, Inc., which was paid in October 2010. BankUnited, Inc. has declared $20 million in dividends to BUFH, which will be paid in October 2010.

IRR-based PIU:

In October 2010, the Board of Directors of BUFH approved, contingent upon consummation of an IPO, the vesting of all issued and outstanding IRR-based PIU immediately prior to the IPO.

Name change:

Effective October 22, 2010, BU Financial Corporation changed its name to BankUnited, Inc.

Stock split:

The Board of Directors authorized a 10-for-1 split of the Company's outstanding common shares effective January 10, 2011. Stockholder's equity has been retroactively adjusted to give effect to the stock split for all periods presented by reclassifying from paid-in capital to common stock the par value of the additional shares issued. All share and per share data have been retroactively restated for all periods presented to reflect this stock split.

Report of Independent Registered Certified Public Accounting Firm

To the Board of Directors and
Stockholders of BankUnited, Inc.:

We have audited the accompanying consolidated statements of financial condition of BankUnited FSB and its subsidiaries (the "Bank") as of May 21, 2009, September 30, 2008 and September 30, 2007, and the related consolidated statements of operations, of comprehensive (loss) income, of stockholder's equity (deficit), and of cash flows for the period from October 1, 2008 through May 21, 2009 and the fiscal years ended September 30, 2008 and 2007. These financial statements are the responsibility of the Bank's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Bank and its subsidiaries at May 21, 2009 and September 30, 2008 and 2007, and the results of their operations and their cash flows for each of the fiscal periods then ended in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 1 to the consolidated financial statements, the Office of Thrift Supervision seized the Bank on May 21, 2009, and named the Federal Deposit Insurance Corporation ("FDIC") as receiver. Immediately thereafter, substantially all assets and liabilities were acquired by BankUnited, a wholly-owned subsidiary of BankUnited, Inc.

/s/ PricewaterhouseCoopers LLP

Fort Lauderdale, Florida
October 27, 2010

BANKUNITED, FSB AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

As of May 21, 2009, September 30, 2008 and September 30, 2007

(In thousands)

	May 21, 2009	September 30, 2008	September 30, 2007
ASSETS			
Cash and due from banks	$ 215,941	$ 169,543	$ 477,170
Due from Federal Reserve Bank	919,755	76,983	34,057
Federal funds sold	7,584	976,820	1,658
Cash and cash equivalents	1,143,280	1,223,346	512,885
Investment securities available for sale, at fair value	538,944	755,225	1,098,665
Federal Home Loan Bank stock	243,334	262,571	305,385
Loans held for sale	788	10,050	174,868
Loans held in portfolio, net of discounts, premiums and deferred costs	11,014,215	11,965,284	12,620,316
Allowance for loan losses	(1,227,173)	(715,917)	(58,623)
Loans held in portfolio, net	9,787,042	11,249,367	12,561,693
Bank owned life insurance	129,111	126,956	122,100
Other real estate owned	177,679	135,324	27,732
Deferred tax asset, net	—	50,306	—
Goodwill and other intangible assets	28,353	28,353	28,353
Other assets	212,331	247,093	275,629
Total assets	$ 12,260,862	$ 14,088,591	$ 15,107,310
LIABILITIES AND STOCKHOLDER'S EQUITY (DEFICIT)			
Liabilities:			
Demand deposits:			
Non-interest bearing	$ 247,646	$ 293,370	$ 557,901
Interest bearing	155,906	170,051	225,901
Savings and money market	1,682,937	1,253,324	1,980,966
Certificates of deposits	6,469,418	6,460,072	4,541,020
Total deposits	8,555,907	8,176,817	7,305,788
Securities sold under agreements to repurchase	1,310	56,930	143,072
Advances from Federal Home Loan Bank	4,429,350	5,279,350	6,234,360
Deferred tax liability	—	—	29,935
Income taxes payable	—	—	20,843
Advance payments by borrowers for taxes and insurance	52,362	91,223	97,455
Other liabilities	110,906	85,501	73,055
Total liabilities	13,149,835	13,689,821	13,904,508
Commitments and contingencies			
Stockholder's Equity (Deficit)			
Common Stock, $0.01 par value, 100 shares authorized, issued and outstanding	—	—	—
Paid-in capital	793,928	793,928	713,928
Retained earnings (deficit)	(1,589,662)	(356,360)	502,027
Accumulated other comprehensive loss, net of tax	(93,239)	(38,798)	(13,153)
Total stockholder's equity (deficit)	(888,973)	398,770	1,202,802
Total liabilities and stockholder's equity (deficit)	$ 12,260,862	$ 14,088,591	$ 15,107,310

The accompanying notes are an integral part of these consolidated financial statements.

Table of Contents

BANKUNITED, FSB AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

For the Period from October 1, 2008 through May 21, 2009, and the Years Ended

September 30, 2008 and September 30, 2007
(In thousands, except per share amounts)

	Period from October 1, 2008 through May 21, 2009	Year Ended September 30, 2008	Year Ended September 30, 2007
Interest income:			
Interest and fees on loans	$ 312,994	$ 762,170	$ 876,861
Interest and dividends on investment securities available for sale	22,407	50,434	61,325
Interest and dividends on other interest-earning assets	3,667	21,856	19,711
Total interest income	339,068	834,460	957,897
Interest expense:			
Interest on deposits	199,570	292,855	302,335
Interest on borrowings	133,822	262,739	302,223
Total interest expense	333,392	555,594	604,558
Net interest income before provision for loan losses	5,676	278,866	353,339
Provision for loan losses	919,139	856,374	31,500
Net interest income (loss) after provision for loan losses	(913,463)	(577,508)	321,839
Non-interest income (loss):			
Other than temporary impairment on investment securities available for sale	(68,609)	(142,035)	(5,042)
Amortization and impairment of mortgage servicing rights	(26,595)	(8,434)	(4,622)
Gain (loss) on sale of loans, net	196	(9,784)	9,777
Service charges	11,796	25,136	22,169
Gain (loss) on sale of investments, net	39	(1,465)	(564)
Other non-interest income	1,742	7,723	6,649
Total non-interest income (loss)	(81,431)	(128,859)	28,367
Non-interest expense:			
Employee compensation and benefits	51,695	88,893	87,958
Occupancy and equipment	25,247	46,743	41,187
Impairment and other real estate owned related expense	73,439	40,650	608
Professional fees	10,062	8,910	5,631
Foreclosure expense	4,907	6,007	535
Deposit insurance expense	38,299	6,147	3,119
Telecommunications and data processing	9,573	13,536	13,019
Other non-interest expense	25,181	35,594	33,577
Total non-interest expense	238,403	246,480	185,634
Income (loss) before income taxes	(1,233,297)	(952,847)	164,572
Income tax expense (benefit)	—	(94,462)	55,067
Net income (loss)	$ (1,233,297)	$ (858,385)	$ 109,505
Earnings (Loss) Per Share:			
Basic	$ (12,332,970)	$ (8,583,850)	$ 1,095,054
Weighted average number of common shares outstanding:			
Basic	100	100	100

The accompanying notes are an integral part of these consolidated financial statements.

BANKUNITED, FSB AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

For the Period from October 1, 2008 through May 21, 2009, and the Years Ended

September 30, 2008 and September 30, 2007

(In thousands)

	Period from October 1, 2008 through May 21, 2009	Year Ended September 30, 2008	Year Ended September 30, 2007
Cash flows from operating activities:			
Net (loss) income	$ (1,233,297)	$ (858,385)	$ 109,505
Adjustments to reconcile net (loss) income to net cash used for operating activities:			
Provision for loan losses	919,139	856,374	31,500
Provision for recourse liability on loans sold	—	12,400	—
Negative amortization of option adjustable rate mortgage payment loans	(28,198)	(161,664)	(166,666)
Other-than-temporary impairment on investment securities	68,609	142,035	5,042
Impairment of other real estate owned	38,742	22,749	14
Depreciation and amortization	7,791	15,330	12,943
Amortization of fees, discounts and premiums, net	10,886	53,930	69,949
Amortization of mortgage servicing rights	1,596	5,391	3,329
Impairment of mortgage servicing rights	24,999	3,043	1,293
Increase in bank owned life insurance cash surrender value	(2,155)	(4,856)	(4,933)
Net loss on sale of other real estate owned and other assets	22,211	8,784	29
Net (gain) loss on sale of loans	(113)	3,857	—
Net gain on sale of loans held for sale	(83)	(6,473)	(9,777)
Net (gain) loss on sale of investment securities available for sale	(39)	414	564
Deferred tax expense (benefit)	50,306	(78,486)	(175)
Other:			
Proceeds from sale of loans held for sale, including those sold as mortgage-backed securities	45,140	1,160,121	1,251,059
Loans originated for sale, net of repayments	(35,795)	(999,505)	(1,268,021)
Increase (decrease) in other assets	510	(117,503)	(37,018)
Increase in other liabilities	25,405	19,505	25,639
Net cash (used in) provided by operating activities	(84,346)	77,061	24,276
Cash flows from investing activities:			
Purchase of investment securities available for sale	(10,427)	(213,414)	(38,992)
Proceeds from repayments of investment securities available for sale	96,428	270,345	382,277
Proceeds from sale of investment securities available for sale	9,847	124,357	80,937
Proceeds from sale of loans held in portfolio	7,563	—	—
Net decrease (increase) in loans held in portfolio	340,767	369,153	(1,261,064)
Purchase of Federal Home Loan Bank stock	(113)	(43,045)	(181,353)
Proceed from repayments of Federal Home Loan Bank stock	19,350	85,859	131,310
Purchase of office properties and equipment	(828)	(7,221)	(31,539)
Proceeds from sale of other real estate owned and other assets	107,089	63,723	4,109
Net cash provided by (used in) investing activities	569,676	649,757	(914,315)

BANKUNITED, FSB AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS (Continued)

For the Period from October 1, 2008 through May 21, 2009, and the Years Ended

September 30, 2008 and September 30, 2007

(In thousands)

	Period from October 1, 2008 through May 21, 2009	Year Ended September 30, 2008	Year Ended September 30, 2007
Cash flows from financing activities:			
Net increase in deposits	379,090	871,029	1,194,900
Additions to Federal Home Loan Bank advances	50,000	3,045,000	5,175,000
Repayments of Federal Home Loan Bank advances	(900,000)	(4,000,010)	(4,114,990)
Capital contribution from parent	—	160,000	—
Net decrease in securities sold under repurchase agreements	(55,620)	(86,142)	(923,317)
(Decrease) increase in advances from borrowers for taxes and insurance	(38,861)	(6,232)	4,736
Dividends paid on stock	(5)	(2)	(5)
Net cash (used in) provided by financing activities	(565,396)	(16,357)	1,336,324
(Decrease) increase in cash and cash equivalents	(80,066)	710,461	446,285
Cash and cash equivalents at beginning of period	1,223,346	512,885	66,600
Cash and cash equivalents at end of period	$ 1,143,280	$ 1,223,346	$ 512,885
Supplemental disclosure of cash flow activity:			
Interest paid on deposits and borrowings	$ 317,614	$ 556,783	$ 598,558
Income taxes (received) paid	$ (45,712)	$ —	$ 40,800
Supplemental schedule of non-cash investing and financing activities:			
Transfers from loans to real estate owned	$ 209,694	$ 202,520	$ 30,528
Transfers of loans held for sale to portfolio	$ —	$ 19,919	$ 38,603
Transfer of loans from portfolio to loans held for sale	$ 7,459	$ 242	$ 264,707
Capital contribution receivable from parent	$ —	$ —	$ 80,000
Exchange loans for mortgages backed securities	$ —	$ 776,796	$ 291,440

The accompanying notes are an integral part of these consolidated financial statements.

Table of Contents

BANKUNITED, FSB AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDER'S EQUITY (DEFICIT)

For the Period from October 1, 2008 through May 21, 2009, and the Years Ended

September 30, 2008 and September 30, 2007

(In thousands)

	Common Stock	Paid-in Capital	Retained Earnings (Deficit)	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity (Deficit)
Balance at September 30, 2006	$ —	$ 633,928	$ 392,527	$ (20,619)	$ 1,005,836
Capital contribution		80,000			80,000
Comprehensive income:					
Net income			109,505		109,505
Other comprehensive income				7,466	7,466
Total comprehensive income					116,971
Payment of cash dividends			(5)		(5)
Balance at September 30, 2007	—	713,928	502,027	(13,153)	1,202,802
Capital contribution		80,000			80,000
Comprehensive loss:					
Net loss			(858,385)		(858,385)
Other comprehensive income				(25,645)	(25,645)
Total comprehensive loss					(884,030)
Payment of cash dividends			(2)		(2)
Balance at September 30, 2008	—	793,928	(356,360)	(38,798)	398,770
Comprehensive loss:					
Net loss			(1,233,297)		(1,233,297)
Other comprehensive income				(54,441)	(54,441)
Total comprehensive loss					(1,287,738)
Payment of cash dividends			(5)		(5)
Balance at May 21, 2009	$ —	$ 793,928	$ (1,589,662)	$ (93,239)	$ (888,973)

The accompanying notes are an integral part of these consolidated financial statements.

BANKUNITED, FSB AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OTHER COMPREHENSIVE INCOME (LOSS)

For the Period from October 1, 2008 through May 21, 2009, and the Years Ended

September 30, 2008 and September 30, 2007

(In thousands)

	Period from October 1, 2008 through May 21, 2009	Year Ended September 30, 2008	Year Ended September 30, 2007
Net income (loss)	$ (1,233,297)	$ (858,385)	$ 109,505
Other comprehensive income (loss), net of tax:			
Unrealized gains (losses) arising during the period on securities, net of tax expense (benefit)(1)	(65,914)	(37,303)	4,442
Unrealized losses on cash flow hedges, net of tax benefit(1)	—	—	(221)
Less reclassification adjustment for:			
Realized losses on securities sold included in net income, net of tax benefit(1)	(22)	(414)	(381)
Other-than-temporary impairment on investment securities included in net income (loss), net of tax benefit(1)	(11,451)	(11,258)	(2,864)
Realized gains on cash flow hedges, net of tax expense(1)	—	14	—
Total other comprehensive income (loss), net of tax	(54,441)	(25,645)	7,466
Total comprehensive income (loss)	$ (1,287,738)	$ (884,030)	$ 116,971

(1) Tax benefit related to 2009 and 2008 unrealized net losses on securities was completely reserved for by a valuation allowance and therefore these years do not show any tax benefit related to investment securities. The following table summarizes the related tax expense (benefit) for the period ended May 21, 2009, and September 30, 2008 and 2007 (in thousands):

	Period from October 1, 2008 through May 21, 2009		Year Ended September 30, 2008		Year Ended September 30, 2007	
	Deferred Tax Expense (Benefit)	Deferred Tax Asset Valuation Allowance	Deferred Tax Expense (Benefit)	Deferred Tax Asset Valuation Allowance	Deferred Tax Expense (Benefit)	Deferred Tax Asset Valuation Allowance
Unrealized gains (losses) arising during the period on securities	$ (35,492)	$ 35,492	$ (20,086)	$ 20,086	$ 2,392	—
Unrealized losses on cash flow hedges	—	—	—	—	(119)	—
Realized losses on securities sold included in net income	(12)	12	(223)	223	(205)	—
Other-than-temporary impairment on investment securities included in net income (loss)	(6,166)	6,166	(6,062)	6,062	(1,542)	—
Realized gains on cash flow hedges	—	—		(7)	—	—

The accompanying notes are an integral part of these consolidated financial statements.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1 Summary of Significant Accounting Policies

BankUnited, FSB ("BankUnited" or the "Bank") was founded in 1984 and offers a full range of consumer and commercial banking products and services to individual and corporate customers through its branch network in Florida. The consolidated financial statements include the accounts of the Bank and its wholly-owned subsidiaries Bay Holdings, Inc., CRE Properties Inc., T&D Properties of South Florida, Inc. and BU Delaware, Inc. and its wholly-owned subsidiary BU REIT, Inc. BankUnited Financial Corporation ("BKUNA"), the parent company, is a Florida corporation organized in 1993 as the holding company for the Bank.

At the close of business on May 21, 2009, the Bank was seized by the Office of Thrift Supervision and the Federal Deposit Insurance Corporation ("FDIC") was appointed as Receiver. Immediately thereafter, a de novo institution ("New BankUnited") acquired certain assets and assumed certain liabilities of the former BankUnited. The change in control of the Bank may affect the accounting policies followed by the Bank under its new ownership.

Regulatory Matters

On September 19, 2008, the Bank reached an agreement with the Office of Thrift Supervision (the "OTS") on regulatory consent orders (the "Orders"). The Orders, among other things, required that BankUnited continue its capital augmentation plan to raise additional capital and to provide an alternative capital strategy to be implemented in the event the capital raising efforts in the capital augmentation plan are unsuccessful (together, the "Capital Plan"). The Capital Plan was approved by the OTS, and on November 1, 2008, the Bank's Board of Directors ("Board") approved and adopted the Capital Plan and began its implementation. Additionally, the Orders required that the Bank's Board prepare and submit to the OTS a comprehensive business plan covering the last three months of calendar year 2008, all of calendar years 2009 and 2010, and the first three quarters of calendar 2011 ("Business Plan"). The Business Plan includes a detailed description of the Bank's plans to improve earnings, preserve and enhance capital and franchise value, and strengthen liquidity.

The Orders required the Bank to meet and maintain a minimum Tier One Core Capital Ratio of 7% and a minimum total Risk-Based Capital Ratio of 14% on and after December 31, 2008. As of December 31, 2008, due primarily to establishing reserves for loan losses and its inability to raise additional equity, the Bank was not in compliance with the capital ratios as required by the Orders. As a result, the Bank was subject to enforcement action by federal regulators, including placing the Bank into receivership.

The Orders prohibit the Bank from paying dividends or capital distributions without receiving the prior written approval of the OTS. The Orders also require, among other things, that BankUnited notify the OTS prior to adding directors or senior executive officers; limit certain kinds of severance and indemnification payments; and obtain OTS approval before entering into, renewing, extending, or revising any compensatory or benefits arrangements with any director or officer.

Additionally, the Orders required the Bank to restrict or prohibit the origination of payment option adjustable rate mortgages ("option ARM loans"), prepare a plan to ensure the Bank maintains and adheres to its allowance for loan losses policies, procedures, time frames and calculation inputs; restricts assets growth; and appoint a regulatory compliance committee.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 1 Summary of Significant Accounting Policies (Continued)

Effective April 14, 2009, the Board entered into a Stipulation and Consent to Prompt Corrective Action Directive ("PCA Directive") with the OTS. The PCA Directive addresses the Bank's failure to operate under an accepted capital restoration plan and imposes various corrective measures and operational limitations mandated by statute. As of January 30, 2009, the Bank was critically undercapitalized for purposes of the Prompt Corrective Action provisions of the Federal Deposit Insurance Act. The PCA Directive was issued when the OTS notified the Bank that its previously filed capital restoration plan was unacceptable and directs the Bank to be recapitalized by a merger with or an acquisition by another financial institution or another entity, or through the sale of all or substantially all of the Bank's assets and liabilities to another financial institution or another entity within twenty days pursuant to a written definitive agreement, which the Bank is required to execute within fifteen days of the effective date of the PCA Directive, unless such timeframes are extended in writing by the OTS.

Accounting Estimates and Assumptions

The accounting and reporting policies of the Bank and the methods of applying those policies that materially affect the accompanying consolidated financial statements conform with accounting principles generally accepted in the United States ("GAAP") and where applicable to general practices in the banking industry or guidelines prescribed by regulatory agencies. The consolidated financial statements of the Bank include the accounts of BankUnited, FSB and its wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

In preparing the consolidated financial statements, management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses and valuation and disclosures of contingent assets and liabilities. Management has made significant estimates in certain areas, including the determination of the allowance for loan losses, reserve for recourse liability for loans sold, valuing certain financial instruments and other assets, the valuation of mortgage servicing rights, the determination of other-than-temporary impairment losses on available-for-sale investment securities, determination of the valuation allowance for deferred tax assets and goodwill impairment. Actual results could differ from those estimates. The current economic environment has increased the degree of uncertainty inherent in those estimates and assumptions.

Financial Statement Reclassifications

Certain prior period amounts have been reclassified to conform to the May 21, 2009 consolidated financial statements presentation.

Fair Value Measurements

In September 2006, the Financial Accounting Standards Board ("FASB") issued a new accounting standard on fair value measurements. The standard defines fair value, establishes a framework for measuring fair value and expands disclosure about fair value measurements. The standard changed key concepts in fair value measures including the establishment of a fair value hierarchy and the concept of the most advantageous or principal market. This standard did not require any new fair value measurement. The Bank adopted this statement for its financial assets and liabilities effective

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 1 Summary of Significant Accounting Policies (Continued)

October 1, 2008. The adoption of this statement did not have a material effect on the Bank's consolidated financial statements.

The Bank uses fair value measurements to record fair value adjustments to certain assets and liabilities and to determine fair value disclosures. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Securities available for sale and derivative instruments are recorded at fair value on a recurring basis. Additionally, from time to time, the Bank may be required to record other financial assets at fair value on a nonrecurring basis, such as impaired loans. These nonrecurring fair value adjustments typically involve application of lower-of-cost-or-market accounting or impairment write-downs of individual assets.

In February 2007, the FASB issued a new accounting standard on the fair value option for financial assets and financial liabilities. This standard allows the Bank an irrevocable option for measurement of eligible financial assets or financial liabilities at fair value on an instrument by instrument basis (the fair value option). Subsequent to the initial adoption of the standard, which the Bank adopted effective October 1, 2008, the Bank may elect to account for eligible financial assets and financial liabilities at fair value. Such an election may be made at the time an eligible financial asset, financial liability or firm commitment is recognized or when certain specified reconsideration events occur. The Bank has not elected the fair value option for any eligible financial instrument during the period ended May 21, 2009.

A fair value measurement assumes that the transaction to sell the asset or transfer the liability occurs in the principal market for the asset or liability or, in the absence of a principal market, the most advantageous market for the asset or liability. The fair value hierarchy distinguishes between assumptions developed based on market data obtained from independent sources (observable inputs) and assumptions made by the Bank about market participant assumptions (unobservable inputs). It is the Bank's policy to maximize the use of observable inputs and minimize the use of unobservable inputs when developing fair value measurements. Because no active market exists for a portion of the Bank's financial assets, fair value estimates are subjective in nature. Additionally, the fair value estimates do not necessarily reflect the price that the Bank might receive if it were to sell at one time its entire holding of a particular financial instrument.

Fair value is based on quoted prices in an active market when available. In certain cases where a quoted price for an asset or liability is not available, the Bank uses quoted market prices for comparable or similar securities, and when not available, uses internal valuation models to estimate its fair value. These models incorporate inputs such as forward yield curves, loan prepayment assumptions, expected loss assumptions, market volatilities and pricing spreads utilizing market-based inputs where readily available. The Bank's estimates of fair value reflect inputs and assumptions which management believes are comparable to those that would be used by other market participants. As an estimate, the fair value cannot be determined with precision and may not be realized in an actual sale or transfer of the asset or liability in a current market exchange.

Cash and Cash Equivalents

Cash and cash equivalents include cash, Federal Home Loan Bank ("FHLB") overnight deposits, federal funds sold and securities purchased under agreements to resell with original maturities of three

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 1 Summary of Significant Accounting Policies (Continued)

months or less. The collateral held by the Bank for securities purchased under agreements to resell consists of the securities underlying those agreements.

The Bank must comply with Federal Reserve Board regulations requiring the maintenance of reserves against its net transaction accounts. As of May 21, 2009, and September 30, 2008 and 2007, cash reserves maintained by the Bank at the Federal Reserve Bank for this purpose exceeded this requirement.

Investment Securities Available for Sale

Investment securities available for sale are carried at fair value, net of unrealized gains and losses, and net of discount accretion and premium amortization computed using the level yield method. Net unrealized gains and losses are included in other comprehensive income (loss) net of applicable income taxes (benefit). Gains or losses on sales of investment and mortgage-backed securities available for sale are recognized on the specific identification basis.

The Bank reviews available for sale securities for impairment on a quarterly basis or more frequently if events and circumstances indicate that a potential loss may have occurred. An investment security is impaired if its fair value is lower than its amortized cost basis. The Bank considers many factors in determining whether the decline in fair value below amortized cost is an other-than-temporary impairment ("OTTI"), including, but not limited to, adverse changes in expected cash flows, the length of time and extent to which the fair value has been less than amortized cost, the Bank's intent and ability to hold the security for a period of time sufficient for a recovery in value and issuer-specific factors such as the issuer's financial condition, external credit ratings and general market conditions.

The Bank uses third party sources to assist in the determination of the fair value of its investment securities, which are subject to validation procedures performed by management. The third-party pricing sources use proprietary models to determine the fair value of the Bank's collateralized mortgage obligations and mortgage pass-through certificates. Management reviews and documents all assumptions used by both internal and third party sources to ensure they are market based and reflective of the structural and collateral characteristics of the respective securities.

Loans Receivable

Loans held in portfolio

The Bank's loans held in portfolio consists primarily of real estate loans collateralized by first mortgages and also includes commercial real estate, commercial land, consumer and home equity loans and lines of credit. Loans held in portfolio are loans which management has the intent and ability to hold for the foreseeable future, are considered held for investment, and, accordingly, are carried at amortized cost. The length of the foreseeable future is a management judgment which is determined based on the type of loan, asset/liability strategies, including available investment opportunities and funding sources, expected liquidity demands, long-term business strategies and current economic and market conditions. Evaluation of these factors requires a significant degree of judgment. Management's view of the foreseeable future may change based on changes in these conditions.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 1 Summary of Significant Accounting Policies (Continued)

Mortgage loans held for sale

BankUnited originates loans that are held for sale in the secondary market to government-sponsored entities and other investors. Loans held for sale are recorded at the lower of cost or fair value, determined in the aggregate, or at fair value when they are designated as the hedged item in a hedging relationship. Origination fees and costs for loans held for sale are capitalized as part of the cost of the loan. Fair value is derived from observable current market prices, when available, and includes loan servicing value. When market data is not available, the Bank estimates fair value based on third party indications of fair value, which may also include adjustments made for specific loan characteristics. Management reviews and documents all assumptions used by both internal and third party sources to ensure they are market based and reflective of the structural and collateral characteristics of the respective assets. Adjustments to reflect unrealized gains and losses resulting from changes in fair value and realized gains and losses upon ultimate sale of the loans are classified as noninterest income in the consolidated statements of operations.

BankUnited transfers certain residential mortgage loans to the held for sale classification at the lower of cost or fair value. At the time of transfer, any losses are recorded as a component of noninterest income, with subsequent losses also recorded as a component of noninterest income in the consolidated statements of operations. BankUnited may also transfer loans from held for sale to held in portfolio. At the time of transfer, any difference between the carrying amount of the loan and its outstanding principal balance is recorded as a component of noninterest income. Subsequently the discount on the loan is recognized as an adjustment to yield using the interest method. Triggers for transfer of loans to the held for sale category would include loans for which the Bank no longer had the intent or ability to hold the loans for the foreseeable future, or to maturity. Triggers for transfers to held in portfolio would include those loans that are no longer saleable due to credit, performance, or market conditions.

Non-Accrual Loans

The Bank typically classifies loans as nonaccrual when one of the following events occurs: (i) interest or principal has been in default, unless the loan is well-secured and in the process of collection; (ii) collection of recorded interest or principal is not anticipated; or (iii) income for the loan is recognized on a cash basis due to the deterioration in the financial condition of the debtor. Consumer and residential mortgage loans are typically placed on nonaccrual when payments have been in default more than 150 days. All other loans are typically placed on nonaccrual when the loans become 90 days past due, or the collection of principal or interest is deemed doubtful.

When a loan is placed on nonaccrual, unpaid interest is reversed against interest income. Interest income on nonaccrual loans, if recognized, is either recorded using the cash basis method of accounting or recognized at the end of the loan term after the principal has been reduced to zero, depending on the type of loan. If and when borrowers demonstrate the ability to repay a loan in accordance with the contractual terms of a loan classified as nonaccrual, the loan may be returned to accrual status. If a nonaccrual loan is returned to accruing status, the accrued interest at the date the loan is placed on nonaccrual status, and foregone interest during the nonaccrual period, are recorded as interest income only after all principal has been collected for commercial real estate and commercial loans. For residential mortgage loans and consumer loans, the accrued interest at the date the loan is placed on

Note 1 Summary of Significant Accounting Policies (Continued)

nonaccrual status, and forgone interest during the nonaccrual period, are recorded as interest income as of the date the loan no longer meets the applicable criteria.

Loans whose terms have been modified in troubled debt restructurings are placed on nonaccrual status, until the Bank determines that future collection of principal and interest is reasonably assured. Generally, a nonaccrual loan that is restructured remains on nonaccrual for a period of six months to demonstrate the borrower can meet the restructured terms. Payment performance immediately prior to the restructuring may be considered when making this determination. Where the borrower of a restructured residential mortgage loan has no history of missed payments for at least six months prior to the restructuring, the loans remain on accrual status at the time of the modification.

Impaired Loans

Loans are considered impaired when, based on current information and events, it is probable that the Bank will be unable to collect the scheduled payments of principal or interest when due, according to the contractual terms of the loan agreement. Factors considered by management in determining impairment include payment status, collateral value, and the probability of collecting scheduled principal and interest payments when due. When a loan is deemed impaired, the amount of specific allowance required is measured by a complete analysis of the most probable source of repayment, including the present value of the loan's expected future cash flows, the fair value of the underlying collateral less costs of disposition, or the loan's estimated fair value. In these measurements, the Bank uses assumptions and methodologies that are relevant to estimating the level of impairment and unrealized losses in the loan portfolio. To the extent that the data supporting such assumptions has limitations, management's judgment and experience play a key role in recording the specific allowance estimates. BankUnited generally applies cash receipts on impaired loans not performing according to contractual terms to reduce the carrying value of the loan, unless the Bank believes it will recover the remaining principal balance of the loan, in which case the Bank may recognize interest income. The Bank includes impairment losses in the allowance for loan losses through a charge to provision for loan losses.

The Bank accounts for loans as troubled debt restructurings, when due to a deterioration in a borrower's financial position, the Bank grants concessions that would not otherwise be considered. Troubled debt restructured loans are tested for impairment and where the borrower has no history of missed payments for six months prior to the restructuring, the loan remains on accrual status at the time of the modification. Other troubled debt restructured loans are placed in nonaccrual status at the time of the modifications. If borrowers perform pursuant to the modified loan terms for at least six months and the remaining loan balances are considered collectible, the loans are returned to accrual status.

Allowance for Loan Losses

The Bank's allowance for loan losses is established for both performing loans and non-performing loans. BankUnited's allowance for loan losses is established and maintained at a level management deems prudent and adequate to cover probable losses on loans based upon a periodic evaluation of current information relating to the risks inherent in BankUnited's loan portfolio. In evaluating the allowance for loan losses, management evaluates both quantitative and qualitative elements which may

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 1 Summary of Significant Accounting Policies (Continued)

require the exercise of judgment. When evaluating loan loss allowances, management reviews performing and non-performing loans separately.

Additions to the allowance are made by provisions charged to current operations. The allowance is decreased by charge-offs due to losses and increased by recoveries.

For commercial loans and commercial loans secured by real estate, losses are recognized at the time they are identified. For the period ended May 21, 2009 and for the fiscal year ended September 30, 2008, losses on one-to-four family residential loans were charged-off at the time they become 270 days past due. The amount of the loss equals the excess of the recorded investment in the loan over estimated the fair value of the collateral, less costs to sell. Previously, the Bank's policy was to recognize charge-offs as the losses on one-to-four family residential loans were identified at the completion of the foreclosure process and repossession of the collateral, which could be an undetermined length of time, generally in excess of 270 days.

During the fiscal year ended September 30, 2007, the Bank's policy was to fully reserve the entire balance of home equity lines when they reached 91 days delinquent, and recognize charge-offs as the losses were identified. Subsequent to September 30, 2007, the policy was revised to continue to fully reserve for loans at 91 days past due and require that loans that reach 270 days delinquent be charged-off.

Recoveries are reported at the time received, except for balances recoverable under mortgage insurance policies. Recoveries under mortgage insurance policies are recorded at the time collection of the claim from the mortgage insurance company is deemed probable. Claims are deemed probable of collection at approximately the time of repossession of the property and the filing of the claim. Recoveries under mortgage insurance policies are reported at the lesser of the amount of the loss for the related loan or the amount recoverable under the mortgage insurance policy, net of a valuation allowance for potential rejections of mortgage insurance claims.

Reserve for Recourse Liability for Loans Sold

The Bank has established a reserve for recourse liability for loans sold. The reserve is established and maintained at a level management deems prudent and adequate to cover probable losses under representations and warranties on loans securitized or sold. The reserve is based upon periodic evaluation of current information relating to the inherent risks, and takes into account historical experiences and trends, and current and projected market, industry, and economic conditions.

Unearned Discounts, Premiums, and Deferred Costs

Loan origination fees and certain direct loan origination costs are included in the carrying value of loans, and amortized over the contractual maturities of the loans as an adjustment to interest income. Prepayments of loans result in acceleration of the amortization of these items. Commitment fees and costs relating to commitments are recognized over the commitment period. If the commitment is subsequently exercised during the commitment period, the remaining unamortized commitment fee at the time of exercise is recognized over the life of the loan as an adjustment of yield.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 1 Summary of Significant Accounting Policies (Continued)

FHLB Stock and Other Earning Assets

The Bank's investment in the stock of the FHLB Atlanta is carried at cost since these are restricted securities. Periodically and as conditions warrant, the Bank reviews its investment in FHLB stock for impairment and adjusts the carrying value of the investment if it is determined to be impaired.

Office Properties and Equipment, net

Office properties and equipment are carried at cost less accumulated depreciation. Building and leasehold improvements are carried at amortized cost. The estimated useful life of newly constructed branch office buildings is 30 years. The lives of improvements to existing buildings are based on the lesser of the remaining life of the original building or the useful life of the improvement. Leasehold improvements are amortized over the shorter of the expected term of the lease at inception, considering options to extend that are reasonably assured, or their useful lives, whichever is shorter. The estimated useful life for furniture, fixtures and equipment is 7 - 10 years, and for computer equipment and software is 3 - 5 years. Depreciation is calculated based on the straight line method using the estimated service lives of the assets. Repair and maintenance costs are charged to operations as incurred, and improvements are capitalized.

Other Real Estate Owned

Property acquired through foreclosure or deed in lieu of foreclosure is initially recorded at estimated fair value, based on independent appraisal by third parties, less estimated costs to sell the property. Any excess of the loan balance over the fair value less estimated costs to sell the property is charged to the allowance for loan losses at the time of foreclosure. The carrying value is reviewed periodically and, when necessary, any decline in the value of the real estate less estimated cost to sell is charged to operations. Significant property improvements, which enhance the salability of the property, are capitalized to the extent that the carrying values do not exceed their estimated realizable values. Legal fees, maintenance and other direct costs of foreclosed properties are expensed as incurred. The amount the Bank ultimately recovers from foreclosed properties may differ substantially from the net carrying value of these assets because of future market factors that are beyond its control or because of changes in the Bank's strategy for sale of the properties.

Mortgage Servicing Rights and Transfers

Mortgage Servicing Rights

BankUnited recognizes mortgage servicing rights ("MSR") as an asset when it sells loans and retains the right to service those loans. The value of servicing assets is derived from estimated future revenues from contractually specified servicing fees, late charges, prepayment fees and other ancillary revenues that are expected to be more than adequate compensation to cover the costs associated with performing the service, and is generally expressed as a percent of the unpaid principal balance of the loans being serviced. Estimated future revenues are determined using the estimated future balance of the underlying mortgage loan portfolio, which, absent new purchases, declines over time from prepayments and cash flows. MSR assets are carried at the lower of aggregate cost or market and amortized in proportion to and over the period of estimated net servicing income. BankUnited charges

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 1 Summary of Significant Accounting Policies (Continued)

impairment as a direct write-down of its MSR assets. BankUnited does not currently utilize a valuation allowance for recognizing impairment of its MSR assets. BankUnited assesses the MSR assets for impairment on a disaggregated basis by strata based on the fair value of those assets.

The estimated fair value of mortgage servicing rights is estimated using various assumptions including future cash flows, market discount rates, as well as expected prepayment rates, servicing costs and other factors. Changes in these factors could result in impairment of the servicing asset and a charge against earnings. For purposes of evaluating impairment, the Bank stratifies its mortgage servicing portfolio on the basis of certain risk characteristics, including loan type. Impairment related to mortgage servicing rights is recorded in other non-interest income. Contractually specified servicing fees, late fees and other ancillary income related to the servicing of mortgage loans are recorded in other non-interest income.

Transfers

When BankUnited sells (transfers) mortgage loans for securitization it may acquire beneficial interests in the securities created as well as the rights to service the loans underlying the securities. Gains or losses on these transactions are recognized only for the portion of securities that are not acquired by BankUnited. Expenses related to the transaction are not deferred but are included in the gain or loss calculation. The book values of securities retained by BankUnited are based on their relative fair values at the date of transfer. BankUnited classifies retained securities as available for sale in its consolidated balance sheets, which are carried at fair value. BankUnited obtains fair values of its retained securities, at both the date of securitization and at each reporting date, from independent third parties.

Goodwill

Goodwill represents the excess of purchase price over the fair value of net assets acquired. The excess purchase price, which is related to banking acquisitions, is tested for impairment on an annual basis, or more often if events or circumstances indicate that there may be impairment. Adverse changes in the economic environment, declining operations, or other factors could result in a decline in the implied fair value.

The goodwill impairment test is performed in two phases during the fourth quarter of each fiscal year (performed as of May 21, 2009 for the period then ended). The first phase is used to identify potential impairment by comparing the fair value of the reporting unit with its carrying amount, including goodwill. The fair value of the reporting unit is determined based upon the present value of estimated future cash flows, using a discount rate that approximates the cost of capital in the industry in which the Bank operates. If the fair value is less than the carrying value, then the second phase is required to identify the amount of impairment by comparing the carrying amount of goodwill to its implied fair value. If the implied fair value is less than the carrying amount, a loss would be recognized in other non-interest expense to reduce the carrying amount to the implied fair value.

Performing an impairment test involves estimating the fair value of a reporting unit, which requires the Bank to make assumptions about future market conditions and its ability to perform as planned. When available, the Bank uses external data in its assumptions.

Note 1 Summary of Significant Accounting Policies (Continued)

Bank Owned Life Insurance

Bank owned life insurance is carried at an amount that could be realized under the insurance contract as of the date of the consolidated balance sheets. The change in contract value is recorded as an adjustment to the premiums paid in determining the expense or income to be recognized under the contract.

Income Taxes

BankUnited and its subsidiaries, other than BU REIT, Inc., are part of the consolidated federal income tax return of BKUNA. BKUNA, BankUnited and its subsidiaries filed separate income tax returns in various state jurisdictions through fiscal year 2006. Beginning with the taxable year ended September 30, 2007, BKUNA, BankUnited and its subsidiaries filed combined state income tax returns where combined filings are required for companies that are considered to be unitary with related entities. The Bank and its subsidiaries have a Tax Sharing Agreement with BKUNA, whereby the Bank pays to or receives cash from BKUNA as if the Bank filed separate tax returns. Any amount of current tax due to or receivable from BKUNA is included in their intercompany balance. Income taxes are accounted for on a separate return basis.

The Bank accounts for income taxes using the asset and liability method, recording deferred tax assets and liabilities by applying federal and state statutory tax rates currently in effect to its cumulative temporary differences. Temporary differences are differences between financial statement carrying amounts and the corresponding tax bases of assets and liabilities. Under the asset and liability method, income tax expense or benefit is comprised of the current and deferred tax provisions (benefit) for the year. The current tax provision (benefit) represents amounts that are payable to or receivable from taxing authorities based on current year taxable income or loss. The deferred tax provision (benefit) reflects changes in deferred tax assets and liabilities during the year as a result of current year operations.

Generally accepted accounting principles require that when determining the need for a valuation allowance against a deferred tax asset, management must assess both positive and negative evidence with regard to the realization of the deferred tax asset. To the extent available sources of taxable income are insufficient to absorb tax losses, a valuation allowance is necessary. Sources of taxable income for this analysis include prior years' carry-backs, the expected reversals of taxable temporary differences between book and tax income, prudent and feasible tax-planning strategies, and future taxable income. A valuation allowance is recognized for a deferred tax asset if, based on the available evidence, it is more likely than not that some portion or all of the deferred tax asset will not be realized. Subsequent changes in the tax laws require adjustment to these assets and liabilities with the cumulative effect included in income from continuing operations for the period in which the change was enacted. In computing the income tax provision, the Bank evaluates the technical merits of its income tax positions based on current legislative, judicial, and regulatory guidance.

The Bank recognizes a liability for uncertain tax positions. An uncertain tax position is defined as a position in a previously filed tax return or a position expected to be taken in a future tax return that is not based on clear and unambiguous tax law and which is reflected in measuring current or deferred income tax assets and liabilities for interim or annual periods. The Bank must recognize the tax benefit from an uncertain tax position only if it is more-likely-than-not that the tax position will be sustained

Note 1 Summary of Significant Accounting Policies (Continued)

on examination by the taxing authorities, based on the technical merits of the position. The Bank measures the tax benefits recognized based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution. The Bank recognizes interest and penalties related to uncertain tax benefits in its provision for income taxes. At May 21, 2009 and September 30, 2008 there were no significant uncertain tax positions.

Earnings (Loss) per Share

Basic earnings (loss) per share are computed by dividing income available to common stockholders by the weighted-average number of common shares outstanding during each period. Diluted earnings per share are based on the weighted-average number of common shares outstanding during the period, plus the dilutive effect of securities or other contracts to issue common stock ("common share equivalents"). Common share equivalents are excluded from the computation of earnings (loss) per share in periods in which they have an anti-dilutive effect. The Bank does not have securities which qualify as common share equivalents that could potentially dilute earnings per share; therefore the weighted average number of shares used to compute basic and diluted income (loss) per share is the same.

Segment Reporting

Public companies are required to report certain financial information about significant revenue-producing segments of the business for which such information is available and utilized by the chief operating decision maker. Specific information to be reported for individual operating segments includes a measure of profit and loss, certain revenue and expense items, and total assets. As a community-oriented financial institution, substantially all of BankUnited's operations involve the delivery of loan and deposit products to customers. Management makes operating decisions and assesses performance based on an ongoing review of these banking operations, which constitute BankUnited's only operating segment.

Derivative Instruments Held for Purposes Other than Trading

BankUnited enters into derivative contracts as a means of reducing its interest rate exposures. No derivatives are held for trading purposes. At inception these contracts are evaluated in order to determine if they qualify for hedge accounting. The hedging instrument must be highly effective in achieving offsetting changes in the hedge instrument and hedged item attributable to the risk being hedged. Any ineffectiveness, which arises during the hedging relationship is recognized in non-interest expense in the period in which it arises. All derivatives are valued at fair value and included in other assets or other liabilities. For cash flow hedges, the unrealized changes in fair value to the extent effective are recognized in other comprehensive income. The fair value of cash flow hedges related to forecasted transactions is recognized in non-interest expense in the period when the forecasted transaction occurs. Any ineffectiveness related to cash flow-hedges is recorded in interest expense.

Residential mortgage loan commitments related to loans to be sold and forward sales contracts for loans to be sold are accounted for as derivatives at fair value. The commitments and forward sales contracts are recorded as either assets or liabilities in the consolidated balance sheets with the changes in fair value recorded in non-interest expense.

Note 1 Summary of Significant Accounting Policies (Continued)

Accounting Policies Recently Adopted and Pending Adoption

As discussed in Note 1 to the consolidated financial statements, BankUnited was closed by the OTS on May 21, 2009. The impact of accounting policies pending adoption is dependent upon the method of application of those policies by New BankUnited management.

In April 2009, the FASB issued new guidance regarding the recognition and presentation of other-than-temporary impairments. This guidance amends the other-than-temporary impairment guidance for debt securities to make the guidance more operational and to improve the presentation and disclosure of OTTI on debt and equity securities in the financial statements. This guidance does not amend existing recognition and measurement guidance related to OTTI of equity securities.

In May 2009, the FASB issued new guidance regarding subsequent events. The new guidance establishes general standards of accounting for and disclosures of events that occur after the balance sheet date but before financial statements are issued or are available to be issued.

In June 2009, the FASB issued new guidance impacting transfers and servicing of financial assets. The objective of this guidance is to improve the relevance, representational faithfulness, and comparability of the information that a reporting entity provides in its financial reports about a transfer of financial assets; the effects of a transfer on its financial position, financial performance, and cash flows; and a transferor's continuing involvement in transferred financial assets. This guidance is effective for financial asset transfers occurring after December 31, 2009.

In June 2009, the FASB issued new guidance impacting consolidation of variable interest entities. The objective of this guidance is to improve financial reporting by enterprises involved with variable interest entities and to provide more relevant and reliable information to users of financial statements. This guidance was effective as of January 1, 2010.

Effective July 1, 2009, the Financial Accounting Standards Board ("FASB") established the Accounting Standards Codification ("ASC" or "Codification") as the source of authoritative GAAP for companies to use in the preparation of financial statements. The guidance contained in the Codification supersedes all existing accounting and reporting standards for public and non-public companies.

In August 2009, the FASB amended the measurement of liabilities at fair value and related disclosures. The amendment provides additional guidance on how to measure the fair value of a liability. The amendment clarifies that when estimating the fair value of a liability the entity is not required to include a separate adjustment to other inputs relating to the existence of a restriction that prevents the transfer of a liability. The amendment also clarifies that the quoted price in an active market at the measurement date of a liability when traded as an asset represents a Level 1 fair value measurements.

In September 2009, the FASB issued new guidance that creates a practical expedient to measure the fair value of an alternative investment that does not have a readily determinable fair value. This guidance also requires certain additional disclosures. This guidance was effective for interim and annual periods ending after December 15, 2009.

In February 2010, the FASB issued new guidance impacting fair value measurements and disclosures. The new guidance requires a gross presentation of purchases and sales of Level 3 activities and adds a new requirement to disclose transfers in and out of Level 1 and Level 2 measurements. The

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 1 Summary of Significant Accounting Policies (Continued)

guidance related to the transfers between Level 1 and Level 2 measurements is effective for the Bank on January 1, 2010. The guidance that requires increased disaggregation of the Level 3 activities is effective for the Bank on January 1, 2011.

In March 2010, the FASB issued new guidance impacting purchased receivables. The new guidance clarifies that a modification to a loan that is part of a pool of loans that was acquired with deteriorated credit quality should not result in the removal of the loan from the pool. This guidance is effective for any modifications of loans accounted for within a pool in the first interim or annual reporting period ending after July 15, 2010.

In July 2010, the FASB issued new guidance impacting the disclosure of financing receivables and the allowance for credit losses. The new guidance requires additional disclosures that will allow users to understand the nature of credit risk inherent in a company's loan portfolios, how that risk is analyzed and assessed in arriving at the allowance for credit losses, and changes and reasons for those changes in the allowance for credit losses. The new disclosures that relate to information as of the end of the reporting period is effective as of December 31, 2010, whereas the disclosures related to activity that occurred during the reporting periods is effective January 1, 2011.

Note 2 Investment Securities Available for Sale

Investment securities available for sale at May 21, 2009, and September 30, 2008 and 2007 are summarized as follows (in thousands):

	May 21, 2009			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. Treasury securities	$ 35,167	$ 261	$ (5)	$ 35,423
U.S. Government agencies and sponsored enterprises mortgage-backed securities	224,587	4,294	(1,002)	227,879
Other collateralized mortgage obligations	3,371	—	(1,586)	1,785
Mortgage pass-through certificates	323,829	—	(93,738)	230,091
Mutual funds and preferred stocks	18,241	230	(377)	18,094
State and Municipal obligations	22,671	33	(8)	22,696
Other debt securities	4,317	—	(1,341)	2,976
Total	$ 632,183	$ 4,818	$ (98,057)	$ 538,944

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 2 Investment Securities Available for Sale (Continued)

	September 30, 2008			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. Treasury securities	$ 45,567	$ 159	$ —	$ 45,726
U.S. Government agencies and sponsored enterprises mortgage-backed securities	256,392	798	(1,707)	255,483
Other collateralized mortgage obligations	3,495	—	(32)	3,463
Mortgage pass-through certificates	430,711	—	(36,390)	394,321
Mutual funds and preferred stocks	24,886	—	(404)	24,482
State and Municipal obligations	22,220	120	(80)	22,260
Other debt securities	10,752	—	(1,262)	9,490
Total	$ 794,023	$ 1,077	$ (39,875)	$ 755,225

	September 30, 2007			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. Treasury securities	$ 25,000	$ —	$ (23)	$ 24,977
U.S. Government agencies and sponsored enterprises mortgage-backed securities	214,198	274	(4,186)	210,286
Other collateralized mortgage obligations	4,284	—	(18)	4,266
Mortgage pass-through certificates	714,189	980	(13,498)	701,671
Mutual funds and preferred stocks	109,929	—	(2,771)	107,158
State and Municipal obligations	47,314	35	(731)	46,618
Other debt securities	4,000	—	(311)	3,689
Total	$ 1,118,914	$ 1,289	$ (21,538)	$ 1,098,665

Investment securities available for sale at May 21, 2009 by contractual maturity, and adjusted for anticipated prepayments, are shown below (in thousands):

	May 21, 2009	
	Amortized Cost	Fair Value
Due in one year or less	$ 159,964	$ 139,782
Due after one year through five years	272,567	229,362
Due after five years through ten years	92,254	77,346
Due after ten years	89,157	74,360
Mutual funds and preferred stock	18,241	18,094
Total	$ 632,183	$ 538,944

Based on BankUnited's proprietary model and assumptions, the weighted average life of the mortgage-backed securities portfolio as of May 21, 2009 was 4.87 years. The model results are based on assumptions that may differ from the eventual outcome.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 2 Investment Securities Available for Sale (Continued)

The Bank monitors its investment securities available for sale for OTTI. Impairment is evaluated on an individual security basis considering numerous factors, and their relative significance varies depending on the situation. The following table shows aggregate fair value and the aggregate amount by which cost exceeds fair value of investments that are in a loss position at May 21, 2009, and September 30, 2008 and 2007 (in thousands):

	May 21, 2009					
	Less than 12 Months		12 Months or Greater		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
Available for sale securities:						
U.S. Treasury securities	$ 5,005	$ (5)	$ —	$ —	$ 5,005	$ (5)
U.S. Government agencies and sponsored enterprises mortgage-backed securities	26,417	(946)	3,199	(56)	29,616	(1,002)
Other collateralized mortgage obligations	1,340	(1,464)	445	(122)	1,785	(1,586)
Mortgage pass-through certificates	10,123	(8,481)	176,440	(85,257)	186,563	(93,738)
Mutual funds and preferred stocks	17,307	(377)	—	—	17,307	(377)
State and municipal obligations	3,841	(8)	—	—	3,841	(8)
Other debt securities	1,676	(1,341)	—	—	1,676	(1,341)
Total	$ 65,709	$ (12,622)	$ 180,084	$ (85,435)	$ 245,793	$ (98,057)

	September 30, 2008					
	Less than 12 Months		12 Months or Greater		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
Available for sale securities:						
U.S. Government agencies and sponsored enterprises mortgage-backed securities	$ 132,031	$ (849)	$ 35,783	$ (858)	$ 167,814	$ (1,707)
Other collateralized mortgage obligations	—	—	660	(32)	660	(32)
Mortgage pass-through certificates	205,155	(22,251)	108,487	(14,139)	313,642	(36,390)
Mutual funds and preferred stocks	—	—	21	(404)	21	(404)
State and municipal obligations	8,980	(80)	—	—	8,980	(80)
Other debt securities	6,490	(1,262)	—	—	6,490	(1,262)
Total	$ 352,656	$ (24,442)	$ 144,951	$ (15,433)	$ 497,607	$ (39,875)

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 2 Investment Securities Available for Sale (Continued)

	September 30, 2007					
	Less than 12 Months		12 Months or Greater		Total	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
Available for sale securities:						
U.S. Treasury securities	$ —	$ —	$ 24,977	$ (23)	$ 24,977	$ (23)
U.S. Government agencies and sponsored enterprises mortgage-backed securities	—	—	155,478	(4,186)	155,478	(4,186)
Other collateralized mortgage obligations	—	—	959	(18)	959	(18)
Mortgage pass-through certificates	115,584	(5,205)	426,293	(8,293)	541,877	(13,498)
Mutual funds and preferred stocks	28,452	(2,771)	—	—	28,452	(2,771)
State and municipal obligations	5,580	(7)	27,638	(724)	33,218	(731)
Other debt securities	1,889	(111)	1,800	(200)	3,689	(311)
Total	$ 151,505	$ (8,094)	$ 637,145	$ (13,444)	$ 788,650	$ (21,538)

Management has completed an assessment of each security with unrealized losses for impairment. The following describes the basis under which the Bank has evaluated OTTI.

U.S. Government Agencies and Sponsored Enterprises Mortgage-backed Securities ("MBS"):

The unrealized losses associated with U.S. Government agencies and Sponsored Enterprises MBS are primarily driven by changes in interest rates and not due to credit losses. These securities do not have any OTTI given the explicit or implicit government guarantee. There was no OTTI as of May 21, 2009, and September 30, 2008 and 2007, respectively.

Other Collateralized Mortgage Obligations ("CMO") and Mortgage Pass-Through Certificates:

These securities are assessed for impairment using a third party developed model, and proprietary behavioral assumptions using default and loss severity levels, and Voluntary Annual Prepayment Rates ("VPRs"). Based upon its assessment of the unrealized losses associated with these securities, management concluded that OTTI of $55.6 million and $95.1 million existed during the period ended May 21, 2009 and the year ended September 30, 2008, respectively. There was no OTTI for the year ended September 30, 2007. The Bank considers the remaining unrealized losses in this portfolio as of May 21, 2009, and September 30, 2008 and 2007 to be temporary.

Mutual Funds and Preferred Stock:

The Bank evaluates its investment in mutual funds for OTTI based on the quoted market value per share. The preferred stock in the investment portfolio was issued by U.S. Government sponsored enterprises. Based upon its assessment of the securities, management concluded that OTTI of $6.6 million, $45.9 million, and $5.0 million existed during the period ended May 21, 2009, and the years ended September 30, 2008 and 2007, respectively. The Bank considers the remaining decline in the value of investment securities classified as available for sale as of May 21, 2009, and September 30, 2008 and 2007 to be temporary.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 2 Investment Securities Available for Sale (Continued)

State and Municipal Obligations:

The unrealized losses associated with securities of State and municipal obligations are primarily driven by changes in interest rates and are not due to the credit quality of the securities. These investments are primarily investment grade. The securities were generally underwritten in accordance with the Bank's own investment standards prior to the decision to purchase, without relying on a bond issuer's guarantee in making the investment decision. These investments will continue to be monitored as part of the Bank's ongoing impairment analysis, but are expected to perform in accordance with terms, even if the rating agencies reduce the credit rating of the bond issuers. As a result, the Bank expects to recover the entire amortized cost basis of these securities.

Other Debt Securities:

These securities are assessed for impairment using a third party developed model, and proprietary behavioral assumptions using default and loss severity levels, and Voluntary Annual Prepayment Rates ("VPRs"). Based upon its assessment of the securities, management concluded that OTTI of $6.4 million and $1.0 million existed during the period ended May 21, 2009 and the year ended September 30, 2008, respectively. There was no OTTI for other debt securities for the year ended September 30, 2007.

For the remaining unrealized losses, the Bank believes that these securities will recover their losses in the foreseeable future and management has the intent and ability to hold the securities until the price recovers.

The fair values of the Bank's investment securities could decline in the future if the underlying performance of the collateral for the residential MBS or other securities deteriorate and the Bank's credit enhancement levels do not provide sufficient protection to the Bank's contractual principal and interest. As a result, there is a risk that OTTI may occur in the future.

Proceeds from sales of investment securities were $9.8 million, $124.4 million, and $80.9 million for the period from October 1, 2008 through May 21, 2009, and for the fiscal years ended September 30, 2008, and September 30, 2007, respectively. Realized gains from these sales were $371.9 thousand, and $329.8 thousand for the fiscal years ended September 30, 2008, and September 30, 2007, respectively. There were no gains recognized during the period from October 1, 2008 through May 21, 2009. Realized losses from these sales were $38.9 thousand, $1.8 million, and $894.0 thousand for the period from October 1, 2008 through May 21, 2009, and for the fiscal years ended September 30, 2008, and September 30, 2007, respectively.

As part of the Bank's liquidity management strategy, the Bank pledges securities to secure borrowings from the FHLB. The Bank also pledges securities to collateralize public deposits and securities sold under agreements to repurchase and due to the Federal Reserve. The carrying value of pledged securities totaled $474.8 million, $667.7 million, and $302.6 million at May 21, 2009, September 30, 2008, and September 30, 2007, respectively.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 3 FHLB Stock

BankUnited, as a member institution of the Federal Home Loan Bank of Atlanta, is required to own capital stock in the FHLB. The required stock ownership is based generally on (i) membership requirement and (ii) activity based requirement related to the levels that BankUnited borrows from the FHLB. In connection therewith, the Bank held stock with the aggregate carrying value of $243.3 million, $262.6 million, and $305.4 million as of May 21, 2009, September 30, 2008, and September 30, 2007, respectively. The stock is restricted and can only be repurchased by the FHLB. No market exists for this stock and there is no quoted market price. Redemption of FHLB stock has historically been at par value, which is BankUnited's carrying value. The redemption of any excess stock BankUnited holds is at the discretion of the FHLB.

In evaluating OTTI of the FHLB stock, the Bank considered the most recent financial results, the resumption of dividends on common stock in the second quarter of 2009 and information from credit rating agencies. Management believes that there is no OTTI in its investment in FHLB stock as of May 21, 2009, September 30, 2008 and September 30, 2007.

Note 4 Loans Receivable

At May 21, 2009, September 30, 2008, and September 30, 2007 loans receivable consisted of the following (amounts in thousands):

	May 21, 2009		September 30, 2008		September 30, 2007	
	Total	Percent of Total	Total	Percent of Total	Total	Percent of Total
Real Estate Loans:						
1-4 single family residential	$ 8,993,077	91.9%	$ 9,916,696	88.2%	$ 10,693,832	85.1%
Home equity loans and lines of credit	505,642	5.2%	486,467	4.3%	420,386	3.3%
Multi-family	129,481	1.3%	144,324	1.3%	120,058	1.0%
Commercial real estate	594,877	6.1%	600,261	5.3%	496,556	4.0%
Construction	187,333	1.9%	171,213	1.5%	146,557	1.2%
Land	219,736	2.2%	224,723	2.0%	303,294	2.4%
Total real estate loans	10,630,146	108.6%	11,543,684	102.6%	12,180,683	97.0%
Other Loans:						
Commercial	181,484	1.9%	197,985	1.8%	187,951	1.5%
Consumer	12,179	0.1%	12,740	0.1%	16,228	0.1%
Total commercial and consumer loans	193,663	2.0%	210,725	1.9%	204,179	1.6%
Total loans held in portfolio	10,823,809	110.6%	11,754,409	104.5%	12,384,862	98.6%
Unearned discounts, premiums and deferred costs, net	190,406	1.9%	210,875	1.9%	235,454	1.9%
Allowance for loan losses	(1,227,173)	(12.5)%	(715,917)	(6.4)%	(58,623)	(0.5)%
Total loans held in portfolio, net	$ 9,787,042	100.0%	$ 11,249,367	100.0%	$ 12,561,693	100.0%

Note 4 Loans Receivable (Continued)

The following table provides a detail of loans to customers for states with balances of 4.4% of the portfolio and higher (dollars in millions):

	May 21, 2009		September 30, 2008		September 30, 2007	
	Amount	Percent of Total	Amount	Percent of Total	Amount	Percent of Total
Florida	$ 6,928	63.7%	$ 7,340	62.4%	$ 7,710	61.4%
California	723	6.6%	824	7.0%	872	6.9%
Arizona	515	4.7%	611	5.2%	668	5.3%
Illinois	505	4.6%	544	4.6%	626	5.0%
New Jersey	480	4.4%	518	4.4%	553	4.4%

As part of the Bank's liquidity management strategy, the Bank pledges loans to secure FHLB borrowings. Pledged loans must meet specific requirements of eligibility and the unpaid principal balance is discounted based on criteria established by the FHLB. As of May 21, 2009, the Bank had pledged real estate loans with an unpaid principal balance of approximately $7.6 billion ($4.6 billion in lendable collateral value) for advances from the FHLB. As of September 30, 2008, the Bank had pledged real estate loans with an unpaid principal balance of approximately $8.5 billion ($6.1 billion in lendable collateral value) for advances from the FHLB. As of September 30, 2007, the Bank had pledged real estate loans with an unpaid principal balance of approximately $9.1 billion ($7.2 billion in lendable collateral value) for advances from the FHLB.

The following table presents total 1-4 single family residential loans categorized between fixed rate mortgages and adjustable rate mortgages ("ARMs") as of May 21, 2009, and September 30, 2008 and September 30, 2007 (dollars in thousands):

	May 21, 2009		September 30, 2008		September 30, 2007	
	Amount	Percent of Total	Amount	Percent of Total	Amount	Percent of Total
1-4 single family residential loans:						
Fixed rate loans	$ 1,774,598	19.7%	$ 1,636,063	16.5%	$ 1,574,004	14.7%
Adjustable rate loans (ARM):						
Monthly payment option(1)	3,876,584	43.1%	5,494,871	55.4%	6,496,835	60.8%
Select-My-Payment(1)	808,506	9.0%	1,219,589	12.3%	1,100,020	10.3%
Non option ARM	2,533,389	28.2%	1,566,173	15.8%	1,522,973	14.2%
Total(2)	$ 8,993,077	100.0%	$ 9,916,696	100.0%	$ 10,693,832	100.0%

(1) As of May 21, 2009, payment option loans with a balance of $3.8 billion, representing 78.9% of the payment option portfolio, were negatively amortizing and approximately $265.3 million, or 5.6%, of the total payment option portfolio resulted from negative amortization. As of September 30, 2008, payment option loans with a balance of $5.9 billion, representing 88.2% of the payment option portfolio, were negatively amortizing and approximately $374.5 million, or 5.6%, of the total payment option portfolio results were from negative amortization. As of September 30, 2007, payment option loans with a balance of $6.7 billion, representing 89% of the payment option

Note 4 Loans Receivable (Continued)

portfolio, were negatively amortizing and approximately $270.2 million, or 3.6%, of the total payment option portfolio results were from negative amortization. These loans are subject to interest rate caps.

(2) Excluding deferred costs, unearned discounts and premiums and allowance for loan losses.

The following table summarizes changes in the allowance for loan losses for the period from October 1, 2006 through May 21, 2009 (in thousands):

Balance as of September 30, 2006	$ 36,378
Provision	31,500
Charge-offs	(11,050)
Recoveries	1,795
Balance as of September 30, 2007	58,623
Provision	856,374
Charge-offs	(230,309)
Recoveries	31,229
Balance as of September 30, 2008	715,917
Provision	919,139
Charge-offs	(449,010)
Recoveries	41,127
Balance as of May 21, 2009	$ 1,227,173

The total allowance reflects management's estimate of credit losses inherent in the loan portfolio at the balance sheet date. The computation of the allowance for loan losses includes elements of judgment and high level of subjectivity. The Bank considers the allowance for loan losses to be adequate to cover credit losses inherent in the loan portfolio at May 21, 2009, September 30, 2008, and September 30, 2007.

Certain loans have been classified as impaired based on the Bank's inability to collect all amounts due under the contractual terms of the loan. The following table shows the Bank's investment in

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 4 Loans Receivable (Continued)

impaired and non-accrual loans as of and for the period ended May 21, 2009 and September 30, 2008 and September 30, 2007 (in thousands):

	May 21, 2009	September 30, 2008	September 30, 2007
Impaired loans on non-accrual:			
Real Estate Loans:			
1-4 single family residential:			
Payment option	$ 1,674,325	$ 968,647	$ 149,749
Non-payment option	453,743	153,125	22,894
Total one-to-four family(1)	2,128,068	1,121,772	172,643
Home equity loans and lines of credit	27,263	8,866	2,251
Multi-family	21,544	10,028	—
Commercial real estate	2,888	—	5,593
Construction	78,403	58,549	—
Land	94,493	38,465	—
Total real estate loans	2,352,659	1,237,680	180,487
Other Loans:			
Commercial	763	65	232
Consumer	23	30	91
Total commercial and consumer loans	786	95	323
Total non-accrual loans	2,353,445	1,237,775	180,810
Impaired Loans and still accruing:			
Real Estate Loans:			
1-4 single family residential(2)	804,218	181,911	—
Commercial real estate	162,937	70,670	8,651
Construction	1,379	—	—
Land	22,780	8,672	9,697
Total real estate loans	991,314	261,253	18,348
Other Loans:			
Commercial	13,271	1,302	907
Consumer	554	550	516
Total commercial and consumer loans	13,825	1,853	1,423
Other loans past due 90 days and still accruing	—	71	493
Total non-accrual and impaired loans	$ 3,358,584	$ 1,500,952	$ 201,074

(1) Included in non-accrual loans at May 21, 2009 and September 30, 2008 were $154.9 million and $43.3 million, respectively, of troubled debt restructured loans. There were no troubled debt restructured loans included in non-accrual loans at September 30, 2007.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 4 Loans Receivable (Continued)

(2) The amount of impaired 1-4 single family residential loans at May 21, 2009 and September 30, 2008 represents troubled debt restructured loans.

Had loans in non-accrual status been in accrual, the Bank would have recognized additional interest income of approximately $88.9 million, $85.9 million and $10.0 million for the period ended May 21, 2009, September 30, 2008, and September 30, 2007, respectively.

Interest income recognized on non-accrual loans amounted to $6.0 million, $32.0 million, and $6.2 million for the period ended May 21, 2009, September 30, 2008, and September 30, 2007, respectively.

The following table presents information related to the Bank's impaired loans and allocated reserves as of May 21, 2009 and September 30, 2008 and 2007 (in thousands):

	May 21, 2009		September 30, 2008		September 30, 2007	
	Outstanding Principal	Specific Reserves	Outstanding Principal	Specific Reserves	Outstanding Principal	Specific Reserves
Impaired loans with specific reserves:						
1-4 single family residential	$ 1,464,787	$ 381,013	$ 967,573	$ 263,136	$ 923	$ 407
Home equity loans and lines of credit	12,944	12,944	7,672	7,672	—	—
Commercial real estate	188,373	133,683	107,042	25,147	—	—
Commercial	1,755	1,272	160	160	232	232
Total	1,667,860	528,913	1,082,446	296,115	1,155	639
Impaired loans without specific reserves:						
1-4 single family residential	1,467,498	—	336,110	—	171,720	—
Home equity loans and lines of credit	14,319	—	1,194	—	2,251	—
Commercial real estate	196,051	—	79,342	—	23,941	—
Commercial	12,279		1,207		907	
Consumer	577	—	580	—	607	—
Loans past due 90 days and still accruing	—		71		493	
Total	1,690,724	—	418,505	—	199,919	—
Total impaired loans	$ 3,358,584	$ 528,913	$ 1,500,952	$ 296,115	$ 201,074	$ 639

Specific reserves related to troubled debt restructured loans amounted to $56.5 million, and $24.7 million at May 21, 2009 and September 30, 2008, respectively.

Loans Held For Sale

Loans held for sale are accounted for under the lower of cost or fair value method. Lower of cost or fair value adjustments are recorded in earnings under non-interest income. During the period from

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 4 Loans Receivable (Continued)

October 1, 2008 through May 21, 2009, the Bank transferred $7.5 million of loans from loans held in portfolio to loans held for sale and recorded a loss of $6 thousand, which is included in other non-interest income. During the years ended September 30, 2008 and September 30, 2007, the Bank transferred $20.0 million, and $37.8 million, respectively, of loans from loans held for sale to loans held in portfolio and recorded a loss of $2.3 million, and $0.0 million, respectively, which is included in other non-interest income.

Note 5 Servicing and Transfers of Mortgage Loans

Servicing

As of May 21, 2009, September 30, 2008, and September 30, 2007 the Bank had mortgage servicing rights ("MSR") with a carrying amount of $1.1 million, $27.1 million and $20.6 million, respectively. MSRs are included with Other Assets on the consolidated balance sheet. The Bank accounted for MSRs using the amortization method (i.e., lower of cost or fair value) with impairment recognized as a reduction to non-operating income.

On November 17, 2008, Freddie Mac notified the Bank that they were terminating the Seller/Servicer Eligibility Contract with the Bank effective as of November 17, 2008. The Bank had the right to market the servicing rights until April 2009. Since the Bank was unable to sell the servicing rights, the termination of this agreement required the Bank to write-off the recorded Freddie Mac servicing asset, which totaled $2.3 million, at February 28, 2009. On March 17, 2009, the Bank provided to Fannie Mae a notification whereby it voluntary terminated the Mortgage Selling and Servicing Contract between the Bank and Fannie Mae, effective as of April 1, 2009. The voluntarily termination required the Bank to write-off the recorded Fannie Mae servicing asset, which totaled $15.8 million, at February 28, 2009. The termination of these contracts is consistent with the Bank's strategy of no longer being active in the wholesale residential lending business. At May 21, 2009, the remaining carrying value of the MSR of $1.1 million, which approximates fair value, relates primarily to the servicing of remaining private label mortgage loans.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 5 Servicing and Transfers of Mortgage Loans (Continued)

The following table provides activity related to the Bank's MSR assets from October 1, 2006 through May 21, 2009:

	MSR From Loan Sales	MSR Securitization	Total MSR
		(in thousands)	
Balance October 1, 2006	$ 15,628	$ 4,631	$ 20,259
New MSR assets from loan sales	4,994	—	4,994
Amortization of MSR assets	(2,263)	(1,066)	(3,329)
Impairment of MSR assets	(659)	(634)	(1,293)
Balance September 30, 2007	$ 17,700	$ 2,931	$ 20,631
Fair Value at September 30, 2007	$ 18,100	$ 2,931	$ 21,031
Balance October 1, 2007	$ 17,700	$ 2,931	$ 20,631
New MSR assets from loan sales	14,885	—	14,885
MSR servicing sales	(14)	—	(14)
Amortization of MSR assets	(4,026)	(1,365)	(5,391)
Impairment of MSR assets	(3,043)	—	(3,043)
Balance September 30, 2008	$ 25,502	$ 1,566	$ 27,068
Fair Value at September 30, 2008	$ 26,646	$ 1,973	$ 28,619
Balance October 1, 2008	$ 25,502	$ 1,566	$ 27,068
New MSR assets from loan sales	668	—	668
MSR servicing sales	—	—	—
Amortization of MSR assets	(1,435)	(161)	(1,596)
Impairment of MSR assets	(24,449)	(550)	(24,999)
Balance May 21, 2009	$ 286	$ 855	$ 1,141

Transfers

On September 26, 2005, the Bank sold mortgage loans for securitization to a trust ("BUMT 2005-1") in a sale transaction. The BUMT 2005-1 securities are held in a trust established by a third party for the purpose of issuing securities arising from the securitization of one-to-four family residential mortgage loans originated by the Bank. The Bank's Trust 2005-1 is not controlled by, or affiliated with the Bank or any of its subsidiaries. The investors and the securitization trust have no recourse to the Bank's assets for failure of debtors to pay when due.

While the Bank does not retain credit risk on the loans it has securitized, it has potential liability, under representations and warranties it made to the trust purchasing the loans. Upon securitization of the mortgage loans, the Bank acquired subordinated securities, including an interest only strip (collectively retained securities), and recognized the value of the rights to servicing the underlying loans (MSRs). The Bank has classified the retained securities as available for sale.

Considerable judgment is required to determine the fair values of the Bank's retained securities. Unlike government securities and other highly liquid investments, the precise market value of retained securities cannot be readily determined because these assets are not actively traded in stand-alone

Note 5 Servicing and Transfers of Mortgage Loans (Continued)

markets. Accordingly, the Bank utilizes independent third parties specializing in secondary market transactions to assist in the determination of the fair values of its retained securities through the use of discounted cash flow models. BankUnited values these securities using third party proprietary pricing models that incorporate observable and unobservable inputs. Unobservable inputs include BankUnited's expectation of projected prepayment speeds, discount rates and projected loss severity and default rates. The estimated fair value of the Bank's retained securities amounted to $27.2 million, $75.3 million and $179.0 million as of May 21, 2009 and September 2008 and 2007, respectively.

At May 21, 2009, September 30, 2008 and September 30, 2007, BankUnited was servicing loans for others of approximately $43.7 million, $2.2 billion and $1.6 billion, respectively.

Note 6 Office Properties and Equipment, net

Included in other assets are office properties and equipment, net. At May 21, 2009, September 30, 2008 and September 30, 2007, office properties and equipment, net are summarized as follows (in thousands):

	May 21, 2009	September 30, 2008	September 30, 2007
	(Dollars in thousands)		
Branch buildings	$ 3,738	$ 3,733	$ 3,530
Leasehold Improvements	47,481	47,515	44,330
Furniture, fixtures and equipment	31,679	32,551	35,491
Computer equipment and software	38,037	37,318	31,440
Total	120,935	121,117	114,791
Less: accumulated depreciation	(70,344)	(62,869)	(48,043)
Office properties and equipment, net	$ 50,591	$ 58,248	$ 66,748

Depreciation expense was $7.8 million, $15.3 million and $13.0 million, for the period from October 1, 2008 through May 21, 2009, and the fiscal years ended September 30, 2008 and 2007, respectively.

Total rental expense on operating leases for the period from October 1, 2008 through May 21, 2009, and for the fiscal years ended September 30, 2008 and September 30, 2007, was $10.9 million, $16.2 million, and $16.1 million, respectively.

The Bank and its subsidiaries lease premises and equipment under cancelable and non-cancelable leases, some of which contain renewal options under various terms. The leased properties are used primarily for banking purposes.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 6 Office Properties and Equipment, net (Continued)

As of May 21, 2009, the Bank had entered into non-cancelable operating leases with approximate minimum future rentals as follows (in thousands):

Periods Ending May 21,	
2010	$ 12,442
2011	11,262
2012	10,039
2013	8,457
2014	6,159
Thereafter through 2026	9,052
Total	$ 57,411

Note 7 Other Real Estate Owned

An analysis of other real estate owned for the period from October 1, 2006 through May 21, 2009, as follows (in thousands):

Balance as of September 30, 2006	$ 729
Transfers from loan portfolio, net	30,528
Transfers from other assets	51
Sales	(3,562)
Impairment	(14)
Balance as of September 30, 2007	27,732
Transfers from loan portfolio, net	202,520
Transfers to other assets	(50)
Sales	(72,129)
Impairment	(22,749)
Balance as of September 30, 2008	135,324
Transfers from loan portfolio, net	209,694
Sales	(128,597)
Impairment	(38,742)
Balance as of May 21, 2009	$ 177,679

Note 8 Deposits

At May 21, 2009, the Bank had outstanding non-interest bearing deposits of $247.6 million and interest bearing deposits of $8.3 billion. At September 30, 2008, the Bank had outstanding non-interest bearing deposits of $293.3 million and interest bearing deposits of $7.9 billion. At September 30, 2007, the Bank had outstanding non-interest bearing deposits of $557.9 million and interest bearing deposits of $6.7 billion. Deposits as of May 21, 2009 and September 30, 2008 include brokered time deposits amounting to $348.4 million and $773.9 million, respectively. There were no brokered deposits as of September 30, 2007.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 8 Deposits (Continued)

The following table sets forth average amounts and weighted average rates paid on each of the Bank's deposit categories for the period ended May 21, 2009, September 30, 2008, and September 30, 2007 (amounts in thousands):

	May 21, 2009		September 30, 2008		September 30, 2007	
	Amount	Rate	Amount	Rate	Amount	Rate
Transaction accounts, demand:						
Non-interest bearing	$ 282,215		$ 441,570		$ 503,353	
Interest bearing	164,669	0.85%	199,942	1.07%	232,451	1.66%
Money market accounts	784,043	3.11%	548,812	3.65%	280,864	4.63%
Savings accounts	701,412	2.78%	1,324,916	3.59%	1,456,083	4.59%
Certificates of deposit	6,611,919	4.04%	4,929,198	4.53%	4,325,561	5.06%
Total average deposits	$ 8,544,258	3.66%	$ 7,444,438	3.93%	$ 6,798,312	4.45%

Time deposit accounts with balances of $100,000 or more totaled approximately $2.8 billion at May 21, 2009, including $865.1 million with balances of $250,000 or more. Time deposits accounts with balances of $100,000 or more totaled approximately $3.0 billion at September 30, 2008, including $1.3 billion with balances of $250,000 or more. Time deposit accounts with balances of $100,000 or more totaled approximately $2.1 billion at September 30, 2007, including $676.5 million with balances of $250,000 or more.

The following table sets forth maturities of time deposits equal to or greater than $100,000 as of May 21, 2009, September 30, 2008, and September 30, 2007 (in thousands):

	May 21, 2009	September 30, 2008	September 30, 2007
Three months or less	$ 826,504	$ 628,755	$ 543,137
Over 3 through 6 months	593,413	726,180	844,072
Over 6 through 12 months	1,070,345	853,366	402,476
Over 12 through 24 months	195,730	653,815	95,475
Over 24 through 36 months	109,398	118,840	119,232
Over 36 through 48 months	3,427	42,191	55,000
Over 48 through 60 months	526	754	31,321
Over 60 months	—	—	—
Total	$ 2,799,343	$ 3,023,901	$ 2,090,713

Included in the table above are $211.9 million, $259.4 million, and $293.4 million of time deposits issued to the State of Florida which are collateralized by a letter of credit of $325 million, $345 million and $155 million at May 21, 2009, September 30, 2008, and September 30, 2007, respectively.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 8 Deposits (Continued)

Interest expense on deposits for the period from October 1, 2008 through May 21, 2009, and the fiscal years ended September 30, 2008 and September 30, 2007, is as follows (in thousands):

	May 21, 2009	September 30, 2008	September 30, 2007
Transaction accounts	$ 895	$ 2,146	$ 3,858
Money market	15,576	20,017	13,008
Savings accounts	12,433	47,583	66,580
Certificates of deposit	170,666	223,109	218,889
Total	$ 199,570	$ 292,855	$ 302,335

On October 3, 2008, the Emergency Economic Stabilization Act ("EESA") of 2008 became effective. This legislation was passed in response to the financial crisis affecting the banking system and financial markets and threats to investment banks and other financial institutions. The EESA temporarily raises the basic limit on federal deposit insurance coverage from $100,000 to $250,000 per depositor until December 31, 2009. The legislation did not increase coverage for retirement accounts and it continues to be $250,000.

On October 14, 2008, the FDIC announced the Temporary Liquidity Guarantee Program ("TLGP") to strengthen confidence and encourage liquidity in the banking system. The new program provides full deposit insurance coverage for non-interest bearing deposit transaction accounts in FDIC-insured institutions, regardless of the dollar amount. These are mainly payment-processing accounts, such as payroll accounts used by businesses, which frequently exceed the maximum limit of $250,000.

Note 9 Securities Sold under Agreements to Repurchase

The following sets forth information concerning repurchase agreements for the period from October 1, 2008 through May 21, 2009, and the fiscal years ended September 30, 2008 and September 30, 2007 (amounts in thousands):

	May 21, 2009	September 30, 2008	September 30, 2007
Maximum amount outstanding at any month end during the period	$ 48,114	$ 177,218	$ 829,435
Average amount outstanding during the period	$ 22,732	$ 114,368	$ 377,014
Weighted average interest rate for the period	0.40%	3.00%	5.29%

Interest expense on securities sold under agreements to repurchase aggregated $58 thousand, $3.4 million and $19.9 million for the period from October 1, 2008 through May 21, 2009, and the fiscal years ended September 30, 2008 and September 30, 2007, respectively.

As of May 21, 2009, September 30, 2008, and September 30, 2007, the Bank had pledged mortgage-backed securities with a fair value of approximately $30.4 million, $79.4 million and $143.0 million, respectively, for securities sold under agreements to repurchase. The agreements are overnight agreements with an average interest rate of 0.00%, 0.99%, and 4.58% at May 21, 2009, September 30, 2008, and September 30, 2007, respectively.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 10 FHLB Advances

Advances from the FHLB outstanding as of May 21, 2009 incur interest and have contractual repayments as follows (amounts in thousands):

	Amount	Range of Interest Rates	
Repayable During Period Ending May 21,			
2010	$ 2,300,000	2.52%	5.24%
2011	605,000	2.47%	4.97%
2012	235,000	2.81%	4.36%
2013	750,000	3.09%	4.83%
2014	—	—	—
2015	100	0.00%	0.00%
2016	364,250	0.00%	4.79%
2017	—	—	—
2018	175,000	2.76%	2.95%
Total Carrying Value	$ 4,429,350		

The terms of a security agreement with the FHLB include a specific assignment of collateral that requires the maintenance of qualifying first mortgage, commercial real estate loans, home equity lines of credit and mortgage-backed securities as pledged collateral with unpaid principal amounts at least equal to 100% of the FHLB advances, when discounted at various percentages of their unpaid principal balance. As of May 21, 2009, September 30, 2008 and September 30, 2007, the Bank had pledged investment securities and mortgage loans with an aggregate carrying amount of approximately $7.9 billion, $8.8 billion and $9.1 billion, respectively, for advances from the FHLB.

Interest expense for FHLB Advances was $133.8 million, $259.0 million and $280.8 million, for the period from October 1, 2008 through May 21, 2009, and the fiscal years ended September 30, 2008 and 2007, respectively.

Note 11 Derivatives and Hedging Activities

The Bank uses derivative instruments as part of its interest rate risk management activities to reduce risks associated with its loan origination and borrowing activities. Derivatives used for interest rate risk management include loan commitments and forward contracts that relate to the pricing of specific on-balance sheet instruments and forecasted transactions. The Bank recognizes all derivatives as either assets or liabilities on the consolidated balance sheets and reports them at fair value with realized and unrealized gains and losses included in either earnings or in other comprehensive income, depending on the purpose for which the derivative is held and whether the derivative qualifies for hedge accounting.

Loan Commitments

The Bank commits to originate one-to-four family residential mortgage loans with potential borrowers at specified interest rates for short periods of time, usually thirty days. If potential borrowers meet underwriting standards, these loan commitments obligate the Bank to fund the loans, but do not obligate the potential borrowers to accept the loans. If the borrowers do not allow the commitments to expire, the loans are funded, and either placed into the Bank's loan portfolio or held for sale. Based on

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 11 Derivatives and Hedging Activities (Continued)

historical experience, the interest rate environment, and the underlying loan characteristics, the Bank estimates the amount of commitments that will ultimately become loans held for sale and accounts for those as derivatives during the commitment period. As derivatives, the changes in the fair value of the commitments are recorded in current earnings under other non-interest expense with an offset to the consolidated balance sheets in other liabilities. Fair values are based solely on the relationship of observable market interest rates and are calculated with the assistance of third parties.

Forward Sales Contracts

The Bank enters into forward sales contracts in order to economically hedge fair value exposure of loan commitments and fair value exposure to a change in interest rates of loans held for sale. Fair value changes of forward sales contracts, not eligible for hedge accounting, are recorded in earnings under non-interest expense with an offset in other liabilities. Hedge accounting was not applied to these contracts in the period from October 1, 2007 through May 21, 2009. Loans held for sale do not include any payment option loans.

Interest Rate Swaps

The Bank had an interest rate swap agreement that expired during the year ended September 30, 2007. As of May 21, 2009 and September 30, 2008, the Bank had no interest rate swap agreements outstanding.

The following table summarizes certain information with respect to the use of derivatives and their impact on the Bank's consolidated statements of operations during the period ended May 21, 2009 and the years ended September 30, 2008 and September 30, 2007:

	May 21, 2009	September 30, 2008	September 30, 2007
		(in thousands)	
Interest Rate Swaps			
Net gain (loss) recorded in non-interest income related to swaps	$ —	$ 14	$ (327)
Other Derivatives(1)			
Gain (loss) recorded in non-interest expense related to loan commitments	$ 183	$ 97	$ (9)
Loss recorded in non-interest expense related to forward sales contracts	$ (435)	$ (627)	$ (763)
Total net loss recorded in earnings due to derivatives	$ (252)	$ (516)	$ (1,099)

(1) BankUnited uses other derivatives to economically hedge interest rate risk, but they do not qualify for hedge accounting treatment. As of September 30, 2008 and September 30, 2007, $16 thousand and $4 thousand, respectively, were reclassified out of other comprehensive income as a charge to expense from cash flow hedges. There were no such reclassifications for the period ended May 21, 2009.

Note 12 Regulatory Capital

See Note 1 for a discussion of regulatory matters affecting regulatory capital.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 12 Regulatory Capital (Continued)

On September 5, 2008, BankUnited received notification that the OTS reclassified the Bank's regulatory capital status from well-capitalized to adequately capitalized due to the deterioration in the Bank's non-traditional mortgage loan portfolio, the concentration of risk associated with that portfolio, and a resultant need for significant additional capital. As of May 21, 2009, the Bank had negative regulatory capital which created significant capital deficiencies in Tier 1 leverage, Tier 1 risk-based and total risk-based capital ratios.

BankUnited's regulatory capital levels as of September 30, 2008 and September 30, 2007 were as follows (amounts in thousands):

	September 30, 2008					
	Actual		Required to be considered well-capitalized(1)		Required to be considered adequately capitalized	
	Ratio	Amount	Ratio	Amount	Ratio	Amount
Tier 1 leverage ratio	2.89%	$ 406,599	5.00%	$ 703,458	4.00%	$ 562,767
Tier 1 risk-based capital ratio	4.90%	403,795	6.00%	494,443	4.00%	329,629
Total risk based capital ratio	6.21%	512,446	10.00%	825,195	8.00%	660,156

	September 30, 2007					
	Actual		Required to be considered well-capitalized		Required to be considered adequately capitalized	
	Ratio	Amount	Ratio	Amount	Ratio	Amount
Tier 1 leverage ratio	7.84%	$ 1,183,375	5.00%	$ 754,703	4.00%	$ 603,763
Tier 1 risk-based capital ratio	14.64%	1,173,788	6.00%	481,061	4.00%	320,707
Total risk based capital ratio	15.37%	1,232,706	10.00%	802,021	8.00%	641,617

(1) As defined by OTS Banking Regulations, before consideration of requirements imposed by the Orders as discussed in Note 1.

No capital distributions were made by the Bank during the period ended May 21, 2009, and for the fiscal years ended September 30, 2008 and 2007.

In each of the fiscal years ended September 30, 2008 and September 30, 2007, BKUNA, the Bank's sole shareholder at that time, contributed $80 million, in additional capital to the Bank.

Note 13 Benefit Plans

BankUnited 401(k) Plan

The Bank sponsors a 401(k) profit sharing plan (the "401(k) Plan") for eligible employees. Under the terms of the 401(k) Plan, eligible employees may contribute up to the limits set by law. Employees are eligible to participate in the plan after one month of service and the Bank's matching contributions begin vesting after two years of service at the rate of 25% per year up to 100% by the fifth year of service. The Bank makes matching contributions to the 401(k) Plan equal to 75% of the eligible employee pre-tax contribution up to 6% of salary. The matching contributions are made in the form of cash and allocated to the 401(k) Plan participants' investments. For the period from October 1, 2008 through May 21, 2009 and for the fiscal years ended September 30, 2008 and September 30, 2007, the

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 13 Benefit Plans (Continued)

Bank made matching contributions of approximately $1.4 million, $2.4 million and $2.1 million, respectively.

Note 14 Income Taxes

The components of the provision (benefit) for income taxes for the period from October 1, 2008 through May 21, 2009 and for the fiscal years ended September 30, 2008 and September 30, 2007, is as follows (in thousands):

	May 21, 2009	September 30, 2008	September 30, 2007
Current income tax expense (benefit):			
Federal	$ (50,306)	$ (15,976)	$ 55,196
State	—	—	46
Total current income tax expense (benefit):	(50,306)	(15,976)	55,242
Deferred income tax expense (benefit):			
Federal	(382,587)	(320,645)	(175)
State	(19,787)	(30,890)	—
Valuation allowance	452,680	273,049	—
Total deferred income tax expense (benefit)	50,306	(78,486)	(175)
Total income tax expense (benefit)	$ —	$ (94,462)	$ 55,067

A reconciliation of the expected income tax expense (benefit) at the statutory federal income tax rate of 35% to the Bank's actual income tax expense and effective tax rate for the period from October 1, 2008 through May 21, 2009 and for the fiscal years ended September 30, 2008 and September 30, 2007, is as follows (amounts in thousands):

	May 21, 2009		September 30,			
			2008		2007	
	Amount	%	Amount	%	Amount	%
Tax expense (benefit) at federal income tax rate	$ (431,808)	35.0%	$ (334,260)	35.0%	$ 57,601	35.0%
Increases (decreases) resulting from:						
State tax, net of federal benefit	(19,787)	1.6%	(30,890)	3.2%	46	0.0%
Tax exempt income	(1,184)	0.2%	(2,017)	0.2%	(2,737)	(1.7)%
Other	99	0.0%	(344)	0.1%	157	0.1%
Valuation allowance	452,680	(36.7)%	273,049	(28.6)%	—	0.0%
Total	$ —	0.1%	$ (94,462)	9.9%	$ 55,067	33.4%

Deferred income tax assets and liabilities result from temporary differences between assets and liabilities measured for financial reporting purposes and for income tax return purposes. These assets and liabilities are measured using the enacted tax rates and laws that are currently in effect and are reported net in the accompanying Consolidated Balance Sheets. The significant components of the net

Note 14 Income Taxes (Continued)

deferred tax assets and liabilities at May 21, 2009, September 30, 2008, and September 30, 2007 were as follows (in thousands):

	May 21, 2009	September 30, 2008	September 30, 2007
Deferred tax assets:			
Allowance for loan losses and other reserves	$ 521,487	$ 293,069	$ 16,568
Impairment losses on available for sale securities	84,822	58,549	—
Unrealized losses in other comprehensive income	4,043	16,810	7,061
Non-accrual interest	15,518	9,615	3,054
AMT credit carryover	3,250	—	—
Impairment on other real estate owned and other expenses	—	8,802	1,845
Reserve for recourse liability	4,748	4,748	—
NOL carryforward	151,220	—	—
Other	2,182	1,402	452
Gross deferred tax assets	787,270	392,995	28,980
Valuation allowance	(730,041)	(287,823)	—
Net deferred tax asset	$ 57,229	$ 105,172	$ 28,980
Deferred tax liabilities:			
Deferrals and amortization	186	—	7,341
Sale of mortgage servicing rights	—	10,113	—
Other real estate owned expenses	5,945	—	—
Deferred REIT income	50,783	44,381	51,342
Other	315	372	232
Gross deferred liabilities	$ 57,229	$ 54,866	$ 58,915
Net deferred tax asset (liability)	$ —	$ 50,306	$ (29,935)

Realization of tax benefits for deductible temporary differences depends on having sufficient taxable income of an appropriate character within the carryforward periods. Sources of taxable income that may allow for the realization of these tax benefits include: (1) taxable income that would be available through carryback in future years, (2) future taxable income that will result from reversal of existing taxable temporary differences, (3) taxable income generated from future operations, and (4) prudent and feasible tax planning strategies.

At May 21, 2009 and September 30, 2008, the Bank had deferred tax assets net of deferred tax liabilities, before valuation allowances, of $730.0 and $338.1 million. The Bank's net deferred tax asset before valuation allowances resulted primarily from an increase in its allowance for loan losses and the recognition of other-than-temporary impairment losses on certain securities available for sale. At May 21, 2009 and September 30, 2008, after considering all available evidence the Bank determined that it was more likely than not that only a portion of its deferred tax assets in each fiscal period will not be realized. The determination that a valuation allowance was needed was primarily based on the current level of losses the Bank is experiencing, in addition to the uncertainty with respect to its future forecasted results. As a result of this determination, the Bank recorded a valuation allowance of $730.0

Note 14 Income Taxes (Continued)

and $287.8 million against its net deferred tax assets at May 21, 2009 and September 30, 2008, respectively.

The Bank determined that it is more likely than not that it will realize $50.3 million of its net deferred tax assets as a result of the future carryback of losses generated by the deferred tax assets that will reverse during fiscal year 2009 and will be carried back to fiscal year 2007. This carryback is expected to result in a refund of $50.3 million of income taxes paid by the Bank in 2007.

As of May 21, 2009, the Bank had a net operating loss carryforward for Federal tax purposes of $432.1 million which will expire in 2029. The Bank's state income tax net operating loss carryforward is approximately $951 million which will begin to expire in 2027. The Federal and State net operating loss deferred tax asset is completely offset by a valuation allowance.

The Bank adopted the provisions of FIN 48 effective October 1, 2007. The adoption of FIN 48 did not have a material effect on the Bank's financial condition, as the Bank recognized no increase in its liability for unrecognized income tax benefits. In addition, the Bank had no liabilities recorded for unrecognized income tax benefits for fiscal year 2007. For the period ended May 21, 2009, the Bank did not have any material unrecognized income tax benefits and, accordingly, the company continued to have a zero liability balance relating to FIN 48. The Company has elected to account for any applicable interest and penalties on uncertain tax positions as a component of income tax expense.

BKUNA federal returns through 2005 have been examined by the Internal Revenue Service ("IRS"), and therefore, it remains subject to examination for its fiscal years ended September 30, 2006, 2007 and 2008. Generally, the state jurisdictions in which the Bank files income tax returns are subject to examination for a period of up to four years after the returns are filed.

Note 15 Commitments and Contingencies

Reserve for Recourse Liability for Loans Sold

BankUnited has sold and securitized loans (hereinafter referred to as loan sales or loans sold) without recourse to government sponsored entities and private investors. When a loan sold to an investor without recourse contains fraudulent representations, errors, omissions or negligence on the part of the seller or any party involved in the origination, including the borrower or appraiser, or a breach of other representations and warranties, the Bank may be required to repurchase the loan or indemnify the investor for losses sustained.

The estimated losses related to forecasted loan repurchase activity and make whole indemnity claims meet the criteria for accrual of a loss contingency as of September 30, 2008. Management estimated the amount of potential losses related to the Bank's recourse obligations as of September 30, 2008 based on various sensitivity analyses taking into account historical experience and trends and current and projected market, industry and economic conditions. These factors are used to develop forecasted repurchase activity and estimated severity of losses. This analysis resulted in the Bank recording a provision for recourse liability amounting to $12.4 million during the year ended September 30, 2008, which is included in gain (loss) on sale of loans in the consolidated statement of operations. The reserve for recourse liability on loans sold is included in other liabilities in the consolidated balance sheets as of May 21, 2009 and September 30, 2008. The Bank accounts for loans repurchased under recourse provisions at fair value on the date of repurchase, and recognizes an adjustment to the reserve for recourse liability for any difference between the fair value of the loan and the amount due to the investor.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 15 Commitments and Contingencies (Continued)

A summary of the activity in the reserve for the period ended May 21, 2009 and the year ended September 30, 2008 is as follows (no such reserve was deemed necessary at September 30, 2007):

	For The Period Ended May 21, 2009	For The Year Ended September 30, 2008
Balance at beginning of period	$ 8,663	$ —
Provision for recourse liability	—	12,400
Mark-to-market adjustment for loans repurchased	(1,635)	(3,689)
Make whole indemnifications	(2,786)	(48)
Balance at end of period	$ 4,242	$ 8,663

Financial Instruments Commitments

The Bank issues off-balance sheet financial instruments in connection with BankUnited's lending activities and to meet the financing needs of its customers. These financial instruments include commitments to fund loans, lines of credit, and commercial and standby letters of credit. These commitments expose the Bank to varying degrees of credit and market risk which are essentially the same as those involved in extending loans to customers, and are subject to the Bank's credit policies. The Bank follows the same credit policies in making commitments as it does for instruments recorded on the Bank's consolidated balance sheet. Collateral is obtained based on management's assessment of the customer's credit risk. The Bank's exposure to credit loss is represented by the contractual amount of these commitments.

Total commitments at May 21, 2009 were as follows (in thousands):

Commitments to fund loans	
Commercial and commercial real estate	$ 18,438
Construction	25,148
Unfunded commitments under line of credit	294,748
Commercial and standby letters of credit	27,149
Total	$ 365,483

Commitments to fund loans:

These are agreements to lend funds to customers as long as there is no violation of any condition established in the contract. Commitments to fund loans generally have fixed expiration dates or other termination clauses and may require payment of a fee. Many of these commitments are expected to expire without being funded, and therefore the total commitment amounts do not necessarily represent future liquidity requirements. The Bank evaluates each customer's creditworthiness on a case-by-case basis. The amount of collateral required in connection with an extension of credit is based on management's credit evaluation of the counterparty.

Unfunded commitments under lines of credit:

To accommodate the financial needs of customers, the Bank makes commitments under various terms to lend funds to consumers and businesses. Unfunded commitments under lines of credit include consumer, commercial and commercial real estate lines of credit to existing customers. Many of these

Note 15 Commitments and Contingencies (Continued)

commitments have fixed expiration dates or other termination clauses and may require payment of a fee. Since many of these commitments are expected to expire without being funded, the total commitment amounts do not necessarily represent future liquidity requirements. The amount of collateral obtained, if it is deemed necessary, is based on management's credit evaluation of the customer.

Commercial and standby letters of credit:

Letters of credit are conditional commitments issued by the Bank to guarantee the performance of a customer to a third party. Those letters of credit are primarily issued to support trade transactions or guarantee arrangements. Fees collected on standby letters of credit represent the fair value of those commitments and are deferred and amortized over their term, which is typically one year or less. The credit risk involved in issuing letters of credit is essentially the same as that involved in extending loan facilities to customers. BankUnited generally holds collateral supporting those commitments if deemed necessary.

Other Commitments

Employment Agreements. The Bank has employment and change in control agreements with certain members of senior management. The employment agreements, which establish the duties and compensation of the executives, have terms ranging from one year to five years, and include specific provisions for salary, bonus, other benefits and termination payments in certain circumstances. In addition to other provisions, the change in control agreements provide for severance payments in the event of a change in control.

Operating leases. BankUnited leases premises and equipment under cancelable and non-cancelable operating leases, some of which contain renewal options under various terms.

Legal Proceedings.

BankUnited and its subsidiaries, from time to time, are involved as plaintiff or defendant in other various legal actions arising in the normal course of their businesses. While the ultimate outcome of any such proceedings cannot be predicted with certainty, it is the opinion of management, based on advice of legal counsel, that no proceedings exist, either individually or in the aggregate, which, if determined adversely to BankUnited and its subsidiaries, would have a material effect on BankUnited's consolidated financial condition, results of operations or cash flows.

As discussed in note 1 to the consolidated financial statements, the OTS seized the Bank on May 21, 2009 and appointed the FDIC as receiver. Pursuant to the terms of the Purchase and Assumption Agreement under which the New BankUnited purchased certain assets and assumed certain deposits and other liabilities of the Bank, all defensive litigation liabilities of the Bank were retained by the FDIC, as receiver, except those defensive litigation liabilities that relate to an asset purchased by New BankUnited and that are subject to a loss sharing agreement, which such liabilities were assumed by New BankUnited.

Note 16 Related Party Transactions

The Bank has a Management Agreement with BKUNA dated October 1, 2006. The Management Agreement requires that BKUNA reimburse the Bank for management and other services provided to BKUNA on a monthly basis. BKUNA paid management fees to the Bank in conjunction with the

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 16 Related Party Transactions (Continued)

Management Agreement amounting to $0.6 million, $1.1 million and $1.1 million for the period ended May 21, 2009 and for the years ended September 30, 2008 and 2007, respectively. The management fees paid by BKUNA are included in non-interest income—service charges in the consolidated statements of operations.

The Bank and BU Financial Services (BUFS), a wholly-owned subsidiary of BKUNA, entered into a Fee Agreement dated October 1, 2007. The Fee Agreement requires that BUFS reimburse the Bank for management and other services provided to BUFS on a monthly basis. BUFS paid management fees to the Bank in conjunction with the Fee Agreement amounting to $1.2 million and $4.1 million for the period ended May 21, 2009 and for the year ended September 30, 2008, respectively. The fees received are included in non-interest income—service charges in the consolidated statements of operations.

The Bank has entered into a Tax Sharing Agreement with BKUNA, whereby the Bank pays to or receives cash from BKUNA as if the Bank filed separate tax returns. Any amount of current tax due to or receivable from BKUNA is included in the intercompany balance.

The consolidated balance sheets include $10.6 million, $1.9 million and $1.7 million in other assets as of May 21, 2009 and September 30, 2008 and 2007, respectively, related to amounts receivable from BKUNA and BUFS related to the intercompany agreements discussed above and other intercompany transaction in the ordinary course of business, including amounts related to intercompany settlement of current taxes due or payable. In addition, included in interest bearing demand deposits in the accompanying consolidated balance sheets as of May 21, 2009 and September 30, 2008 and 2007 are $18.1 million, $29.1 million and $204.5 million, respectively, of deposits from BKUNA and BUFS.

BKUNA had a capital commitment to the Bank as of September 30, 2007 amounting to $80 million which was recorded as a capital contribution and is included in other assets. The capital commitment was paid on October 1, 2007.

From time to time, the Bank makes loans in the ordinary course of business as a financial institution to directors, officers and employees of the Bank, as well as to members of their immediate families and affiliates, to the extent consistent with applicable laws and regulations. As of May 21, 2009, September 30, 2008, and September 30, 2007 these loans totaled $1.7 million, $2.0 million, and $2.0 million, respectively.

For the period ended May 21, 2009 and the years ended September 30, 2008 and September 30, 2007, the Bank retained the law firm of Camner, Lipsitz and Poller, P.A ("CLP"), as general counsel. The Bank's and BKUNA's former Chief Executive Officer and Chairman of the Board of Directors, until October 20, 2008 is the senior managing director of CLP and one of two of the shareholders of the law firm. For the period ended May 21, 2009 and the years ended September 30, 2008 and September 30, 2007, the Bank paid CLP approximately $3.2 million, $7.1 million, and $4.9 million respectively, in legal fees and reimbursable expenses, related to loan closings, foreclosures, litigation, corporate and other matters.

CLP subleases approximately 2,223 square feet of office space in Coral Gables, Florida from the Bank. The sublease extends through January 31, 2014 and may be renewed for up to four additional five-year terms, subject to the Bank exercising its right to renew under the master lease. Under the terms of the sublease the minimum annual rental payments for the property is $65.7 thousand. Payments from CLP to the Bank during the period from October 1, 2008 to May 21, 2009 and the fiscal years ended September 30, 2008, and September 30, 2007, totaled $55 thousand, $81 thousand

Note 16 Related Party Transactions (Continued)

and $79 thousand, respectively, which included payments for tenant improvements of $8 thousand, $13 thousand, and $23 thousand, respectively. The Bank believes that the terms of the sublease reflect market rates comparable to those prevailing in the area for similar rental properties involving non-affiliated parties at the time the sublease was made.

For the period ended May 21, 2009 and the fiscal years ended September 30, 2008 and September 30, 2007, BankUnited obtained policies for directors' and officers' liability insurance, banker's blanket bond insurance, commercial multi-peril insurance, workers' compensation insurance and BankUnited's health and dental insurance through HBA Insurance Group, of which a director of the Bank, is a member of the Board of Directors and shareholder. For the period ended May 21, 2009 and the years ended September 30, 2008 and September 30, 2007, the Bank paid HBA Insurance Group $490 thousand, $350 thousand, and $319 thousand, respectively, in commissions on premiums paid for these policies.

The Bank paid the firm of Rachlin, LLP $10 thousand and $75 thousand for consulting services for the period ended May 21, 2009 and the year ended September 30, 2008, respectively. The managing partner of Rachlin, LLP is a member of the Bank's Board of Directors.

Note 17 Fair Value

The Bank groups its assets and liabilities measured at fair value in three levels, based on the markets in which the assets and liabilities are traded and the reliability of the assumptions used to determine fair value. These levels are as follows:

Level 1—Assets or liabilities for which the identical item is traded on an active exchange, such as publicly-traded instruments or futures contracts.

Level 2—Assets and liabilities valued based on observable market data for similar instruments.

Level 3—Assets or liabilities for which significant valuation assumptions are not readily observable in the market; instruments valued based on the best available data, some of which is internally-developed, and considers risk premiums that a market participant would require. Valuation techniques include use of option pricing models, discounted cash flow models and similar techniques.

In instances where there is limited or no observable market data, fair value measurements for assets and liabilities are based primarily upon the Bank's own estimates or combination of such estimates and independent vendor or broker pricing. When determining the fair value measurements for assets and liabilities and the related fair value hierarchy, the Bank considers the principal or most advantageous market in which it would transact and considers assumptions that market participants would use when pricing the asset or liability (observable inputs). When possible, the Bank looks to active and observable markets to price identical assets or liabilities and when identical assets and liabilities are not traded in active markets, the Bank looks to market observable data for similar assets and liabilities. It is the Bank's policy to maximize the use of observable inputs and minimize the use of unobservable inputs. Unobservable inputs are only used to measure fair value to the extent that observable inputs are not available. The need to use unobservable inputs generally results from the lack of market liquidity, resulting in diminished observability of both actual trades and assumptions that would otherwise be available to value these instruments, or the value of the underlying collateral is not market observable. Although third party price indications may be available for a security, limited trading activity would make it difficult to support the observability of these quotations.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 17 Fair Value (Continued)

The following is a description of the valuation methodologies used for financial assets and liabilities measured at fair value on a recurring basis, as well as the general classification of each instrument under the valuation hierarchy.

Assets and Liabilities Carried at Fair Value on a Recurring Basis

Investment securities available for sale—Investment securities available-for-sale are carried at fair value on a recurring basis. When available, fair value is based on quoted prices in an active market and as such would be classified as Level 1 (e.g., U.S. Government agencies and sponsored enterprises securities, preferred stock of U.S. Government agencies and mutual funds). If quoted market prices are not available, fair values are estimated using quoted prices of securities with similar characteristics, discounted cash flows or other pricing models. Investment securities available for sale that the Bank classifies as Level 2 include U.S. Government agencies mortgage-backed securities and collateralized mortgage obligations, preferred stock of other issuers and State and municipal obligations. All other investment securities available for sale are classified as Level 3 and include private label mortgage pass-through certificates, collateralized debt obligations and other debt securities, for which fair value estimation requires the use of unobservable inputs. The Bank values these securities using third party proprietary pricing models that incorporate observable and unobservable inputs.

The following table presents the financial instruments measured at fair value on a recurring basis as of May 21, 2009 on the consolidated balance sheet utilizing the hierarchy discussed above (in thousands):

	May 21, 2009			
	Level 1	Level 2	Level 3	Total
Investment Securities Available for Sale:				
U.S. Treasury securities	$ 35,423	$ —	$ —	$ 35,423
U.S. Government agencies and sponsored enterprises mortgage-backed securities	—	227,879	—	227,879
Other collateralized mortgage obligations	—	—	1,785	1,785
Mortgage pass-through certificates	—	—	230,091	230,091
Mutual funds and preferred stocks	17,981	113	—	18,094
State and municipal obligations	—	22,446	250	22,696
Other debt securities	—	1,300	1,676	2,976
Total assets at fair value	$ 53,404	$ 251,738	$ 233,802	$ 538,944

The following table identifies changes in Level 3 financial instruments that are measured at fair value on a recurring basis as of May 21, 2009. Level 3 financial instruments typically include unobservable components, but may also include some observable components that may be validated to

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 17 Fair Value (Continued)

external sources. The gains or losses in the following table may include changes to fair value due in part to unobservable factors that may be part of the valuation methodology (in thousands):

	Other Collateralized Mortgages Obligations	Mortgages Pass-through Certificates	State and Municipal obligations	Other Debt Securities
Balance September 30, 2008	$ 3,463	$ 394,321	$ 250	$ 6,490
Total net gains (losses) for the year included in:				
Other comprehensive income	(1,554)	(57,543)	(0)	(80)
Purchases, sales or settlements, net	(124)	(106,687)	(0)	(4,734)
Balance May 21, 2009	$ 1,785	$ 230,091	$ 250	$ 1,676

Financial Assets and Liabilities Measured at Fair Value on a Non-Recurring Basis

Loans are measured for impairment using the fair value of the collateral. Fair value of the loan collateral is primarily determined using estimates which generally use the market and income approach valuation technique and use observable market data to formulate an opinion of the estimated fair value. When current appraisals are not available, the Bank uses its judgment regarding changes in market conditions, based on observable market inputs, to adjust the latest appraised value available. As a result, the estimated fair value is considered Level 3.

Fair Value of Financial Instruments

The following table presents the carrying value and fair value of financial instruments as of May 21, 2009 and for the fiscal years ended September 30, 2008 and September 30, 2007 (in thousands):

	May 21, 2009		September 30, 2008		September 30, 2007	
	Carrying Value	Fair Value	Carrying Value	Fair Value	Carrying Value	Fair Value
Financial Instruments:						
Assets:						
Cash and cash equivalents	$ 1,143,280	$ 1,143,280	$ 1,223,346	$ 1,223,346	$ 512,885	$ 512,885
Investment securities available for sale, at fair value	538,944	538,944	755,225	755,225	1,098,665	1,098,665
Federal Home Loan Bank stock	243,334	243,334	262,571	262,571	305,385	305,385
Loans held for sale	788	788	10,050	10,050	174,868	174,868
Loans held in portfolio, net	9,787,042	5,010,328	11,249,367	11,264,161	12,561,693	12,531,026
Bank owned life insurance	129,111	129,111	126,956	126,956	122,100	122,100
Accrued interest receivable	43,310	43,310	66,394	66,394	85,853	85,853
Liabilities:						
Demand deposits, savings, money market and certificates of deposit	8,555,907	8,664,473	8,176,817	8,176,839	7,305,788	7,309,925
Securities sold under agreements to repurchase	1,310	1,310	56,930	56,930	143,072	143,072
Advances from Federal Home Loan Bank	4,429,350	4,630,614	5,279,350	5,357,556	6,234,360	6,253,423
Accrued interest payable	52,283	52,283	36,505	36,505	37,694	37,694
Income taxes payable	—	—	—	—	20,843	20,843
Advance payments by borrowers for taxes and insurance	52,362	52,362	91,223	91,223	97,455	97,455
Other liabilities	58,623	58,623	48,923	48,923	34,576	34,576
Derivative instruments	—	—	73	73	785	785

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Note 17 Fair Value (Continued)

The following methods and assumptions were used to estimate the fair value of each class of financial instruments not carried at fair value on recurring basis:

Certain financial instruments are carried at amounts that approximate fair value, due to their short-term nature or their generally negligible credit risk. The Bank's financial instruments for which fair value approximates the carrying amount at May 21, 2009, September 30, 2008, and September 30, 2007 include cash and cash equivalents, FHLB stock, accrued interest receivable, Bank owned life insurance, demand deposits, savings and money market accounts, securities sold under agreements to repurchase, income taxes payable, advance payments by borrowers for taxes and insurance and other liabilities.

Loans receivable

Fair values for all performing loans are estimated using a discounted cash flow analysis, utilizing interest rates currently being offered for loans with similar terms to borrowers of similar credit quality.

Bank Owned Life Insurance—The estimated fair value of Bank Owned Life Insurance is based on the cash surrender value.

Deposits:

The fair value of demand deposits, savings accounts and money market deposits is the amount payable on demand at the reporting date. The fair value of fixed-maturity certificates of deposit are estimated using discounted cash flow analysis using the rates currently offered for deposits of similar remaining maturities.

FHLB advances:

The fair value of the borrowings is estimated by discounting the future cash flows using the current rate at which similar borrowings with similar remaining maturities could be made.

Through and including , 2011 (25 days after the date of this prospectus), all dealers that buy, sell or trade our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

26,250,000 Shares

BankUnited, Inc.

Common Stock

Prospectus
, 2011

Morgan Stanley **BofA Merrill Lynch**

Deutsche Bank Securities **Goldman, Sachs & Co.**

Keefe, Bruyette & Woods **RBC Capital Markets** **UBS Investment Bank**

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the sale of the common stock being registered. All amounts, except the SEC registration fee and the FINRA filing fee, are estimates.

SEC registration fee	$ 87,619
FINRA filing fee	75,500
NYSE listing fees and expenses	250,000
Transfer agent and registrar fees and expenses	10,000
Printing fees and expenses	750,000
Legal fees and expenses	2,500,000
Accounting fees and expenses	1,250,000
Miscellaneous	100,000
Total	$ 5,023,119

Item 14. Indemnification of Directors and Officers.

Section 102(b)(7) of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL (regarding, among other things, the payment of unlawful dividends or unlawful stock purchases or redemptions), or (iv) for any transaction from which the director derived an improper personal benefit. Our amended and restated certificate of incorporation will provide for such limitation of liability.

Section 145(a) of the DGCL empowers a corporation to indemnify any director, officer, employee or agent, or former director, officer, employee or agent, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of such person's service as a director, officer, employee or agent of the corporation, or such person's service, at the corporation's request, as a director, officer, employee or agent of another corporation or enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding; provided that such director or officer acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding; provided that such director or officer had no reasonable cause to believe his conduct was unlawful.

Section 145(b) of the DGCL empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another enterprise, against expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit; provided that such director or officer acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which such director or officer shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such director or officer is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. Notwithstanding the preceding sentence, except as otherwise provided in the by-laws, we shall be required to indemnify any such person in connection with a proceeding (or part thereof) commenced by such person only if the commencement of such proceeding (or part thereof) by any such person was authorized by the board.

In addition, our amended and restated certificate of incorporation will provide that we must indemnify our directors and officers to the fullest extent authorized by law. We are also expressly required to advance certain expenses to our directors and officers and carry directors' and officers' insurance providing indemnification for our directors and officers for some liabilities. We believe that these indemnification provisions and the directors' and officers' insurance are useful to attract and retain qualified directors and executive officers.

Prior to completion of this offering, we intend to enter into separate indemnification agreements with each of our directors and executive officers. Each indemnification agreement is expected to provide, among other things, for indemnification to the fullest extent permitted by law and our amended and restated certificate of incorporation and by-laws against (i) any and all expenses and liabilities, including judgments, fines, penalties, interest and amounts paid in settlement of any claim with our approval and counsel fees and disbursements, (ii) any liability pursuant to a loan guarantee, or otherwise, for any of our indebtedness, and (iii) any liabilities incurred as a result of acting on behalf of us (as a fiduciary or otherwise) in connection with an employee benefit plan. The indemnification agreements will provide for the advancement or payment of expenses to the indemnitee and for reimbursement to us if it is found that such indemnitee is not entitled to such indemnification under applicable law and our amended and restated certificate of incorporation and by-laws. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

The proposed form of Underwriting Agreement filed as Exhibit 1.1 to this Registration Statement provides for indemnification of directors and officers of the Registrant by the underwriters against certain liabilities.

Item 15. Recent Sales of Unregistered Securities.

In the three years preceding the filing of this registration statement, BankUnited, Inc. has issued the following securities:

On April 28, 2009, in connection with its incorporation and initial capitalization, BankUnited, Inc. issued 1,000 shares of its common stock to BU Financial Holdings LLC for $10, which shares were subsequently canceled at the time of the Acquisition.

Since the Acquisition on May 21, 2009, BankUnited, Inc. issued an aggregate of 92,971,850.8 shares of its common stock to BU Financial Holdings LLC for consideration of $930.3 million in capital investment transactions.

The issuances of securities described in the preceding paragraphs were made in reliance upon the exemption from registration under Section 4(2) of the Securities Act of 1933, as amended, for transactions by an issuer not involving a public offering. BankUnited, Inc. did not offer or sell the securities by any form of general solicitation or general advertising, informed the purchaser that the securities had not been registered under the Securities Act and were subject to restrictions on transfer, and made offers only to the purchaser, whom BankUnited, Inc. believed had the knowledge and experience in financial and business matters to evaluate the merits and risks of an investment in the securities.

BankUnited, Inc. granted certain of its employees (none of whom are named executive officers) 1,031,700 options to purchase an aggregate of 1,031,700 shares of our common stock under our 2009 Stock Option Plan. 49,990 of these options were forfeited subsequent to grant. These grants were exempt from the registration requirements of the Securities Act pursuant to Rule 701 promulgated thereunder inasmuch as they were offered and sold under written compensatory benefit plans and otherwise in compliance with the provisions of Rule 701.

The information presented in the preceding paragraphs does not give effect to the reorganization transactions described in the prospectus.

Item 16. Exhibits and Financial Statements Schedules.

(a) Exhibits: The list of exhibits is set forth under "Exhibit Index" at the end of this registration statement and is incorporated herein by reference.

(b) Financial Statement Schedules: None.

Item 17. Undertakings.

The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the Underwriting Agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that, in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For purposes of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this amendment to the registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Miami Lakes, State of Florida, on January 18, 2011.

BANKUNITED, INC.

By: /s/ JOHN A. KANAS

Name: John A. Kanas
Title: *Chairman, President and Chief Executive Officer*

Pursuant to the requirements of the Securities Act of 1933, this amendment to the registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ JOHN A. KANAS John A. Kanas	Chairman, President and Chief Executive Officer (Principal Executive Officer)	January 18, 2011
/s/ DOUGLAS J. PAULS Douglas J. Pauls	Chief Financial Officer (Principal Financial and Accounting Officer)	January 18, 2011
* John Bohlsen	Vice Chairman, Chief Lending Officer and Director	January 18, 2011
* Chinh E. Chu	Director	January 18, 2011
* Ambassador Sue M. Cobb	Director	January 18, 2011
* Eugene F. DeMark	Director	January 18, 2011
* Richard S. LeFrak	Director	January 18, 2011

Signature	Title	Date
* Wilbur L. Ross, Jr.	Director	January 18, 2011
* Pierre Olivier Sarkozy	Director	January 18, 2011
* Lance N. West	Director	January 18, 2011

*By: /s/ JOHN A. KANAS

Attorney-in-Fact

Table of Contents

Exhibit Index

Exhibit Number	Description
1.1	Form of Underwriting Agreement
2.1a	Purchase and Assumption Agreement, dated as of May 21, 2009, among the Federal Deposit Insurance Corporation, Receiver of BankUnited, FSB, Coral Cables, Florida, the Federal Deposit Insurance Corporation and BankUnited (Single Family Shared-Loss Agreement and Commercial and Other Shared-Loss Agreement included as Exhibits 4.15A and 4.15B thereto, respectively)†
2.1b	Addendum to Purchase and Assumption Agreement, dated as of May 21, 2009, by and among the Federal Deposit Insurance Corporation, Receiver of BankUnited, FSB, Coral Gables, Florida, BankUnited, and the Federal Deposit Insurance Corporation**
2.1c	Amendment No. 1 to the BankUnited Single Family Shared-Loss Agreement with the FDIC, dated as of November 2, 2010
2.1d	Amendment No. 2 the BankUnited Single Family Shared-Loss Agreement with the FDIC, dated as of December 22, 2010
3.1	Form of Amended and Restated Certificate of Incorporation
3.2	Form of Amended and Restated By-Laws
4.1	Specimen common stock certificate
5.1	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP
10.1	Amended and Restated Limited Liability Company Agreement of BU Financial Holdings LLC, dated as of May 21, 2009, by and among John A. Kanas, Rajinder P. Singh, John N. DiGiacomo, John Bohlsen and the other parties listed on Schedule A thereto (Schedule A as of January 15, 2011)
10.2a	Employment Agreement, dated August 18, 2010, among BU Financial Holdings LLC, BankUnited, Inc. (formerly known as BU Financial Corporation) and John A. Kanas**
10.2b	Amended and Restated Employment Agreement, dated August 18, 2010, between BankUnited, a federally chartered thrift institution and John A. Kanas**
10.3a	Employment Agreement, dated August 18, 2010, among BU Financial Holdings LLC, BankUnited, Inc. (formerly known as BU Financial Corporation) and John Bohlsen**
10.3b	Amended and Restated Employment Agreement, dated August 18, 2010, between BankUnited, a federally chartered thrift institution and John Bohlsen**
10.4a	Employment Agreement, dated August 18, 2010, among BU Financial Holdings LLC, BankUnited, Inc. (formerly known as BU Financial Corporation) and Douglas J. Pauls**
10.4b	Amended and Restated Employment Agreement, dated August 18, 2010, between BankUnited, a federally chartered thrift institution and Douglas J. Pauls**
10.5a	Employment Agreement, dated August 18, 2010, among BU Financial Holdings LLC, BankUnited, Inc. (formerly known as BU Financial Corporation) and Rajinder P. Singh**
10.5b	Amended and Restated Employment Agreement, dated August 18, 2010, between BankUnited, a federally chartered thrift institution and Rajinder P. Singh**
10.6	BankUnited Nonqualified Deferred Compensation Plan**
10.7	BankUnited, Inc. (formerly known as BU Financial Corporation) 2009 Stock Option Plan**
10.8	BankUnited, Inc. 2010 Omnibus Equity Incentive Plan

Exhibit Number	Description
10.9	Form of Registration Rights Agreement by and among BankUnited, Inc., John A. Kanas, Rajinder P. Singh, Douglas J. Pauls and John Bohlsen, and each of the other parties thereto.*
10.10	Form of Director Nomination Agreement by and among BankUnited, Inc., John A. Kanas and the other parties thereto
10.11	Transaction Fee Agreement, dated May 21, 2009, among BU Financial Holdings LLC, Blackstone Management Partners L.L.C., Carlyle Investment Management L.L.C., Centerbridge Advisors, LLC and WL Ross & Co. LLC**
10.12	BU Financial Holdings LLC Warrant to the Federal Deposit Insurance Corporation dated May 21, 2009**
10.13	Form of indemnification agreement between BankUnited, Inc. and each of its directors and executive officers**
10.14	BankUnited, Inc. Policy on Incentive Compensation Arrangements
21.1	Subsidiaries of BankUnited, Inc.**
23.1	Consent of KPMG LLP
23.2	Consent of PricewaterhouseCoopers LLP
23.3	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 5.1)
24.1	Power of Attorney**

* To be filed by amendment.

** Previously filed.

† Schedules and similar attachments to the Purchase and Assumption Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The registrant will furnish supplementally a copy of any omitted schedules or similar attachment to the SEC upon request.

Exhibit 1.1

[ ] Shares

BANKUNITED, INC.

COMMON STOCK, PAR VALUE $0.01 PER SHARE

UNDERWRITING AGREEMENT

, 2011

[ ], 2011

Morgan Stanley & Co. Incorporated
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

c/o Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park
New York, New York 10036

As representatives of the several underwriters

Ladies and Gentlemen:

BankUnited, Inc., a Delaware corporation (the "**Company**"), proposes to issue and sell to the several Underwriters named in Schedule II hereto (the "**Underwriters**"), and certain unitholders of BU Financial Holdings LLC (the "**LLC**") which, substantially concurrently with the Closing Date, will be liquidated whereupon the unitholders of the LLC will become stockholders of the Company (the "**Selling Stockholders**") named in Schedule I hereto severally propose to sell to the several Underwriters, an aggregate of 26,250,000 shares of common stock, par value $0.01 per share, of the Company (the "**Firm Shares**"), of which 4,000,000 shares are to be issued and sold by the Company and 22,250,000 shares are to be sold by the Selling Stockholders, each Selling Stockholder selling the amount set forth opposite such Selling Stockholder's name in Schedule I hereto.

The Selling Stockholders also propose to issue and sell to the several Underwriters not more than an additional 3,937,500 shares of common stock, par value $0.01 per share (the "**Additional Shares**"), of the Company, if and to the extent that you, as representatives of the several Underwriters (the "**Representatives**"), shall have determined to exercise, on behalf of the Underwriters, the right to purchase such shares of common stock granted to the Underwriters in Section 3 hereof. The Firm Shares and the Additional Shares are hereinafter collectively referred to as the "**Shares**." The shares of common stock, par value $0.01 per share, of the Company to be outstanding after giving effect to the sales contemplated hereby are hereinafter referred to as the "**Common**

Stock." The Company and the Selling Stockholders are hereinafter sometimes collectively referred to as the "**Sellers**."

The Company has filed with the Securities and Exchange Commission (the "**Commission**") a registration statement, including a prospectus, relating to the Shares. The registration statement as amended at the time it becomes effective, including the information (if any) deemed to be part of the registration statement at the time of effectiveness pursuant to Rule 430A under the Securities Act of 1933, as amended (the "**Securities Act**"), is hereinafter referred to as the "**Registration Statement**"; the prospectus in the form first used to confirm sales of the Shares (or in the form first made available to the Underwriters by the Company to meet requests of purchasers pursuant to Rule 173 under the Securities Act) is hereinafter referred to as the "**Prospectus**." If the Company has filed an abbreviated registration sta tement to register additional shares of Common Stock pursuant to Rule 462(b) under the Securities Act (the "**Rule 462 Registration Statement**"), then any reference herein to the term "**Registration Statement**" shall be deemed to include such Rule 462 Registration Statement.

For purposes of this Agreement, "**free writing prospectus**" has the meaning set forth in Rule 405 under the Securities Act, "**Time of Sale Prospectus**" means the preliminary prospectus together with the free writing prospectuses, if any, each identified in Schedule III hereto, and "**broadly available road show**" means a "bona fide electronic road show" as defined in Rule 433(h)(5) under the Securities Act that has been made available without restriction to any person. As used herein, the terms "Registration Statement," "preliminary prospectus," "Time of Sale Prospectus" and "Prospectus" shall include the documents, if any, incorporated by reference therein.

1. *Representations and Warranties of the Company*. The Company represents and warrants to and agrees with each of the Underwriters that:

(a) The Registration Statement has become effective; no stop order suspending the effectiveness of the Registration Statement is in effect, and no proceedings for such purpose are pending before or, to the Company's knowledge, threatened by the Commission.

(b) (i) The Registration Statement, when it became effective, did not contain and, as amended or supplemented, if applicable, at all times during which a prospectus is required by the Securities Act to be delivered in connection with the sale of the Shares, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) the Registration Statement and the Prospectus comply and, as amended or supplemented, if applicable, at all times during which a prospectus is required by the Securities Act to be delivered in connection with the sale of the Shares, will comply in all material respects with

the Securities Act and the applicable rules and regulations of the Commission thereunder, (iii) the Time of Sale Prospectus does not, and at the time of each sale of the Shares in connection with the offering when the Prospectus is not yet available to prospective purchasers and at the Closing Date (as defined in Section 5), the Time of Sale Prospectus, as then amended or supplemented by the Company, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, (iv) each broadly available road show, if any, when considered together with the Time of Sale Prospectus, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances un der which they were made, not misleading and (v) the Prospectus does not contain and, as amended or supplemented, if applicable, at all times during which a prospectus is required by the Securities Act to be delivered in connection with the sale of the Shares, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to statements or omissions in the Registration Statement, the Time of Sale Prospectus or the Prospectus based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through you expressly for use therein.

(c) The Company is not an "ineligible issuer" in connection with the offering pursuant to Rules 164, 405 and 433 under the Securities Act. Any free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Each free writing prospectus that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act or that was prepared by or on behalf of or used or referred to by the Company complies or will comply in all material respects with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder. Except for the free writing p rospectuses, if any, identified in Schedule III hereto, and electronic road shows, if any, each furnished to you before first use, the Company has not prepared, used or referred to, and will not, without your prior consent, prepare, use or refer to, any free writing prospectus.

(d) The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the State of Delaware, is a savings and loan holding corporation registered under Section 10 of the Home Owners' Loan Act, as amended ("**HOLA**"), has the corporate power and authority to own its property and to conduct its business as described in the Time of Sale Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing

of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(e) (i) BankUnited (the "**Bank**") was chartered under the laws of the United States to transact the business of a Federal savings bank and the charter of the Bank is in full force and effect, (ii) each other subsidiary of the Company has been duly incorporated, is validly existing and in good standing under the laws of the jurisdiction of its incorporation, and (iii) each subsidiary of the Company, including the Bank, has the corporate or federal savings association power and authority to own its property and to conduct its business as described in the Time of Sale Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except in each case to the extent that the failure to be so qualified or be in good sta nding would not have a material adverse effect on the Company and its subsidiaries, taken as a whole, and except that the representation regarding due incorporation of each other subsidiary of the Company is based solely on good standing certificates received from the subsidiary's jurisdiction of incorporation; all of the issued and outstanding capital stock of the Bank and all of the issued and outstanding shares of capital stock of each other subsidiary of the Company have been duly authorized and validly issued, are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims.

(f) This Agreement has been duly authorized, executed and delivered by the Company.

(g) The authorized capital stock of the Company, on the Closing Date (as defined in Section 5), will conform as to legal matters to the description thereof contained in each of the Time of Sale Prospectus and the Prospectus.

(h) The shares of Common Stock (including the Shares to be sold by the Selling Stockholders) outstanding prior to the issuance of the Shares to be sold by the Company have been duly authorized and are validly issued, fully paid and non-assessable.

(i) The Shares to be sold by the Company have been duly authorized and, when issued and delivered in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable, and the issuance of such Shares will not be subject to any preemptive or similar rights.

(j) The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement will not contravene (i) any provision of applicable law, (ii) the certificate of incorporation or by-laws of the Company, (iii) any agreement or other instrument binding upon the Company or any of its subsidiaries, or (iv) any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any subsidiary, except, in the case of clauses (i), (iii) and (iv) above where such contravention would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiaries, taken as a whole. No consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the Company of its obligations under this Agreement, except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Shares and except for those which have been obtained or made.

(k) There has not occurred any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Prospectus.

(l) There are no legal or governmental proceedings pending or, to the knowledge of the Company, threatened to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject (i) other than proceedings that would not be reasonably expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, or on the power or ability of the Company to perform its obligations under this Agreement or to consummate the transactions contemplated by the Time of Sale Prospectus or (ii) that are required to be described in the Registration Statement or the Prospectus and are not so described; and there are no statutes, regulations, contracts or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Re gistration Statement that are not described or filed as required.

(m) Each preliminary prospectus filed as part of the registration statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424 under the Securities Act, complied when so filed in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder.

(n) The Company is not, and solely after giving effect to the offering and sale of the Shares to be sold by the Company and the application of the proceeds thereof as described in the Prospectus will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(o) The Company and its subsidiaries (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic

substances or wastes, pollutants or contaminants ("**Environmental Laws**"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(p) There are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) that would, singly or in the aggregate, reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(q) Except as described in the Time of Sale Prospectus, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company or to require the Company to include such securities with the Shares registered pursuant to the Registration Statement.

(r) None of the Company, any of its subsidiaries, any director or officer thereof, or, to the Company's knowledge, any affiliate, employee or agent or representative of the Company or of any of its subsidiaries or affiliates, has violated any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "**FCPA**"), including, without limitation, by making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization or approval of the payment or giving of any money, property, gifts or anything else of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or party official or any candidate for foreign political office in contravention of the FCPA; and th e Company and its subsidiaries have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures reasonably designed to promote and achieve compliance therewith.

(s) The operations of the Company and its subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of

2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(t) The Company and each of its subsidiaries are in compliance with all applicable laws administered by, and regulations of, the Federal Deposit Insurance Corporation (the "**FDIC**"), the Office of Thrift Supervision (the "**OTS**"), the Florida Office of Financial Regulation (the "**Office of Financial Regulation**") and any other federal or state bank regulatory authorities with jurisdiction over the Company or any of its subsidiaries (together with the FDIC, the OTS and the Office of Financial Regulation, the "**Bank Regulatory Authorities**"), except where the failure to be in compliance with such laws and regulations would not, singly or in the aggregate, reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole. The deposit accounts of each banking subsidiary of the Company are insured up to applicable limits by the FDIC and no proceedings for the termination or revocation of such insurance are pending or, to the knowledge of the Company, threatened. Neither the Company nor any of its subsidiaries is a party to or otherwise subject to any consent decree, memorandum of understanding, cease and desist order, order of prohibition or suspension, written commitment, supervisory agreement, or written agreement or other written statement as described under 12 U.S.C. 1818(u) (whether or not such federal banking agency has determined that publication would be contrary to the public interest) with any of the Bank Regulatory Authorities, nor have the Company or any of its subsidiaries been advised by any of the Bank Regulatory Authorities that it is contemplating issuing or requesting any of the foregoing.

(u) (i) None of the Company, any of its subsidiaries, any director or officer thereof, or, to the Company's knowledge, any employee, agent, affiliate or representative of the Company or any of its subsidiaries, is an individual or entity ("**Person**") that is, or is owned or controlled by a Person that is:

(A) currently the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("**OFAC**") (collectively, "**Sanctions**"), or

(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Burma/Myanmar, Cuba, Iran, North Korea, Sudan and Syria).

(ii) The Company will not, directly or indirectly, use the proceeds of the offering of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

(A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) The Company and its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(v) Subsequent to the respective dates as of which information is given in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus, (i) the Company and its subsidiaries have not incurred any material liability or material obligation, direct or contingent, nor entered into any material transaction; (ii) the Company has not purchased any of its outstanding capital stock, nor declared, paid or otherwise made any dividend or distribution of any kind on its capital stock other than ordinary and customary dividends; and (iii) there has not been any material change in the capital stock, short-term debt or long-term debt of the Company and its subsidiaries, taken as a whole amongst the Company and its subsidiaries, except in each case as described in each of the Registration Statement, the Time of Sale Prospectus and the Prospectus, respectively.

(w) The Company and its subsidiaries have valid title in fee simple to all real property and valid title to all personal property owned by them that is material to the business of the Company and its subsidiaries, taken as a whole, in each case free and clear of all liens, encumbrances and defects, except such as are described in the Time of Sale Prospectus or such as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and its subsidiaries; and any real property and buildings held under lease by the Company and its subsidiaries that, singly or in the aggregate, are material to the business of the Company and its subsidiaries, taken as a whole, are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use mad e and proposed to be made of such property and buildings by the Company and its subsidiaries, in each case except as described in the Time of Sale Prospectus.

(x) The Company and its subsidiaries own or possess, or, to the knowledge of the Company, can acquire on reasonable terms, all material patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names currently employed by them in connection with the business now operated by them, and neither the Company nor any of its subsidiaries has received any notice of infringement of or conflict with asserted rights of others with respect to any of the foregoing that, singly or in the aggregate, would reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(y) No material labor dispute with the employees of the Company or any of its subsidiaries exists, except as described in the Time of Sale Prospectus, or, to the knowledge of the Company, is imminent.

(z) The Company and its subsidiaries, taken as a whole, are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; and neither the Company nor any of its subsidiaries has any reason to believe that it will not be able to obtain the same or similar coverage from similar insurers as may be necessary to continue their business at a cost that would not have a material adverse effect on the Company and its subsidiaries, taken as a whole, except as described in the Time of Sale Prospectus.

(aa) The Company and its subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct their respective businesses, except as could not reasonably be expected, singly or in the aggregate, to have a material adverse effect on the Company and its subsidiaries, taken as a whole, and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit that, singly or in the aggregate, could reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole, except as described in the Time of Sale Prospectus.

(bb) Except as described in the Time of Sale Prospectus, the Company and its subsidiaries, on a consolidated basis, maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as

described in the Time of Sale Prospectus, since the end of the Company's most recent audited fiscal year, there has been (i) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (ii) no change in the Company's internal control over financial reporting that has materially and adversely affected, or is reasonably likely to materially and adversely affect, the Company's internal control over financial reporting.

(cc) Except as described in the Time of Sale Prospectus, including any shares or options issued in the reorganization described therein, the Company has not sold, issued or distributed any shares of Common Stock during the six-month period preceding the date hereof, including any sales pursuant to Rule 144A under, or Regulation D or S of, the Securities Act, other than shares issued pursuant to employee benefit plans, qualified stock option plans or other employee compensation plans or pursuant to outstanding options, rights or warrants.

(dd) The Company and its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date of this Agreement or have requested extensions thereof (except where the failure to file would not have a material adverse effect on the Company and its subsidiaries, taken as a whole) and have accrued or paid all taxes required to be reflected thereon and any other tax, assessment, fine or penalty levied against them (except where the failure to accrue or pay would not have a material adverse effect on the Company and its subsidiaries, taken as a whole, or except as currently being contested in good faith and for which reserves required by U.S. GAAP have been created in the consolidated financial statements of the Company and its subsidiaries), and no tax deficiency has been determined adversely to the Company o r any of its subsidiaries (nor does the Company nor any of its subsidiaries have any notice or knowledge of any tax deficiency which could reasonably be expected to be determined adversely to the Company or its subsidiaries) that would reasonably be expected to have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(ee) The Bank is "well-capitalized" (as that term is defined at 12 C.F.R. 565.4(b)(1)), and the Bank has not yet received a Community Reinvestment Act ("**CRA**") rating. The Bank has not been informed by the Bank Regulatory Authorities that its status as "well-capitalized" will change within one year, nor has the Bank been informed by the Bank Regulatory Authorities that it may receive a less than "satisfactory" rating for CRA purposes.

2. *Representations and Warranties of the Selling Stockholders*. Each Selling Stockholder, severally and not jointly, represents and warrants to and agrees with each of the Underwriters that:

(a) This Agreement has been duly authorized, executed and delivered by or on behalf of such Selling Stockholder.

(b) The execution and delivery by such Selling Stockholder of, and the performance by such Selling Stockholder of its obligations under, this Agreement, the Custody Agreement signed by such Selling Stockholder and Registrar and Transfer Company, as Custodian, relating to Shares to be sold by such Selling Stockholder (the "**Custody Agreement**") and the Power of Attorney appointing certain individuals as such Selling Stockholder's attorneys-in-fact to the extent set forth therein, relating to the transactions contemplated hereby and by the Registration Statement (the "**Power of Attorney**") will not contravene (i) any provision of applicable law, (ii) the certificate of incorporation or by-laws or other organizational documents of such Selling Stockholder (if such Selling Stockholder is a corporation or other business entity or trust), (iii) any agreement or other instrument binding upon such Selling Stockholder or (iv) any judgment, order or decree of any governmental body, agency or court having jurisdiction over such Selling Stockholder, except, in the case of clauses (i), (iii) and (iv) above, where such contravention would not, singly or in the aggregate, have a material adverse effect on such Selling Stockholder's ability to perform its obligations under this Agreement. No consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by such Selling Stockholder of its obligations under this Agreement or the Custody Agreement or Power of Attorney of such Selling Stockholder, except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Shares.

(c) Such Selling Stockholder has valid title to units of the LLC which will entitle such Selling Stockholder to the Shares to be sold by such Selling Stockholder, and on the Closing Date will have, valid title to, or a "security entitlement" within the meaning of Section 8-501 of the New York Uniform Commercial Code (the "**UCC**") in respect of, the Shares to be sold by such Selling Stockholder free and clear of all security interests, claims, liens, equities or other encumbrances and the legal right and power, and all authorization and approval required by law, to enter into this Agreement, the Custody Agreement and the Power of Attorney and to sell, transfer and deliver the Shares to be sold by such Selling Stockholder or a security entitlement in respect of such Shares.

(d) The Custody Agreement and the Power of Attorney of such Selling Stockholder have been duly authorized, executed and delivered by such Selling Stockholder and are valid and binding agreements of such Selling Stockholder.

(e) Upon payment by the Underwriters for the Shares to be sold by such Selling Stockholder pursuant to this Agreement, delivery of such Shares, as directed by the Underwriters, to Cede & Co. ("**Cede**") or such other nominee as may be designated by the Depository Trust Company ("**DTC**"), registration of

such Shares in the name of Cede or such other nominee on the Company's share registry and the crediting of such Shares on the books of DTC to securities accounts of the Underwriters maintained at DTC (assuming that neither DTC nor any such Underwriter has notice of any adverse claim (within the meaning of Section 8-105 of the UCC) to such Shares), (A) under Section 8-501 of the UCC, the Underwriters will acquire a security entitlement in respect of such Shares and (B) no action based on any "adverse claim", within the meaning of Section 8-102 of the UCC, to such Shares may be asserted against the Underwriters with respect to such security entitlement; for purposes of this representation, such Selling Stockholder may assume that when such payment, delivery and crediting occur, (x) such Shares will have been registered in the name of Cede or another nominee designated by D TC, in each case on the Company's share registry in accordance with its certificate of incorporation, by-laws and applicable law, (y) DTC will be registered as a "clearing corporation" within the meaning of Section 8-102 of the UCC and (z) appropriate book entries crediting the Shares to the securities accounts of the several

Underwriters maintained at DTC will have been made on records of DTC pursuant to Section 8-501 of the UCC. As used in this Section 2(e), the terms "delivery," "securities account," "security entitlement" and "adverse claim" have the meanings given them in Article 8 of the UCC.

(f) In respect of any statements in or omissions from the Registration Statement, the Time of Sale Prospectus or the Prospectus made in reliance upon and in conformity with information furnished to the Company by or on behalf of such Selling Stockholder specifically for use in connection with the preparation thereof, such Selling Stockholder hereby makes the same representations and warranties with respect to such information as the Company makes under paragraph 1(b) hereof, it being understood and agreed that such information consists only of its name and any information relating to its holdings of Common Stock (including for the avoidance of doubt that information set forth in the footnotes to the beneficial ownership table in "Principal and Selling Stockholders") as set forth in the Registration Statement, the Time o f Sale Prospectus and the Prospectus.

3. *Agreements to Sell and Purchase*. Each Seller, severally and not jointly, hereby agrees to sell to the several Underwriters, and each Underwriter, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees, severally and not jointly, to purchase from such Seller at $[ ] a share (the "**Purchase Price**") the number of Firm Shares (subject to such adjustments to eliminate fractional shares as you may determine) that bears the same proportion to the number of Firm Shares to be sold by such Seller as the number of Firm Shares set forth in Schedule II hereto opposite the name of such Underwriter bears to the total number of Firm Shares.

On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Selling Stockholders agree

to sell to the Underwriters the Additional Shares, and the Underwriters shall have the right to purchase, severally and not jointly, up to [ ] Additional Shares at the Purchase Price, provided, however, that the amount paid by the Underwriters for any Additional Shares shall be reduced by an amount per share equal to any dividends declared by the Company and payable on the Firm Shares but not payable on such Additional Shares. You may exercise this right on behalf of the Underwriters in whole or from time to time in part by giving written notice not later than 30 days after the date of this Agreement. Any exercise notice shall specify the number of Additional Shares to be purchased by the Underwriters and the date on which such shares are to be purchased. The number of Additional Shares to be purchased from each Selling Stockholder by the Underwri ters, collectively, pursuant to an exercise notice shall equal the number of Additional Shares to be purchased from the Selling Stockholders, collectively, pursuant to an exercise notice multiplied by the fraction obtained by dividing (i) the number opposite such Selling Stockholder's name under the column titled "Number of Additional Shares to Be Sold" on Schedule I hereto by (ii) the total number opposite the word "Total" under the column titled "Number of Additional Shares to Be Sold" on Schedule I hereto (subject to such adjustments to eliminate fractional shares as you may determine). The number of such Additional Shares to be purchased by each Underwriter from each Selling Stockholder pursuant to an exercise notice shall be the number of Additional Shares (subject to such adjustments to eliminate fractional shares as you may determine) that bears the same proportion to the number of Additional Shares to be sold by such Selling Stockholder as (i) the number oppos ite such Underwriter's name under the column titled "Number of Additional Shares to Be Purchased" on Schedule II hereto bears to (ii) the total number opposite the word "Total" under the column titled "Number of Additional Shares to Be Purchased" on Schedule II hereto. Each purchase date must be at least one business day after the written notice is given and may not be earlier than the closing date for the Firm Shares nor later than ten business days after the date of such notice. Additional Shares may be purchased as provided in Section 5 hereof solely for the purpose of covering over-allotments made in connection with the offering of the Firm Shares. On each day, if any, that Additional Shares are to be purchased (an "**Option Closing Date**"), each Underwriter agrees, severally and not jointly, to purchase the number of Additional Shares (subject to such adjustments to eliminate fractional shares as you may determine) that bears the sa me proportion to the total number of Additional Shares to be purchased on such Option Closing Date as the number of Additional Shares set forth in Schedule II hereto opposite the name of such Underwriter bears to the total number of Additional Shares.

The Company hereby agrees that, without the prior written consent of the Representatives on behalf of the Underwriters, it will not, during the period commencing on the date hereof and ending 180 days after the date of the Prospectus, (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or

warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock beneficially owned (as such term is used in Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") by the Company or any other securities so owned convertible into or exercisable or exchangeable for Common Stock or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise or (3) file any registration statement with the Commission relating to the offering of any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock.

The restrictions contained in the preceding paragraph shall not apply to (a) the Shares to be sold hereunder and any shares or options issued in connection with the reorganization transactions described in the Time of Sale Prospectus, (b) the issuance by the Company of shares of Common Stock upon the exercise of an option or a warrant granted under stock incentive, compensation or similar plans, in each case of which the Representatives have been advised in writing, or issuances or transfers in accordance with the terms of any stock incentive, compensation or similar plan in effect on the date hereof, as described in the Time of Sale Prospectus and of which the Representatives have been advised in writing, (c) the filing by the Company of a registration statement with the Commission on Form S-8 relating to the offering of securities by the Company pursuant to terms of any stock incent ive, compensation or similar plan in effect on the date hereof and as described in the Time of Sale Prospectus or (d) the filing of a registration statement on Form S-4 or other appropriate form with respect to the issuance by the Company of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock in connection with an acquisition or business combination (or the entering into of an acquisition agreement or other offer or contract to sell with respect thereto); provided that no such Common Stock or other securities are issued in connection with any such acquisition or business combination during the 180-day restricted period. Notwithstanding the foregoing, if (1) during the last 17 days of the 180-day restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs; or (2) prior to the expiration of the 180-day restricted period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the 180-day period, the restrictions imposed by this section shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. The Company shall promptly notify the Representatives of any earnings release, news or event that may give rise to an extension of the initial 180-day restricted period.

4. *Terms of Public Offering*. The Sellers are advised by you that the Underwriters propose to make a public offering of their respective portions of the

Shares as soon after the Registration Statement and this Agreement have become effective as in your judgment is advisable. The Sellers are further advised by you that the Shares are to be offered to the public initially at $[ ] a share (the "**Public Offering Price**") and to certain dealers selected by you at a price that represents a concession not in excess of $[ ] a share under the Public Offering Price, and that any Underwriter may allow, and such dealers may reallow, a concession, not in excess of $[ ] a share, to any Underwriter or to certain other dealers.

5. *Payment and Delivery*. Payment for the Firm Shares to be sold by each Seller shall be made to such Seller in Federal or other funds immediately available in New York City against delivery of such Firm Shares for the respective accounts of the several Underwriters at 10:00 a.m., New York City time, on [ ], 2011, or at such other time on the same or such other date, not later than [ ], 2011, as shall be designated in writing by you. The time and date of such payment are hereinafter referred to as the "**Closing Date**."

Payment for any Additional Shares shall be made to the Selling Stockholders in Federal or other funds immediately available in New York City against delivery of such Additional Shares for the respective accounts of the several Underwriters at 10:00 a.m., New York City time, on the date specified in the corresponding notice described in Section 3 or at such other time on the same or on such other date, in any event not later than [ ], 2011, as shall be designated in writing by you.

The Firm Shares and Additional Shares shall be registered in such names and in such denominations as you shall request in writing not later than one full business day prior to the Closing Date or the applicable Option Closing Date, as the case may be. The Firm Shares and Additional Shares shall be delivered to you on the Closing Date or an Option Closing Date, as the case may be, for the respective accounts of the several Underwriters. The Purchase Price payable by the Underwriters shall be reduced by any withholding required by law.

6. *Conditions to the Underwriters' Obligations*. The obligations of the Sellers to sell the Shares to the Underwriters and the several obligations of the Underwriters to purchase and pay for the Shares on the Closing Date are subject to the condition that the Registration Statement shall have become effective not later than 4:00 p.m., New York City time, on the date hereof.

The several obligations of the Underwriters are subject to the following further conditions:

(a) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date:

(i) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded to any securities of the Company or any of its subsidiaries by any "nationally recognized statistical rating organization," as such term is defined for purposes of Rule 436(g)(2) under the Securities Act; and

(ii) there shall not have occurred any change, or any development involving a prospective change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Prospectus as of the date of this Agreement that, in your judgment, is material and adverse and that makes it, in your judgment, impracticable to market the Shares on the terms and in the manner contemplated in the Time of Sale Prospectus.

(b) The Underwriters shall have received on the Closing Date a certificate, dated the Closing Date and signed by an executive officer of the Company, to the effect set forth in Section 6(a)(i) above and to the effect that the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date and that the Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date.

The officer signing and delivering such certificate may rely upon the best of his or her knowledge as to proceedings threatened.

(c) The Underwriters shall have received on the Closing Date opinions and a letter of Skadden, Arps, Slate, Meagher & Flom LLP, outside counsel for the Company, dated the Closing Date, in or substantially in the form set forth in Exhibits B-1, B-2 and B-3 hereto.

(d) The Underwriters shall have received on the Closing Date an opinion of Jeffrey Starr, General Counsel of the Bank, dated the Closing Date, in or substantially in the form set forth in Exhibit C hereto.

(e) The Underwriters shall have received on the Closing Date an opinion of Simpson Thacher & Bartlett LLP, counsel for certain Selling Stockholders, dated the Closing Date, and opinions of in-house counsel for the remaining Selling Stockholders in or substantially in the form set forth in Exhibit D hereto.

(f) The Underwriters shall have received on the Closing Date an opinion of Davis Polk & Wardwell LLP, counsel for the Underwriters, dated the

Closing Date, in form and substance reasonably satisfactory to the Representatives.

The opinions of Skadden, Arps, Slate, Meagher & Flom LLP and the other persons described in Sections 6(c), 6(d) and 6(e) above shall be rendered and addressed to the Underwriters.

(g) The Underwriters shall have received, on each of the date hereof and the Closing Date, a letter dated the date hereof or the Closing Date, as the case may be, in form and substance satisfactory to the Underwriters, from each of KPMG LLP, independent public accountants, and PricewaterhouseCoopers LLP, independent public accountants, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the Time of Sale Prospectus and the Prospectus; *provided* that the letter delivered on the Closing Date shall use a "cut-off date" not earlier than the date hereof.

(h) The "lock-up" agreements, each substantially in the form of Exhibit A hereto, between you and certain stockholders, officers and directors of the Company, relating to sales and certain other dispositions of shares of Common Stock or certain other securities, delivered to you on or before the date hereof, shall be in full force and effect on the Closing Date.

(i) The reorganization shall have taken place as described in the Time of Sale Prospectus and the Prospectus under "Reorganization".

The several obligations of the Underwriters to purchase Additional Shares hereunder are subject to the delivery to you on the applicable Option Closing Date of such documents as you may reasonably request with respect to the good standing of the Company, the due authorization of the Additional Shares to be sold on such Option Closing Date and other matters related to the Additional Shares.

7. *Covenants of the Company*. The Company covenants with each Underwriter as follows:

(a) To furnish to you, without charge, three signed copies of the Registration Statement (including exhibits thereto) and for delivery to each other Underwriter a conformed copy of the Registration Statement (without exhibits thereto), upon the reasonable request of such other Underwriter, and to furnish to you in New York City, without charge, prior to 10:00 a.m., New York City time, on the business day next succeeding the date of this Agreement and during the period mentioned in Section 7(e) or 7(f) below, as many copies of the Time of Sale Prospectus, the Prospectus and any supplements and amendments thereto or to the Registration Statement as you may reasonably request.

(b) Subject to Section 7(e) below, before amending or supplementing the Registration Statement, the Time of Sale Prospectus or the Prospectus, to furnish to you a copy of each such proposed amendment or supplement and not to file any such proposed amendment or supplement to which you reasonably object, and to file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule.

(c) To furnish to you a copy of each proposed free writing prospectus to be prepared by or on behalf of, used by, or referred to by the Company and not to use or refer to any proposed free writing prospectus to which you reasonably object.

(d) Not to take any action that would result in an Underwriter or the Company being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of the Underwriter that the Underwriter otherwise would not have been required to file thereunder.

(e) If the Time of Sale Prospectus is being used to solicit offers to buy the Shares at a time when the Prospectus is not yet available to prospective purchasers and any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Time of Sale Prospectus in order to make the statements therein, in the light of the circumstances, not misleading, or if any event shall occur or condition exist as a result of which the Time of Sale Prospectus conflicts with the information contained in the Registration Statement then on file, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Time of Sale Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at the Company's own expense, to the Underwriters and to any dealer upon request, either amendments or supplements to the Time of Sale Prospectus so that the statements in the Time of Sale Prospectus as so amended or supplemented will not, in the light of the circumstances when the Time of Sale Prospectus is delivered to a prospective purchaser, be misleading or so that the Time of Sale Prospectus, as amended or supplemented, will no longer conflict with the Registration Statement, or so that the Time of Sale Prospectus, as amended or supplemented, will comply with applicable law.

(f) If, during such period after the first date of the public offering of the Shares as in the opinion of counsel for the Underwriters the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is required by law to be delivered in connection with sales by an Underwriter or dealer, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus (or in lieu thereof the notice referred to in

Rule 173(a) of the Securities Act) is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at the Company's own expense, to the Underwriters and to the dealers (whose names and addresses you will furnish to the Company) to which Shares may have been sold by you on behalf of the Underwriters and to any other dealers upon request, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) of the Securities Act) is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with applicable law.

(g) To endeavor to qualify the Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions as you shall reasonably request, provided that in no event shall the Company or any of its subsidiaries be obligated to qualify to do business as a foreign corporation in any jurisdiction where it is not already so qualified or to take any action that would subject the Company or any of its subsidiaries to taxation or service of process where it is not already subject to taxation or service of process.

(h) To make generally available to the Company's security holders and to you as soon as practicable an earning statement covering a period of at least twelve months beginning with the first fiscal quarter of the Company occurring after the date of this Agreement which shall satisfy the provisions of

Section 11(a) of the Securities Act (including, at the option of the Company, Rule 158 of the Securities Act) and the rules and regulations of the Commission thereunder.

(i) If any Selling Stockholder is not a U.S. person for U.S. federal income tax purposes, the Company will deliver to each Underwriter (or its agent), on or before the Closing Date, (i) a certificate with respect to the Company's status as a "United States real property holding corporation," dated not more than thirty (30) days prior to the Closing Date, as described in Treasury Regulations Sections 1.897-2(h) and 1.1445-2(c)(3), and (ii) proof of delivery to the IRS of the required notice, as described in Treasury Regulations 1.897-2(h)(2).

8. *Covenants of the Sellers*. Each Seller, severally and not jointly, covenants with each Underwriter as follows:

(a) Each Seller will deliver to each Underwriter (or its agent), prior to or at the Closing Date, a properly completed and executed Internal Revenue Service ("**IRS**") Form W-9 or an IRS Form W-8, as appropriate, together with all required attachments to such form.

9. *Expenses*. Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, the Company agrees to pay or cause to be paid all expenses incident to the performance of the obligations of the Sellers under this Agreement, including: (i) the fees, disbursements and expenses of the Company's counsel, the Company's accountants and counsel for the Selling Stockholders in connection with the registration and delivery of the Shares under the Securities Act and all other fees or expenses in connection with the preparation and filing of the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, the Prospectus, any free writing prospectus prepared by or on behalf of, used by, or referred to by the Company and amendments and supplement s to any of the foregoing, including all printing costs associated therewith, and the mailing and delivering of copies thereof to the Underwriters and dealers, in the quantities hereinabove specified, (ii) all costs and expenses related to the transfer and delivery of the Shares to the Underwriters, including any transfer or other taxes payable thereon, (iii) the reasonable and documented cost of printing or producing any Blue Sky or Legal Investment memorandum in connection with the offer and sale of the Shares under state securities laws and all expenses in connection with the qualification of the Shares for offer and sale under state securities laws as provided in Section 7(g) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky or Legal Investment memorandum, (iv) all filing fees and the reasonable fees and disbursements of counsel to the Underwriters incur red in connection with the review and qualification of the offering of the Shares by the Financial Industry Regulatory Authority, Inc. provided that such fees and disbursements of such counsel in clause (iii) and (iv) shall not exceed $75,000, (v) all fees and expenses in connection with the preparation and filing of the registration statement on Form 8-A relating to the Common Stock and all costs and expenses incident to listing the Shares on the New York Stock Exchange, (vi) the cost of printing certificates, if any, representing the Shares, (vii) the costs and charges of any transfer agent, registrar or depositary, (viii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Shares, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with the production of road show sl ides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives and officers of the Company and any such consultants, provided, however, that the cost of any aircraft chartered in connection with the road show shall be split evenly between the Company on the one hand and the Underwriters on the other hand, (ix) the document production charges and expenses associated with printing this Agreement and (x) all other costs and expenses incident to the performance of the obligations of the Company hereunder for which provision is not otherwise made in this Section. It is

understood, however, that except as provided in this Section, Section 11 entitled "Indemnity and Contribution" and the last paragraph of Section 13 below, the Underwriters will pay all of their costs and expenses, including fees and disbursements of their counsel, stock transfer taxes payable on resale of any of the Shares by them and any advertising expenses connected with any offers they may make.

The provisions of this Section shall not supersede or otherwise affect any agreement that the Sellers may otherwise have for the allocation of such expenses among themselves.

10. *Covenants of the Underwriters*. Each Underwriter severally covenants with the Company not to take any action that would result in the Company being required to file with the Commission under Rule 433(d) a free writing prospectus prepared by or on behalf of such Underwriter that otherwise would not be required to be filed by the Company thereunder, but for the action of the Underwriter.

11. *Indemnity and Contribution*. (a) The Company agrees to indemnify and hold harmless each Underwriter, each person, if any, who controls any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of any Underwriter within the meaning of Rule 405 under the Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, any preliminary prospectus, the Time of Sale Prospectus, any issuer free writing prospectus as defined i n Rule 433(h) under the Securities Act, any Company information that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act, or the Prospectus or any amendment or supplement thereto, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through you expressly for use therein.

(b) Each Selling Stockholder, severally and not jointly, agrees to indemnify and hold harmless each Underwriter, each person, if any, who controls any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of any Underwriter within the meaning of Rule 405 under the Securities Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, any preliminary prospectus, the Time of Sale Prospectus, any issuer free writing prospectus as defined in Rule 433(h) under the Securities Act, any Company information that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act, or the Prospectus or any amendment or supplement thereto, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, but only with reference to information relating to such Selling Stockholder furnished to the Company by or on behalf of such Selling Stockholder specifically for use in the documents referred to in the foregoing indemnity, it being understood and agreed that the such information provided by or on behalf of any such Selling Stockholder consists only of its name and any information relating to its holdings of shares of Common Stock (including for the avoidance of doubt that information set forth in the footnotes to the beneficial ownership table in "Principal and Selling Stockholders") as set forth in the documents referred to in the foregoing indemnity. The liability of each Selling Stockholder under the representations and warranties contained in this Agreement and under the indemnity and contribution agreements contained in this Section 11 shall be limited to an amount equal to (i) the number of Shares sold by such Selling Stockholder under this Agreement multiplied by (ii) the Public Offering Price (minus related underwriting discounts and commissions).

(c) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, the Selling Stockholders, the directors of the Company, the officers of the Company who sign the Registration Statement and each person, if any, who controls the Company or any Selling Stockholder within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, any preliminary prospectus, the Time of Sale Prospectus, any issuer free writin g prospectus as defined in Rule 433(h) under the Securities Act, any Company information that the Company has filed, or is required to file, pursuant to Rule 433(d) under the Securities Act, or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, but only with reference to information relating to such Underwriter furnished to the Company in writing by such Underwriter through you expressly for use therein.

(d) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 11(a), 11(b) or 11(c), such person (the "**indemnified party**") shall promptly notify the person against whom such indemnity may be sought (the "**indemnifying party**") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for (i) the reasonable fees and expenses of more than one separate firm (in addition to any local counsel) for all Underwriters and all persons, if any, who control any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act or who are affiliates of any Underwrit er within the meaning of Rule 405 under the Securities Act, (ii) the reasonable fees and expenses of more than one separate firm (in addition to any local counsel) for the Company, its directors, its officers who sign the Registration Statement and each person, if any, who controls the Company within the meaning of either such Section and (iii) the reasonable fees and expenses of more than one separate firm (in addition to any local counsel) for all Selling Stockholders and all persons, if any, who control any Selling Stockholder within the meaning of either such Section, and that all such reasonable fees and expenses shall be reimbursed as they are incurred. In the case of any such separate firm for the Underwriters and such control persons and affiliates of any Underwriters, such firm shall be designated in writing by the Representatives. In the case of any such separate firm for the Company, and such directors, officers and control persons of the Company, such firm shall be designated in writing by the Company. In the case of any such separate firm for the Selling Stockholders and such control persons of any Selling Stockholders, such firm shall be designated in writing by the persons named as attorneys-in-fact for the Selling Stockholders under the applicable Powers of Attorney. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to

reimburse the indemnified party for reasonably incurred fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement and (iii) such indemnified party shall have given the indemnifying party at least 15 days' prior written notice of its intention to settle. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could h ave been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(e) To the extent the indemnification provided for in Section 11(a), 11(a) or 11(c) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand from the offering of the Shares or (ii) if the allocation provided by clause 11(e)(i) above is not permitted by applicable law, in such proportion as is appropria te to reflect not only the relative benefits referred to in clause 11(e)(i) above but also the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Sellers on the one hand and the Underwriters on the other hand in connection with the offering of the Shares shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Shares (before deducting expenses) received by each Seller and the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate Public Offering Price of the Shares. The relative fault of the Sellers on the one hand and the Underwriters on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Sellers or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Underwriters' respective obligations to contribute

pursuant to this Section 11 are several in proportion to the respective number of Shares they have purchased hereunder, and not joint.

(f) The Sellers and the Underwriters agree that it would not be just or equitable if contribution pursuant to this Section 11 were determined by *pro rata* allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 11(e). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in Section 11(e) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 11, no Underwriter shall be req uired to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The remedies provided for in this Section 11 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(g) The indemnity and contribution provisions contained in this Section 11 and the representations, warranties and other statements of the Company and the Selling Stockholders contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Underwriter, any person controlling any Underwriter or any affiliate of any Underwriter, any Selling Stockholder or any person controlling any Selling Stockholder, or the Company, its officers or directors or any person controlling the Company and (iii) acceptance of and payment for any of the Shares.

12. *Termination*. The Underwriters may terminate this Agreement by notice given by you to the Company and the Selling Stockholders if, after the execution and delivery of this Agreement and prior to the Closing Date, (i) trading generally shall have been suspended or materially limited on, or by, as the case may be, either of the New York Stock Exchange or the NASDAQ Global Market, (ii) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market, (iii) a material disruption in securities settlement, payment or clearance services in the United States shall have occurred, (iv) any moratorium on commercial banking activities shall have been declared by Federal or New York State authorities or (v) there shall have occurred any outbreak or escalati on of hostilities, or any change in financial

markets or any calamity or crisis that, in your judgment, is material and adverse and that, singly or together with any other event specified in this clause (v), makes it, in your judgment, impracticable or inadvisable to proceed with the offer, sale or delivery of the Shares on the terms and in the manner contemplated in the Time of Sale Prospectus or the Prospectus.

13. *Effectiveness; Defaulting Underwriters*. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If, on the Closing Date or an Option Closing Date, as the case may be, any one or more of the Underwriters shall fail or refuse to purchase Shares that it has or they have agreed to purchase hereunder on such date, and the aggregate number of Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase is not more than one-tenth of the aggregate number of the Shares to be purchased on such date, the other Underwriters shall be obligated severally in the proportions that the number of Firm Shares set forth opposite their respective names in Schedule II bears to the aggregate number of Firm Shares set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as you may specify, to purchase the Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date; *provided* that in no event shall the number of Shares that any Underwriter has agreed to purchase pursuant to this Agreement be increased pursuant to this Section 13 by an amount in excess of one-ninth of such number of Shares without the written consent of such Underwriter. If, on the Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Firm Shares and the aggregate number of Firm Shares with respect to which such default occurs is more than one-tenth of the aggregate number of Firm Shares to be purchased on such date, and arrangements satisfactory to you, the Company and the Selling Stockholders for the purchase of such Firm Shares are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter, the Company or the Selling Stockholders. In any such case either you or the relevant Sellers shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement, in the Time of Sale Prospectus, in the Prospectus or in any other documents or arrangements may be effected. If, on an Option Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Additional Shares and the aggregate number of Additional Shares with respect to which such default occurs is more than one-tenth of the aggregate number of Additional Shares to be purchased on such Option Closing Date, the non-defaulting Underwriters shall have the option to (i) terminate their obligation hereunder to purchase the Additional Shares to be sold on such Option Closing Date or (ii) purchase not less than the number of Additional Shares that such non-defaulting Underwriters would have been obligated to purchase in the absence of such default. Any action taken under this paragraph shall not relieve any

defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

If this Agreement shall be terminated by the Underwriters, or any of them, because of any failure or refusal on the part of the Company or any other Seller to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Company or any other Seller shall be unable to perform its obligations under this Agreement (which for the purposes of this Section 13, shall not include termination by the Underwriters under items (i), (iii), (iv) or (v) of Section 12), the Company will reimburse the Underwriters or such Underwriters as have so terminated this Agreement with respect to themselves, severally, for all out-of-pocket expenses (including the reasonable fees and disbursements of their counsel) reasonably incurred by such Underwriters in connection with this Agreement or the offering contemplated hereunder.

14. *Entire Agreement*. (a) This Agreement, together with any contemporaneous written agreements and any prior written agreements (to the extent not superseded by this Agreement) that relate to the offering of the Shares, represents the entire agreement between the Company and the Selling Stockholders, on the one hand, and the Underwriters, on the other, with respect to the preparation of any preliminary prospectus, the Time of Sale Prospectus, the Prospectus, the conduct of the offering, and the purchase and sale of the Shares.

(b) The Company acknowledges that in connection with the offering of the Shares: (i) the Underwriters have acted at arms length, are not agents of, and owe no fiduciary duties to, the Company or any other person, (ii) the Underwriters owe the Company only those duties and obligations set forth in this Agreement and prior written agreements (to the extent not superseded by this Agreement), if any, and (iii) the Underwriters may have interests that differ from those of the Company. The Company waives to the full extent permitted by applicable law any claims it may have against the Underwriters arising from an alleged breach of fiduciary duty in connection with the offering of the Shares.

15. *Counterparts*. This Agreement may be signed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

16. *Applicable Law*. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

17. *Headings*. The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

18. *Patriot Act.* In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the

Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company, which information may include the name and address of their respective clients, as well as other information that will allow the underwriters to properly identify their respective clients.

19. *Notices.* All communications hereunder shall be in writing and effective only upon receipt and if to the Underwriters shall be delivered, mailed or sent to you in care of Morgan Stanley & Co. Incorporated, 1585 Broadway, New York, New York 10036, Attention: Equity Syndicate Desk, with a copy to the Legal Department; and to Merrill Lynch, Pierce, Fenner & Smith Incorporated, One Bryant Park, New York, New York 10036, Attention: Syndicate Department; if to the Company shall be delivered, mailed or sent to BankUnited, Inc., 14817 Oak Lane, Miami Lakes, Florida 33016, Attention: Chief Operating Officer, with a copy which shall not constitute notice to Skadden, Arps, Slate, M eagher & Flom LLP, Four Times Square, New York, New York 10036, Attention: Richard B. Aftanas, Esq., and if to any Selling Stockholder shall be delivered, mailed or sent to it at the address set forth in Schedule I.

Very truly yours,

BankUnited, Inc.

By: ______________________________
Name:
Title:

The Selling Stockholders named in
Schedule I hereto, acting severally

By: ______________________________
Attorney-in Fact

Accepted as of the date hereof

Morgan Stanley & Co. Incorporated
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

Acting severally on behalf of themselves and
the several Underwriters named in
Schedule II hereto

By: Morgan Stanley & Co. Incorporated

By: ______________________________
Name:
Title:

By: Merrill Lynch, Pierce, Fenner & Smith Incorporated

By: ______________________________
Name:
Title:

SCHEDULE I

Selling Stockholder	Number of Firm Shares to Be Sold	Number of Additional Shares to Be Sold (Assuming [ ] Additional Shares Are Purchased)	Address of Selling Stockholder
[TO COME]			
Total:			

SCHEDULE II

Underwriter	Number of Firm Shares to Be Purchased	Number of Additional Shares to Be Purchased (Assuming [ ] Additional Shares Are Purchased)
Morgan Stanley & Co. Incorporated		
Merrill Lynch, Pierce, Fenner & Smith Incorporated		
Deutsche Bank Securities Inc.		
Goldman, Sachs & Co.		
Keefe, Bruyette & Woods, Inc.		
RBC Capital Markets, LLC		
UBS Securities LLC		
Total:		

SCHEDULE III

Time of Sale Prospectus

1. Preliminary Prospectus dated [date]

2. [identify all free writing prospectuses filed by the Company under Rule 433(d) of the Securities Act]

3. [free writing prospectus containing a description of terms that does not reflect final terms, if the Time of Sale Prospectus does not include a final term sheet]

EXHIBIT A

FORM OF LOCK-UP LETTER

[ ]

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park
New York, New York 10036

Ladies and Gentlemen:

The undersigned understands that Morgan Stanley & Co. Incorporated ("**Morgan Stanley**") and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("**Merrill Lynch**"), as representatives (the "**Representatives**") of the Underwriters (as defined below), propose to enter into an Underwriting Agreement (the "**Underwriting Agreement**") with BankUnited, Inc., a Delaware corporation (the "**Company**"), providing for the initial public offering (the "**Public Offering**") by the several Underwriters (the "**Underwriters**"), including Morgan Stanley and Merrill Lynch, of shares (the "**Shares**") of the common stock, par value $0.01 per share, of the Company (the "**Common Stock**").

To induce the Underwriters that may participate in the Public Offering to continue their efforts in connection with the Public Offering, the undersigned hereby agrees that, without the prior written consent of the Representatives, it will not, during the period commencing on the date of the Underwriting Agreement and ending 180 days after the date of the final prospectus relating to the Public Offering (the "**Prospectus**"), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock beneficially owned (as such term is used in Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")), by the undersigned or any other securitie s so owned convertible into or exercisable or exchangeable for Common Stock or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by

delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (a) any Shares to be sold by the undersigned pursuant to the Underwriting Agreement, (b) transactions relating to shares of Common Stock or other securities acquired in open market transactions after the completion of the Public Offering, provided that no filing under Section 16(a) of the Exchange Act (other than a filing on a Form 5 made after the expiration of the 180-day period referred to above) shall be required or shall be voluntarily made in connection with subsequent sales of shares of Common Stock or other securities acquired in such open market transactions, (c) transfers of shares of Common Stock or any security convertible into Common Stock as a bona fide gift or gifts, (d) transfers of shares of Common Stock or any security convertible into Comm on Stock to any trust for the direct or indirect benefit of the undersigned or the undersigned's immediate family, (e) transfers by testate succession or intestate distribution, (f) distributions or transfers (other than for value) by the undersigned to limited partners, members, or stockholders of the undersigned or transfers (other than for value) to any corporation, partnership or other business entity that is the direct or indirect affiliate of the undersigned, (g) transfers (other than for value) of shares to any corporation, partnership or other business entity with whom the undersigned shares in common an investment manager or advisor which has investment discretionary authority with respect to the undersigned's and the entity's investments pursuant to an investment advisory or similar agreement, provided that in the case of any transfer or distribution pursuant to clause (c) through (g), (x) each donee, distributee or transferee shall sign and deliver a lock-up letter substantially in the form of this letter, and (ii) no filing under Section 16(a) of the Exchange Act (other than a filing on a Form 5 made after the expiration of the 180-day period referred to above), reporting a reduction in beneficial ownership of shares of Common Stock, shall be required or shall be voluntarily made during the restricted period referred to in the foregoing sentence, or (h) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Common Stock, *provided* that such plan does not provide for the transfer of Common Stock during the restricted period and no public announcement or filing under the Exchange Act regarding the establishment of such plan shall be required of or voluntarily made by or on behalf of the undersigned or the Company. In addition, without limiting the ability of the undersigned to effect the sale of Shares pursuant to the Underwriting Agreement, the undersigned agrees that, without the prior written consent of the Representatives on behalf of the Underwriters, it will not, during the period commencing on the date of the Underwriting Agreement and ending 180 days after the date of the Prospectus, make any demand for or exercise any right with respect to, the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the

undersigned's shares of Common Stock except in compliance with the foregoing restrictions.

If:

(1) during the last 17 days of the restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs; or

(2) prior to the expiration of the restricted period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the restricted period;

the restrictions imposed by this agreement shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

The undersigned shall not engage in any transaction that may be restricted by this agreement during the 34-day period beginning on the last day of the initial restricted period unless the undersigned requests and receives prior written confirmation from the Company, Morgan Stanley or Merrill Lynch that the restrictions imposed by this agreement have expired.

The undersigned understands that the Company and the Underwriters are relying upon this agreement in proceeding toward consummation of the Public Offering. The undersigned further understands that this agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

If (1) the Underwriting Agreement shall not be entered into on or before March 31, 2011, (2) the Public Offering is abandoned by the Company before such date or (3) the Underwriting Agreement (other than the terms thereof which survive termination) shall terminate or be terminated prior to payment and delivery of the Common Stock to be sold thereunder, then this agreement shall be of no force and effect, and the restrictions on transactions contained herein relating to the Common Stock shall be null and void.

Whether or not the Public Offering actually occurs depends on a number of factors, including market conditions. Any Public Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Underwriters.

Very truly yours,

____
(Name)

____
(Address)

Exhibit 2.1a

PURCHASE AND ASSUMPTION AGREEMENT
WHOLE BANK

ALL DEPOSITS

AMONG

FEDERAL DEPOSIT INSURANCE CORPORATION,
RECEIVER OF BANKUNITED, FSB
CORAL GABLES, FLORIDA

FEDERAL DEPOSIT INSURANCE CORPORATION

and

BANKUNITED

DATED AS OF
MAY 21, 2009

TABLE OF CONTENTS

SCHEDULES

EXHIBITS

PURCHASE AND ASSUMPTION AGREEMENT

WHOLE BANK

ALL DEPOSITS

THIS AGREEMENT, made and entered into as of the 21st day of May, 2009, by and among the **FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER** of **BANKUNITED, FSB, CORAL GABLES, FLORIDA** (the "Receiver"), **BANKUNITED**, a de novo federal savings association organized under the laws of the United States of America, and having its principal place of business in Coral Gables, Florida (the "Assuming Bank"), and the **FEDERAL DEPOSIT INSURANCE CORPORATION**, organized under the laws of the United States of America and having its principal office in Washington, D.C., acting in its corporate capacity (the "Corporation").

WITNESSETH:

WHEREAS, on Bank Closing, the Chartering Authority closed BANKUNITED, FSB (the "Failed Bank") pursuant to applicable law and the Corporation was appointed Receiver thereof; and

WHEREAS, the Assuming Bank desires to purchase certain assets and assume certain deposit and other liabilities of the Failed Bank, and the Assuming Bank's holding company, BU Financial Holdings LLC, a Delaware limited liability company, desires to provide a warrant to the Corporation ("Warrant"), on the terms and conditions set forth in this Agreement, the Addendum to the Purchase and Assumption Agreement, and the Warrant; and

WHEREAS, pursuant to 12 U.S.C. Section 1823(c)(2)(A), the Corporation may provide assistance to the Assuming Bank to facilitate the transactions contemplated by this Agreement, which assistance may include indemnification pursuant to Article XII; and

WHEREAS, the Board of Directors of the Corporation (the "Board") has determined to provide assistance to the Assuming Bank on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, the Board has determined pursuant to 12 U.S.C. Section 1823(c)(4)(A) that such assistance is necessary to meet the obligation of the Corporation to provide insurance coverage for the insured deposits in the Failed Bank; and

NOW THEREFORE, in consideration of the mutual promises herein set forth and other valuable consideration, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings set forth in this Article 1, or elsewhere in this Agreement. As used herein, words imparting the singular include the plural and vice versa.

"**Accounting Records**" means the general ledger and subsidiary ledgers and supporting schedules which support the general ledger balances.

"**Acquired Subsidiaries**" means the Subsidiaries of the Failed Bank listed on Schedule 3.1a.

"**Affiliate**" of any Person means any director, officer, or employee of that Person and any other Person (1) who is directly or indirectly controlling, or controlled by, or under direct or indirect common control with, such Person, or (ii) who is an affiliate of such Person as the term "affiliate" is defined in Section 2 of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841.

"**Agreement**" means this Purchase and Assumption Agreement by and among the Assuming Bank, the Corporation and the Receiver, as amended or otherwise modified from time to time.

"**Assets**" means all assets of the Failed Bank purchased pursuant to Section 3.1. Assets owned by Subsidiaries of the Failed Bank are not "Assets" within the meaning of this definition.

"**Assumed Deposits**"" means Deposits.

"**Bank Closing**"" means the close of business of the Failed Bank on the date on which the Chartering Authority closed such institution.

"**Bank Premises**" means the banking houses, drive-in banking facilities, teller facilities (staffed or automated), and related corporate or administrative facilities, together with appurtenant parking, storage and service facilities and structures connecting remote facilities to banking houses and other facilities, and land on which the foregoing are located, that are owned or leased by the Failed Bank and that are occupied by the Failed Bank as of Bank Closing.

"**Book Value**" means, with respect to any Asset and any Liability Assumed, the dollar amount thereof stated on the Accounting Records of the Failed Bank. The Book Value of any item shall be determined as of Bank Closing after adjustments made by the Receiver for differences in accounts, suspense items, unposted debits and credits, and other similar adjustments or corrections and for setoffs, whether voluntary or involuntary. The Book Value of a Subsidiary of the Failed Bank acquired by the Assuming Bank shall be determined from the investment in subsidiary and related accounts on the "bank only" (unconsolidated) balance sheet of the Failed Bank based on the equity method of accounting. Without limiting the generality of the foregoing, (i) the Book Value of a Liability Assumed shall include all accrued and unpaid i nterest thereon as of Bank Closing, and (ii) the Book Value of a Loan shall reflect adjustments

for earned interest, or unearned interest (as it relates to the "rule of 78s" or add-on-interest loans, as applicable), if any, as of Bank Closing, adjustments for the portion of earned Or Unearned loan-related credit life and/or disability insurance premiums, if any, attributable to the Failed Bank as of Bank Closing, and adjustments for Failed Bank Advances, if any, in each case as determined for financial reporting purposes. The Book Value of an Asset shall not include any adjustment for loan premiums, discounts, or any related deferred income, fees or expenses, or general or specific reserves on the Accounting Records of the Failed Bank

"**Business Day**" means a day other than a Saturday, Sunday, Federal legal holiday or legal holiday under the laws of the State where the Failed Bank is located, or a day on which the principal office of the Corporation is closed.

"**Chartering Authority**" means (i) with respect to a national bank, the Office of the Comptroller of the Currency, (ii) with respect to a Federal savings association or savings bank, the Office of Thrift Supervision, (iii) with respect to a bank or savings institution chartered by a State, the agency of such State charged with primary responsibility for regulating and/or closing banks or savings institutions, as the case may be, (iv) the Corporation in accordance with 12 U.S.C. Section 1821(c), with regard to self appointment, or (v) the appropriate Federal banking agency in accordance with 12 U.S.C. § 1821(c)(9).

"**Commitment**" means the unfunded portion of a line of credit or other commitment reflected on the books and records of the Failed Bank to make an extension of credit (or additional advances with respect to a Loan) that was legally binding on the Failed Bank as of Bank Closing, other than overdraft protection plans of the Failed Bank, if any.

"**Credit Documents**" mean the agreements, instruments, certificates or other documents at any time evidencing or otherwise relating to, governing or executed in connection with or as security for, a Loan, including without limitation notes, bonds, loan agreements, letter of credit applications, lease financing contracts, banker's acceptances, drafts, interest protection agreements, currency exchange agreements, repurchase agreements, reverse repurchase agreements, guarantees, deeds of trust, mortgages, assignments, security agreements, pledges, subordination or priority agreements, lien priority agreements, undertakings, security instruments, certificates, documents, legal opinions, participation agreements and intercreditor agreements, and all amendments, modifications, renewals, extensions, rearrangements, and substitutions with respect to any of the foregoing.

"**Credit File**" means all Credit Documents and all other credit, collateral, or insurance documents in the possession or custody of the Assuming Bank, or any of its Subsidiaries or Affiliates, relating to an Asset or a Loan included in a Put Notice, or copies of any thereof.

"**Data Processing Lease**" means any lease or licensing agreement, binding on the Failed Bank as of Bank Closing, the subject of which is data processing equipment or computer hardware or software used in connection with data processing activities. A lease or licensing agreement for computer software used in connection with data processing activities shall constitute a Data Processing Lease regardless of whether such lease or licensing agreement also covers data processing equipment.

"**Deposit**" means a deposit as defined in 12 U.S.C. Section 1813(1), including without limitation, outstanding cashier's checks and other official checks and all uncojlected items included in the depositors' balances and credited on the books and records of the Failed Bank; provided, that the term "Deposit" shall not include all or any portion of those deposit balances which, in the discretion of the Receiver or the Corporation, (i) may be required to satisfy it for any liquidated or contingent liability of any depositor arising from an unauthorized or unlawful transaction, or (ii) may be needed to provide payment of any liability of any depositor to the Failed Bank or the Receiver, including the liability of any depositor as a director or officer of the Failed Bank, whether or not the amount of the liabil ity is or can be determined as of Bank Closing.

"**Equity Adjustment**" means the dollar amount resulting by subtracting the Book Value, as of Bank Closing, of all Liabilities Assumed under this Agreement by the Assuming Bank from the Book Value, as of Bank Closing, of all Assets acquired under this Agreement by the Assuming Bank, which may be a positive or a negative number.

"**Failed Bank Advances**" means the total sums paid by the Failed Bank to (i) protect its lien position, (ii) pay ad valorem taxes and hazard insurance, and (iii) pay credit life insurance, accident and health insurance, and vendor's single interest insurance.

"**Fair Market Value**" means (i)(a) "Market Value" as defined in the regulation prescribing the standards for real estate appraisals used in federally related transactions, 12 C.F.R. § 323.2(g), and accordingly shall mean the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and acting in what they consider their own best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale;

as determined as of Bank Closing by an appraiser chosen by the Assuming Bank from a list of acceptable appraisers provided by the Receiver; any costs and fees associated with such determination shall be shared equally by the Receiver and the Assuming Bank, and (b) which, with respect to Bank Premises (to the extent, if any, that Bank Premises are purchased utilizing this valuation method), shall be determined not later than sixty (60) days after Bank Closing by an appraiser mutually selected by the Receiver and the Assuming Bank within seven (7) days after Bank Closing; or (ii) with respect to property other than Bank Premises purchased utilizing this valuation method, the price therefore as established by the Receiver and agreed to by the

Assuming Bank, or in the absence of such agreement, as determined in accordance with clause. (i)(a) above.

"**Fair Value**" means the fair value of a Shared Loss MTM Asset as determined in accordance with FAS 157 as in effect on Bank Closing.

"**First Loss Tranche**" means the dollar amount of liability that the Assuming Bank will incur prior to the commencement of loss sharing, which is the sum of (i) the Assuming Bank's asset premium (discount) bid, as reflected on the Assuming Bank's bid form, plus (ii) the Assuming Bank's Deposit premium bid, as reflected on the Assuming Bank's bid form, plus (iii) the Equity Adjustment. The First Loss Tranche may be a positive or negative number.

"**Fixtures**" means those leasehold improvements, additions, alterations and installations constituting all or a part of Bank Premises and which were acquired, added, built, installed or purchased at the expense of the Failed Bank, regardless of the holder of legal title thereto as of Bank Closing.

"**Furniture and Equipment**" means the furniture and equipment, other than motor vehicles, leased or owned by the Failed Bank and reflected on the books of the Failed Bank as of Bank Closing, including without limitation automated teller machines, carpeting, furniture, office machinery (including personal computers), shelving, office supplies, telephone, surveillance and security systems. Motor vehicles shall be considered other assets and pass at Book Value.

"**Indemnitees**" means, except as provided in paragraph (11) of Section 12.1(b), (i) the Assuming Bank, (ii) the Subsidiaries and Affiliates of the Assuming Bank, and (iii) the directors, officers, employees and agents of the Assuming Bank and its Subsidiaries and Affiliates who are not also present or former directors, officers, employees or agents of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank.

"**Information Package**" means the compilation of financial and other data with respect to the Failed Bank entitled "Information Package" as of [March 31], 2009 provided to the Assuming Bank by the Corporation on the web site used by the Corporation to market the Failed Bank to potential acquirers.

"**Legal Balance**" means the amount of indebtedness legally owed by an Obligor with respect to a Loan, including principal and accrued and unpaid interest, late fees, attorneys' fees and expenses, taxes, insurance premiums, and similar charges, if any.

"**Liabilities Assumed**" has the meaning provided in Section 2.1.

"**Lien**" means any mortgage, lien, pledge, charge, assignment for security purposes, security interest, or encumbrance of any kind with respect to an Asset, or asset of an Acquired Subsidiary, including any conditional sale agreement or capital lease or other title retention agreement relating to such Asset or asset of an Acquired Subsidiary.

"**Loans**" means all of the following owed to or held by the Failed Bank or, for purposes of Section 4.15, Section 12.1(a)(12) and the Shared-Loss Agreements, any Acquired Subsidiary, as of Bank Closing:

(i) loans (including loans which have been charged off the Accounting Records of the Failed Bank in whole or in part prior to the date of the Information Package), participation agreements, interests in participations, overdrafts of customers (including but not limited to overdrafts made pursuant to an overdraft protection plan or similar extensions of credit in connection with a deposit account), revolving commercial lines of credit, home equity lines of credit, Commitments, and lease financing contracts;

(ii) all Liens, rights (including rights of set-off), remedies, powers, privileges, demands, claims, priorities, equities and benefits owned or held by, or accruing or to accrue to or for the benefit of, the holder of the obligations or instruments referred to in clause (i) above, including but not limited to those arising under or based upon Credit Documents or otherwise in respect of collateral, casualty insurance policies and binders, standby letters of credit, mortgagee title insurance policies and binders, other related insurance policies and binders, payment bonds and performance bonds, insuranc e or guaranty by any department of any governmental unit, federal, state or local and escrow, custodial or similar arrangements at any time and from time to time existing with respect to any of the obligations or instruments referred to in clause (i) above; and

(iii) all amendments, modifications, renewals, extensions, refinancings, and refundings of or for any of the foregoing.

"**Obligor**" means each Person liable for the full or partial payment or performance of any Loan, whether such Person is obligated directly, indirectly, primarily, secondarily, jointly, or severally.

"**Other Real Estate**" means all interests in real estate (other than Bank Premises and Fixtures) and loans on "in substance foreclosure" status as of Bank Closing as recorded on the Accounting Records of the Failed Bank, including but not limited to mineral rights, leasehold rights, condominium and cooperative interests, air rights and development rights that are owned by the Failed Bank.

"**Person**" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof, excluding the Corporation.

"**Primary Indemnitor**" means any Person (other than the Assuming Bank or any of its Affiliates) who is obligated to indemnify or insure, or otherwise make payments (including payments on account of claims made against) to or on behalf of any Person in connection with the Losses covered under Article XII, including without limitation, the Receiver under the Shared-Loss Agreements, any insurer issuing any directors and officers liability policy or any Person issuing a financial institution bond or banker's blanket bond.

"**Pro forma**" means producing a balance sheet that reflects the financial position of the Failed bank at the date of Bank Closing. The Pro forma financial statements serve as a basis for the opening entries of both the. Assuming. Bank and the Receiver.

"**Put Dat**e" has the meaning provided in Section 3.4.

"**Put Notice**" has the meaning provided in Section 3.4.

"**Record**" means any document, microfiche, microfilm and computer records (including but not limited to magnetic tape, disc storage, card forms and printed copy) of the Failed Bank generated or maintained by the Failed Bank that is owned by or in the possession of the Receiver at Bank Closing.

"**Related Liability**" with respect to any Asset means any liability existing and reflected on the Accounting Records of the Failed Bank as of Bank Closing for (i) indebtedness secured by mortgages, deeds of trust, chattel mortgages, security interests or other liens on or affecting such Asset, (ii) ad valorem taxes applicable to such Asset, and (iii) any other obligation determined by the Receiver to be directly related to such Asset.

"**Related Liability Amoun**t" with respect to any Related Liability on the books of the Assuming Bank, means the amount of such Related Liability as stated on the Accounting Records of the Assuming Bank (as maintained in accordance with generally accepted accounting principles) as of the date as of which the Related Liability Amount is being determined. With respect to a liability that relates to more than one asset, the amount of such Related Liability shall be allocated among such assets for the purpose of determining the Related Liability Amount with respect to any one of such assets. Such allocation shall be made by specific allocation, where determinable, and otherwise shall be pro rata based upon the dollar amount of such assets stated on the Accounting Records of the entity that owns such asset.

"**Repurchase Price**" means, with respect to any Loan (i) the Book Value, adjusted to reflect changes to Book Value after Bank Closing, plus (ii) any advances and interest on such Loan after Bank Closing, minus (iii) the total of amounts received by the Assuming Bank for such Loan, regardless of how applied, after Bank Closing, plus (iv) advances made by Assuming Bank, plus (v) total disbursements of principal made by Receiver that are not included in the Book Value.

"**Safe Deposit Boxes**" means the safe deposit boxes of the Failed Bank, if any, including the removable safe deposit boxes and safe deposit stacks in the Failed Bank's vault(s), all rights and benefits under rental agreements with respect to such safe deposit boxes; and all keys and combinations thereto.

"**Settlement Date**" means the first Business Day immediately prior to the day which is one hundred eighty (180) days after Bank Closing, or such other date prior thereto as may be agreed upon by the Receiver and the Assuming Bank. The Receiver, in its discretion, may extend the Settlement Date but not beyond the date which is two hundred ten (210) days after Bank Closing.

"**Settlement Interest Rate**" means, for the first calendar quarter or portion thereof during which interest accrues, the rate determined by the Receiver to be equal to the equivalent coupon issue yield on twenty-six (26)-week United States Treasury Bills in effect as of Bank Closing as published in The Wall Street Journal; provided, that if no such equivalent coupon issue yield is available as of Bank Closing, the equivalent coupon issue yield for such Treasury Bills most recently published in The Wall Street Journal prior to Bank Closing shall be used. Thereafter, the rate shall be adjusted to the rate determined by the Receiver to be equal to the equivalent coupon issue yield on such Treasury Bills in effect as of the first day of each succeeding calendar quarter during which interest accrues as published in The W all Street Journal.

"**Shared-Loss MTM Assets**" means those securities and other assets listed on Schedule 4.15C.

"**Subsidiary**" has the meaning set forth in Section 3(w)(4) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(w)(4), as amended.

ARTICLE II

ASSUMPTION OF LIABILITIES

2.1 **Liabilities Assumed by Assuming Bank**. The Assuming Bank expressly assumes at Book Value (subject to adjustment pursuant to Article VIII) and agrees to pay, perform, and discharge all of the following liabilities of the Failed Bank as of Bank Closing, except as otherwise provided in this Agreement (such liabilities referred to as "Liabilities Assumed"):

(a) Assumed Deposits, except those Deposits specifically listed on Schedule 2.1(a); provided, that as to any Deposits of public money which are Assumed Deposits, the Assuming Bank agrees to properly secure such Deposits with such of the Assets as appropriate which, prior to Bank Closing, were pledged as security therefor by the Failed Bank, or with assets of the Assuming Bank, if such securing Assets, if any, are insufficient to properly secure such Deposits;

(b) liabilities for indebtedness secured by mortgages, deeds of trust, chattel mortgages, security interests or other liens of record as of Bank Closing on or affecting any Assets, if any; provided, that the assumption of any liability pursuant to this paragraph shall be limited to the market value of the Assets securing such liability as determined by the Receiver;

(c) borrowings from Federal Reserve Banks and Federal Home Loan Banks, if any, provided, that the assumption of any liability pursuant to this paragraph shall be limited to the market value of the assets securing such liability as determined by the Receiver; and overdrafts, debit balances, service charges, reclamations, and adjustments to accounts with the Federal Reserve Banks as reflected on the books and records of any such Federal Reserve Bank within ninety (90) days after Bank Closing, if any;

(d) ad valorem taxes applicable to any Asset, if any; provided, that the assumption of any ad valorem taxes pursuant to this paragraph shall be limited to an amount equal to the market value of the Asset to which such taxes apply as determined by the Receiver;

(e) liabilities, if any, for federal funds purchased, repurchase agreements and overdrafts in accounts maintained with other depository institutions (including any accrued and unpaid interest thereon computed to and including Bank Closing); provided, that the assumption of any liability pursuant to this paragraph shall be limited to the market value of the Assets securing such liability as determined by the Receiver;

(f) [Reserved];

(g) liabilities for any acceptance or commercial letter of credit (other than "standby letters of credit" as defined in 12 C.F.R. Section 337.2(a)); provided, that the assumption of any liability pursuant to this paragraph shall be limited to the market value of the Assets securing such liability as determined by the Receiver;

(h) duties and obligations assumed pursuant to this Agreement including without limitation those relating to the Failed Bank's overdraft protection plans and safe deposit business, if any;

(i) liabilities, if any, for Commitments;

(j) liabilities, if any, for amounts owed to any Acquired Subsidiary of the Failed Bank;

(k) [Reserved];

(l) [Reserved];

(m) all asset-related offensive litigation liabilities and all asset-related defensive litigation liabilities, but only to the extent such liabilities relate to assets subject to a loss share agreement, and provided that all other defensive litigation is retained by the Receiver; and

(n) liabilities, obligations, or responsibilities under the Failed Bank's health care plans, if any.

Schedule 2.1 attached hereto and incorporated herein sets forth certain categories of Liabilities Assumed and the aggregate Book Value of the Liabilities Assumed in such categories. Such schedule is based upon the best information available to the Receiver and may be adjusted as provided in Article VIII. The Assuming Bank does not assume any liabilities or obligations of the Failed Bank or any of its Affiliates or Subsidiaries whether accrued, absolute, contingent or otherwise, asserted or unasserted, known or unknown, other than the Liabilities Assumed.

2.2 Interest on Deposit Liabilities. The Assuming Bank agrees that, from and after Bank Closing, it will accrue and pay interest on Deposit liabilities assumed pursuant to Section 2.1 at a rate(s) it shall determine; provided, that for non-transaction Deposit liabilities such rate(s) shall not be less than the lowest rate offered by the Assuming Bank to its depositors for non-transaction deposit accounts. The Assuming Bank shall permit each depositor to withdr aw, without penalty for early withdrawal, all or any portion of such depositor's Deposit, whether or not the Assuming Bank elects to pay interest in accordance with any deposit agreement formerly existing between the Failed Bank and such depositor; and further provided, that if such Deposit has been pledged to secure an obligation of the depositor or other party, any withdrawal thereof shall be subject to the terms of the agreement governing such pledge. The Assuming Bank shall give notice to such depositors as provided in Section 5.3 of the rate(s) of interest which it has determined to pay (which notice may be made subsequent to the application of such new rate(s)) and of such withdrawal rights.

2.3 Unclaimed Deposits. Fifteen months following Bank Closing Date, the Assuming Bank will provide the FDIC a listing of all deposits by product type not claimed by the depositor. FDIC will review the list and authorize the Assuming Bank to act on behalf of the Corporation to send a "Final Legal Notice" to the owner(s) of the unclaimed deposits reminding them of the need to claim or arrange to continue their account(s) with the Assuming Bank. The notice will be sent in the form of a letter on the Corporation's letterhead provided in exhibit 2.3. The Assuming bank will send the "Final Legal Notice" to the depositors within thirty (30) days following notification of FDIC approval.

The Assuming Bank will prepare an "Affidavit of Mailing", as provided in exhibit 2.3, and forward the "Affidavit of Mailing" to the Corporation."

If, within eighteen (18) months after Bank Closing, any depositor of the Failed Bank does not claim or arrange to continue such depositor's Deposit assumed pursuant to Section 2.1 at the Assuming Bank, the Assuming Bank shall, within fifteen (15) Business Days after the end of such eighteen (18)-month period, (i) refund to the Corporation the fall amount of each such Deposit (without reduction for service charges), (ii) provide to the Corporation a schedule of all such refunded Deposits in such form as may be prescribed by the Corporation, and (iii) assign, transfer, convey and deliver to the Receiver all right, title and interest of the Assuming Bank in and to Records previously transferred to the Assuming Bank and other records generated or maintained by the Assuming

Bank pertaining to such Deposits. During such eighteen (18)-month period, at the request of the Corporation, the Assuming Bank promptly shall provide to the Corporation schedules of unclaimed deposits in such form as may be prescribed by the Corporation.

2.4 **Employee Plans**. Except as provided in Section 4.12, the Assuming Bank shall have no liabilities, obligations or responsibilities under the Failed Bank's employment agreements, severance, bonus, vacation, pension, profit sharing, deferred compensation, 401K or stock purchase plans or similar plans, if any, unless the Receiver and the Assuming Bank agree otherwise subsequent to the date of this Agreement.

ARTICLE III
PURCHASE OF ASSETS

3.1 **Assets Purchased by Assuming Bank**. With the exception of certain assets expressly excluded in Sections 3.5 and 3.6, the Assuming Bank hereby purchases from the Receiver, and the Receiver hereby sells, assigns, transfers, conveys, and delivers to the Assuming Bank, all right, title, and interest of the Receiver in and to all of the assets (real, personal and mixed, wherever located and however acquired) of the Failed Bank whether or not reflected on the books of the Failed Bank as of Bank Cl osing. Schedule 3.1 attached hereto and incorporated herein sets forth certain categories of Assets purchased hereunder. Such schedule is based upon the best information available to the Receiver and may be adjusted as provided in Article VIII. Assets are purchased hereunder by the Assuming Bank subject to all liabilities for indebtedness collateralized by Liens affecting such Assets to the extent provided in Section 2.1. In addition, Assuming Bank is entitled to the option to acquire additional assets and assume agreements as set forth in Sections 4.6, 4.7 and 4.8.

3.2 **Asset Purchase Price**.

(a) All Assets and assets of the Failed Bank subject to an option to purchase by the Assuming Bank shall be purchased for the amount, or the amount resulting from the method specified for determining the amount, as specified on Schedule 3.2, except as otherwise may be provided herein. Any Asset, asset of the Failed Bank subject to an option to purchase or other asset purchased for which no purchase price is specified on Schedule 3.2 or otherwise herein shall be purchased at its Book Value. Loans or other assets charged off the Accounting Records of the Failed Bank prior to the date of the Infor mation Package shall be purchased at a price of zero.

(b) The purchase price for securities (other than the capital stock of any Acquired Subsidiary) purchased under Section 3.1 by the Assuming Bank shall be the market value thereof as of Bank Closing, which market value shall be (i) the market price for each such security quoted at the close of the trading day effective on Bank Closing as published electronically by Bloomberg, L.P., or alternatively, at the discretion of the Receiver, IDC/Financial Times (FT) Interactive Data; (ii) provided, that if such market price is not available for any such security, the Assuming Bank will s ubmit a bid for each such security within three days of notification/bid request by the Receiver (unless a different time period is agreed to by the Assuming Bank and the Receiver) and the Receiver, in its sole discretion will accept or reject each such bid; and (iii) further provided in the absence of an acceptable bid from the Assuming Bank, each such security shall not pass to the Assuming Bank and shall be deemed to be an excluded asset hereunder.

(c) Shared Loss MTM Assets, as set forth on Schedule 4.I5C, shall be purchased at the Fair Value stated on the Accounting Records of the Failed Bank at Bank Closing.

(d) The Parties agree that any indemnification payment made pursuant to this Agreement shall be treated as an adjustment to the purchase price for tax purposes, unless otherwise required by applicable law.

3.3 **Manner of Conveyance; Limited Warranty; Nonrecourse: Etc.** **EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ARTICLE XII, THE CONVEYANCE OF ALL ASSETS, INCLUDING REAL AND PERSONAL PROPERTY INTERESTS, PURCHASED BY THE ASSUMING BANK UNDER THIS AGREEMENT SHALL BE MADE, AS NECESSARY, BY RECEIVER'S DEED OR RECEIVER'S BILL OF SALE, "AS IS", "WHERE IS", WITHOUT RECOURSE AND, WITHOUT ANY WARRANTIES WHATSOEVER W ITH RESPECT TO SUCH ASSETS, EXPRESS OR IMPLIED, WITH RESPECT TO TITLE, ENFORCEABILITY, COLLECTIBILITY, DOCUMENTATION OR FREEDOM FROM LIENS OR ENCUMBRANCES (IN WHOLE OR IN PART), OR ANY OTHER MATTERS.**

3.4 **Puts of Assets to the Receiver**.

(a) **Puts Prior to the Settlement Date.**

(i) During the period from Bank Closing to and including the Business Day immediately preceding the Settlement Date, the Assuming Bank shall be entitled to require the Receiver to purchase any Asset or asset of an Acquired Subsidiary which the Assuming Bank can establish is evidenced by forged or stolen instruments as of Bank Closing.

(ii) At the end of the thirty (30)-day period following Bank Closing and at that time only, in accordance with this Section 3.4, the Assuming Bank shall be entitled to require the Receiver to purchase any remaining overdraft transferred to the Assuming Bank pursuant to 3.1 which both was made after the "as of the date of the Information Package and was not made pursuant to an overdraft protection plan or similar extension of credit.

The Assuming Bank shall transfer all such Assets to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Assuming Bank with respect to any such Asset, as provided in Section 12.4.

(b) **Notices to the Receiver**. In the event that the Assuming Bank elects to require the Receiver to purchase one or more Assets, the Assuming Bank shall deliver to the Receiver from time to time a notice (a "Put Notice") which shall include:

(i) a list of all Assets that the Assuming Bank requires the Receiver to purchase;

(ii) a list of all Related Liabilities with respect to the Assets identified pursuant to (i) above; and

(iii) a statement of the estimated Repurchase Price of each Asset identified pursuant to (i) above as of the applicable Put Date.

Such notice shall be in the form prescribed by the Receiver or such other form to which the Receiver shall consent. As provided in Section 9.6, the Assuming Bank shall deliver to the

Receiver such documents, Credit Files and such additional information relating to the subject matter of the Put Notice as the Receiver may request and shall provide to the Receiver full access to all other relevant books and records.

(c) **Purchase by Receiver**. The Receiver shall purchase Assets that are specified in any Put Notice and shall assume Related Liabilities with respect to such Assets, and the transfer of such Assets and Related Liabilities shall be effective as of a date determined by the Receiver which date shall not be later than thirty (30) days after receipt by the Receiver of the applicable Put Notice (the "Put Date").

(d) **Purchase Price and Payment Date**. Each Asset purchased by the Receiver pursuant to this Section 3.4 shall be purchased at a price equal to the Repurchase Price of such Asset less the Related Liability Amount applicable to such Asset, in each case determined as of the applicable Put Date. If the difference between such Repurchase Price and such Related Liability Amount is positive, then the Receiver shall pay to the Assuming Bank the amount of such difference; if the difference between such amounts is negative, then the Assuming Bank shall pay to the Receiver the amount of such difference. The Assuming Bank or the Receiver, as the case may be, shall pay the purchase price determined pursuant to this Section 3.4(d) not later than the twentieth (20th) Business Day following the applicable Put Date, together with interest on such amount at the Settlement Interest Rate for the period from and including such Put Date to and including the day preceding the date upon which payment is made.

(e) **Servicing**. The Assuming Bank shall administer and manage any Asset subject to purchase by the Receiver in accordance with usual and prudent banking standards and business practices until such time as such Asset is purchased by the Receiver.

(f) **Reversals**. In the event that the Receiver purchases an Asset (and assumes the Related Liability) that it is not required to purchase pursuant to this Section 3.4, the Assuming Bank shall repurchase such Asset (and assume such Related Liability) from the Receiver at a price computed so as to achieve the same economic result as would apply if the Receiver had never purchased such Asset pursuant to this Section 3.4.

3.5 **Assets Not Purchased by Assuming Bank**. The Assuming Bank does not purchase, acquire or assume, or (except as otherwise expressly provided in this Agreement) obtain an option to purchase, acquire or assume under this Agreement:

(a) any financial institution bonds, banker's blanket bonds, or public liability, fire, or extended coverage insurance policy or any other insurance policy of the Failed Bank, or premium refund, unearned premium derived from cancellation, or any proceeds payable with respect to any of the foregoing, provided however, that bank owned life insurance which has a reported balance of approximately $128,379,000 as of April 2, 2009 on the Accounting Records of the Failed Bank and insurance included in the definition of Loan will be acquired by the Assuming Bank;

(b) any interest, right, action, claim, or judgment against (i) any officer, director, employee, accountant, attorney, or any other Person employed or retained by the Failed

Bank or any Subsidiary of the Failed Bank on or prior to Bank Closing arising out of any act or omission of such Person in such capacity, (ii) any underwriter of financial institution bonds, banker's blanket bonds or any other insurance policy of the Failed Bank, (iii) any shareholder or holding company of the Failed Bank, or (iv) any other Person whose action or inaction may be related to any loss (exclusive of any loss resulting from such Person's failure to pay on a Loan made by the Failed Bank) incurred by the Failed Bank; provided, that for the purposes hereof, the acts, omissions or other events giving rise to any such claim shall have occurred on or before Bank Closing, regardless of when any such claim is discovered and regardless of whether any such claim is made with respect to a financial institution bond, banker's blanket bond, or any other insurance polic y of the Failed Bank in force as of Bank Closing;

(c) prepaid regulatory assessments of the Failed Bank, if any;

(d) legal or equitable interests in tax receivables of the Failed Bank, if any, including any claims arising as a result of the Failed Bank having entered into any agreement or otherwise being joined with another Person with respect to the filing of tax returns or the payment of taxes;

(e) amounts reflected on the Accounting Records of the Failed Bank as of Bank Closing for loan premiums, discounts, or any related deferred income, fees or expenses, or general or specific reserves, if any

(f) leased or owned Bank Premises and leased or owned Furniture and Equipment and Fixtures and data processing equipment (including hardware and software) located on leased or owned Bank Premises, if any; provided, that the Assuming Bank does obtain an option under Section 4.6, Section 4.7 or Section 4.8, as the case may be, with respect thereto;

(g) owned Bank Premises which the Receiver, in its discretion, determines may contain environmentally hazardous substances;

(h) any Subsidiary (other than the Acquired Subsidiaries), joint venture, partnership, or other business combinations or arrangements, whether active, inactive, dissolved or terminated, of the Failed Bank;

(i) any "goodwill," as such term is defined in the instructions to the report of condition prepared by banks examined by the Corporation in accordance with 12 C.F.R. Section 304.4, and other intangibles (for the avoidance of doubt, other intangible assets does not include any intellectual property (including patents, technology, know-how, copyrights (including software), trade secrets, processes, trademarks, service marks, trade names, domain names, logos, trade dress or other indicators of source or origin) or right to use any such intellectual property);

(j) any criminal restitution or forfeiture orders issued in favor of the Failed Bank; and

(k) assets essential to the Receiver in accordance with Section 3.6.

(l) reserved.

3.6 **Retention or Repurchase of Assets Essential to Receiver**.

(a) The Receiver may refuse to sell to the Assuming Bank, or the Assuming Bank agrees, at the request of the Receiver set forth in a written notice to the Assuming Bank, to assign, transfer, convey, and deliver to the Receiver all of the Assuming Bank's right, title and interest in and to, any Asset or asset acquired pursuant to this Agreement essential to the Receiver as determined by the Receiver in its discretion (together with all Credit Documents evidencing or pertaining thereto), which may include any Asset or asset acquired pursuant to this Agreement that the Receiver determines to be:

(i) made to an officer, director, or other Person engaging in the affairs of the Failed Bank, its Subsidiaries or Affiliates or any related entities of any of the foregoing;

(ii) the subject of any investigation relating to any claim with respect to any item described in Section 3.5(a) or (b), or the subject of, or potentially the subject of, any legal proceedings;

(iii) made to a Person who is an Obligor on a loan owned by the Receiver or the Corporation in its corporate capacity or its capacity as receiver of any institution;

(iv) secured by collateral which also secures any asset owned by the Receiver; or

(v) related to any asset of the Failed Bank not purchased by the Assuming Bank under this Article III or any liability of the Failed Bank not assumed by the Assuming Bank under Article II.

(b) Each such Asset or asset purchased by the Receiver shall be purchased at a price equal to the Repurchase Price thereof less the Related Liability Amount with respect to any Related Liabilities related to such Asset or asset, in each case determined as of the date of the notice provided by the Receiver pursuant to Section 3.6(a). The Receiver shall pay the Assuming Bank not later than the twentieth (20th) Business Day following receipt of related Credit Documents and Credit Files together with interest on such amount at the Settlement Interest Rate for the period from and including the date of rece ipt of such documents to and including the day preceding the day on which payment is made. The Assuming Bank agrees to administer and manage each such Asset or asset in accordance with usual and prudent banking standards and business practices until each such Asset or asset is purchased by the Receiver. All transfers with respect to Asset or assets under this Section 3.6 shall be made as provided in Section 9.6. The Assuming Bank shall transfer all such Asset or assets and Related Liabilities to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Assuming Bank with respect to any such Asset or asset, as provided in Section 12.4.

ARTICLE IV
ASSUMPTION OF CERTAIN DUTIES AND OBLIGATIONS

The Assuming Bank agrees with the Receiver and the Corporation as follows:

4.1 **Continuation of Banking Business**. The Assuming Bank agrees to provide full service banking in the trade area of the Failed Bank commencing on the first banking business day after Bank Closing and to maintain such presence until it has complied with all necessary notice provisions to cease providing such banking services in the trade area. At the option of the Assuming Bank, such banking services may be provided at any or all of the Bank Premises, or at other premises within such trade area. For the avoidance of doubt, the foregoing shall not restrict or otherwise affect the ability of the Assuming Bank to make changes to the banking business that it conducts at any time from and after Bank Closing, including opening or closing branches. In addition, the Assuming Bank may, effective upon Bank Closing or at a later date, modify the terms of any assumed deposit account, including, without limitation, changing the maturity of any time Deposits, subject, in the case of changes to applicable interest rates or fees, to compliance with Section 5.3.

4.2 **Reserved**.

4.3 **Agreement with Respect to Safe Deposit Business**. The Assuming Bank assumes and agrees to discharge, from and after Bank Closing, in the usual course of conducting a banking business, the duties and obligations of the Failed Bank with respect to all Safe Deposit Boxes, if any, of the Failed Bank and to maintain all of the necessary facilities for the use of such boxes by the renters thereof during the period for which such boxes have been rented and the rent therefor paid to the Failed Bank, or such earlier time as is permitted under the provisions of the rental agreements between the Failed Bank and the respective renters of such boxes or applicable law; provided, that, notwithstanding any provisions of the rental agreements between the Failed Bank and the respective renters of such boxes, the Assuming Bank may immediately relocate the Safe Deposit Boxes of the Failed Bank to any office of the Assuming Bank located in the trade area of the Failed Bank. Fees related to the safe deposit business earned prior to the Bank Closing Date shall be for the benefit of the Receiver and fees earned after the Bank Closing Date shall be for the benefit of the Assuming Bank.

4.4 **Reserved**.

4.5 **Reserved**.

4.6 **Agreement with Respect to Bank Premises**.

(a) **Option to Purchase**. Subject to Section 3.5, the Receiver hereby grants to the Assuming Bank an exclusive option for the period of one hundred seventy (170) days commencing the day after Bank Closing to purchase any or all owned Bank Premises, including all Furniture, Fixtures and Equipment located on the Bank Premises. The Assuming Bank shall give written notice to the Receiver within the option period of its election to purchase or not to purchase any of the owned Bank Premises. Any purchase of such premise s shall be effective as of the date of Bank Closing and such purchase shall be consummated as soon as practicable thereafter, and in no event later than the Settlement Date.

(b) **Option to Lease**. The Receiver hereby grants to the Assuming Bank an exclusive option for the period of one hundred seventy (170) days commencing the day after Bank Closing to cause the Receiver to assign to the Assuming Bank any or all leases for leased Bank Premises, if any, which have been continuously occupied by the Assuming Bank from Bank Closing to the date it elects to accept an assignment of the leases with respect thereto to the extent such leases can be assigned; provided, that the exercise of this op tion with respect to any lease must be as to all premises or other property subject to the lease. If an assignment cannot be made of any such leases, the Receiver may, in its discretion, enter into subleases with the Assuming Bank containing the same terms and conditions provided under such existing leases for such leased Bank Premises or other property. The Assuming Bank shall give notice to the Receiver within the option period of its election to accept or not to accept an assignment of any or all leases (or enter into subleases or new leases in lieu thereof). The Assuming Bank agrees to assume all leases that it has elected to accept that are assigned (or enter into subleases or new leases in lieu thereof) pursuant to this Section 4.6.

(c) **Facilitation**. The Receiver agrees to facilitate the assumption, assignment or sublease of leases or the negotiation of new leases by the Assuming Bank; provided, that neither the Receiver nor the Corporation shall be obligated to engage in litigation, make payments to the Assuming Bank or to any third party in connection with facilitating any such assumption, assignment, sublease or negotiation or commit to any other obligations to third parties.

(d) **Occupancy**. The Assuming Bank shall give the Receiver fifteen (15) days' prior written notice of its intention to vacate prior to vacating any leased Bank Premises with respect to which the Assuming Bank has not exercised the option provided in Section 4.6(b). Any such notice shall be deemed to terminate the Assuming Bank's option with respect to such leased Bank Premises.

(e) **Occupancy Costs**.

(i) The Assuming Bank agrees to pay to the Receiver, or to appropriate third parties at the direction of the Receiver, during and for the period of any occupancy by it of (x) owned Bank Premises the market rental value, as determined by the appraiser selected in accordance with the definition of Fair Market Value, and all operating costs, and (y) leased Bank Premises, all operating costs with respect thereto and to comply with all relevant terms of applicable leases entered into by the Failed Bank, including without limitation the timely payment of all rent, Operating costs include, without limitation all taxes, fees, charges, utilities, insurance and assessments, to the extent not included in the rental value or rent. If the Assuming Bank elects to purchase any owned Bank Premises in accordance with Section 4.6(a), the amount of any rent paid (and taxes paid to the Receiver which have not been paid to the taxing authority and for which the Assuming Bank assumes liability) by the Assuming Bank with respect thereto shall be applied as an offset against the purchase price thereof.

(ii) The Assuming Bank agrees during the period of occupancy by it of owned or leased Bank Premises, to pay to the Receiver rent for the use of all owned or leased Furniture and Equipment and all owned or leased Fixtures located on such Bank

Premises for the period of such occupancy. Rent for such property owned by the Failed Bank shall be the market rental value thereof, as determined by the Receiver within sixty (60) days after Bank Closing. Rent for such leased property shall be an amount equal to any and all rent and other amounts which the Receiver incurs or accrues as an obligation or is obligated to pay for such period of occupancy pursuant to all leases and contracts with respect to such property. If the Assuming Bank purchases any owned Furniture and Equipment or owned Fixtures in accordance with Section 4.6(f) or 4.6(h), the amount of any rents paid by the Assuming Bank with respect thereto shall be applied as an offset against the purchase price thereof,

(f) **Certain Requirements as to Furniture, Equipment and Fixtures**. If the Assuming Bank purchases owned Bank Premises or accepts an assignment of the lease (or enters into a sublease or a new lease in lieu thereof) for leased Bank Premises as provided in Section 4.6(a) or 4.6(b), or if the Assuming Bank does not exercise such option but within twelve (12) months following Bank Closing obtains the right to occupy such premises (whether by assignment, lease, sublease, purchase or otherwise), other than i n accordance with Section 4.6(a) or (b), the Assuming Bank shall (i) effective as of the date of Bank Closing, purchase from the Receiver all Furniture and Equipment and Fixtures owned by the Failed Bank at Fair Market Value and located thereon as of Bank Closing, (ii) accept an assignment or a sublease of the leases or negotiate new leases for all Furniture and Equipment and Fixtures leased by the Failed Bank and located thereon, and (iii) if applicable, accept an assignment or a sublease of any ground lease or negotiate a new ground lease with respect to any land on which such Bank Premises are located; provided, that the Receiver shall not have disposed of such Furniture and Equipment and Fixtures or repudiated the leases specified in clause (ii) or (iii).

(g) **Vacating Premises**.

(i) If the Assuming Bank elects not to purchase any owned Bank Premises, the notice of such election in accordance with Section 4.6(a) shall specify the date upon which the Assuming Bank's occupancy of such premises shall terminate, which date shall not be later than ninety (90) days after the date of the Assuming Bank's notice not to exercise such option. The Assuming Bank promptly shall relinquish and release to the Receiver such premises and the Furniture and Equipment and Fixtures located thereon in the same condition as at Bank Closing, normal wear and tear excepted. By occupying any such premises after the expiration of such ninety (90) day period, the Assuming Bank shall, at the Receiver's option, (x) be deemed to have agreed to purchase such Bank Premises, and to assume all leases, obligations and liabilities with respect to leased Furniture and Equipment and leased Fixtures located thereon and any ground lease with respect to the land on which such premises are located, and (y) be required to purchase all Furniture and Equipment and Fixtures owned by the Failed Bank and located on such premises as of Bank Closing.

(ii) If the Assuming Bank elects not to accept an assignment of the lease or sublease any leased Bank Premises, the notice of such election in accordance with Section 4.6(b) shall specify the date upon which the Assuming Bank's occupancy of such leased Bank Premises shall terminate, which date shall not be later than the date which is one hundred eighty (180) days after Bank Closing. Upon vacating such

premises, the Assuming Bank shall relinquish and release to the Receiver such premises and the Fixtures and the Furniture and Equipment located thereon in the same condition as at Bank Closing, normal wear and tear excepted. By failing to provide notice of its intention to vacate such premises prior to the expiration of the option period specified in Section 4.6(b), or by occupying such premises after the one hundred eighty (180)-day period specified above in this paragraph (ii), the Assuming Bank shall, at the Receiver's option, (x) be deemed to have assumed all leases, obligations and liabilities with respect to such premises (including any ground lease with respect to the land on which premises are located), and leased Furniture and Equipment and leased Fixtures located thereon in accordance with this Section 4.6 (unless the Receiver previously repudiated any such lease), and (y) be required to purchase all Furniture and Equipment and Fixtures owned by the Failed Bank at Fair Market Value and located on such premises as of Bank Closing.

(h) Furniture and Equipment and Certain Other Equipment. The Receiver hereby grants to the Assuming Bank an option to purchase all Furniture and Equipment or any telecommunications, data processing equipment (including hardware and software) and check processing and similar operating equipment owned by the Failed Bank at Fair Market Value and located at any leased Bank Premises that the Assuming Bank elects to vacate or which it could have, but did not occupy, pursuant to this Section 4.6; provided, that, the Assuming Bank shall give the Receiver notice of its election to purchase such p roperty at the time it gives notice of its intention to vacate such Bank Premises or within ten (10) days after Bank Closing for Bank Premises it could have, but did not, occupy.

4.7 **Agreement with Respect to Leased Data Processing Equipment**.

(a) The Receiver hereby grants to the Assuming Bank an exclusive option for the period of one hundred seventy (170) days after Bank Closing days commencing the day after Bank Closing to accept an assignment from the Receiver of any or all Data Processing Leases to the extent that such Data Processing Leases can be assigned.

(b) The Assuming Bank shall (i) give written notice to the Receiver within the option period specified in Section 4.7(a) of its intent to accept or decline an assignment or sublease of any or all Data Processing Leases and promptly accept an assignment or sublease of such Data Processing Leases, and (ii) give written notice to the appropriate lessor(s) that it has accepted an assignment or sublease of any such Data Processing Leases.

(c) The Receiver agrees to facilitate the assignment or sublease of Data Processing Leases or the negotiation of new leases or license agreements by the Assuming Bank; provided, that neither the Receiver nor the Corporation shall be obligated to engage in litigation or make payments to the Assuming Bank or to any third party in connection with facilitating any such assumption, assignment, sublease or negotiation.

(d) The Assuming Bank agrees, during its period of use of any property subject to a Data Processing Lease, to pay to the Receiver or to appropriate third parties at the direction of the Receiver all operating costs with respect thereto and to comply with all relevant terms of the applicable Data Processing Leases entered into by the Failed Bank, including

without limitation the timely payment of all rent, taxes, fees, charges, utilities, insurance and assessments.

(e) The Assuming Bank shall, not later than fifty (50) days after giving the notice provided in Section 4.7(b), (i) relinquish and release to the Receiver all property subject to the relevant Data Processing Lease, in the same condition as at Bank Closing, normal wear and tear excepted, or (ii) accept an assignment or a sublease thereof or negotiate a new lease or license agreement under this Section 4.7.

4.8 **Agreement with Respect to Certain Existing Agreements**.

(a) Subject to the provisions of Section 4.8(b), with respect to agreements existing as of Bank Closing which provide for the rendering of services by or to the Failed Bank or any Acquired Subsidiary or any other agreement to which the Failed Bank or any Acquired Subsidiary is a party (other than those that are the subject of Section 4.6 or 4.7), within one hundred seventy (170) days after Bank Closing, the Assuming Bank shall give the Receiver written notice specifying whether it elects to assume or not to assume each such agreeinent. Except as may be otherwise provided in this Article&nbs p;IV, the Assuming Bank agrees to comply with the service terms of each such agreement which provide for the rendering of services by or to the Failed Bank for a period commencing on the day after Bank Closing and ending on: (i) in the case of an agreement that provides for the rendering of services by the Failed Bank, the date which is up to two hundred seventy (270) days after Bank Closing, and (ii) in the case of an agreement that provides for the rendering of services to the Failed Bank, the date which is thirty (30) days after the Assuming Bank has given notice to the Receiver of its election not to assume such agreement; provided, that the Receiver can reasonably make such service agreements available to the Assuming Bank. The Assuming Bank shall be deemed by the Receiver to have assumed agreements for which no notification is timely given. The Receiver agrees to assign, transfer, convey, and deliver to the Assuming Bank all right, title and interest of the Receiver, if any, in and to agreements the Assuming Bank assumes hereunder. In the event the Assuming Bank elects not to accept an assignment of any lease (or sublease) or negotiate a new lease for leased Bank Premises under Section 4.6 and does not otherwise occupy such premises, the provisions of this Section 4.8(a) shall not apply to service agreements or other agreements related to such premises. The Assuming Bank agrees, during the period it has the use or benefit of any such agreement, promptly to pay to the Receiver or to appropriate third parties at the direction of the Receiver all operating costs with respect thereto and to comply with all relevant terms of such agreement.

(b) The provisions of Section 4.8(a) shall not apply to (i) any insurance policy or bond referred to in Section 3.5(a) or other agreement specified in Section 3.5 (other than any insurance included in the definition of Loan), and (ii) consulting, management or employment agreements, if any, between the Failed Bank or any of its Subsidiaries or Affiliates and its or their employees or other Persons. The Assuming Bank does not assume any liabilities or acquire any rights under any of the agreements described in this Section 4.8(b).

4.9 **Informational Tax Reporting**. The Assuming Bank agrees to perform all obligations of the Failed Bank with respect to Federal and State income tax informational reporting related to (i) the Assets and the Liabilities Assumed, (ii) deposit accounts that were

closed and loans that were paid off or collateral obtained with respect thereto prior to Bank Closing, (iii) miscellaneous payments made to vendors of the Failed Bank, and (iv) any other asset or liability of the Failed Bank, including, without limitation, loans not purchased and Deposits not assumed by the Assuming Bank, as may be required by the Receiver.

4.10 **Insurance**. The Assuming Bank agrees to obtain insurance coverage effective from and after Bank Closing, including public liability, fire and extended coverage insurance acceptable to the Receiver with respect to owned or leased Bank Premises that it occupies, and all owned or leased Furniture and Equipment and Fixtures and leased data processing equipment (including hardware and software) located thereon, in the event such insurance coverage is not already in force and effect with respect to the Assuming Bank as the insured as of Bank Closing. All such insurance shall, where appropriate (as determined by the Receiver), name the Receiver as an additional insured.

4.11 **Office Space for Receiver and Corporation**. For the period commencing on the day following Bank Closing and ending on the one hundred eightieth (180th) day thereafter, the Assuming Bank agrees to provide to the Receiver and the Corporation, without charge, adequate and suitable office space (including parking facilities and vault space), furniture, equipment (including photocopying and telecopying machines), email accounts, network access and technology resources (such as shared drive) and utilities (including local telephone servi ce and fax machines) at the Bank Premises occupied by the Assuming Bank for their use in the discharge of their respective functions with respect to the Failed Bank. In the event the Receiver and the Corporation determine that the space provided is inadequate or unsuitable, the, Receiver and the Corporation may relocate to other quarters having adequate and suitable space and the costs of relocation and any rental and utility costs for the balance of the period of occupancy by the Receiver and the Corporation shall be borne by the Assuming Bank. Additionally, the Assuming Bank agrees to pay such bills and invoices on behalf of the Receiver and Corporation as the Receiver or Corporation may direct for the period beginning on the date of Bank Closing and ending on Settlement Date. Assuming Bank shall submit its requests for reimbursement of such expenditures pursuant to Article VIII of this Agreement.

4.12 **Agreement with Respect to Continuation of Group Health Plan Coverage for Former Employees of the Failed Bank**.

(a) The Assuming Bank agrees to assist the Receiver, as provided in this Section 4.12, in offering individuals who were employees or former employees of the Failed Bank, or any of its Subsidiaries, and who, immediately prior to Bank Closing, were receiving, or were eligible to receive, health insurance coverage or health insurance continuation coverage from the Failed Bank ("Eligible Individuals"), the opportunity to obtain health insurance coverage in the Corporation's HA Continuation Coverage Plan which provides for health insurance continuation coverage to such Eligible Individuals w ho are qualified beneficiaries of the Failed Bank as defined in Section 607 of the Employee Retirement Income Security Act of 1974, as amended (respectively, "qualified beneficiaries" and "ERISA"). The Assuming Bank shall consult with the Receiver and not later than five (5) Business Days after Bank Closing shall provide written notice to the Receiver of the number (if available), identity (if available) and addresses (if available) of the Eligible Individuals who are qualified beneficiaries of the Failed Bank and for whom a "qualifying event" (as defined in Section 603 of ERISA) has occurred and

with respect to whom the Failed Bank's obligations under Part 6 of Subtitle B of Title I of ERISA have not been satisfied in full, and such other information as the Receiver may reasonably require. The Receiver shall cooperate with the Assuming Bank in order to permit it to prepare such notice and shall provide to the Assuming Bank such data in its possession as may be reasonably required for purposes of preparing such notice.

(b) The Assuming Bank shall take such further action to assist the Receiver in offering the Eligible Individuals who are qualified beneficiaries of the Failed Bank the opportunity to obtain health insurance coverage in the Corporation's FIA Continuation Coverage Plan as the Receiver may direct. All expenses incurred and paid by the Assuming Bank (i) in connection with the obligations of the Assuming Bank under this Section 4.12, and (ii) in providing health insurance continuation coverage to any Eligible Individuals who are hired by the Assuming Bank and such employees' qualified b eneficiaries shall be borne by the Assuming Bank.

(c) This Section 4.12 is for the sole and exclusive benefit of the parties to this Agreement, and for the benefit of no other Person (including any former employee of the Failed Bank or any Subsidiary thereof or qualified beneficiary of such former employee). Nothing in this Section 4.12 is intended by the parties, or shall be construed, to give any Person (including any former employee of the Failed Bank or any Subsidiary thereof or qualified beneficiary of such former employee) other than the Corporation, the Receiver and the Assuming Bank any legal or equitable right, remedy or claim under or with respect to the provisions of this Section.

4.13 **Reserved**.

4.14 **Reserved**.

4.15 **Agreement with Respect to Loss Sharing**. The Assuming Bank (or any assignee thereof pursuant to the Shared-Loss Agreements) shall be entitled to require reimbursement from the Receiver for loss sharing on all Loans and certain other assets in accordance with the Single Family Shared-Loss Agreement attached hereto as Exhibit 4.15A and the Commercial and Other Loans Shared-Loss Agreement attached hereto as Exhibit 4.15B, collectively, the "Shared-Loss Agreements." All Loans shall be subject to either the Single Fa mily Shared-Loss Agreement or the Commercial and Other Loans Shared-Loss Agreement and all private label asset backed securities and non-investment grade securities owned by the Failed Bank or any Acquired Subsidiary as of Bank Closing shall be subject to the Commercial and Other Loans Shared-Loss Agreement. The Loans that shall be subject to the Single Family Shared-Loss Agreement are identified on the Schedule of Loans 4.15A attached hereto and the Loans and other assets that shall be subject to the Commercial and Other Loans Shared-Loss Agreement are identified on the Schedule of Loans 4.15B, and Schedule 4.15C, Shared-Loss MTM Assets, attached hereto. The Single Family Shared-Loss Agreement and the Commercial and Other Loans Shared-Loss Agreement have their own separate terms and expressly survive the term .of this Agreement. For the avoidance of doubt, the Shared-Loss Agreements shall not terminate on the sixth anniversary of Bank Closing and shall remain in full force and effect there after.

ARTICLE V
DUTIES WITH RESPECT TO DEPOSITORS OF THE FAILED BANK

5.1 **Payment of Checks, Drafts and Orders**. Subject to Section 9.5, the Assuming Bank agrees to pay all properly drawn checks, drafts and withdrawal orders of depositors of the Failed Bank presented for payment, whether drawn on the check or draft forms provided by the Failed Bank or by the Assuming Bank, to the extent that the Deposit balances to the credit of the respective makers or drawers assumed by the Assuming Bank under this Agreement are sufficient to permit the payment thereof, and in all other respects to discharge, in the usual course of conducting a banking business, the duties and obligations of the Failed Bank with respect to the Deposit balances due and owing to the depositors of the Failed Bank assumed by the Assuming Bank under this Agreement.

5.2 **Certain Agreements Related to Deposits**. Subject to Section 2.2, the Assuming Bank agrees to honor the terms and conditions of any written escrow or mortgage servicing agreement or other similar agreement relating to a Deposit liability assumed by the Assuming Bank pursuant to this Agreement.

5.3 **Notice to Depositors**.

(a) Within 30 days after Bank Closing, the Assuming Bank shall give (i) notice to depositors of the Failed Bank of its assumption of the Deposit liabilities of the Failed Bank, and (ii) any notice required under Section 2.2, by mailing to each such depositor a notice with respect to such assumption and by advertising in a newspaper of general circulation in the county or counties in which the Failed Bank was located. The Assuming Bank agrees that it will obtain prior approval of all such notices and advertisements from counsel for the Receiver (such approval not to be unreasonably withheld o r delayed) and that such notices and advertisements shall not be mailed or published until such approval is received.

(b) The Assuming Bank shall give notice by mail to depositors of the Failed Bank concerning the procedures to claim their deposits, which notice shall be provided to the Assuming Bank by the Receiver or the Corporation. Such notice shall be included with the notice to depositors to be mailed by the Assuming Bank pursuant to Section 5.3(a).

(c) If the Assuming Bank proposes to charge fees different from those charged by the Failed Bank before it establishes new deposit account relationships with the depositors of the Failed Bank, the Assuming Bank shall give notice by mail of such changed fees to such depositors (which notice may be made subsequent to the application of such new fees).

ARTICLE VI
RECORDS

6.1 **Transfer of Records**.

(a) In accordance with Section 3.1, the Receiver assigns, transfers, conveys and delivers to the Assuming Bank the following Records pertaining to the Deposit liabilities of the Failed Bank assumed by the Assuming Bank under this Agreement, except as provided in Section 6.4:

(i) signature cards, orders, contracts between the Failed Bank and its depositors and Records of similar character;

(ii) passbooks of depositors held by the Failed Bank, deposit slips, cancelled checks and withdrawal orders representing charges to accounts of depositors;

and the following Records pertaining to the Assets:

(iii) records of deposit balances carried with other banks, bankers or trust companies;

(iv) Loan and collateral records and Credit Files and other documents;

(v) deeds, mortgages, abstracts, surveys, and other instruments or records of title pertaining to real estate or real estate mortgages; and

(vi) signature cards, agreements and records pertaining to Safe Deposit Boxes, if any.

(b) The Receiver, at its option, may assign and transfer to the Assuming Bank by a single blanket assignment or otherwise, as soon as practicable after Bank Closing, any other Records not assigned and transferred to the Assuming Bank as provided in this Agreement, including but not limited to loan disbursement checks, general ledger tickets, official bank checks, proof transactions (including proof tapes) and paid out loan files.

6.2 **Delivery of Assigned Records**. The Receiver shall deliver to the Assuming Bank all Records described in (i) Section 6.1(a) as soon as practicable on or after the date of this Agreement, and (ii) Section 6.1(b) as soon as practicable after making any assignment described therein.

6.3 **Preservation of Records**. The Assuming Bank agrees that it will preserve and maintain for the joint benefit of the Receiver, the Corporation and the Assuming Bonk, all Records of which it has custody for such period as either the Receiver or the Corporation in its discretion may require, until directed otherwise, in writing, by the Receiver or Corporation. The Assuming Bank shall have the primary responsibility to respond to subpoenas, discovery requests, and other similar official inquiries with respect to the Records of which it has custody.

6.4 **Access to Records; Copies**. The Assuming Bank agrees to permit the Receiver and the Corporation access to all Records of which the Assuming Bank has custody, and to use, inspect, make extracts from or request copies of any such Records in the manner and to the extent requested, and to duplicate, in the discretion of the Receiver or the Corporation, any Record in the form of microfilm or microfiche pertaining to Deposit account relationships; provided, that in the event that the Failed Bank maintained one or more duplicate copies of such microfilm or microfiche Records, the Assuming Bank hereby assigns, transfers, and conveys to the Corporation one such duplicate copy of each such Record without cost to the Corporation, and agrees to deliver to the

Corporation all Records assigned and transferred to the Corporation under this Article VI as soon as practicable on or after the date of this Agreement. The party requesting a copy of any Record shall bear the cost (based on standard accepted industry charges

to the extent applicable, as determined by the Receiver) for providing such duplicate Records. A copy of each Record requested shall be provided as soon as practicable by the party having custody thereof.

ARTICLE VII
FIRST LOSS TRANCHE

The Assuming Bank has submitted to the Receiver an asset premium (discount) bid of negative three billion dollars ($3,000,000,000) and a Deposit premium bid of zero percent (0%). The Deposit premium bid will be applied to the total of all Assumed Deposits except for brokered, CDARS, and any market place or similar subscription services Deposits. The First Loss Tranche shall be determined by adding (i) the asset premium (discount) bid, (ii) the Deposit premium bid, and (iii) the Equity Adjustment. If the First Loss Tranche is a positive number, then this is the Losses on Single Family Shared-Loss Loans and Net Charge-offs on Shared Loss Assets that the Assuming Bank will incur before loss-sharing commences under Exhibits 4.15A and 4.15B. If the First Loss Tranche is a negative number, the Corporation shall pay such amount by wire transfer to the Assuming Bank by the end of the first business day following Bank Closing and loss sharing shall commence immediately.

ARTICLE VIII
ADJUSTMENTS

8.1 **<u>Pro Forma Statement</u>**. The Receiver, as soon as practicable after Bank Closing, in accordance with the best information then available, shall provide to the Assuming Bank a pro forma statement reflecting any adjustments of such liabilities and assets as may be necessary. Such pro forma statement shall be prepared in accordance with the Receiver's customary practices and shall take into account, to the extent possible, (i) liabilities and assets of a nature similar to those con templated by Section 21 or Section 3.1, respectively, which at Bank Closing were carried in the Failed Bank's suspense accounts, (ii) accruals as of Bank Closing for all income related to th'e assets and business of the Failed Bank acquired by the Assuming Bank hereunder, whether or not such accruals were reflected on the Accounting Records of the Failed Bank in the normal course of its operations, and (iii) adjustments to determine the Book Value of any investment in an Acquired Subsidiary and related accounts on the "bank only" (unconsolidated) balance sheet of the Failed Bank based on the equity method of accounting, whether or not the Failed Bank used the equity method of accounting for investments in subsidiaries, except that the resulting amount cannot be less than the Acquired Subsidiary's recorded equity as of Bank Closing as reflected on the Accounting Records of the Acquired Subsidiary. Any Loan purchased by the Assuming Bank pursuant to Section&nb sp;3.1 which the Failed Bank charged off during the period following the date of the Information Package to Bank Closing shall be deemed not to be charged off for the purposes of the pro forma statement, and the purchase price shall be determined pursuant to Section 3.2. It is understood and agreed that any adjustments made pursuant to this Article VIII shall be settled in the manner described in Sections 8.3 and 8.5 and shall not alter or affect the calculation of the First Loss Tranche.

8.2 **<u>Correction of Errors and Omissions; Other Liabilities</u>**.

(a) In the event any bookkeeping omissions or errors are discovered in preparing any Pro forma statement or in completing the transfers and assumptions contemplated hereby, the parties hereto agree to correct such errors and omissions, it being understood that, as far as practicable, all adjustments will be made consistent with the judgments, methods, policies or accounting principles utilized by the Failed Bank in preparing and maintaining Accounting Records, except that adjustments made pursuant to this Section 8.2(a) are not intended to bring the Accounting Records of the Failed Bank into acco rdance with generally accepted accounting principles.

(b) If the Receiver discovers at any time subsequent to the date of this Agreement and prior to the Settlement Date that any claim exists against the Failed Bank which is of such a nature that it would have been included in the liabilities assumed under Article II had the existence of such claim or the facts giving rise thereto been known as of Bank Closing, the Receiver may, in its discretion, at any time prior to the Settlement Date, require that such claim be assumed by the Assuming Bank in a manner consistent with the intent of this Agreement. The Receiver will make appropriate adjustments to the Pro forma statement provided by the Receiver to the Assuming Bank pursuant to Section 8.1 as may be necessary.

8.3 **<u>Payments</u>**. The Receiver agrees to cause to be paid to the Assuming Bank, or the Assuming Bank agrees to pay to the Receiver, as the case may be, on the Settlement Date (or, the first Business Day following the date on which the final Pro forma statement has been deemed to be accepted in accordance with Section 8.6(a) or delivered in accordance with Section 8.6(b), if later), a payment in an amount which reflects the net adjustments (including any costs, expenses and fees assoc iated with determinations of value as provided in this Agreement) made pursuant to Section 8.1 or Section 8.2, plus interest as provided in Section 8.4. The Receiver and the Assuming Bank agree to effect on the Settlement Date (or, the first Business Day following the date on which the final Pro forma statement has been deemed to be accepted in accordance with Section 8.6(a) or delivered in accordance with Section 8.6(b), if later) any further transfer of assets to or assumption of liabilities or claims by the Assuming Bank as may be necessary in accordance with Section 8.1 or Section 8.2.

8.4 **<u>Interest</u>**. Any amounts paid under Section 8.3 or Section 8.5, shall bear interest for the period from and including the day following Bank Closing to and including the day preceding the payment at the Settlement Interest Rate.

8.5 **<u>Subsequent Adjustments</u>**. In the event that the Assuming Bank or the Receiver discovers any errors or omissions as contemplated by Section 8.2 or any error with respect to the payment made under Section 8.3 after the Settlement Date, the Assuming Bank and the Receiver agree to provide written notification of such errors and omissions and any payments as may be necessary to reflect any such correction (a "Subsequent Adjustment Notice") and, subject to Section 8.6, prom ptly correct any such errors or omissions and make any payments as may be necessary to reflect any such correction plus interest as provided in Section 8.4.

8.6 Disagreements.

(a) Within thirty (30) calendar days following receipt by the Assuming Bank of the Pro forma statement contemplated by Section 8.1, the Assuming Bank shall have the right to dispute all or any portion of such Pro forma statement by giving written notice (a "Notice of Disagreement") to the Receiver setting forth in reasonable detail the basis for any such dispute and the Assuming Bank's calculation of any amounts set forth in the Pro forma statement that are the subject of such dispute (any such dispute, a "Disagreement"). If the Assuming Bank does not deliver a Notice of Disagreement within thirty (30) calendar days after delivery of the Pro forma statement, the Assuming Bank will be deemed to have irrevocably accepted the Pro forma statement.

(b) Promptly following the delivery of a Notice of Disagreement, the parties shall commence good faith negotiations with a view to resolving all such Disagreements. If there are any Disagreements that the parties are unable to resolve within thirty (30) calendar days after the delivery of a Notice of Disagreement, any such Disagreements shall be resolved by determination of a review board (a "Review Board") consisting of three (3) members, one of which shall be selected by the Receiver, one of which shall be selected by the Assuming Bank and the third member of which shall be selected by the other two members. No member of the Review Board may be affiliated with either the Assuming Bank or the Receiver and each member of the Review Board must possess sufficient financial expertise to permit such Member to conduct an informed evaluation of a Disagreement. The parties shall promptly select their members of the Review Board and submit their positions with respect to the Disagreements to the Review Board and shall cooperate with the Review Board and provide the Review Board with access to all documentation and personnel as the Review Board reasonably requests in order to render its determination. The parties shall use their best efforts to cause the Review Board to render its determination as soon as practicable, and in any case no later than thirty (30) calendar days, after the referral to it of the Disagreements. With respect to each Disagreement, the Review Board shall be required to either (i) adopt the position of one of the parties regarding such Disagreement or (ii) adopt a position that is in between the positions of the parties. The Review Board shall issue a written determination setting forth its determination with respect to the Disagreements and provide the same to each party. Such written determination shall be final and binding upon the parties. Promptly following the final determination of all Disputes, the Receiver shall deliver to the Assuming Bank a Pro forma statement reflecting the final determination as determined in accordance with this Section 8.6(b), and any payments required to be made and transfer of assets to or assumptions of liabilities or claims pursuant to Section 8.3 shall be determined based on such Pro forma statement.

(c) Within thirty (30) calendar days following receipt by a party of a Subsequent Adjustment Notice, the receiving party shall have the right to dispute all or any portion of such Subsequent Adjustment Notice by giving a Notice of Disagreement to the other party setting forth in reasonable detail the basis for any such Disagreement and such party's calculation of any amounts set forth in the Subsequent Adjustment Notice that are the subject of such Disagreement. If the party receiving the Subsequent Adjustment Notice does not deliyer a Notice of Disagreement within thirty (30) calendar days afte r delivery of the Subsequent Adjustment Notice, such party will be deemed to have irrevocably accepted the matters described in the Subsequent Adjustment Notice. In the event that a Notice of Disagreement is

delivered within such thirty (30) calendar day period, the parties agree to follow the procedures set forth in Section 8.2(b) in order to resolve any Disagreement set forth in such Notice of Disagreement. The determination of any such Disagreement made in accordance with the procedures set forth in Section 8.2(b) shall be final and binding upon the parties and any payments required to be made pursuant to Section 8.5 shall be determined based on such determination.

ARTICLE IX
CONTINUING COOPERATION

9.1 General Matters. The parties hereto agree that they will, in good faith and with their best efforts, cooperate with each other to carry out the transactions contemplated by this Agreement and to effect the purposes hereof.

9.2 Additional Title Documents. The Receiver, the Corporation and the Assuming Bank each agree, at any time, and from time to time, upon the request of any party hereto, to execute and deliver such additional instruments and documents of conveyance and take such other action as shall be reasonably necessary to vest in the appropriate party its full legal or equitable title in and to the property transferred pursuant to this Agreement or to be transferred in accordance herewith. The Assumi ng Bank shall prepare such instruments and documents of conveyance (in form and substance reasonably satisfactory to the Receiver) as shall be necessary to vest title to the Assets in the Assuming Bank. The Assuming Bank shall be responsible for recording such instruments and documents of conveyance at its own expense. In furtherance of the foregoing, concurrently with the execution of this Agreement, the Receiver shall execute and deliver to the Assuming Bank the Power of Attorney in the form attached as Exhibit 9.2 to this Agreement.

9.3 Claims and Suits.

(a) The Receiver shall have the right, in its discretion, to defend or settle any claim or suit against the Assuming Bank with respect to which the Receiver has indemnified the Assuming Bank in the same manner and to the same extent as provided in Article XII; provided that no such settlement shall be made without the prior written consent of the Assuming Bank (such consent not to be unreasonably withheld or delayed) unless any such settlement includes an express unconditional release of the Assuming Bank and its Affiliates from any and all liabilities arising out of or relating to such claim or suit without any admission of wrongdoing by the Assuming Bank or any of its Affiliates. The exercise by the Receiver of any rights under this Section 9.3(a) shall not release the Assuming Bank with respect to any of its obligations under this Agreement.

(b) In the event any action at law or in equity shall be instituted by any Person against the Receiver and the Corporation as codefendants with respect to any asset of the Failed Bank retained or acquired pursuant to this Agreement by the Receiver, the Receiver agrees, at the request of the Corporation, to join with the Corporation in a petition to remove the action to the United States District Court for the proper district. The Receiver agrees to institute, with or without joinder of the Corporation as coplaintiff, any action with respect to any such retained or

acquired asset or any matter connected therewith whenever notice requiring such action shall be given by the Corporation to the Receiver.

9.4 **Payment of Deposits**. In the event any depositor does not accept the obligation of the Assuming Bank to pay any Deposit liability of the Failed Bank assumed by the Assuming Bank pursuant to this Agreement and asserts a claim against the Receiver for all or any portion of any such Deposit liability, the Assuming Bank agrees on demand to provide to the Receiver funds sufficient to pay such claim in an amount not in excess of the Deposit liability reflected on the books of the Assuming Bank at the time such claim is made. Upon payment by the Assuming Bank to the Receiver of such amount, the Assuming Bank shall be discharged from any further obligation under this Agreement to pay to any such depositor the amount of such Deposit liability paid to the Receiver.

9.5 **Withheld Payments**. At any time, the Receiver or the Corporation may, in its discretion, determine that all or any portion of any deposit balance assumed by the Assuming Bank pursuant to this Agreement does not constitute a "Deposit" (or otherwise, in its discretion, determine that it is the best interest of the Receiver or Corporation to withhold all or any portion of any deposit), and may direct the Assuming Bank to withhold payment of all or any portion of any such deposit balan ce. Upon such direction, the Assuming Bank agrees to hold such deposit and not to make any payment of such deposit balance to or on behalf of the depositor, or to itself, whether by way of transfer, set-off, or otherwise. The Assuming Bank agrees to maintain the "withheld payment" status of any such deposit balance until directed in writing by the Receiver or the Corporation as to its disposition. At the direction of the Receiver or the Corporation, the Assuming Bank shall return all or any portion of such deposit balance to the Receiver or the Corporation, as appropriate, and thereupon the Assuming Bank shall be discharged from any further liability to such depositor with respect to such returned deposit balance. If such deposit balance has been paid to the depositor prior to a demand for return by the Corporation or the Receiver, and payment of such deposit balance had not been previously withheld pursuant to this Section, the Assuming Bank shall not be obligated to return such deposit balance to the Receiver or the Corporation. The Assuming Bank shall be obligated to reimburse the Corporation or the Receiver, as the case may be, for the amount of any deposit balance or portion thereof paid by the Assuming Bank in contravention of any previous direction to withhold payment of such deposit balance or return such deposit balance the payment of which was withheld pursuant to this Section.

9.6 **Proceedings with Respect to Certain Assets and Liabilities**.

(a) In connection with any investigation, proceeding or other matter with respect to any asset or liability of the Failed Bank retained by the Receiver, or any asset of the Failed Bank acquired by the Receiver pursuant to this Agreement, the Assuming Bank shall cooperate to the extent reasonably required by the Receiver.

(b) In addition to its obligations under Section 6.4, the Assuming Bank shall provide representatives of the Receiver access at reasonable times and locations without other limitation or qualification to (i) its directors, officers, employees and agents and those of the Acquired Subsidiaries, and (ii) its books and records, the books and records of such Acquired Subsidiaries and all Credit Files, and copies thereof. Copies of books, records and Credit Files

shall be provided by the Assuming Bank as requested by the Receiver and the costs of duplication thereof shall be borne by the Receiver.

(c) Not later than ten (10) days after the Put Notice pursuant to Section 3.4 or the date of the notice of transfer of any Loan by the Assuming Bank to the Receiver pursuant to Section 3.6, the Assuming Bank shall deliver to the Receiver such documents with respect to such Loan as the Receiver may request, including without limitation the following: (i) all related Credit Documents (other than certificates, notices and other ancillary documents), (ii) a certificate setting forth the principal amount on the date of the transfer and the amount of interest, fees and other charges then accrued and unpaid thereon, and any restrictions on transfer to which any such Loan is subject, and (iii) all Credit Files, and all documents, microfiche, microfilm and computer records (including but not limited to magnetic tape, disc storage, card forms and printed copy) maintained by, owned by, or in the possession of the Assuming Bank or any Affiliate of the Assuming Bank relating to the transferred Loan.

9.7 **Information**. The Assuming Bank promptly shall provide to the Corporation such other information, including financial statements and computations, relating to the performance of the provisions of this Agreement as the Corporation or the Receiver may request from time to time, and, at the request of the Receiver, make available employees of the Failed Bank employed or retained by the Assuming Bank to assist in preparation of the Pro forma statement pursuant to Section 8.1.

ARTICLE X
CONDITION PRECEDENT

The obligations of the parties to this Agreement are subject to the Receiver and the Corporation having received at or before Bank Closing evidence reasonably satisfactory to each of any necessary approval, waiver, or other action by any governmental authority, the board of directors of the Assuming Bank, or other third party, with respect to this Agreement and the transactions contemplated hereby, the closing of the Failed Bank and the appointment of the Receiver, the chartering of the Assuming Bank, and any agreements, documents, matters or proceedings contemplated hereby or thereby.

ARTICLE XI
REPRESENTATIONS AND WARRANTIES OF THE ASSUMING BANK

The Assuming Bank represents and warrants to the Corporation and the Receiver as follows:

(a) **Corporate Existence and Authority**. The Assuming Bank (i) is duly organized, validly existing and in good standing under the laws of its Chartering Authority and has full power and authority to own and operate its prOperties and to conduct its business as now conducted by it, and (ii) has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The Assuming Bank has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement and the performance of the transactions contemplated hereby.

(b) **Third Party Consents**. No governmental authority or other third party consents (including but not limited to approvals, licenses, registrations or declarations) are required in connection with the execution, delivery or performance by the Assuming Bank of this Agreement, other than such consents as have been duly obtained and are in full force and effect.

(c) **Execution and Enforceability**. This Agreement has been duly executed and delivered by the Assuming Bank and when this Agreement has been duly authorized, executed and delivered by the Corporation and the Receiver, this Agreement will constitute the legal, valid and binding obligation of the Assuming Bank, enforceable in accordance with its tends.

(d) **Compliance with Law**.

(i) Neither the Assuming Bank nor any of its Subsidiaries is in violation of any statute, regulation, order, decision, judgment or decree of, or any restriction imposed by, the United States of America, any State, municipality or other political subdivision or any agency of any of the foregoing, or any court or other tribunal having jurisdiction over the Assuming Bank or any of its Subsidiaries or any assets of any such Person, or any foreign government or agency thereof having such jurisdiction, with respect to the conduct of the business of the Assuming Bank or of any of its Subsidiaries, or the ownership of the properties of the Assuming Bank or any of its Subsidiaries, which, either individually or in the aggregate with all other such violations, would materially and adversely affect the business, operations or conditio n (financial or otherwise) of the Assuming Bank or the ability of the Assuming Bank to perform, satisfy or observe any obligation or condition under this Agreement.

(ii) Neither the execution and delivery nor the performance by the Assuming Bank of this Agreement will result in any violation by the Assuming Bank of, or be in conflict with, any provision of any applicable law or regulation, or any order, writ or decree of any court or governmental authority.

(e) **Representations Remain True**. The Assuming Bank represents and warrants that it has executed and delivered to the Corporation a Purchaser Eligibility Certification and Confidentiality Agreement and that all information provided and representations made by or on behalf of the Assuming Bank in connection with this Agreement and the transactions contemplated hereby, including, but not limited to, the Purchaser Eligibility Certification and Confidentiality Agreement (which are affirmed and ratified hereby) are and remain true and correct in all material respects and do not fail to state any fact required to make the information contained therein not misleading.

ARTICLE XII
INDEMNIFICATION

12.1 **Indemnification of Indemnitees**. From and after Bank Closing and subject to the limitations set forth in this Section and Section 12.6 and, with respect to third party claims, compliance by the Indemnitees with Section 12.2, the Receiver agrees to indemnify and hold harmless the Indemnitees against any and all costs, losses, any diminution in value of any Asset

or asset of an Acquired Subsidiary, claims, liabilities, expenses (including attorneys' fees), judgments, fines and amounts paid in settlement ("Losses") suffered or incurred by any Indernnitee based upon, relating to, arising out of, or in connection with, any of the following set forth in (a) of this Section 12.1, subject to the exclusions as provided in (b) of this Section 12.1:

(a)

(1) the rights of any shareholder or former shareholder as such of (x) the Failed Bank, or (y) any Subsidiary or Affiliate of the Failed Bank, or the rights of (i) the Failed Bank or (ii) any Subsidiary or Affiliate of the Failed Bank which are asserted derivatively;

(2) the rights of any creditor as such of the Failed Bank or any Subsidiary or Affiliate of the Failed Bank, or any creditor as such of any director, officer, employee or agent of the Failed Bank or any Subsidiary or Affiliate of the Failed Bank, with respect to any indebtedness or other obligation of the Failed Bank or any Subsidiary or Affiliate of the Failed Bank arising prior to Bank Closing;

(3) the rights of any present or former director, officer, employee or agent as such of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank;

(4) any action or inaction, including, without limitation, any violation of any law, rule or regulation, prior to Bank Closing of the Failed Bank, its directors, officers, employees or agents as such, or any Subsidiary or Affiliate of the Failed Bank, or the directors, officers, employees or agents as such of such Subsidiary or Affiliate;

(5) any amounts owed by the Failed Bank or any Subsidiary or Affiliate to any Person for goods or services provided, or with respect to periods occurring, prior to Bank Closing, including, without limitation, any such amounts owed under any contract to which the Failed Bank or any of its Subsidiaries or Affiliates was a party, regardless of whether or not the Assuming Bank elects to assume such contract in accordance with this Agreement;

(6) any failure or alleged failure (not in violation of law) by the Assuming Bank to continue to perform any service or activity previously performed by the Failed Bank or any of its Subsidiaries or Affiliates which the Assuming Bank is not required to perform pursuant to this Agreement or which arise under any contract to which the Failed Bank or any of its Subsidiaries or Affiliates was a party which the Assuming Bank elected not to assume in accordance with this Agreement and which neither the Assuming Bank nor any Subsidiary or Affiliate of the Assuming Bank has assumed subsequent to the execution hereof;

(7) any action or inaction of any Indemnitee, including for purposes of this Section 12.1(a)(7) the former officers or employees of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank that is taken upon the specific written direction of the Corporation or the Receiver or that is permitted to be taken under this

Agreement, other than any action or inaction taken in a manner constituting bad faith, gross negligence or willful misconduct;

(8) the rights of any depositor of the Failed Bank whose deposit has been accorded “withheld payment” status and/or returned to the Receiver or Corporation in accordance with Section 9.5 and/or has become an “unclaimed deposit” or has been returned to the Corporation or the Receiver in accordance with Section 2,3;

(9) the presence, storage or release of any hazardous or toxic substance, or any pollutant or contaminant, or condition of any Asset or other asset of the Failed Bank or any of its Subsidiaries or Affiliates to the extent existing prior to Bank Closing;

(10) any other liabilities of any Acquired Subsidiary based upon, relating to, arising out of or in connection with facts or circumstances occurring or existing prior to Bank Closing;

(11) any other liabilities of the Failed Bank or any of its Subsidiaries or Affiliates that are not expressly assumed by the Assuming Bank pursuant to Section 2.1; and

(12) for the avoidance of doubt and without limiting the generality of this Section 12.1(a), each Indemnitee will be indemnified for Losses suffered or incurred by any Indemnitee based upon, relating to, arising out of, or in connection with (i) inadequate or fraudulent origination or loan servicing activities or other lender liability causes of action, (ii) the failure of the Failed Bank or an Acquired Subsidiary to have a legal, valid and enforceable perfected Lien over the assets to which any Loan relates, with the priority purported to be granted by the instrument creating such Lien, or (iii) the failure of any Credit Documents evidencing a Loan or which purport to create a Lien over the assets to which a Loan relates to be legal, valid and binding obligations of the relevant parties enforceable in accordance with the ir terms.

(b) provided, that, with respect to this Agreement, except for paragraphs (7) and (8) of Section 12.1(a), no indemnification will be provided under this Agreement for any:

(1) Losses for which the Assuming Bank has been made whole under other provisions of this Agreement, including the Single Family Shared-Loss Agreement and the Commercial Shared-Loss Agreement;

(2) Losses with respect to any liability or obligation of the Failed Bank that is expressly assumed by the Assuming Bank pursuant to this Agreement or subsequent to the execution hereof by the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank;

(3) Losses with respect to any liability of the Failed Bank to any present or former employee as such of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank, which liability is expressly assumed by the Assuming Bank

or any Subsidiary or Affiliate of the Assuming Bank subsequent to the execution hereof by the Assuming Bank;

(4) Losses based on the failure of any Indemnitee to seek recovery of damages from the Receiver for any claims based upon any action or inaction of the Failed Bank, its directors, officers, employees or agents as fiduciary, agent or custodian prior to Bank Closing;

(5) Losses based on any violation or alleged violation by any Indemnitee of the antitrust, branching, banking or bank holding company or securities laws of the United States of America or any State thereof (in the case of any Acquired Subsidiary, only to the extent such violation or alleged violation occurred after the acquisition thereof by the Assuming Bank);

(6) Losses based on the rights of any present or former creditor, customer, or supplier as such of the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank (in the case of any Acquired Subsidiary, only to the extent such claim is based on rights arising after acquisition thereof by the Assuming Bank);

(7) Losses based on the rights of any present or former shareholder as such of the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank (other than any Acquired Subsidiary) regardless of whether any such present or former shareholder is also a present or former shareholder of the Failed Bank;

(8) [Reserved];

(9) Losses which could have been enforced against any Indernnitee (other than an Acquired Subsidiary) had the Assuming Bank not entered into this Agreement;

(10) Losses based on any liability for taxes or fees (other than taxes or fees based on income of the Failed Bank or any Subsidiary or Affiliate of the Failed Bank) assessed with respect to the consummation of the transactions contemplated by this Agreement, including without limitation any subsequent transfer of any Assets or Liabilities Assumed to any Subsidiary or Affiliate of the Assuming Bank;

(11) except as expressly provided in this Article XII, Losses based on any action or inaction of any Indemnitee (in the case of any Acquired Subsidiary, only with respect to any such action or inaction occurring after the acquisition thereof by the Assuming Bank), and nothing in this Agreement shall be construed to provide indemnification for (i) the Failed Bank, (ii) any Subsidiary or Affiliate of the Failed Bank (other than an Acquired Subsidiary), or (iii) any present or former director, officer, employee or agent of the Failed Bank or its Subsidiaries or Affiliates; provided, that the Receiver, in its discretion, may provide indemnification hereunder for any present or former director, officer, employee or agent of the Failed Bank or its Subsidiaries or Affiliates who is also or becomes a director, offic er, employee or agent of the Assuming Bank or its Subsidiaries or Affiliates;

(12) claims or other actions which constitute a breach by the Assuming Bank of the representations and warranties contained in Article XI;

(13) [Reserved]; and

(14) Losses based on, related to or arising from any asset, including a loan, acquired or liability assumed by the Assuming Bank, which acquisition or assumption is effected other than pursuant to this Agreement.

12.2 Conditions Precedent to Indemnification. It shall be a condition precedent to the obligation of the Receiver to indemnify any Person pursuant to this Article XII that such Person shall, with respect to any claim made or threatened against such Person by a third party for which such Person is or may be entitled to indemnification hereunder:

(a) give written notice to the Regional Counsel (Litigation Branch) of the Corporation in the manner and at the address provided in Section 13.7 of such claim as soon as practicable after such claim is made or threatened; provided, that notice must be given on or before the date which is six (6) years from the date of this Agreement;

(b) provide to the Receiver such information and cooperation with respect to such claim as the Receiver may reasonably require;

(c) cooperate and take all steps, as the Receiver may reasonably require, to preserve and protect any defense to such claim;

(d) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Receiver the right, which the Receiver may exercise in its sole discretion, to conduct the investigation, control the defense and effect settlement of such claim, including without limitation the right to designate counsel and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of any such claim, all of which shall be at the expense of the Receiver; provided, that the Receiver shall have notified the Person claiming indemnification in writing that such claim is a claim with respect to which the Person claiming indemnification is entitled to indemnification under this Article XII; provided, further that no settlement shall be made without the prior writt en consent of the Indernnitee (such consent not to be unreasonably withheld or delayed) unless any such settlement includes an express unconditional release of the Indemnittee and its Affiliates from any and all liabilities arising out of or relating to such suit without any admission of wrongdoing by the Indemnitee or any of its Affiliates;

(e) not incur any costs or expenses in connection with any response or suit with respect to such claim, unless such costs or expenses were incurred upon the written direction of the Receiver or unless such Indemnitee incurs such costs or expenses for its own account; provided, that the Receiver shall not be obligated to reimburse the amount of any such costs or expenses unless such costs or expenses were incurred upon the written direction of the Receiver;

(f) not release or settle such claim or make any payment or admission with respect thereto, unless the Receiver consents in writing thereto, which consent shall not be

unreasonably withheld; provided, that the Receiver shall not be obligated to reimburse the amount of any such settlement or payment unless such settlement or payment was effected upon the written direction of the Receiver; and

(g) take reasonable action as the Receiver may request in writing as necessary to preserve, protect or enforce the rights of the indemnified Person against any Primary Indemnitor.

12.3 No Additional Warranty. Nothing in this Article XII shall be construed or deemed to (i) expand or otherwise alter any warranty or disclaimer thereof provided under Section 3.3 or any other provision of this Agreement with respect to, among other matters, the title, value, collectibility, genuineness, enforceability or condition of any (x) Asset, or (y) asset of the Failed Bank purchased by the Assuming Bank subsequent to the execution of this Agreement by the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank, or (ii) create any warranty not expressly provided under this Agreement with respect thereto; provided however that the absence of any such warranty shall not affect the calculation of any Losses with respect to wh ich any Indemnitee is entitled to indemnification under Section 12.1.

12.4 Indemnification of Receiver and Corporation. From and after Bank Closing, the Assuming Bank agrees to indemnify and hold harmless the Corporation and the Receiver and their respective directors, officers, employees and agents from and against any and all Losses actually and reasonably incurred in connection with any of the following:

(a) claims against the Corporation or any such specified Person based on any and all liabilities or obligations of the Failed Bank assumed by the Assuming Bank pursuant to this Agreement or subsequent to the execution hereof by the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank, whether or not any such liabilities subsequently are sold and/or transferred, other than any claim based upon any action or inaction of any Indemnitee as provided in paragraph (7) or (8) of Section 12.1(a); and

(b) claims against the Corporation or any such specified Person based on any act or omission of any Indemnitee (including but not limited to claims of any Person claiming any right or title by or through the Assuming Bank with respect to Assets transferred to the Receiver pursuant to Section 3.4 or 3.6), other than any action or inaction of any Indemnitee as provided in paragraph (7) or (8) of Section 12.1(a).

12.5 Obligations Supplemental. The obligations of the Receiver, and the Corporation as guarantor in accordance with Section 12.7, to provide indemnification under this Article MI are to supplement any amount payable by any Primary Indemnitor to the Person indemnified under this Article XII. Consistent with that intent, the Receiver agrees only to make payments pursuant to such indemnification to the extent not payable by a Primary Indemnitor. If the aggregate amount of payments actually received by the Person being indemnified from the Receiver, or the Corporation as guarantor in accordance with Section 12.7, and all Primary Indernnitors with respect to any item of indemnification under this Article XII exceeds the amount payable wit h respect to such item, such Person being indemnified shall notify the Receiver thereof and, upon the request of the Receiver, shall promptly pay to the Receiver, or the

Corporation as appropriate, the amount of the Receiver's (or Corporation's) payments to the extent of such excess.

12.6 **Criminal Claims**. Notwithstanding any provision of this Article XII to the contrary, in the event that any Person being indemnified under this Article XII shall become involved in any criminal action, suit or proceeding, whether judicial, administrative or investigative, the Receiver shall have no obligation hereunder to indemnify such Person for liability with respect to any criminal act or to the extent any costs or expenses are attributable to the defense against the allegation of any criminal act, unless (i) the Person is successful on the merits or otherwise in the defense against any such action, suit or proceeding, or (ii) such action, suit or proceeding is terminated without the imposition of liability on such Person.

12.7 **Limited Guaranty of the Corporation**. The Corporation hereby guarantees performance of the Receiver's obligation to indemnify the Assuming Bank as set forth in this Article XII. It is a condition to the Corporation's obligation hereunder that the Assuming Bank shall comply in all respects with the applicable provisions of this Article XII. The Corporation shall be liable hereunder only for such amounts, if any, as the Receiver is obligated to pay under the terms of this Article XII but shall fail to pay. Except as otherwise provided above in this Section 12.7, nothing in this Article XII is intended or shall be construed to create any liability or obligation on the part of the Corporation, the United States of America o r any department or agency thereof under or with respect to this Article XII, or any provision hereof, it being the intention of the parties hereto that the obligations undertaken by the Receiver under this Article XII are the sole and exclusive responsibility of the Receiver and no other Person or entity.

12.8 **Subrogation**. Upon payment by the Receiver, or the Corporation as guarantor in accordance with Section 12.7, to any Indemnitee for any claims indemnified by the Receiver under this Article XII, the Receiver, or the Corporation as appropriate, shall become subrogated to all rights of the Indemnitee against any other Person to the extent of such payment.

ARTICLE XIII
MISCELLANEOUS

13.1 **Entire Agreement**. This Agreement (including the Schedules and Exhibits hereto) and the Addendum to Purchase and Assumption Agreement, the Warrant and the other documents delivered in connection herewith, embody the entire agreement of the parties hereto in relation to the subject matter herein and supersede all prior understandings or agreements, oral or written, between the parties.

13.2 **Headings**. The headings and subheadings of the Table of Contents, Articles and Sections contained in this Agreement, except the terms identified for definition in Article I and elsewhere in this Agreement, are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

13.3 **Counterparts**. This Agreement may be executed in any number of counterparts and by the duly authorized representative of a different party hereto on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

13.4 **GOVERNING LAW**. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES OF AMERICA, AND IN THE ABSENCE OF CONTROLLING FEDERAL LAW, IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE MAIN OFFICE OF THE FAILED BANK IS LOCATED.

13.5 **Successors**. All terms and conditions of this Agreement shall be binding on the successors and assigns of the Receiver, the Corporation and the Assuming Bank. Except as otherwise specifically provided in this Agreement, nothing expressed or referred to in this Agreement is intended or shall be construed to give any Person other than the Receiver, the Corporation and the Assuming Bank any legal or equitable right, remedy or claim under or with respect to this Agreement or any provisions contained herein, it being the intention of the parties hereto that this Agreement, the obligations and statements of responsibilities hereunder, and all other conditions and provisions hereof are for the sole and exclusive benefit of the Receiver, the Corporation and the Assuming Ban k and for the benefit of no other Person.

13.6 **Modification; Assignment**. No amendment or other modification, rescission, release, or assignment of any part of this Agreement shall be effective except pursuant to a written agreement subscribed by the duly authorized representatives of the parties hereto. Notwithstanding the foregoing, the Assuming Bank shall be entitled to assign any of its rights or obligations under this Agreement to any Subsidiary of the Assuming Bank, except to the extent that any such assignment is not permitted under applicable law.

13.7 **Notice**. Any notice, request, demand, consent, approval or other communication to any party hereto shall be effective when received and shall be given in writing, and delivered in person against receipt therefore, or sent by certified mail, postage prepaid, courier service, telex, facsimile transmission or email to such party (with copies as indicated below) at its address set forth below or at such other address as it shall hereafter furnish in writing to the other parties. All such notices and other communications shall be deemed given on the date received by the addressee.

Assuming Bank

BankUnited
255 Alhambra Circle
Coral Gables, Florida 33134
Attention: Mr. John Kanas

with a copy to:

Receiver and Corporation

Federal Deposit Insurance Corporation,
Receiver of BankUnited, FSB

1601 Bryan Street, Suite 1700
Dallas, Texas 75201

Attention: Settlement Manager

with copy to: Regional Counsel (Litigation Branch)

and with respect to notice under Article XII:

Federal Deposit Insurance Corporation
Receiver of BankUnited, FSB
1601 Bryan Street, Suite 1700
Dallas, Texas 75201
Attention: Regional Counsel (Litigation Branch)

13.8 **Manner of Payment**. All payments due under this Agreement shall be in lawful money of the United States of America in immediately available funds as each party hereto may specify to the other parties; provided, that in the event the Receiver or the Corporation is obligated to make any payment hereunder in the amount of $25,000.00 or less, such payment may be made by check.

13.9 **Costs, Fees and Expenses**. Except as otherwise specifically provided herein, each party hereto agrees to pay all costs, fees and expenses which it has incurred in connection with or incidental to the matters contained in this Agreement, including without limitation any fees and disbursements to its accountants and counsel; provided, that the Assuming Bank shall pay all fees, costs and expenses (other than attorneys' fees incurred by the Receiver) incurred in connection with the transfer to it of any Assets or Liabilities Assumed hereunder or in accordance herewith.

13.10 **Waiver**. Each of the Receiver, the Corporation and the Assuming Bank may waive its respective rights, powers or privileges under this Agreement; provided, that such waiver shall be in writing; and further provided, that no failure or delay on the part of the Receiver, the Corporation or the Assuming Bank to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege by the Receiver, the Corporation, or the Assuming Bank under this Agreement, nor will any such waiver operate or be construed as a future waive r of such right, power or privilege under this Agreement.

13.11 **Severabilitv**. If any provision of this Agreement is declared invalid or unenforceable, then, to the extent possible, all of the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

13.12 **Term of Agreement**. This Agreement shall continue in full force and effect until the sixth (6th) anniversary of Bank Closing; provided, that the provisions of Section 6.3 and 6.4 shall survive until the seventh (7th) anniversary of Bank Closing. Provided, however, the receivership of the Failed Bank may be terminated prior to the expiration of the term of this Agreement; in such event, the guaranty of the Corporation, as provided in and in accordance with the provisions of Section 12.7 shall be in effect for the remainder of the term (or such

longer period as necessary to satisfy the terms of the immediately succeeding sentence). Expiration of the term of this Agreement shall not affect any claim or liability of any party with respect to any (i) amount which is owing at the time of such expiration, regardless of when such amount becomes payable, (ii) breach of this Agreement occurring prior to such expiration, regardless of when such breach is discovered and (iii) any matter for which a request for indemnification has been timely submitted.

13.13 **Survival of Covenants, Etc.**. The covenants, representations, and warranties in this Agreement shall survive the execution of this Agreement and the consummation of the transactions contemplated hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the fate first above written.

FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER OF BANKUNITED, FSB, CORAL GABLES, FLORIDA

By: /s/ Arthur Cook
Name: Arthur Cook
Title: Attorney-In-Fact

Attest:

/s/ Cathy Powers

FEDERAL DEPOSIT INSURANCE CORPORATION

By: /s/ Arthur Cook
Name: Arthur Cook
Title: Attorney-In-Fact

Attest:

/s/ Cathy Powers

BANKUNITED

By: /s/ Rajinder P. Singh
Name: Rajinder P. Singh
Title: Head of Consumer Banking

Attest:

/s/ Andrew Alin

SCHEDULE 2.1 - Certain Liabilities Assumed by the Assuming Bank

SCHEDULE 2.1(a) — Excluded Deposit Liability Accounts

Accounts Excluded from P&A Transaction

BankUnited, FSB
Coral Gables, FL

BankUnited, FSB has deposits associated with the Depository Organization (DO) Cede & Co as Nominee for DTC. The DO accounts do not pass to the Assuming Bank and are excluded from the transaction as described in section 2.1 of the P&A Agreement. The attached Schedule 2.1.a DO Detail Report identifies the DO accounts as of March 27 2009. This schedule will be updated post closing with data as of Bank Closing date.

Accounts Excluded from Calculation of Deposit Franchise Bid Premium

BankUnited, FSB
Coral Gables, FL

The accounts identified below will pass to the Assuming Bank (unless otherwise noted). When calculating the premium to be paid on Assumed Deposits in a P&A transaction, the FDIC will exclude the following categories of deposit accounts:

Category	Description		Amount
I	Non-DO Brokered Deposits	$	6,268,827.85
II	CDARS	$	0.00
III	Market Place Deposits	$	0.00
	Total deposits excluded from Calculation of premium	$	6,268,827.85

<u>Category Description</u>

I Brokered Deposits

Brokered deposit accounts are accounts for which the "depositor of record" is an agent, nominee, or custodian who deposits funds for a principal or principals to whom "pass-through" deposit insurance coverage may be extended. The FDIC separates brokered deposit accounts into 2 categories: 1) Depository Organization (DO) Brokered Deposits and 2) Non-Depository Organization (Non-DO) Brokered Deposits. This distinction is made by the FDIC to facilitate our role as Receiver and Insurer. These terms will not appear on other "brokered deposit" reports generated by the institution.

Non-DO Brokered Deposits pass to the Assuming Bank, but are excluded from Assumed Deposits when the deposit premium is calculated. Please see the attached "Schedule 7 Non-DO Broker Deposit Detail Report" for a listing of these accounts. This list will be updated post closing with balances as of Bank Closing date.

If this institution had any DO Brokered Deposits (Cede & Co as Nominee for DTC), they are excluded from Assumed Deposits in the PM transaction. A list of these accounts is provided on "Schedule 2.1 DO Brokered Deposit Detail Report".

II CDARS

CDARS deposits pass to the Assuming Bank, but are excluded from Assumed Deposits when the deposit premium is calculated.

BankUnited, FSB did not participate in the CDARS program as of the date of the deposit download. If CDARS deposits are taken between the date of the deposit download and the Bank Closing Date, they will be identified post closing and made part of Schedule 7 to the PM Agreement.

Ill Market Place Deposits

"Market Place Deposits" is a description given to deposits that may have been solicited via a money desk, intemet subscription service (for example, Qwickrate), or similar programs.

BankUnited, FSB was represented not to have solicited Market Place Deposits as identified above. This list will be 2f updated (if necessary) post closing with balances as of Bank Closing date.

This schedule provides account categories and balances as of the date of the deposit download, or as indicated.

The deposit franchise bid premium will be calculated using account categories and balances as of Bank Closing Date that are reflected in the general ledger or subsystem as described above. The final numbers for Schedule 7 will be provided post closing.

SCHEDULE 3.1 - Certain Assets Purchased

SEE ATTACHED LIST

THE LIST(S) ATTACHED TO THIS SCHEDULE (OR SUBSCHEDULE(S)) AND THE INFORMATION THEREIN, IS AS OF THE DATE OF THE INFORMATION PACKAGE. IT WILL BE ADJUSTED TO REFLECT THE COMPOSITION AND BOOK VALUE OF THE LOANS AND ASSETS AS OF THE DATE OF BANK CLOSING. THE LIST(S) MAY NOT INCLUDE ALL LOANS AND ASSETS (E.G., CHARGED OFF LOANS).

SCHEDULE 3.1a — Subsidiary Entities Acquired

SEE ATTACHED LIST

THE LIST(S) ATTACHED TO THIS SCHEDULE (OR SUBSCHEDULE(S)) AND THE INFORMATION THEREIN, IS AS OF BANK CLOSING.

Name	TIN
Bay Holdings, Inc.	
CRE Properties, Inc.	
BU, REIT, Inc.	
BU Delaware, Inc.	
T&D Properties of South Florida, Inc.	

SCHEDULE 3.2 - Purchase Price of Assets or assets

(a)	cash, cash equivalents and receivables from depository institutions, including cash items in the process of collection, plus interest thereon:	Book Value
(b)	securities (exclusive of the capital stock of Acquired Subsidiaries), plus interest thereon:	As provided in Section 3.2(b)

(c)	federal funds sold and repurchase agreements, if any, including interest thereon:	Book Value
(d)	Loans:	Book Value
(e)	[Reserved]	Book Value
(f)	Safe Deposit Boxes and related business, if any:	Book Value
(g)	Records and other documents:	Book Value
(h)	capital stock of any Acquired Subsidiaries:	Book Value
(i)	amounts owed to the Failed Bank by any Acquired Subsidiary:	Book Value
(j)	assets securing Deposits of public money, to the extent not otherwise purchased hereunder:	Book Value
(k)	Overdrafts of customers:	Book Value
(1)	[Reserved]	
(m)	[Reserved]	
(n)	Shared-Loss MTM Assets:	As provided in Section 3.2(c)

assets subject to an option to purchase:

(a)	Owned Bank Premises:	Fair Market Value
(b)	Furniture and Equipment:	Fair Market Value
(c)	Fixtures:	Fair Market Value
(d)	Other Equipment:	Fair Market Value

SCHEDULE 4.15A

LOANS SUBJECT TO LOSS SHARING UNDER THE SINGLE FAMILY SHARED-LOSS AGREEMENT

SCHEDULE 4.15B

LOANS SUBJECT TO LOSS SHARING UNDER THE COMMERCIAL AND OTHER LOANS SHARED-LOSS AGREEMENT

SCHEDULE 4.15C

SHARED-LOSS MTM ASSETS

EXHIBIT 2.3

FINAL LEGAL NOTICE
Claiming Requirements for Deposits
Under 12 U.S.C. 1822(e)

[Date]

[Name of Unclaimed Depositor]
[Address of Unclaimed Depositor]
[Anytown, USA]

Subject: **[XXXXX — Name of Bank**
<u>City, State] — In Receivership</u>

Dear **[Sir/Madam]:**

As you may know, on **[Date: Closing Date]**, the **[Name of Bank ("The Bank")]** was closed and the Federal Deposit Insurance Corporation ("FDIC") transferred **[The Bank's]** accounts to **[Name of Acquiring Institution]**.

According to federal law under 12 U.S.C., 1822(e), on **[Date: eighteen months from the Closing Date], [Name of Acquiring Institution]** must transfer the funds in your account(s) back to the FDIC if you have not claimed your account(s) with **[Name of Acquiring Institution]**. Based on the records recently supplied to us by **[Name of Acquiring Institution]**, your account(s) currently fall into this category.

This letter is your formal Legal Notice that you have until **[Date: eighteen months from the Closing Date]**, to claim or arrange to continue your account(s) with **[Name of Acquiring Institution]**. There are several ways that you can claim your account(s) at **[Name of Acquiring Institution]**. It is only necessary for you to take any one of the following actions in order for your account(s) at **[Name of Acquiring Institution]** to be deemed claimed. In addition, if you have more than one account, your claim to one account will automatically claim all accounts:

1. Write to **[Name of Acquiring Institution]** and notify them that you wish to keep your account(s) active with them. Please be sure to include the name of the account(s), the account number(s), the signature of an authorized signer on the account(s), name, and address. **[Name of Acquiring Institution]** address is:

    [123 Main Street

    Anytown, USA]

2. Execute a new signature card on your account(s), enter into a new deposit agreement with [Name of Acquiring Institution], change the ownership on your account(s), or renegotiate the terms of your certificate of deposit account(s) (if any).

3. Provide [Name of Acquiring Institution] with a change of address form.

4. Make a deposit to or withdrawal from your account(s). This includes writing a check on any account or having an automatic direct deposit credited to or an automatic withdrawal debited from an account.

If you do not want to continue your account(s) with **[Name of Acquiring Institution]** for any reason, you can withdraw your funds and close your account(s). Withdrawing funds from one or more of your account(s) satisfies the federal law claiming requirement. If you have time deposits, such as certificates of deposit, **[Name of Acquiring Institution]** can advise you how to withdraw them without being charged an interest penalty for early withdrawal.

If you do not claim ownership of your account(s) at **[Name of Acquiring Institution by Date: eighteen months from the Closing Date]** federal law requires **[Name of Acquiring Institution]** to return your deposits to the FDIC, which will deliver them as unclaimed property to the State indicated in your address in the Failed Institution's records. If your address is outside of the United States, the FDIC will deliver the deposits to the State in which the Failed Institution had its main office. 12 U.S.0 § 1822(e). If the State accepts custody of your deposits, you will have 10 years from the date of delivery to claim your deposits from the State. Mier 10 years you will be permanently barred from claiming your deposits. However, if the State refuses to take custody of your deposits, you will be able to claim them from the FDIC until the receivership is te rminated. If you have not claimed your insured deposits before the receivership is terminated, and a receivership may be terminated at any time, all of your rights in those deposits will be barred.

If you have any questions or concerns about these items, please contact **[Bank Employee]** at **[Name of Acquiring Institution]** by phone at **[(XXX) XXX-XXXX]**.

Sincerely,

[Name of Claims Specialist]
[Title]

<u>AFFIDAVIT OF MAILING</u>

1.2 **<u>State of</u>**

1.3 <u>COUNTY OF</u>

I am employed as a **[Tide of Office]** by the **[Name of Acquiring Institution]**.

This will attest that on **[Date of mailing]**, I caused a true and correct copy of the Final Legal Notice, attached hereto, to owners of unclaimed deposits of **[Name of Failed Bank]**, City, State, to be prepared for deposit in the mail of the United States of America on behalf of the Federal Deposit Insurance

Corporation. A list of depositors to whom the notice was mailed is attached. This notice was mailed to the depositor's last address as reflected on the books and records of the **[Name of Failed Bank]** as of the date of failure.

[Name]
[Title of Office]
[Name of Acquiring Institution]

Subscribed and sworn to before me this day of [Month, Year].

My commission expires:

[Name], Notary Public

EXHIBIT 4.15A

SINGLE FAMILY SHARED-LOSS AGREEMENT

This agreement for the reimbursement of loss sharing on certain single family residential mortgage loans (the "Single Family Shared-Loss Agreement") shall apply when the Assuming Bank purchases Single Family Shared-Loss Loans as that term is defined herein. The terms hereof shall modify and supplement, as necessary, the terms of the Purchase and Assumption Agreement to which this Single Family Shared-Loss Agreement is attached as Exhibit 4.15A and incorporated therein. To the extent any inconsistencies may arise between the terms of the Purchase and Assumption Agreement and this Single Family Shared-Loss Agreement with respect to the subject matter of this Single Family Shared-Loss Agreement, the terms of this Single Family Shared-Loss Agreement shall control. References in this Single Family Shared-Loss Agreement to a particular Section shall be deemed to refer to a Section in this Single Family Shared-Loss Agreement, unless the context indicates that it is intended to be a reference to a Section of the Purchase and Assumption Agreement.

ARTICLE I — DEFINITIONS

The capitalized terms used in this Single Family Shared-Loss Agreement that are not defined in this Single Family Shared-Loss Agreement are defined in the Purchase and Assumption Agreement. In addition to the terms defined above, defined below are certain additional terms relating to loss-sharing, as used in this Single Family Shared-Loss Agreement.

"**Accounting Records**" means the subsidiary system of record on which the loan history and balance of each Single Family Shared-Loss Loan is maintained; individual loan files containing either an original or copies of documents that are customary and reasonable with respect to loan servicing, including management and disposition of Other Real Estate; the records documenting alternatives considered with respect to loans in default or for which a default is reasonably foreseeable; records of loss calculations and supporting documentation with respect to line items on the loss calculations; and, monthly delinquency reports and other performance reports customarily utilized by the Assuming Bank in management of loan portfolios.

"**Accrued Interest**" means, with respect to Single Family Shared-Loss Loans, the amount of earned and unpaid interest at the note rate specified in the applicable loan documents, limited to 90 days.

"**Affiliate**" shall have the meaning set forth in the Purchase and Assumption Agreement; provided, that, for purposes of this Single Family Shared-Loss Agreement, no Third Party Servicer shall be deemed to be an Affiliate of the Assuming Bank.

"**Commencement Date**" means the first calendar day following the Bank Closing.

"**Commercial Shared-Loss Agreement**" means the Commercial and Other Loans Shared-Loss Agreement attached to the Purchase and Assumption Agreement as Exhibit 4. 1 5B.

"**Cumulative Loss Amount**" means the sum of the Monthly Loss Amounts less the sum of all Recovery Amounts.

"**Cumulative Shared-Loss Amount**" means the excess, if any, of the Cumulative Loss Amount over the First Loss Tranche.

"**Customary Servicing Procedures**" means procedures (including collection procedures) that the Assuming Bank (or, to the extent a Third Party Servicer is engaged, the Third Party Servicer) customarily employs and exercises in servicing and administering mortgage loans for its own accounts and the servicing procedures established by FNMA or FHLMC (as in effect from time to time), which are in accordance with accepted mortgage servicing practices of prudent lending institutions.

"**Deficient Valuation**" means the determination by a court in a bankruptcy proceeding that the value of the collateral is less than the amount of the loan in which case the loss will be the difference between the then unpaid principal balance (or the NPV of a modified loan that defaults) and the value of the collateral so established.

"**Home Equity Loans**" means loans or funded portions of lines of credit secured by mortgages on one-to four-family residences or stock of cooperative housing associations, where the Failed Bank did not have a first lien on the same property as collateral and therefore can be treated under the charge-off policies outlined in the Commercial and Other Loans Shared-Loss Agreement.

"**Final Shared-Loss Month**" means the calendar month in which the tenth anniversary of the Commencement Date occurs.

"**Final Shared-Loss Recovery Month**" means the calendar month in which the tenth anniversary of the Commencement Date occurs.

"**Foreclosure Loss**" means the loss realized when the Assuming Bank has completed the foreclosure on a Single Family Shared-Loss Loan and realized final recovery on the collateral through liquidation and recovery of all insurance proceeds. Each Foreclosure Loss shall be calculated in accordance with the form and methodology specified in Exhibit 2a or Exhibit 2a(1).

"**Investor-Owned Residential Loans**" means Loans, excluding advances made pursuant to Home Equity Loans, that are secured by mortgages on one- to four family residences or stock of cooperative housing associations that are not owner-occupied. These loans can be treated as Restructured Loans on a commercially reasonable basis and can be a restructured under terms separate from the Exhibit 5 standards. Please refer to Exhibit 2b for guidance in Calculation of Loss for Restricted Loans.

"**Loss**" means a Foreclosure Loss, Restructuring Loss, Short Sale Loss, Portfolio Loss, Modification Default Loss or Deficient Valuation.

"**Loss Amount**" means the dollar amount of loss incurred and reported on the Monthly Certificate for a Single Family Shared-Loss Loan.

"**Modification Default Loss**" means the loss calculated in Exhibits 2a(1) and 2c(1) for single family loans modified under this part of the agreement that default and result in a foreclosure or short sale.

"**Modification Guidelines**" has the meaning provided in Section 2.1(a) of this Single Family Shared-Loss Agreement.

"**Monthly Certificate**" has the meaning provided in Section 2.1(b) of this Single Family Shared-Loss Agreement.

"**Monthly Loss Amount**" means the sum of all Foreelosure Losses, Restructuring Losses, Short Sale Losses, Portfolio Losses, Modification Default Losses and losses in connection with Deficient Valuations realized by the Assuming Bank for any Shared Loss Month.

"**Monthly Shared-Loss Amount**" means the change in the Cumulative Shared-Loss Amount from the beginning of each month to the end of each month.

"**Neutral Member**" has the meaning provided in Section 2. l(f)(ii) of this Single Family Shared-Loss Agreement.

"**Portfolio Loss**" means the loss realized on either (i) a portfolio sale of Single Family Shared-Loss Loans in accordance with the terms of Article IV or (ii) the sale of a loan with the consent of the Receiver as provided in Section 2.7.

"**Recovery Amount**" means, with respect to any period prior to the Termination Date, the amount of colleeted funds received by the Assuming Bank that (i) are applicable against a Foreclosure Loss which has previously been paid to the Assuming Bank by the Receiver or (ii) gains realized from a Section 4.1 sale of Single Family Shared-Loss Loans for which the Assuming Bank has previously received a Restructuring Loss payment from the Receiver (iii) or any incentive payments from national programs paid to an investor or borrower on loans that have been modified or otherwise treated (short sale or foreclosure) in accordance with Exhibit 5.

"**Restructuring Loss**" means the loss on a modified or restructured loan measured by the difference between (a) the principal, Accrued Interest, tax and insurance advances, third party or other fees due on a loan prior to the modification or restructuring, and (b) the net present value of estimated cash flows on the modified or restructured loan, discounted at the Then-Current Interest Rate. Each Restructuring Loss shall be calculated in accordance with the form and methodology attached as Exhibit 2b, as applicable.

"**Restructured Loan**" means a Single Family Shared-Loss Loan for which the Assuming Bank has received a Restructuring Loss payment from the Receiver. This applies to owner occupied and investor owned residences.

"**Servicing Officer**" has the meaning provided in Section 2.1(b) of this Single Family Shared-Loss Agreement.

"**Shared Loss Payment Trigger**" means when the sum of the Cumulative Loss Amount under this Single Family Shared-Loss Agreement and the Shared-Loss Amount under the Commercial and Other Loans Shared-Loss Agreement, exceeds the First Loss Tranche. If the First Loss Tranche is zero or a negative number, the Shared Loss Payment Trigger shall be deemed to have been reached upon Bank Closing.

"**Shared-Loss Month**" means each calendar month between the Commencement Date and the last day of the month in which the tenth anniversary of the Commencement Date occurs, provided that, the first Shared-Loss Month shall begin on the Commencement Date and end on the last day of that month.

"**Shares**" means common stock and any instrument which by its terms is currently convertible into common stock, or which will become convertible into common stock within 18 months of the execution of this Agreement.

"**Short-Sale Loss**" means the loss resulting from the Assuming Bank's agreement with the mortgagor to accept a payoff in an amount less than the balance due on the loan (including the costs of any cash incentives to borrower to agree to such sale or to maintain the property pending such sale), further provided, that each Short-Sale Loss shall be calculated in accordance with the form and methodology specified in Exhibit 2c or Exhibit 2c(1).

“**Single Family Shared-Loss Loans**” means the single family one-to-four residential mortgage loans (whether owned by the Assuming Bank or any Subsidiary) identified on Schedule 4.15A of the Purchase and Assumption Agreement.

“**Stated Threshold**” means total losses under the shared loss agreements in the amount of $4 Billion ($4,000,000,000.00).

“**Termination Date**” means the last day of the Final Shared-Loss Recovery Month.

“**Then-Current Interest Rate**” means the most recently published Freddie Mac survey rate for 30-year fixed-rate loans.

“**Third Party Servicer**” means any servicer appointed from time to time by the Assuming Bank or any Affiliate of the Assuming Bank to service the Shared-Loss Loans on behalf of the Assuming Bank, the identity of which shall be given to the Receiver prior to or concurrent with the appointment thereof.

ARTICLE II — SHARED-LOSS ARRANGEMENT

2.1 Shared-Loss Arrangement.

(a) **Loss Mitigation and Consideration of Alternatives**. For each Single Family Shared-Loss Loan in default or for which a default is reasonably foreseeable, the Assuming Bank shall undertake reasonable and customary loss mitigation efforts, in accordance with any of the following programs selected by Assuming Bank in its sole discretion, Exhibit 5 (FDIC Mortgage Loan Modification Program), the United States Treasury’s Home Affordable

Modification Program Guidelines or any other modification program approved by the United States Treasury Department, the Corporation, the Board of Governors of the Federal Reserve System or any other governmental agency (it being understood that the Assuming Bank can select different programs for the various Single Family Shared-Loss Loans) (such program chosen, the “Modification Guidelines”). After selecting the applicable Modification Guideline for any such Single Family Shared-Loss Loan, the Assuming Bank shall document its consideration of foreclosure, loan restructuring under such Modification Guideline chosen, and short-sale (if short-sale is a viable option) alternatives and shall select the alternative the Assuming Bank believes, based on its estimated calculations, will result in the least Loss. Assuming Bank shall retain its calculations of the estimated loss under each alternative, such cal culations to be provided to the Receiver upon request. For the avoidance of doubt and notwithstanding anything herein to the contrary, (i) the Assuming Bank is not required to modify or restructure any Single Family Shared-Loss Loan on more than one occasion and (ii) the Assuming Bank is not required to consider any alternatives with respect to any Shared-Loss Loan in the process of foreclosure as of the Bank Closing and shall be entitled to continue such foreclosure measures and recover the Foreclosure Loss as provided herein.

(b) **Monthly Certificates.**

Not later than fifteen (15) days after the end of each Shared-Loss Month, beginning with the month in which the Commencement Date occurs and ending in the month in which the tenth anniversary of the Commencement Date occurs (or, twelfth anniversary of the Commencement Date if the Termination Date is extended as provided in Section 4.1(a)) , the Assuming Bank shall deliver to the Receiver a certificate, signed by an officer of the Assuming Bank involved in, or responsible for, the administration and servicing of the Single Family Shared-Loss Loans whose name appears on a list of servicing officers furnished by the Assuming Bank to the Receiver, (a “Servicing Officer”) setting forth in such form and detail as the Receiver may reasonably specify (a “Monthly Certificate”):

(iv) (A) a schedule substantially in the form of Exhibit 1 listing:

(i) each Single Family Shared-Loss Loan for which a Loss Amount (calculated in accordance with the applicable Exhibit) is being claimed, the related Loss Amount for each Single Family Shared-Loss Loan, and the total Monthly Loss Amount for all Single Family Shared-Loss Loans;

(ii) each Single Family Shared-Loss Loan for which a Recovery Amount was received, the Recovery Amount for each Single Family Shared-Loss Loan, and the total Recovery Amount for all Single Family Shared-Loss Loans;

(iii) the total Monthly Loss Amount for all Single Family Shared-Loss Loans minus the total monthly Recovery Amount for all Single Family Shared-Loss Loans;

(iv) the Cumulative Shared-Loss Amount as of the beginning and end of the month;

(v) the Monthly Shared Loss Amount;

(vi) the result obtained in (v) times 80%, or times 95% if the Stated Threshold has been reached, which in either case is the amount to be paid under Section 2.1(d) of this Single Family Shared-Loss Agreement by the Receiver to the Assuming Bank if the amount is a positive number, or by the Assuming Bank to the Receiver if the amount is a negative number;

(v) (B) for each of the Single Family Shared-Loss Loans for which a Loss is claimed for that Shared-Loss Month, a schedule showing the calculation of the Loss Amount using the form and methodology shown in Exhibit 2a, Exhibit 2b, or Exhibit 2c, as applicable.

(vi) (C) For each of the Restructured Loans where a gain or loss is realized in a sale under Section 4.1 or 4.2, a schedule showing the calculation using the form and methodology shown in Exhibit 2d,

(vii) (D) a portfolio performance and summary schedule substantially in the form shown in Exhibit 3.

(c) **Monthly Data Download.** Not later than fifteen (15) days after the end of each month, beginning with the month in which the Commencement Date occurs and ending with the Final Shared-Loss Recovery Month, Assuming Bank shall provide Receiver:

(viii) (i) the servicing file in machine-readable format including but not limited to the following fields for each outstanding Single Family Shared-Loss Loan, as applicable:

(A) Loan number
(B) FICO score
(C) Origination date
(I)) Original principal amount
(E) Maturity date
(F) Paid-to date
(G) Last payment date
(H) Loan status (bankruptcy, in foreclosure, etc.)
(I) Delinquency counters
(J) Current principal balance
(K) Current escrow account balance
(L) Current Appraisal/MO value
(M) Current Appraisal/BPO date
(N) Interest rate
(O) Monthly principal and interest payment amount

(P) Monthly escrow payment for taxes and insurance
(Q) Interest rate type (fixed or adjustable)
(R) If adjustable: index, margin, next interest rate reset date
(S) Payment/Interest rate cap and/or floor
(T) Underwriting type (Full doc, Alt doc, No Doc)
(U) Lien type (1st, 2nd)
(V) Amortization type (amortizing or I/O)
(W) Property address, including city, state, zip code
(X) A code indicating whether the Mortgaged Property is owner occupied
(Y) Property type (single-family detached, condominium, duplex, etc.)

(ix) (ii) An Excel file for ORE held as a result of foreclosure on a Single Family Shared-Loss Loan listing:

(A) Foreclosure date
(B) Unpaid loan principal balance
(C) Appraised value or BPO value, as applicable
(D) Projected liquidation date

Notwithstanding the foregoing, the Assuming Bank shall not be required to provide any of the foregoing information to the extent it is unable to do so as a result of the Failed Bank's or Receiver's failure to provide information required to produce the information set forth in this Section 2.1(c); provided, that the Assuming Bank shall, consistent with Customary Servicing Procedures seek to produce any such missing information or improve any inaccurate Information previously provided to it.

(d) **Payments With Respect to Shared-Loss Assets.**

(i) **Losses Under the Stated Threshold**. After the Shared Loss Payment Trigger is reached, not later than fifteen (15) days after the date on which the Receiver receives the Monthly Certificate, the Receiver shall pay to the Assuming Bank, in immediately available funds, an amount equal to eighty percent (80%) of the Monthly Shared-Loss Amount reported on the Monthly Certificate. If the total Monthly Shared-Loss Amount reported on the Monthly Certificate is a negative number, the Assuming Bank shall pay to the Receiver in immediately available funds eighty percent (80%) of that amount.

(ii) **Losses in Excess of the Stated Threshold**. In the event that the sum of the Cumulative Loss Amount under. this Single Family Shared-Loss Agreement and the Stated Loss Amount under the Commercial Shared-Loss Agreement meets or exceeds the Stated Threshold, the loss/recovery sharing percentages set forth herein shall change from 80/20 to 95/5 and thereafter the Receiver shall pay to the Assuming Bank, in immediately available funds, an amount equal to ninety-five percent (95%) of the Monthly Shared-Loss Amount reported on the Monthly Certificate. If the Monthly Shared-Loss Amount reported on the Monthly Certificate is a negative number, the Ass uming Bank shall pay to the Receiver in immediately available funds ninety-five percent (95%) of that amount.

(e) **Limitations on Shared-Loss Payment**. The Receiver shall not be required to make any payments pursuant to Section 2.1(d) with respect to any Foreclosure Loss, Restructuring Loss, Short Sale Loss or Portfolio Loss that the Receiver determines reasonably and in good faith, based upon the criteria set forth in this Single Family Shared-Loss Agreement (including the analysis and documentation requirements of Section 2.1(a)) or Customary Servicing Procedures, should not have been effected by the Assuming Bank; provided, however, (x) the Receiver must provide written notice to the Assuming

Bank detailing the grounds for not making such paymen t, (y) the Receiver must provide the Assuming Bank with a reasonable opportunity to cure any such deficiency and (z) (1) to the extent curable, if cured, the Receiver shall make payment with respect to the properly effected Loss, and (2) to the extent not curable, notwithstanding the foregoing, the Receiver shall make a payment as to all Losses (or portion of Losses) that were effected which would have been payable as a Loss if the Assuming Bank had properly effected such Loss. In the event that the Receiver does not make any payment with respect to Losses claimed pursuant to Section 2.1(d), the Receiver and Assuming Bank shall, upon final resolution, make the necessary adjustments to the Monthly Shared-Loss Amount for that Monthly Certificate and the payment pursuant to Section 2.1(d) above shall be adjusted accordingly.

(f) **Payments by Wire-Transfer**. All payments under this Single Family Shared-Loss Agreement shall be made by wire-transfer in accordance with the wire-transfer instructions on Exhibit 4.

2.2 Auditor Report; Right to Audit

(a) Within ninety (90) days after the end of each calendar year during which the Receiver makes any payment to the Assuming Bank under this Single Family Shared-Loss Agreement, the Assuming Bank shall deliver to the Receiver a report signed by its independent public accountants stating that they have reviewed the terms of this Single Family Shared-Loss Agreement and that, in the eourse of their annual audit of the Assuming Bank's books and records, nothing has come to their attention suggesting that any computations required to be made by the Assuming Bank during such calendar year pursuant to this Article II were not made by the Assuming Bank in accordance herewith. In the event that the Assuming Bank cannot comply with the preceding sentence, it shall promptly submit to the Receiver corrected computations together with a report signed by its independent public accountants stating that, after giving effect to such corrected computations, nothing has come to their attention suggesting that any computations required to be made by the Assuming Bank during such year pursuant to this Article II were not made by the Assuming Bank in accordance herewith. In such event, the Assuming Bank and the Receiver shall make all such accounting adjustments and payments as may be necessary to give effect to each correction reflected in such corrected computations, retroactive to the date on which the corresponding incorrect computation was made.

(b) The Receiver or the FDIC in its corporate capacity ("Corporation") may perform an audit or audits to determine the Assuming Bank's compliance with the provisions of this Single Family Shared-Loss Agreement, including this Article II, by providing not,less than ten (10) Business Days' prior written notice. Assuming Bank shall provide access to pertinent records and proximate working space in Assuming Bank's facilities. The scope and duration of any such audit shall be within the reasonable discretion of the Receiver or the Corporation, but

shall in no event be administered in a manner that unreasonably interferes with the operation of the Assuming Bank's business. The Receiver or the Corporation, as the case may be, shall bear the expense of any such audit. In the event that any corrections are necessary as a result of such an audit or audits, the Assuming Bank and the Receiver shall make such accounting adjustments and payments as may be necessary to give retroactive effect to such corrections.

2.3 Withholdings. Notwithstanding any other provision in this Article II, the Receiver, upon the direction of the Director (or designee) of the Federal Deposit Insurance Corporation's Division of Resolutions and Receiverships, may withhold payment for any amounts included in a Monthly Certificate delivered pursuant to Section 2.1, if in its good faith and reasonable judgment there is a reasonable basis under the requirements of this Single Family Shared-Loss Agreement for denying the eligibility of an item for which reimbursement or payment is sought under such Section. In such event, the Receiver shall provide a written notice to the Assuming Bank detailing the grounds for withholding such payment. At such time as the Assuming Bank demonstrates to the satisfaction of the Receiver, in its reasonable judgment, that the grounds for such withholding of payment, or portion of payment, no longer exist or have been cured, then the Receiver shall pay the Assuming Bank the amount withheld which the Receiver determines is eligible for payment, within fifteen (15) Business Days.

2.4 Books and Records. The Assuming Bank shall at all times during the term of this Single Family Shared-Loss Agreement keep books and records sufficient to ensure and document compliance with the terms of this Single Family Shared-Loss Agreement, including but not limited to (a) documentation of alternatives considered with respect to defaulted loans or loans for which default is reasonably foreseeable, (b) documentation showing the calculation of loss for claims submitted to the Receiver, (c) retention of documents that support each line item on the loss claim forms, and (d) documentation with re spect to the Recovery Amount on loans for which the Receiver has made a loss-share payment

2.5 Information. The Assuming Bank shall promptly provide to the Receiver such other information, including but not limited to, financial statements, computations, and bank policies and procedures, relating to the performance of the provisions of this Single Family Shared-Loss Agreement, as the Receiver may reasonably request from time to time.

2.6 Tax Ruling. The Assuming Bank shall not at any time, without the Receiver's prior written consent, seek a private letter ruling or other determination from the Internal Revenue Service or otherwise seek to qualify for any special tax treatment or benefits associated with any payments made by the Receiver pursuant to this Single Family Shared-Loss Agreement.

2.7 Sale of Single Family Shared-Loss Loans. The Receiver shall be relieved of its obligations with respect to a Single Family Shared-Loss Loan upon payment of a Foreclosure Loss amount or a Short Sale Loss amount with respect to such Single Family Shared-Loss Loan or upon the sale of a Single Family Shared-Loss Loan by Assuming Bank to a person or entity that is not an Affiliate; provided, however, that if the Receiver consents to the sale of any such Single Family Shared-Loss Loan, any loss on such sale shall be a Portfolio Loss. The Assuming Bank shall provide the Receiver with timely notice of any suc h sale. Notwithstanding the foregoing, a sale of the Single Family Shared-Loss Loan, for purposes of this Section 2.7, shall not be deemed to have occurred as the result of (i) any change in the ownership or control of

Assuming Bank or the transfer of any or all of the Single Family Shared-Loss Loan(s) to any Affiliate of Assuming Bank, (ii) a merger by Assuming Bank with or into any other entity, (iii) a sale by Assuming Bank of all or substantially all of its assets or (iv) the sale (in one or more transactions) of interests in the subsidiary of the Assuming Bank holding the Shared-Loss Loans which do not result in the transfer of 50% or more of the voting interests in such subsidiary.

ARTICLE III — RULES REGARDING THE ADMINISTRATION OF SINGLE FAMILY SHARED-LOSS LOANS

3.1 Agreement with Respect to Administration. The Assuming Bank shall (and shall cause any of its Affiliates to which the Assuming Bank transfers any Single Family Shared-Loss Loans to) manage, administer, and collect the Single Family Shared-Loss Loans while owned by the Assuming Bank or any Affiliate thereof during the term of this Single Family Shared-Loss Agreement in accordance with the rules set forth in this Article III. The Assuming Bank shall be responsible to the Receiver in the performance of its duties hereunder and sha ll provide to the Receiver such reports as the Receiver reasonably deems advisable, including but not limited to the reports required by Sections 2.1, 2.2 and 3.3 hereof, and shall permit the Receiver to monitor the Assuming Bank's performance of its duties hereunder.

3.2 Duties of the Assuming Bank. (a) In performance of its duties under this Article III, the Assuming Bank shall:

(i) manage and administer each Single Family Shared-Loss Loan in accordance with Assuming Bank's usual and prudent business and banking practices and Customary Servicing Procedures;

(ii) exercise its best business judgment in managing, administering and collecting amounts owed on the Single Family Shared-Loss Loans;

(iii) use commercially reasonable efforts to maximize Recoveries with respect to Losses on Single Family Shared-Loss Loans without regard to the effect of maximizing collections on assets held by the Assuming Bank or any of its Affiliates that are not Single Family Shared-Loss Loans;

(iv) retain sufficient staff (in Assuming Bank's discretion) to perform its duties hereunder; and

(v) other than as provided in Section 2.1(a), comply with the terms of the Modification Guidelines for any Single Family Shared-Loss Loans meeting the requirements set forth therein. For the avoidance of doubt, the Assuming Bank may propose exceptions to Exhibit 5 (the FDIC Loan Modification Program) for a group of Loans with similar characteristics, with the objectives of (1) minimizing the loss to the Assuming Bank and the FDIC and (2) maximizing the opportunity for qualified homeowners to remain in their homes with affordable mortgage payments.

(b) Any transaction with or between any Affiliate of the Assuming Bank with respect to any Single Family Shared-Loss Loan including, without limitation, the execution of any contract pursuant to which any Affiliate of the Assuming Bank will manage, administer or

collect any of the Single Family Shared-Loss Loans will be provided to FDIC for informational purposes and if such transaction is not entered into on an arm's length basis on commercially reasonable terms such transaction shall be subject to the prior written approval of the Receiver.

3.3 Shared-Loss Asset Records and Reports. The Assuming Bank shall establish and maintain such records as may be appropriate to account for the Single Family Shared-Loss Loans in such form and detail as the Receiver may reasonably require, and to enable the Assuming Bank to prepare and deliver to the Receiver such reports as the Receiver may from time to time request regarding the Single Family Shared-Loss Loans and the Monthly Certificates required by Section 2.1 of this Single Family Shared-Loss Agreement.

3.4 Related Loans.

(a) Assuming Bank shall use its best efforts to determine which loans are "Related Loans", as hereinafter defined. The Assuming Bank shall not manage, administer or collect any "Related Loan" in any manner that would have the effect of disproportionately increasing the amount of any collections with respect to the Related Loan to the detriment of the Single Family Shared-Loss Loan to which such loan is related. A "Related Loan" means any loan or extension of credit held by the Assuming Bank at any time on or prior to the end of the Final Shared-Loss Month that is made to an Obligor of a Single Family Shared-Loss Loan.

(b) The Assuming Bank shall prepare and deliver to the Receiver with the Monthly Certificates for the calendar months ending June 30 and December 31, a schedule of all Related Loans on the Accounting Records of the Assuming Bank as of the end of each such semi-annual period.

3.5 Legal Action; Utilization of Special Receivership Powers. The Assuming Bank shall notify the Receiver in writing (such notice to be given in accordance with Article V below and to include all relevant details) prior to utilizing in any legal action any special legal power or right which the Assuming Bank derives as a result of having acquired an asset from the Receiver, and the Assuming Bank shall not utilize any such power unless the Receiver shall have consented in writing to the proposed usage. The Receiver shall have the right to direct such proposed usage by the Assuming Bank and the Assuming Bank shall comply in all respects with such direction. Upon request of the Receiver, the Assuming Bank will advise the Receiver as to the status of any such legal action. The Assuming Bank shall immediately notify the Receiver of any judgment in litigation involving any of the aforesaid special powers or rights.

3.6 Third Party Servicer. The Assuming Bank may perform any of its obligations and/or exercise any of its rights under this Single Family Shared-Loss Agreement through or by one or more Third Party Servicers, who may take actions and make expenditures as if any such Third Party Servicer was the Assuming Bank hereunder (and, for the avoidance of doubt, such expenses incurred by any such Third Party Servicer on behalf of the Assuming Bank shall be included in calculating Losses to the extent such expenses would be included in such calculation if the expenses were incurred by Assuming Bank); provided, however, that the u se thereof by the Assuming Bank shall not release the Assuming Bank of any obligation or liability hereunder.

ARTICLE IV — PORTFOLIO SALE

4.1 Assuming Bank Portfolio Sales of Remaining Single Family Shared-Loss Loans. The Assuming Bank shall have the right with the concurrence of the Receiver to liquidate for cash consideration, from time to time in one or more transactions, all or a portion of Single Family Shared-Loss Loans held by the Assuming Bank at any time prior to the Termination Date ("Portfolio Sales"). If the Assuming Bank exercises its option under this Section 4.1, it must give thirty (30) days notice in writing to the Receiver setting forth the details and schedule for the Portfolio Sale which shall be conducted by mea ns of sealed bid sales to third parties, not including any of the Assuming Bank's affiliates, contractors, or any affiliates of the Assuming Bank's contractors. Sales of Restructured Loans shall be sold in a separate pool from Single Family Shared-Loss Loans not restructured. The Receiver's review of the Assuming Bank's proposed Portfolio Sale will be considered in a timely fashion and approval will not be unreasonably withheld, delayed or conditioned. Notwithstanding anything herein to the contrary, if the Assuming Bank seeks the consent of the Receiver to undertake a Portfolio Sale in the nine (9) months prior to the tenth (10th) anniversary of the Commencement Date and the Receiver does not consent to such Portfolio Sale, then the Termination Date shall automatically, without any further action, be extended for an additional two years with r espect to the Single Family Shared-Loss Loans that were the subject to the proposed Portfolio Sale (the "Portfolio Sale Loans") and all provisions hereof shall remain in place for such additional two-year period with respect to the Portfolio Sale Loans. In such event, the Assuming Bank shall have the right, without the consent of the Receiver, to undertake a Portfolio Sale as to all or any portion of the Portfolio Sale Loans at any time within nine (9) months prior to the Termination Date, as so extended.

4.2 **<u>Assuming Bank's Liquidation of Remaining Single Family Shared-Loss Loans</u>**. In the event that the Assuming Bank does not conduct a Portfolio Sale pursuant to Section 4.1, the Receiver shall have the right, exercisable in its sole and absolute discretion, to require the Assuming Bank to liquidate for cash consideration, any Single Family Shared-Loss Loans held by the Assuming Bank at any time after the date that is six months prior to the Termination Date. If the Receiver exercises its option under this Section 4.2, it must give notice in writing to the Assuming Bank, setting forth the time period with in which the Assuming Bank shall be required to liquidate the Single Family Shared-Loss Loans. The Assuming Bank will comply with the Receiver's notice and must liquidate the Single Family Shared-Loss Loans as soon as reasonably practicable by means of sealed bid sales to third parties, not including any of the Assuming Bank's affiliates, contractors, or any affiliates of the Assuming Bank's contractors. The selection of any financial advisor or other third party broker or sales agent retained for the liquidation of the remaining Single Family Shared-Loss Loans pursuant to this Section shall be subject to the prior approval of the Receiver, such approval not to be unreasonably withheld, delayed or conditioned.

4.3 **<u>Calculation of Sale Gain or Loss</u>**. For Single Family Shared-Loss Loans that are not Restructured Loans gain or loss on the sales under Section 4.1 or Section 4.2 will be calculated as the sale price received by the Assuming Bank less the unpaid principal balance of the remaining Single Family Shared-Loss Loans. For any Restructured Loan included in the sale gain or loss on sale will be calculated as (a) the sale price received by the Assuming Bank less (b) the net present value of estimated cash flows on the Restructured Loan that was used in the

calculation of the related Restructuring Loss plus (c) Loan principal payments collected by the Assuming Bank from the date the Loan was restructured to the date of sale. (See Exhibit 2d for example calculation).

ARTICLE V — LOSS-SHARING NOTICES GIVEN TO RECEIVER AND PURCHASER

All notices, demands and other communications hereunder shall be in writing and shall be delivered by hand, or overnight courier, receipt requested, addressed to the parties as follows:

If to Receiver, to:

Federal Deposit Insurance Corporation as Receiver
for BankUnited, FSB
Division of Resolutions and Receiverships
550 17th Street, N.W.
Washington, D.C. 20429
Attention: Ralph Malami, Manager, Capital Markets

with a copy to:

Federal Deposit Insurance Corporation
as Receiver for
Room E7056
3501 Fairfax Drive, Arlington, VA 2226
Attn: Special Issues Unit

With respect to a notice under Section 3.5 of this Single Family Shared-Loss Agreement, copies of such notice shall be sent to:

Federal Deposit Insurance Corporation
Legal Division 1601 Bryan St.
Dallas, Texas 75201
Attention: Regional Counsel

If to Assuming Bank, to:

____
____
____

with a copy to:

____
____
____

Such Persons and addresses may be changed from time to time by notice given pursuant to the provisions of this Article V. Any notice, demand or other communication delivered pursuant to the provisions of this Article IV shall be deemed to have been given on the . date actually received.

ARTICLE VI — MISCELLANEOUS

6.1 **Expenses**. Except as otherwise expressly provided herein, all costs and expenses incurred by or on behalf of a party hereto in connection with this Single Family Shared-Loss Agreement shall be borne by such party whether or not the transactions contemplated herein shall be consummated.

6.2 **Successors and Assigns; Specific Performance**. All terms and provisions of this Single Family Shared-Loss Agreement shall be binding upon and shall inure to the benefit of the parties hereto only; provided, however, that, Receiver may assign or otherwise transfer this Single Family Shared-Loss Agreement (in whole or in part) to the Federal Deposit Insurance Corporation in its corporate capacity without the consent of Assuming Bank. Notwithstanding anything to the contrary contained in this Single Family Shared-Loss Agreement, except as is expressly permitted in this Section 6.2, Assuming Bank may not assign or otherwise transfer this Single Family Shared-Loss Agreement (in whole or in part) without the prior written consent of the Receiver, which consent may be granted or withheld by the Receiver in its sole discretion, and any attempted assignment or transfer in violation of this provision shall be void ab initio. For the avoidance of doubt, a merger or consolidation of the Assuming Bank with and into another financial institution, the sale of all or substantially all of the assets of the Assuming Bank to another financial institution constitutes the transfer of this Single Family Shared-Loss Agreement which requires the consent of the Receiver; and for a period of eighteen (18) months after Bank Closing, a merger or consolidation shall also include the sale by any individual shareholder, or shareholders acting in concert, of more than 9% of the outstanding shares of the Assuming Bank or its holding company or any subsidiary holding Shared-Loss Assets, or the sale of shares by the Assuming Bank or its hold ing company or any subsidiary holding Shared-Loss Assets, in a public or private offering, that increases the number of shares outstanding by more than 9%, constitutes the transfer of this Single-Family Loss Share Agreement which requires the consent of the Receiver. However, no Loss shall be recognized as a result of any accounting adjustments that are made due to any such merger, consolidation or sale consented to by the FDIC. The FDIC's consent shall not be required if the aggregate outstanding principal balance of the Single Family Shared-Loss Loans is less than twenty percent (20%) of the initial aggregate balance of Single Family Shared-Loss Loans. Notwithstanding anything contained herein, the Receiver hereby consents to (i) the transfer of this Single Family Shared-Loss Agreement upon any merger or consolidation of the Assuming Bank with and into another financial institution at any time after the eighteen-month anniversary of Bank Closing and (ii) any private offering of e quity securities by Assuming Bank's holding company during the eighteen-month period following Bank Closing to (x) existing investors in Assuming Bank's holding company and (y) persons who are not existing investors in the Assuming Bank's holding company provided that following any such private offering the investors in the Assuming Bank's holding company as of the closing continue to hold seventy-five percent (75%) of the equity in the Assuming Bank's holding company and no person who was not such an existing investor shall own or control more than twenty-four and nine-tenths percent (24.9%) of the Assuming Bank's holding company's equity securities.

6.3 **Governing Law**. This Single Family Shared-Loss Agreement shall be construed in accordance with federal law, or, if there is no applicable federal law, the laws of the State of

New York, without regard to any rule of conflict of law that would result in the application of the substantive law of any jurisdiction other than the State of New York.

6.4 **WAIVER OF JURY TRIAL**. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATING TO OR IN CONNECTION WITH THIS SINGLE FAMILY SHARED-LOSS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

6.5 **Captions**. All captions and headings contained in this Single Family Shared-Loss Agreement are for convenience of reference only and do not form a part of, and shall not affect the meaning or interpretation of, this Single Family Shared-Loss Agreement.

6.6 **Entire Agreements Amendments**. This Single Family Shared-Loss Agreement, along with the Commercial Shared-Loss Agreement and the Purchase and Assumption Agreement, including the Exhibits and any other documents delivered pursuant hereto or thereto, embody the entire agreement of the parties with respect to the subject matter hereof, and supersede all prior representations, warranties, offers, acceptances, agreements and understandings, written or oral, relating to the subject matter herein. This Single Family Shared-Loss Agreement may be amended or modified or any provision thereof waived only by a written instrume nt signed by both parties or their respective duly authorized agents.

6.7 **Severability**. Whenever possible, each provision of this Single Family Shared Loss Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Single Family Shared-Loss Agreement is held to be prohibited by or invalid, illegal or unenforceable under applicable law, such provision shall be construed and enforced as if it had been more narrowly drawn so as not to be prohibited, invalid, illegal or unenforceable, and the validity, legality and enforceability of the remainder of such provision and the remaining provisions of this Single Family Shared-Los s Agreement shall not in any way be affected or impaired thereby.

6.8 **No Third Party Beneficiary**. This Single Family Shared-Loss Agreement and the Exhibits hereto are for the sole and exclusive benefit of the parties hereto and their respective permitted successors and permitted assigns and there shall be no other third party beneficiaries, and nothing in this Single Family Shared-Loss Agreement or the Exhibits shall be construed to grant to any other Person any right, remedy or Claim under or in respect of this Single Family Shared-Loss Agreement or any provision hereof.

6.9 **Counterparts**. This Single Family Shared-Loss Agreement may be executed separately by Receiver and Assuming Bank in any number of counterparts, each of which when executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

6.10 **Consent**. Except as otherwise provided herein, when the consent of a party is required herein, such consent shall not be unreasonably withheld or delayed.

6.11 **Rights Cumulative**. Except as otherwise expressly provided herein, the rights of each of the parties under this Single Family Shared-Loss Agreement are cumulative, may be exercised as often as any party considers appropriate and are in addition to each such party's rights under the Purchase and Sale Agreement and any of the related agreements or under law. Except as otherwise expressly provided herein, any failure to exercise or any delay in exercising any of such rights, or any partial or defective exercise of such rights, shall not operate as a waiver or variation of that or any other such right.

ARTICLE VII — DISPUTE RESOLUTION

7.1 Dispute Resolution Procedures.

(a) In the event a dispute arises about the interpretation, application, calculation of Loss, or calculation of payments or otherwise with respect to this Single Family Shared-Loss Agreement ("SF Shared-Loss Dispute Item"), then the Receiver and the Assuming Bank shall make every attempt in good faith to resolve such items within sixty (60) days following the receipt of a written description of the SF Shared-Loss Dispute Item, with notification of the possibility of taking the matter to arbitration (the date on which such 60-day period expires, or any extension of such period as the parties hereto may mutually agree to in writing, herein called the "Resolution Deadline Date"). If the Receiver and the Assuming Bank r esolve all such items to their mutual satisfaction by the Resolution Deadline Date, then within thirty (30) days following such resolution, any payment arising out such resolution shall be made arising from the settlement of the SF Shared-Loss Dispute.

(b) If the Receiver and the Assuming Bank fail to resolve any outstanding SF Shared-Loss Dispute Items by the Resolution Deadline Date, then either party may notify the other of its intent to submit the SF Shared-Loss Dispute Item to arbitration pursuant to the provisions of this Article VII. Failure of either party to notify the other of its intent to submit any unresolved SF Shared-Loss Dispute Item to arbitration within thirty (30) days following the Resolution Deadline Date (the date on which such thirty (30) day period expires is herein called the "Arbitration Deadline Date") shall be deemed an acceptance of such SF Shared-Loss Dispute not submitted to arbitration, as well as a waiver of the submitting party's right to dispute such non-submitted SF Shared-Loss Dispute Item but not a waiver of any similar claim which may arise in the future.

(c) If a SF Shared-Loss Dispute Item is submitted to arbitration, it shall be governed by the rules of the American Arbitration Association (the "AAA"), except as otherwise provided herein. Either party may submit a matter for arbitration by delivering a notice, prior to the Arbitration Deadline Date, to the other party in writing setting forth:

(i) A brief description of each SF Shared-Loss Dispute Item submitted for arbitration;

(ii) A statement of the moving party's position with respect to each SF Shared-Loss Dispute Item submitted for arbitration;

(iii) The value sought by the moving party, or other relief requested regarding each SF Shared-Loss Dispute Item submitted for arbitration, to the extent reasonably calculable; and

(iv) The name and address of the arbiter selected by the moving party (the "Moving Arbiter"), who shall be a neutral, as determined by the AAA.

Failure to adequately include any information above shall not be deemed to be a waiver of the parties right to arbitrate so long as after notification of such failure the Moving party cures such failure as promptly as reasonably practicable.

(d) The non-moving party shall, within thirty (30) days following receipt of a notice of arbitration pursuant to this Section 6.1, deliver a notice to the moving party setting forth:

(i) The name and address of the arbiter selected by the non-moving party (the "Respondent Arbiter"), who shall be a neutral, as determined by the AAA;

(ii) A statement of the position of the respondent with respect to each Dispute Item; and

(iii) The ultimate resolution sought by the respondent or other relief, if any, the respondent deems is due the moving party with respect to each SF Shared-Loss Dispute Item.

Failure to adequately include any information above shall not be deemed to be a waiver of the non-moving party's right to defend such arbitration so long as after notification of such failure the non-moving party cures such failure as promptly as reasonably practicable

(e) The Moving Arbiter and Respondent Arbiter shall select a third arbiter from a list furnished by the American Arbitration Association (the "AAA"). In accordance with the rules of the AAA, the three (3) arbiters shall constitute the arbitration panel for resolution of each SF Loss-Share Dispute Item. The concurrence of any two (2) arbiters shall be deemed to be the decision of the arbiters for all purposes hereunder. The arbitration shall proceed on such time schedule and in accordance with the Rules of Commercial Arbitration of the AAA then in effect, as modified by this Section 7.1. The arbitration proceedings shall take place at such location as the parties thereto may mutually agree, but if they cannot agree, then they will take place at the offices of the Corporation in Washington, DC, or Arlington, Virginia.

(f) The Receiver and Assuming Bank shall facilitate the resolution of each outstanding SF Shared-Loss Dispute Item by making available in a prompt and timely manner to one another and to the arbiters for examination and copying, as appropriate, all documents, books, and records under their respective control and that would be discoverable under the Federal Rules of Civil Procedure.

(g) The arbiters designated pursuant to subsections (c), (d) and (e) hereof shall select, with respect to each Dispute Item submitted to arbitration pursuant to this Section 7.1, either (i) the position and relief submitted by the Assuming Bank with respect to each SF Shared-Loss Dispute Item, or (ii) the position and relief submitted by the Receiver with respect to each

SF Shared-Loss Dispute Item, in either case as set forth in its respective notice of arbitration. The arbiters shall have no authority to select a value for each Dispute Item other than the determination set forth in Section 7.1(c) and Section 7.1(d). The arbitration shall be final, binding and conclusive on the parties.

(h) Any amounts ultimately determined to be payable pursuant to such award shall bear interest at the Settlement Interest Rate from and including the date specified for the arbiters decisions specified in this Section 7.1, without regard to any extension of the finality of such award, to but not including the date paid. All payments required to be made under this Section 7.1 shall be made by wire transfer.

(i) For the avoidance of doubt, to the extent any notice of a SF Shared-Loss Dispute Item(s) is provided prior to the Termination Date, the terms of this Single Family Shared-Loss Agreement shall remain in effect with respect to the Single Family Shared-Loss Loans that are the subject of such SF Shared-Loss Dispute Item(s) until such time as any such dispute is finally resolved.

7.2 **Fees and Expenses of Arbiters**. The aggregate fees and expenses of the arbiters shall be allocated by the arbiters against the party who is not the prevailing party with respect to a particular SF Shared-Loss Dispute Item. The party against whom such fees and expenses are allocated shall pay them within thirty (30) days after receipt of the written decision of the arbiters (unless the arbiters agree in writing on some other payment schedule). In the event the arbitration ceases before a decision is made by the arbiters, the aggregate fees and expenses shall be borne equally by the parties.

Exhibit 1

Monthly Certificate

SEE FOLLOWING PAGE

PART 1 — CURRENT MONTH NET LOSS

MONTH ENDED **[input report month]**

Losses

Loan No.	Loss Type	Loss Amount	
TOTAL		XX	A

Recoveries

Loan No.	Recovery Amount	Loss Amount	Loss Month
TOTAL	XX	B	
Net Losses (Recoveries)	XX	C = A - B	

PART 2 — FIRST LOSS TEST

	Col.- Cumulative Loss Amount	Col. E First Loss Tranche	Col. D - Col. E Cumulative Shared-Loss Amount	
Balance, beginning of month	XX	XX	XX	F
Current month Net Losses (from Part 1)	XX			
Balance, end of month	XX	XX	XX	G
Shared Loss Amount			XX	G - F
Times Loss Share percentage			80%	
Amount due from (to) FDIC as Receiver			XX	

Pursuant to Section 2.1 of the Single Family Shared-Loss Agreement, the undersigned hereby certifies the information on this Certificate is true, complete and correct.
OFFICER SIGNATURE
OFFICER NAME: **TITLE**

Exhibit 2a
Calculation of Foreclosure Loss

Shared-Loss Month: **[input month]**

Loan no.:	**[input loan no.]**			
Interest paid-to date				
Foreclosure date				
Liquidation date				
Note Interest rate				
Foreclosure Loss calculation				
Loan Principal balance after last paid installment	xx			
Accrued interest, limited to 90 days	xx	(1)		
Attorney's fees	xx	(2)		
Foreclosure costs, including title search, filing fees, advertising, etc.	xx			
Property protection costs, maint., repairs and any costs or expenses relating to environmental conditions, (it being understood that any such costs with respect to remediation activities are limited to $200,000 without Assuming Bank having received the prior consent of the FDIC)	xx			
Tax and insurance advances	xx			
Other Advances			(3)	
Appraisal/Broker's Price Opinion fees	xx			
Inspections	xx			
Other	xx			
Gross balance recoverable by Assuming Bank	xx		xx	(A)
Cash Recoveries:				
Net liquidation proceeds (from HUD-1 settl stmt)	xx			
Insurance proceeds	xx			
T &1 escrow account balance, if positive	xx			
Other credits, if any (itemize)	xx			
Total Cash Recovery	xx		xx	(B)
Loss Amount			**xx**	(A) - (B)
Times 80% (or 95% if the Stated Threshold has been met) (Receiver Loss Share percentage)		x	80%	
Amount due Assuming Bank for Receiver Loss Share Amount	.		**xx**	

(1) Accrued interest is limited to 90 days and is calculated (a) at the note interest rate that would have been in effect if the loan was performing, (b) on the principal balance after application of the last payment made by the borrower.

(2) Reasonable and customary third-party attorney's fees and expenses incurred by or on behalf of Assuming Bank in connection with any enforcement procedures or otherwise with respect to such (2) Reasonable and customary third-party attorney's fees and expenses incurred by or on behalf of Assuming Bank in connection with any enforcement procedures or otherwise with respect to such Mortgage Loan.

(3) Assuming Bank's (or Third Party Services) reasonable and customary out-of-pocket costs paid to either a third-party or an affiliate (if affiliate is pre-approved by the FDIC) for foreclosure, property protection and maintenance costs, repairs, assessments, taxes, insurance and similar items, to the extent not paid from funds in borrower escrow account. Allowable costs are limited to amounts per Freddie Mac or Fannie Mae guidelines (as in effect from time to time), where applicable, provided that this limitation shall not apply to costs or expenses relating to environmental conditions.

DO NOT INCLUDE late fees, prepayment penalties, or any similar lender fees or charges by the Assuming Bank to the loan account, any allocation of Assuming Bank's servicing costs, or any allocations of Assuming Bank's G&A or other operating costs.

Exhibit 2a(1)

CALCULATION OF FORECLOSURES LOSS
No Preceding Loan Mod under Loss Share

Shared Loss Month	May-09
Loss no:	R1
Loan no:	292334
Interest paid-to-date	4/30/2008
Foreclosure date	1/15/2009
Liquidation date	4/12/2009
Note Interest rate	8.000%
Owner occupied?	Yes
If owner occupied:	
Borrower current gross annual Income	42,000

Estimated NPV of loan mod	195,000
Most recent BPO	235,000
Most recent BPO date	1/21/2009
Foreclosure Loss calculation	
Loan Principal balance after last paid installment	300,000
Accrued interest, limited to 90 days	6,000
Attorney's fees	0
Foreclosure costs, including title search, filing fees, advertising, etc.	4,000
Property protection costs, maint., repairs and any costs or expenses relating to environmental conditions, (it being understood that any such costs with respect to remediation activities are limited to $200,000 per asset without Assuming Bank having received the prior consent of the FDIC)	5,500
Tax and insurance advances	1,500
Other Advances	
Appraisal/Brokers Price Opinion fees	0
Inspections	50
Other	0
Gross balance recoverable by Purchaser	317,050
Cash Recoveries:	
Net liquidation proceeds (from HUD-1 settl stmt)	205,000
Hazard Insurance proceeds	0
Mortgage Insurance proceeds	0
T & I escrow account balances, if positive	0
Other credits, if any (itemize)	0
Total Cash Recovery	205,000
Loss Amount	112,050

CALCULATION OF FORECLOSURE LOSS
Foreclosure after a Covered Loan Mod

Shared-Loss Month	May-09
Loss no:	R2
Loan no:	138554
Loan mod date	1/17/2008
Interest paid-to-date	4/30/2008
Foreclosure date	1/15/2009
Liquidation date	4/12/2009
Note Interest rate	4.000%
Most recent BPO	210,000
Most recent BPO date	1/20/2009
Foreclosure Loss calculation	
NPV of projected cash flows at loan mod	285,000
Less: Principal payments between loan mod and delinquency	2,500
Plus:	
Attorney's fees	0
Foreclosure costs, including title search, filing fees, advertising, etc.	4,000
Property protection costs, maint., repairs and any costs or expenses relating to environmental conditions, (it being understood that any such costs with respect to remediation activities are limited to $200,000 per asset without Assuming Bank having received the prior consent of the FDIC)	7,000
Tax and insurance advances	2,000
Other Advances	
Appraisal/Broker's Price Opinion fees	0
Inspections	0
Other	0
Gross balance recoverable by Purchaser	295,500
Cash Recoveries:	
Net liquidation proceeds (from HUD-1 settl stmt)	201,000
Hazard Insurance proceeds	0
Mortgage Insurance proceeds	0
T & I escrow account balances, if positive	0
Other credits, if any (itemize)	0
Total Cash Recovery	201,000
Loss Amount	94,500

Exhibit 2b

Calculation of Loss for Restructured Loans

Concept and Definition — Restructuring Loss

For purposes of loss sharing, losses on restructured loans are calculated as the difference between
(a) the principal, accrued interest and advances due on the loan prior to restructuring, and
(b) the Net Present Value (NPV) of estimated cash flows on the restructured loan, discounted at the most recently published Freddie Mac survey rate on 30-year fixed-rate loans at the restructure date for owner occupied residential loans,
(c) the Net Present Value (NPV) of estimated cash flows on the restructured loan, discounted at a commercially reasonable discount rate at the restructure date for Investor-Owned Residential Loans

The NPV calculations must assume loan prepayment in full at the end of ten years (120 months).

Form for Calculation — Restructuring Loss

Shared-Loss Month:	**[input month]**
Loan no.:	**[input loan no.]**
Loan before Restructuring	
Original loan amount	
Current unpaid principal balance	
Remaining term	
Interest rate	
Interest Paid-To Date	
Monthly payment - P&I	
Monthly payment - T&I	
Total monthly payment	
Loan type (fixed-rate, ARM, I/O, Option ARM, etc.)	
Terms of Modified/Restructured Loan	
Closing date on modified/restructured loan	
New Principal balance	
Remaining term	
Interest rate	
Monthly payment - P&I	
Monthly payment — T&I	
Total monthlypayment	
Loan type (Fixed-rate, ARM, I/O, Option ARM, negative amortization features, etc.)	
Lien type (1st, 2nd)	
If adjustable:	
Initial interest rate	
Term - initial interest rate	
Initial payment amount	
Term - initial payment amount	
Negative amortization?	[Yes/No]
Rate reset frequency after first adjustment	
Next reset date	
Index	
Margin	
Cap per adjustment	
Lifetime Cap	
Floor	

Restructuring Loss Calculation				
Loan Principal balance before restructuring	xx			
Accrued interest, limited to 90 days	xx	(1)		
Tax and insurance advances	xx			
3rd party fees due	xx			
		→		
Total loan balance due before restructuring	XX		**XX**	(A)
Assumptions for NPV Calculation, Restructured Loan:				
Discount rate for projected cash flows	xx%	(2)		
Loan prepayment in full	120 months			

NPV of projected cash flows (3)	XX	→	**XX**	(B)
Loss Amount			**XX**	(A) - (B)
Times 80% (or 95% if Stated Threshold met) (Receiver Loss Share percentage)			80%	
Amount due Assuming Bank for Receiver Loss Share Amount			**XX**	

Footnotes

(1) Accrued interest is limited to 90 days and is calculated (a) at the note interest rate that would have been in effect if the loan was performing, (b) on the principal balance after application of the last payment made by the borrower.

(2) The discount rate to be used is the most recently published Freddie Mac Survey Rate on 30-year fixed-rate loans at the loan restructuring date.

(3) If the new loan is an adjustable-rate loan, interest rate resets and related cash flows should be projected based on the index rate in effect at the date of the loan restructuring. If the restructured loan otherwise provides for specified changes in monthly P&I payments over the term of the loan, those changes should be reflected in projected cash flows. Assuming Bank must retain supporting schedule of projected cash flows by month as required by Section 2.1 of the Single Family Shared-Loss Agreement and provide to the FDIC if requested for sample audit.

CALCULATION OF RESTRUCTURING LOSS

Shared-Loss Month	May-09
Loss #	M1
Loan no:	123456
Loan before Restructuring	
Original loan amount	500,000
Current unpaid principal balance	450,000
Remaining term	298
Interest rate	7.500%
Interest Paid-To-Date	2/29/2008
Monthly payment — P&I	3,333
Monthly payment — T&I	1,000
Total monthly payment	4,333
Loan type (fixed-rate, ARM, I/O, Option ARM, etc.)	Option ARM
Borrower current annual income	82,000
Terms of Modified/Restructured Loan	
Closing date on modified/restructured loan	4/19/2009
New Principal balance	461,438
Remaining term	313
Interest rate	3.500%
Monthly payment — P&I	1,346
Monthly payment — T&I	800
Total monthly payment	2,146
Loan type (fixed-rate, ARM, I/O, Option ARM, etc.)	10 Hybrid
Lien type (1st, 2nd)	1st
If adjustable:	
Initial interest rate	3.500%
Term — initial interest rate	60 Months
Initial payment amount	2,146
Term-initial payment amount	60 Months
Negative amortization?	No
Rate reset frequency after first adjustment	6 Months
Next reset date	5/1/2014
Index	LIBOR
Margin	2.750%
Cap per adjustment	2.000%
Lifetime Cap	9.500%
Floor	2.750%
Front end DTI	31%
Back end DTI	45%
Restructuring Loss Calculation	
Loan Principal balance before restructuring	450,000
Accrued interest, limited to 90 days	8,438
Tax and insurance advances	3.000
3rd party fees due	—
Total loan balance due before restructuring	461,438
Assumptions for NPV Calculation, Restructured Loan:	
Discount rate for projected cash flows	5.530%
Loan prepayment in full	120 Months

NPV of projected cash flows	403,000
Loss Amount	58,438

<u>Exhibit 2c</u>

Calculation of Loss for Short Sale Loans

Shared-Loss Month:	**[input month]**
Loan no.:	**[input loan no.]**

Interest paid-to date				
Short Payoff Date				
Note Interest rate				
<u>Short-Sale Loss calculation</u>				
Loan Principal balance	xx			
Accrued interest, limited to 90 days	xx	(1)		
Attorney’s fees	xx	(2)		
Tax and insurance advances	xx			
Property protection costs, maint., repairs and any costs or expenses relating to environmental conditions, (it being understood that any such costs with respect to remediation activities are limited to $200,000 per asset without Assuming Bank having received the prior consent of the FDIC)				
3rd party fees due	xx			
Gross balance recoverable by Assuming Bank	XX		XX	(A)
Amount accepted in Short-Sale	XX		XX	(B)
Loss Amount			XX	(A) - (B)
Times 80% (or 95% if the Stated Threshold has been met) (Receiver Loss Share percentage)		x	80%	
Amount due Assuming Bank for Receiver Loss Share				
Amount			XX	

(1) Accrued interest is limited to 90 days and is calculated (a) at the note interest rate that would have been in effect if the loan was performing, (b) on the principal balance after application of the last payment made by the borrower.

(2) Reasonable and customary third-party attorney’s fees and expenses incurred by or on behalf of Assuming Bank in connection with any enforcement procedures or otherwise with respect to negotiation and acceptance of Short-Sale payoff.

DO NOT INCLUDE late fees, prepayment penalties, or any similar lender fees or charges by the Assuming Bank to the loan account, any allocation of Assuming Bank’s servicing costs, or any allocations of Assuming Bank’s G&A or other operating costs.

Exhibit 2c(1)

CALCULATION OF LOSS FOR SHORT SALE LOANS
Short Sale after a Covered Loan Mod

Shared-Loss Month:	May-09
Loss #	S2
Loan #	20078
Loan mod date	5/12/2008
Interest paid-to-date	9/30/2008
Short Payoff Date	4/2/2009
Note Interest rate	7.500%
Most recent BPO	230,000
Most recent BPO date	1/21/2009
<u>Short-Sale Loss calculation</u>	
NPV of projected cash flows at loan mod	311,000
Less: Principal payments between loan mod and delinquency	1,000
Plus:	
Attorney’s fees	0
Tax and insurance advances	1,500

Property protection costs, maint., repairs and any costs or expenses relating to environmental conditions, (it being understood that any such costs with respect to remediation activities are limited to $200,000 per asset without Assuming Bank having received the prior consent of the FDIC)	0
3rd party fees due	2,600
Incentive to borrower	3,500
Gross balance recoverable by Purchaser	317,600
Amount accepted in Short-Sale	234,000
Hazard Insurance	0
Mortgage Insurance	0
Total Cash Recovery	234,000
Loss Amount	83,600

Exhibit 2d

Shared-Loss Month: **[input month]**
Loan no.: **[input loan no.]**

NOTE
The calculation of recovery on a loan for which a Restructuring Loss has been paid will only apply if the loan is sold.

EXAMPLE CALCULATION

Restructuring Loss Information			
Loan principal balance before restructuring	$	200,000	**A**
NPV, restructured loan		165,000	**B**
Loss on restructured loan	$	35,000	**A - B**
Times FDIC applicable loss share % (80% or 95%)		80%	
Loss share payment to purchaser	$	28,000	**C**
Calculation — Recovery amount due to Receiver			
Loan sales price	$	190,000	
NPV of restructured loan at mod date		165,000	
Gain - step 1		25,000	**D**
PLUS			
Loan UPB after restructuring (1)		200,000	
Loan UPB at liquidation date		192,000	
Gain - step 2 (principal collections after restructuring)		8,000	**E**
Recovery amount		33,000	**D+ E**
Times FDIC loss share %		80%	
Recovery due to FDIC	**$**	**26,400**	**F**
Net loss share paid to purchaser (C - F)	**$**	**1,600**	
Proof Calculation (2)	$	200,000	**G**
Loan principal balance			
Principal collections on loan		8,000	
Sales price for loan		190,000	
Total collections on loan		198,000	**H**
Net loss on loan	$	2,000	**G - H**
Times FDIC applicable loss share % (80% or 95%)		80%	
Loss share payment to purchaser	**$**	**1,600**	

(1) This example assumes that the FDIC loan modification program as shown in Exhibit 5 is applied and the loan restructuring does not result in a reduction in the loan principal balance due from the borrower.
(2) This proof calculation is provided to illustrate the concept and the Assuming Bank is not required to provide this with its Recovery calculations.

Exhibit 3
Portfolio Performance and Summary Schedule

SHARED-LOSS LOANS
PORTFOLIO PERFORMANCE AND SUMMARY SCHEDULE
MONTH ENDED: **[input report month]**

<u>POOL SUMMARY</u>			
	#	$	
Loans at Sale Date	xx	xx	
Loans as of this month-end	xx	xx	
<u>STATED THRESHOLD TRACKING</u>	#	$	
Stated Threshold amount			A
Cumulative loss payments, prior month			
Loss payment for current month			
Cumulative loss payment, this month			
Cumulative Commercial & Other Loans Net Charge-Offs			
			B
Remaining to Stated Threshold			A - B
			Percent of Total
<u>PORTFOLIO PERFORMANCE STATUS</u>	#	$	#
Current			
30 – 69 days past due			
60 – 89 days past due			
90 –119 days past due			
120 and over days past due			
In foreclosure			
ORE			
Total			
<u>Memo Item</u>:			
Loans in process of restructuring — total			
Loans in bankruptcy			
<u>Loans in process of restructuring by delinquency status</u>			
Current			
30 - 59 days past due			
60 - 89 days past due			
90 - 119 days past due			
120 and over days past due In foreclosure			
Total			
List of Loans Paid Off During Month			
Loan #	Principal Balance		
List of Loans Sold During Month			
Loan #	Principal Balance		

Exhibit 4
Wire Transfer Instructions

PURCHASER WIRING INSTRUCTIONS

BANK RECEIVING WIRE

9 DIGIT ABA ROUTING NUMBER

ACCOUNT NUMBER

NAME OF ACCOUNT

ATTENTION TO WHOM

PURPOSE OF WIRE

FDIC RECEIVER WIRING INSTRUCTIONS

BANK RECEIVING WIRE

SHORT NAME

ADDRESS OF BANK RECEIVING WIRE

9 DIGIT ABA ROUTING NUMBER

ACCOUNT NUMBER

NAME OF ACCOUNT

ATTENTION TO WHOM

PURPOSE OF WIRE

EXHIBIT 5

FDIC MORTGAGE LOAN MODIFICATION PROGRAM

Objective

The objective of this FDIC Mortgage Loan Modification Program ("Program") is to modify the terms of certain residential mortgage loans so as to improve affordability, increase the probability of performance, allow borrowers to remain in their homes and increase the value of the loans to the FDIC and assignees. The Program provides for the modification of Qualifying Loans (as defined below) by reducing the borrower's monthly housing debt to income ratio ("DTI Ratio") to no more than 31% at the time of the modification and eliminating adjustable interest rate and negative amortization features.

Qualifying Mortgage Loans

In order for a mortgage loan to be a Qualifying Loan it must meet all of the following criteria, which must be confirmed by the lender:

- The collateral securing the mortgage loan is owner-occupied and the owner's primary residence; and
- The mortgagor has a first priority lien on the collateral; and
- Either the borrower is at least 60 days delinquent or a default is reasonably foreseeable.

Modification Process

The lender shall undertake a review of its mortgage loan portfolio to identify Qualifying Loans. For each Qualifying Loan, the lender shall determine the net present value of the modified loan and, if it will exceed the net present value of the foreclosed collateral upon disposition, then the Qualifying Loan shall be modified so as to reduce the borrower's monthly DTI Ratio to no more than 31% at the time of the modification. To achieve this, the lender shall use a combination of interest rate reduction, term extension and principal forbearance, as necessary.

The borrower's monthly DTI Ratio shall be a percentage calculated by dividing the borrower's monthly income by the borrower's monthly housing payment (including principal, interest, taxes and insurance). For these purposes, (1) the borrower's monthly income shall be the amount of the borrower's (along with any co-borrowers') documented and verified gross monthly income, and (2) the borrower's monthly housing payment shall be the amount required to pay monthly principal and interest plus one-twelfth of the then current annual amount required to pay real property taxes and homeowner's insurance with respect to the collateral.

In order to calculate the monthly principal payment, the lender shall capitalize to the outstanding principal balance of the Qualifying Loan the amount of all delinquent interest, delinquent taxes, past due insurance premiums, third party fees and (without duplication) escrow advances (such amount, the "Capitalized Balance").

In order to achieve the goal of reducing the DTI Ratio to 31%, the lender shall take the following steps in the following order of priority with respect to each Qualifying Loan:

1. Reduce the interest rate to the then current Freddie Mac Survey Rate for 30-year fixed rate mortgage loans, and adjust the term to 30 years.

2. If the DTI Ratio is still in excess of 31%, reduce the interest rate further, but no lower than 3%, until the DTI ratio of 31% is achieved.

3. If the DTI Ratio is still in excess of 31% after adjusting the interest rate to 3%, extend the remaining term of the loan by 10 years.

4. If the DTI Ratio is still in excess of 31%, calculate a new monthly payment (the "Adjusted Payment Amount") that will result in the borrower's monthly DTI Ratio not exceeding 31%. After calculating the Adjusted Payment Amount, the lender shall bifurcate the Capitalized Balance into two portions — the amortizing portion and the non-amortizing portion. The amortizing portion of the Capitalized Balance shall be the mortgage amount that will fully amortize over a 40-year term at an annual interest rate of 3% and monthly payments equal to th e Adjusted Payment Amount. The non-amortizing portion of the Capitalized Balance shall be the difference between the Capitalized Balance and the amortizing portion of the Capitalized Balance. If the amortizing portion of the Capitalized Balance is less than 75% of the current estimated value of the collateral, then the lender may choose not to restructure the loan. If the lender chooses to restructure the loan, then the lender shall forbear on collecting the non-amortizing portion of the Capitalized Balance, and such amount shall be due and payable only upon the earlier of (i) maturity of the modified loan, (ii) a sale of the property or (iii) a pay-off or refinancing of the loan. No interest shall be charged on the non-amortizing portion of the Capitalized Balance, but repayment shall be secured by a first lien on the collateral.

Special Note:

The net present value calculation used to determine whether a loan should be modified based on the modification process above is distinct and different from the net present value calculation used to determine the covered loss if the loan is modified. Please refer only to the net present value calculation described in this exhibit for the modification process, with its separate assumptions, when determining whether to provide a modification to a borrower. Separate assumptions may include, without limitation, Assuming Bank's determination of a probability of default without modification, a probability of default with modification, home price forecasts, prepayment speeds, and event timing. These assumptions are applied to different projected cash flows over the term of the loan, such as the projected cash flow of the loan performing or defaulting without modification and the projected cash f low of the loan performing or defaulting with modification.

By contrast, the net present value for determining the covered loss is based on a 10 year period. While the assumptions in the net present value calculation used in the modification process may change, the net present value calculation for determining the covered loss remains constant.

EXHIBIT 4.15B

COMMERCIAL AND OTHER LOANS SHARED-LOSS AGREEMENT

This agreement for reimbursement of loss sharing expenses on certain loans and other assets (the "Commercial Shared-Loss Agreement") shall apply when the Assuming Bank purchases Shared-Loss Assets as that term is defined herein. The terms hereof shall modify and supplement, as necessary, the terms of the Purchase and Assumption Agreement to which this Commercial Shared-Loss Agreement is attached as Exhibit 4.15B and incorporated therein. To the extent any inconsistencies may arise between the terms of the Purchase and Assumption Agreement and this Commercial Shared-Loss Agreement with respect to the subject matter of this Commercial Shared-Loss Agreement, the terms of this Commercial Shared-Loss Agreement shall control. References in this Commercial Shared-Loss Agreement to a particular Section shall be deemed to refer to a Section in this Commercial Shared- Loss Agreement unless the context indicates that a Section of the Purchase and Assumption Agreement is intended.

ARTICLE I — DEFINITIONS

Capitalized terms used in this Commercial Shared-Loss Agreement that are not defined in this Commercial Shared-Loss Agreement are defined in the Purchase and Assumption Agreement. In addition to the terms defined above, defined below are certain additional terms relating to loss-sharing, as used in this Commercial Shared-Loss Agreement.

"**AAA**" means the American Arbitration Association as provided in Section 2.1(f)(iii) of this Commercial Shared-Loss Agreement.

"**Accrued Interest**" means, with respect to any Shared-Loss Loan, Permitted Advance or Shared-Loss Loan Commitment Advance at any time, the amount of earned and unpaid interest, taxes, credit life and/or disability insurance premiums (if any) payable by the Obligor accrued on or with respect to such Shared-Loss Loan, Permitted Advance or Shared-Loss Loan Commitment Advance, all as reflected on the Accounting Records of the Failed Bank or the Assuming Bank (as applicable); provided, that Accrued Interest shall not include any amount that accrues on or with respect to any Shared-Loss Loan, Permitted Advance or Shared-Loss Loan Commitment Advance after that Asset has been placed on non-accrual or nonperforming status by either the Failed Bank or the Assuming Bank (as applicable).

"**Additional ORE**" means Shared-Loss Loans that become Other Red Estate after Bank Closing Date.

"**Affiliate**" shall have the meaning set forth in the Purchase and Assumption Agreement; provided, that, for purposes of this Commercial Shared-Loss Agreement, no Third Party Servicer shall be deemed to be an Affiliate of the Assuming Bank.

"**Applicable Anniversary of the Commencement Date**" means the fifth (5th) anniversary of the Commencement Date or the seventh (7th) anniversary of the Commencement Date if extended pursuant to Article IV.

"**Calendar Quarter**" means a quarterly period (a) for the first such period, beginning on the Commencement Date and ending on the last calendar day of either March, June, September or December, whichever is the first to occur after the Commencement Date, and (b) for quarterly periods thereafter, beginning on the first calendar day of the calendar month immediately after the month that ended the prior period and ending on the last calendar day of each successive three-calendar-month period thereafter (i.e., each March, June, September and December, starting in the applicable order depending on the ending date of first such period) of any year.

"**Capitalized Expenditures**" means those expenditures that (i) would be capitalized under generally accepted accounting principles, and (ii) are incurred with respect to Shared-Loss Loans, Other Real Estate, Additional ORE or Subsidiary ORE. Capitalized Expenditures shall not include expenses related to environmental conditions including, but not limited to, remediation, storage or disposal of any hazardous or toxic substances or any pollutant or contaminant.

"**Charge-Offs**" means, with respect to any Shared-Loss Assets for any period, an amount equal to the aggregate amount of loans or portions of loans classified as "Loss" under the Examination Criteria, including (a) charge-offs of (i) the principal amount of such assets net of unearned interest (including write-downs associated with Other Real Estate, Additional ORE, Subsidiary ORE or loan modification(s)) (ii) Accrued Interest, and (iii) Capitalized Expenditures plus (b) Pre-Charge-Off Expenses incurred on the respective Shared-Loss Loans, all as effected by the Assuming Bank during such period and reflected on the Accounting Records of the Assuming Bank; provided, that: (i) the aggregate amount of Accrued Interest (including any reversals thereof) for the period after Bank Closing that shall be included in determining the amount of Charge-Offs for any Shared-Loss Loan shall not exceed ninety (90) days' Accrued Interest; (ii) no Charge-Off shall be taken with respect to any anticipated expenditure by the Assuming Bank until such expenditure is actually incurred; (iii) any financial statement adjustments made in connection with the purchase of any Assets pursuant to this Purchase and Assumption Agreement or any future purchase, merger, consolidation or other acquisition of the Assuming Bank shall not constitute "Charge-Offs"; and

(iv) except for Portfolio Sales or any other sales or dispositions consented to by the Receiver, losses incurred on the sale or other disposition of Shared-Loss Assets to any Person (other than the sale or other disposition of Other Real Estate, Additional ORE or Subsidiary ORE to a Person other than an Affiliate of the Assuming Bank which is conducted in a commercially reasonable and prudent manner) shall not constitute Charge-Offs.

"**Commencement Date**" means the first calendar day following Bank Closing.

"**Consumer Loans**" means Loans to individuals for household, family and other personal expenditures (including United States and/or State-guaranteed student loans and extensions of credit pursuant to a credit card plan or debit card plan).

"**Environmental Assessment**" means an assessment of the presence, storage or release of any hazardous or toxic substance, pollutant or contaminant with respect to the collateral securing a Shared-Loss Loan that has been fully or partially charged off.

"**Examination Criteria**" means the loan classification criteria employed by, or any applicable regulations of, the Assuming Bank's Chartering Authority at the time such action is taken, as such criteria may be amended from time to time.

"**Failed Bank Charge-Offs/Write-Downs**" means, with respect to any Shared-Loss Asset, an amount equal to the aggregate amount of reversals or charge-offs of Accrued Interest and charge-offs and write-downs of principal effected by the Failed Bank with respect to that Shared-Loss Asset as reflected on the Accounting Records of the Failed Bank.

"**Fair Value**" means the fair value of a Shared Loss MTM Asset as determined in accordance with FAS 157 as in effect on Bank Closing.

"**FDIC Party**" has the meaning provided in Section 2.1(f)(ii) of this Commercial Shared-Loss Agreement.

"**Net Charge-Offs**" means, with respect to any period, an amount equal to the aggregate amount of Charge-Offs for such period less the amount of Recoveries for such period.

"**Neutral Member**" has the meaning provided in Section 2.1(f)(ii) of this Commercial Shared-Loss Agreement.

"**New Shared-Loss Loans**" means loans that would otherwise be subject to loss sharing under this Commercial Shared-Loss Agreement that were originated after the Information Package Date and before Bank Closing.

"**Notice of Dispute**" has the meaning provided in Section 2.1(f)(iii) of this Commercial Shared-Loss Agreement.

"**ORE Subsidiary**" means any Subsidiary of the Assuming Bank that engages solely in holding, servicing, managing or liquidating interests of a type described in clause (A) of the definition of "Other Real Estate," which interests have arisen from the collection or settlement of a Shared-Loss Loan.

"**Other Real Estate**" means all of the following (including any of the following fully or partially charged off the books and records of the Failed Bank or the Assuming Bank) that (i) are owned by the Failed Bank as of Bank Closing and are purchased pursuant to the Purchase and Assumption Agreement or (ii) have arisen subsequent to Bank Closing from the collection or settlement by the Assuming Bank of a Shared-Loss Loan:

(A) all interests in real estate (other than Bank Premises and Fixtures), including but not limited to mineral rights, leasehold rights, condominium and cooperative interests, air rights and development rights; and

(B) all other assets (whether real or personal property) acquired by foreclosure or in full or partial satisfaction of judgments or indebtedness.

"**Permitted Advance**" means an advance of funds by the Assuming Bank with respect to a Shared-Loss Loan, or the making of a legally binding commitment by the Assuming

Bank to advance funds with respect to a Shared-Loss Loan, that (i) in the case of such an advance, is actually made, and, in the case of such a commitment, is made and all of the proceeds thereof actually advanced, within one (1) year after the Commencement Date, (ii) does not cause the sum of (A) the book value of such Shared-Loss Loan as reflected on the Accounting Records of the Assuming Bank after any such advance has been made by the Assuming Bank plus (B) the unfunded amount of any such commitment made by the Assuming Bank related thereto, to exceed 110% of the Book Value of such Shared-Loss Loan, (iii) is not made with respect to a Shared-Loss Loan with respect to which (A) there exists a related Shared-Loss Loan Commitment or (B) the Assuming Bank has taken a Charge-Off and (iv) is made in good faith, is supported at the time it is made by documentation in the Cre dit Files and conforms to and is in accordance with the applicable requirements set forth in Article III of this Commercial Shared-Loss Agreement and with the then effective written internal credit policy guidelines of the Assuming Bank; provided, that the limitations in subparagraphs (i), (ii) and (iii) of this definition shall not apply to any such action (other than to an advance or commitment related to the remediation, storage or final disposal of any hazardous or toxic substance, pollutant or contaminant) that is taken by Assuming Bank in its reasonable discretion to preserve or secure the value of the collateral for such Shared-Loss Loan.

"**Permitted Amendment**" means, with respect to any Shared-Loss Loan Commitment or Shared-Loss Loan, any amendment, modification, renewal or extension thereof, or any waiver of any term, right, or remedy thereunder, made by the Assuming Bank in good faith and otherwise in accordance with the applicable requirements set forth in Article III of this Commercial Shared-Loss Agreement and the then effective written internal credit policy guidelines of the Assuming Bank; provided, that:

(i) with respect to a Shared-Loss Loan Commitment or a Shared-Loss Loan that is not a revolving line of credit, no such amendment, modification, renewal, extension, or waiver, except as allowed under the definition of Permitted Advance, shall operate to increase the amount of principal

(A) then remaining available to be advanced by the Assuming Bank under the Shared-Loss Loan Commitment or (B) then outstanding under the Shared-Loss Loan;

(ii) with respect to a Shared-Loss Loan Commitment or a Shared-Loss Loan that is a revolving line of credit, no such amendment, modification, renewal, extension, or waiver, except as allowed under the definition of Permitted Advance, shall operate to increase the maximum amount of principal authorized as of Bank Closing to be outstanding at any one time under the underlying revolving line of credit relationship with the debtor (regardless of the extent to which such revolving line of credit may have been funded as of Bank Closing or may subsequently have been funded and/or repaid); and

(iii) no such amendment, modification, renewal, extension or waiver shall extend the term of such Shared-Loss Loan Commitment or Shared-Loss Loan beyond the end of the final Shared-Loss Quarter unless the term of such Shared-Loss Loan Commitment or Shared-Loss Loan as existed on Bank Closing was beyond the end of the final Shared-Loss Quarter, in which event no such amendment, modification, renewal, extension or waiver shall extend such term beyond the term as existed as of Bank Closing.

"**Pre-Charge-Off Expenses**" means those expenses incurred in the usual and prudent management of a Shared-Loss Loan that would qualify as a Reimbursable Expense or Recovery Expense if incurred after a Charge-Off of the related Shared-Loss Asset had occurred.

"**Quarterly Certificate**" has the meaning provided in Section 2.1(a)(i) of this Commercial Shared-Loss Agreement.

"**Recoveries**" (I)(A) In addition to any sums to be applied as Recoveries pursuant to subparagraph (II) below, "Recoveries" means, with respect to any period, the sum of (without duplication):

(i) the amount of collections during such period by the Assuming Bank on Charge-Offs of Shared-Loss Assets effected by the Assuming Bank prior to the end of the final Shared-Loss Quarter; plus

(ii) the amount of collections during such period by the Assuming Bank on Failed Bank Charge-Offs/Write-Downs; plus

(iii) the amount of gain on any sale or other disposition during such period by the Assuming Bank of Shared Loss Loans, Other Real Estate, Additional ORE or Subsidiary ORE (provided, that the amount of any such gain included in Recoveries shall not exceed the aggregate amount of the related Failed Bank Charge-Offs/Write-Downs and Charge-Offs taken and any related Reimbursable Expenses and Recovery Expenses); plus

(iv) the amount of collections during such period by the Assuming Bank of any Reimbursable Expenses or Recovery Expenses; plus

(v) the amount of any fee or other consideration received by the Assuming Bank during or prior to such period in connection with any amendment, modification, renewal, extension, refinance, restructure, commitment or other similar action taken by the Assuming Bank with respect to a Shared-Loss Asset with respect to which there exists a Failed Bank Charge-Off/Write-Down or a Shared-Loss Loan as to which a Charge-Off has been effected by the Assuming Bank during or prior to such period (provided, that the amount of any such fee or other consideration included in Recoveries shall not exceed the aggregate amount of the related Failed Bank Charge-Offs/Write-Downs and Charge-Offs taken and any related Reimbursable Expenses and Recovery Expenses).

(I)(B) For the purpose of determining the amounts to be applied as Recoveriesipursuant to subparagraph (I)(A) above, the Assuming Bank shall apply amounts received on the Assets that are not otherwise applied to reduce the book value of principal of a Shared-Loss Loan (or, in the case of Other Real Estate, Additional ORE, Subsidiary ORE and Capitalized Expenditures, that are not otherwise applied to reduce the book value thereof) in the following order: first to Charge-Offs and Failed Bank Charge-Offs/Write Downs; then to Reimbursable Expenses and Recovery Expenses; then to interest income; and then to other expenses incurred by the Assuming Bank.

(II) If there occurs an amendment, modification, renewal, extension, refinance, restructure, commitment, sale or other similar action with respect to a Shared-Loss Loan as to

---

which there exists a Failed Bank Charge-Off/Write Down or as to which a Charge-Off has been effected by the Assuming Bank during or prior to such period, and if, as a result of such occurrence, the Assuming Bank recognizes any interest income for financial accounting purposes on that Shared-Loss Loan, then "Recoveries" shall also include the portion of the total, amount of any such interest income recognized by the Assuming Bank which is derived by multiplying:

(A) the total amount of any such interest income recognized by the Assuming Bank during such period with respect to that Shared-Loss Loan as described above, by

(B) a fraction, the numerator of which is the aggregate principal amount (excluding reversals or charge-offs of Accrued Interest) of all such Failed Bank Charge-Offs/Write¬Downs and Charge-Offs effected by the Assuming Bank with respect to that Shared-Loss Loan plus the principal amount of that Shared-Loss Loan that has not yet been charged-off but has been placed on nonaccrual status, all of which occurred at any time prior to or during the period in which the interest income referred to in subparagraph (II)(A) immediately above was recognized, and the denominator of which is the total amount of principal indebtedness (including all such prior Failed Bank Charge-Offs/Write-Downs and Charge-Offs as described above) due from the Ob ligor on that Shared-Loss Loan as of the end of such period;

provided, however, that the amount of any interest income included as Recoveries for a particular Shared-Loss Loan shall not exceed the aggregate amount of (a) Failed Bank Charge¬Offs/Write-Downs, (b) Charge-Offs effected by the Assuming Bank during or prior to the period in which the amount of Recoveries is being determined, plus (c) any Reimbursable Expenses and Recovery Expenses paid to the Assuming Bank pursuant to this Commercial Shared-Loss Agreement during or prior to the period in which the amount of Recoveries is being determined, all with respect to that particular Shared-Loss Loan; and, provided, further, that any collections on any such Shared-Loss Loan that are not applied to reduce book value of principal or recognized as interest income shall be applied pursuant to subparagraph (I) a bove.

(III) Notwithstanding subparagraphs (I) and (II) above, the term "Recoveries" shall not include: (a) any amounts paid to the Assuming Bank by the Receiver pursuant to Section 2.1 of this Commercial Shared-Loss Agreement, (b) amounts received with respect to Charge-Offs effected by the Assuming Bank after the final Shared-Loss Quarter, (c) after the final Shared-Loss Quarter, income received by the Assuming Bank from the operation of, and any gains recognized by the Assuming Bank on the disposition of, Other Real Estate, Additional ORE or Subsidiary ORE (such income and gains being hereinafter together referred to as "ORE Income"), except to the extent that aggregate ORE Income exceeds the aggregate expenses paid to third parties by or on behalf of the Assuming Bank after the final Shared-Loss Quarter to manage, operate and main tain Other Real Estate, Additional ORE or Subsidiary ORE (such expenses being hereinafter referred to as "ORE Expenses"). In determining the extent aggregate ORE Income exceeds aggregate ORE Expenses for any Recovery Quarter as set forth immediately above in subparagraph (c), the Assuming Bank will subtract (i) ORE Expenses paid to third parties during such Recovery Quarter (provided, that, in the case of the final Recovery Quarter only, the Assuming Bank will subtract ORE Expenses paid to third parties from the beginning of the final Recovery Quarter up to the date the Assuming Bank is required to deliver the final Quarterly Certificate pursuant to this Commercial Shared-Loss Agreement) from (ii) ORE

Income received during such Recovery Quarter, to calculate net ORE income ("Net ORE Income") for that Recovery Quarter. If the amount of Net ORE Income so calculated for a Recovery Quarter is positive, such amount shall be reported as Recoveries on the Quarterly Certificate for such Recovery Quarter. If the amount of Net ORE Income so calculated for a Recovery Quarter is negative ("Net ORE Loss Carryforward"), such amount shall be added to any ORE Expenses paid to third parties in the next succeeding Recovery Quarter, which sum shall then be subtracted from ORE Income for that next succeeding Recovery Quarter, for the purpose of determining the amount of Net ORE Income (or, if applicable, Net ORE Loss Carryforward) for that next succeeding Recovery Quarter. If, as of the end of the final Recovery Quarter, a Net ORE Loss Carryforward exists, then the amount of the Net ORE Lo ss Carryforward that does not exceed the aggregate amount of Net ORE Income reported as Recoveries on Quarterly Certificates for all Recovery Quarters may be included as a Recovery Expense on the Quarterly Certificate for the final Recovery Quarter.

"**Recovery Amount**" has the meaning provided in Section 2.1(b)(ii) of this Commercial Shared-Loss Agreement.

"**Recovery Expenses**" means, for any Recovery Quarter, the amount of actual, reasonable and necessary out-of-pocket expenses (other than Capitalized Expenditures) paid to third parties (other than Affiliates of the Assuming Bank) by or on behalf of the Assuming Bank, as limited by Sections 3.2(c) and (d) of Article III to this Commercial Shared-Loss Agreement, to recover amounts owed with respect to (i) any Shared-Loss Asset as to which a Charge-Off was effected prior to the end of the final Shared-Loss Quarter (provided that such amounts were incurred no earlier than the date the first Charge-Off on such Shared-Loss Asset could have been reflected on the Accounting Records of the Assuming Bank), and (ii) Failed Bank Charge-Offs/Write-Downs (including, in each case, all costs and expenses related to an Environmental Assess ment and any other costs or expenses related to any environmental conditions with respect to the Shared-Loss Assets (it being understood that any remediation expenses for any such pollutant or contaminant are not recoverable if in excess of $200,000 per Shared-Loss Asset, without the Assuming Bank having obtained the prior consent of the Receiver for such expenses); provided, that, so long as income with respect to a Shared-Loss Loan is being prorated pursuant to the arithmetical formula in subsection (II) of the definition of "Recoveries", the term "Recovery Expenses" shall not include that portion of any such expenses paid during such Recovery Quarter to recover any amounts owed on that Shared-Loss Loan that is derived by:

subtracting (1) the product derived by multiplying:

(A) the total amount of any such expenses paid by or on behalf of the Assuming Bank during such Recovery Quarter with respect to that Shared-Loss Loan, by

(B) a fraction, the numerator of which is the aggregate principal amount (excluding reversals or charge-offs of Accrued Interest) of all such Failed Bank Charge-Offs/Write-Downs and Charge-Offs effected by the Assuming Bank with respect to that Shared-Loss Loan plus the principal amount of that Shared-Loss Loan that has not yet been charged-off but has been placed on nonaccrual status, all of which occurred at any time prior to or during the period in which the

interest income referred to in subparagraph (II)(A) of the definition of "Recoveries" was recognized, and the denominator of which is the total amount of principal indebtedness (including all such prior Failed Bank Charge-Offs/Write-Downs and Charge-Offs as described above) due from the Obligor on that Shared-Loss Loan as of the end of such period;

from (2) the total amount of any such expenses paid during that Recovery Quarter with respect to that Shared-Loss Loan.

"**Recovery Quarter**" has the meaning provided in Section 21 (a)(ii) of this Commercial Shared-Loss Agreement.

"**Reimbursable Expenses**" means, for any Shared-Loss Quarter, the amount of actual, reasonable and necessary out-of-pocket expenses (other than Capitalized Expehditures), paid to third parties (other than Affiliates of the Assuming Bank) by or on behalf of the Assuming Bank, as limited by Sections 3.2(c) and (d) of Article III of this Commercial Shared-Loss Agreement, to:

(i) recover amounts owed with respect to any Shared-Loss Asset as to which a Charge-Off has been effected prior to the end of the final Shared-Loss Quarter (provided that such amounts were incurred no earlier than the date the first Charge-Off on such Shared-Loss Asset could have been reflected on the Accounting Records of the Assuming Bank) and recover amounts owed with respect to Failed Bank Charge-Offs/Write-Downs (including, in each case, all costs and expenses related to an Environmental Assessment and any other costs or expenses related to any environmental conditions with respect to the Shared-Loss Assets (it being understood that any such remediation expenses for any such pollutant or contaminant are not recoverable if in excess of $200,000 per Shared-Loss Asset, without the Assuming Bank having obtained the prior consent of the Receiver for such expenses); provided, tha t, so long as income with respect to a Shared-Loss Loan is being pro-rated pursuant to the arithmetical formula in subsection (II) of the definition of

“Recoveries”, the term “Reimbursable Expenses” shall not include that portion of any such expenses paid during such Shared-Loss Quarter to recover any amounts owed on that Shared-Loss Loan that is derived by:

subtracting (1) the product derived by multiplying:

(A) the total amount of any such expenses paid by or on behalf of the Assuming Bank during such Shared-Loss Quarter with respect to that Shared-Loss Loan, by

(B) a fraction, the numerator of which is the aggregate principal amount (excluding reversals or charge-offs of Accrued Interest) of all such Failed Bank Charge-Offs/Write-Downs and Charge-Offs effected by the Assuming Bank with respect to that Shared-Loss Loan plus the principal amount of that Shared-Loss Loan that has not yet been charged-off but has been placed on nonaccrual status, all of which occurred at any time prior to or during the period in which the interest income referred to in subparagraph (II)(A) of the definition of “Recoveries” was recognized, and the denominator of which is the total amount of principal indebtedness (including all such prior Failed Bank Charge-Offs/Write-

Downs and Charge-Offs as described above) due from the Obligor on that Shared-Loss Loan as of the end of such period;

from (2) the total amount of any such expenses paid during that Shared-Loss Quarter with respect to that Shared-Loss Loan; and

(ii) manage, operate or maintain Other Real Estate, Additional ORE or Subsidiary ORE less the amount of any income received by the Assuming Bank during such Shared-Loss Quarter with respect to such Other Real Estate, Additional ORE or Subsidiary ORE (which resulting amount under this clause (ii) may be negative).

“**Review Board**” has the meaning provided in Section 2.1(f)(i) of this Commercial Shared-Loss Agreement.

“**Shared-Loss Amount**” has the meaning provided in Section 2.1(b)(i) of this Commercial Shared-Loss Agreement.

“**Shared-Loss Asset Repurchase Price**” means, with respect to any Shared-Loss Asset, the principal amount thereof plus any other fees or penalties due from an Obligor (including, subject to the limitations discussed below, the amount of any Accrued Interest) stated on the Accounting Records of the Assuming Bank, as of the date as of which the Shared-Loss Asset Repurchase Price is being determined (regardless, in the case of a Shared-Loss Loan, of the Legal Balance thereof) plus all Reimbursable Expenses and Recovery Expenses incurred up to and through the date of consummation of purchase of such Shared-Loss Asset; provided, that (i) in the case of a Shared-Loss Loan there shall be excluded from such amount the amount of any Accrued Interest accrued on or with respect to such Shared-Loss Loan prior to the ninety (90)-day period ending on the day prior to the purchase date determined pursuant to Sections 2.1(e)(i) or 2,1(e)(iii) of this Commercial Shared-Loss Agreement, except to the extent such Accrued Interest was included in the Book Value of such Shared-Loss Loan, and (ii) any collections on a Shared-Loss Loan received by the Assuming Bank after the purchase date applicable to such Shared-Loss Loan shall be applied (without duplication) to reduce the Shared-Loss Asset Repurchase Price of such Shared-Loss Loan on a dollar-for-dollar basis. For purposes of determining the amount of unpaid interest which accrued during a given period with respect to a variable-rate Shared-Loss Loan, all collections of interest shall be deemed to be applied to unpaid interest in the chronological order in which such interest accrued.

“**Shared-Loss Assets**” means Shared-Loss Loans, Other Real Estate purchased by the Assuming Bank, Additional ORE, Subsidiary ORE and Capitalized Expenditures, but does not include Shared Loss MTM Assets.

“**Shared-Loss Loan Commitment**” means:

(i) any Commitment to make a further extension of credit or to make a further advance with respect to an existing Shared-Loss Loan; and

(ii) any Shared-Loss Loan Commitment (described in subparagraph (i) immediately preceding) with respect to which the Assuming Bank has made a Permitted Amendment.

“**Shared-Loss Loan Commitment Advance**” means an advance pursuant to a Shared-Loss Loan Commitment with respect to which the Assuming Bank has not made a Permitted Advance.

“**Shared-Loss Loans**” means:

(i)(A) Loans purchased by the Assuming Bank pursuant to the Purchase and Assumption Agreement set forth on Exhibit 4.15(b) to the Purchase and Assumption Agreement, (B) New Shared-Loss Loans purchased by the Assuming Bank pursuant to the Purchase and Assumption Agreement, (C) Permitted Advances and (D) Shared-Loss Loan Commitment Advances, if any; provided, that Shared-Loss Loans shall not include Loans, New Shared-Loss Loans, Permitted Advances and Shared-Loss Loan Commitment Advances with respect to which an Acquired Subsidiary, or a constituent Subsidiary thereof, is an Obligor; (E) Loans owned by any Subsidiary which are not Shared-Loss Loans under the Single Family Shared-Loss Agreement; and (F) Consumer Loans; and

(ii) any Shared-Loss Loans (described in subparagraph (i) immediately preceding) with respect to which the Assuming Bank has made a Permitted Amendment.

“**Shared-Loss MTM Assets**” means those securities and other assets listed on Exhibit 4.15(C).

“**Shared-Loss Payment Trigger**” means when the sum of the Cumulative Loss Amount under the Single Family Shared-Loss Agreement and the cumulative Net Charge-Offs under this Commercial Shared-Loss Agreement, exceeds the First Loss Tranche. If the First Loss Tranche is zero or a negative number, the Shared-Loss Payment Trigger shall be deemed to have been reached upon Bank Closing.

"**Shared-Loss Quarter**" has the meaning provided in Section 2.1(a)(i) of this Commercial Shared-Loss Agreement.

"**Shares**" means common stock and any instrument which by its terms is currently convertible into common stock, or which will become convertible into common stock within 18 months of the execution of this Agreement.

"**Stated Threshold**" means total losses under the shared loss agreements in the amount of $4 Billion ($4,000,000,000.00).

"**Subsidiary ORE**" means all assets owned by ORE Subsidiaries that would constitute Additional ORE if such assets were on the books of the Assuming Bank.

"**Termination Date**" means the eighth (8th) anniversary of the Commencement Date.

"**Third Party Servicer**" means any servicer appointed from time to time by the Assuming Bank or any Affiliate of the Assuming Bank to service the Shared-Loss Assets on behalf of the Assuming bank, the identity of which shall be given to the Receiver prior to or concurrent with the appointment thereof.

ARTICLE II – SHARED-LOSS ARRANGEMENT

2.1 Shared-Loss Arrangement.

(a) Quarterly Certificates. (i) Not later than thirty (30) days after the end of each Calendar Quarter from and including the initial Calendar Quarter to and including the Calendar Quarter in which the Applicable Anniversary of the Commencement Date falls (each of such Calendar Quarters being referred to herein as a "Shared-Loss Quarter"), the Assuming Bank shall deliver to the Receiver a certificate, signed by the Assuming Bank's chief executive officer and its chief financial officer, setting forth in such form and detail as the Receiver may specify (a "Quarterly Certificate"):< /font>

(A) the amount of Charge-Offs, the amount of Recoveries and the amount of Net Charge-Offs (which amount may be negative) during such Shared-Loss Quarter with respect to the Shared-Loss Assets (and for Recoveries, with respect to the Assets for which a charge-off was effected by the Failed Bank prior to Bank Closing); and

(B) the aggregate amount of Reimbursable Expenses (which amount may be negative) during such Shared-Loss Quarter; and

(C) net realized loss on the Shared Loss MTM Assets determined pursuant to FAS 115, expressed as a positive number (MTM Net Realized Loss), or net realized gain on the Shared Loss MTM assets, expressed as a negative number (MTM Net Realized Gain); and

(D) any other than temporary impairment of the Shared Loss MTM Assets, determined pursuant to FAS 115, expressed as a positive number ("OTTI Loss") or reversals of OTTI Loss, expressed as a negative number (for the avoidance of doubt, normal and customary unrealized mark-to-market changes by reason of the application of fair value accounting do not qualify for loss sharing payments).

(ii) Not later than thirty (30) days after the end of each Calendar Quarter from and including the first Calendar Quarter following the final Shared-Loss Quarter to and including the Calendar Quarter in which the Termination Date falls (each of such Calendar Quarters being referred to herein as a "Recovery Quarter"), the Assuming Bank shall deliver to the Receiver a Quarterly Certificate setting forth, in such form and detail as the Receiver may specify

(A) the amount of Recoveries and Recovery Expenses during such Recovery Quarter. On the Quarterly Certificate for the first Recovery Quarter only, the Assuming Bank may report as a separate item, in such form and detail as the Receiver may specify, the aggregate amount of any Reimbursable Expenses that: (a) were incurred prior to or during the final Shared-Loss Quarter, and (b) had not been included in any Quarterly Certificate for any Shared-Loss Quarter because they had not been actually paid by or on behalf of the Assuming Bank (in accordance with the terms of this Commercial Shared-Loss Agreement) during any Shared-Loss Quarter and (c) were actually paid by or on behalf of the

Assuming Bank (in accordance with the terms of this Commercial Shared-Loss Agreement) during the first Recovery Quarter; and

(B) net realized gain on the Shared Loss MTM Assets.

(b) Payments With Respect to Shared-Loss Assets.

(i) For purposes of this Section 2.1(b), the Assuming Bank shall initially record the Shared-Loss Assets on its Accounting Records at Book Value, and initially record the Shared Loss MTM Assets on its Accounting Records at Fair Value, and adjust such amounts as such values may change after the Bank Closing. If the amount of all Net Charge-Offs during any Shared-Loss Quarter plus Reimbursable Expenses, plus MTM Net Realized Gain or MTM Net Realized Loss, plus OTTI Loss during such Shared-Loss Quarter (the "Shared-Loss Amount") is positive, then, except as provided in Sections 2.1(c) and (e) below, and subject to the provisions of Section 2.1(b)(vi) below, not later than fifte en (15) days after the date on which the Receiver receives the Quarterly Certificate with respect to such Shared-Loss Quarter, the Receiver shall pay to the Assuming Bank an amount equal to eighty percent (80%) of the Shared-Loss Amount for such Shared-Loss Quarter. If the Shared-Loss Amount during any Shared-Loss Quarter is negative, the Assuming Bank shall pay to the Receiver an amount equal to eighty percent (80%) of the Shared-Loss Amount for such Shared-Loss Quarter, which payment shall be delivered to the Receiver together with the Quarterly Certificate for such Shared-Loss Quarter. When the cumulative Shared-Loss Amounts for all Shared-Loss Quarters plus the Cumulative Loss Amount under the Single Family Shared-Loss Agreement equals or exceeds the Stated Threshold, the Receiver shall pay to the Assuming Bank an amount equal to ninety-five percent ((95%) of the Shared-Loss Amount for each Shared-Loss Quarter, until such time as the cumulative Shared-Loss Amount for all Shared-Loss Quarters is less than the Stated Threshold, when the percentage shall revert back to eighty percent (80%).

(ii) If the amount of gross Recoveries during any Recovery Quarter less Recovery Expenses during such Recovery Quarter plus net realized gains or reversals of OTTI Loss on Shared Loss MTM Assets (the "Recovery Amount") is positive, then, simultaneously with its delivery of the Quarterly Certificate with respect to such Recovery Quarter, the Assuming Bank shall pay to the Receiver an amount equal to eighty percent (80%) of the Recovery Amount for such Recovery Quarter. If the Recovery Amount is negative, then such negative amount shall be subtracted from the amount of gross Recoveries during the next succeeding Recovery Quarter in determining the Recovery Amount in such next succeeding Recovery Quarter; provided, tha t this Section 2.1(b)(ii) shall operate successively in the event that the Recovery Amount (after giving effect to this Section 2.1(b)(ii)) in such next succeeding Recovery Quarter is negative. The Assuming Bank shall specify, in the Quarterly Certificate for the final Recovery Quarter, the aggregate amount for all Recovery Quarters only, as of the end of, and including, the final Recovery Quarter of (A) Recoveries plus net realized gains or reversals of OTTI Loss on Shared Loss MTM Assets ("Aggregate Recovery Period Recoveries"), (B) Recovery Expenses ("Aggregate Recovery Expenses"), and (C) only those Recovery Expenses that have been actually "offset" against Aggregate Recovery Period Recoveries (including those so "offset" in that final Recovery Quarter) ("Aggregate Offset Recovery Expenses"); as used in this sentence, the term "offset" means the amount that has been applied to reduce gross Recoveries in an y Recovery Quarter pursuant to the methodology set forth in this Section

2.1(b)(ii). If, at the end of the final Recovery Quarter the amount of Aggregate Recovery Expenses exceeds the amount of Aggregate Recovery Period Recoveries, the Receiver shall have no obligation to pay to the Assuming Bank all or any portion of such excess. Subsequent to the Assuming Bank's calculation of the Recovery Amount (if any) for the final Recovery Quarter, the Assuming Bank shall also show on the Quarterly Certificate for the final Recovery Quarter the results of the following three mathematical calculations: (i) Aggregate Recovery Period Recoveries minus Aggregate Offset Recovery Expenses; (ii) Aggregate Recovery Expenses minus Aggregate Offset Recovery Expenses; and (iii) the lesser of the two amounts calculated in (i) and (ii) immediately above ("Additional Recovery Expenses") multiplied by 80% (the amount so cal culated in (iii) being defined as the "Additional Recovery Expense Amount"). if the Additional Recovery Expense Amount is greater than zero, then the Assuming Bank may request in the Quarterly Certificate for the final Recovery Quarter that the Receiver reimburse the Assuming Bank the amount of the Additional Recovery Expense Amount and the Receiver shall pay to the Assuming Bank the Additional Recovery Expense Amount within fifteen (15) days after the date on which the Receiver receives that Quarterly Certificate. On the Quarterly Certificate for the final Recovery Quarter only, the Assuming Bank may include, in addition to any Recovery Expenses for that Recovery Quarter that were paid by or on behalf of the Assuming Bank in that Recovery Quarter, those Recovery Expenses that: (a) were incurred prior to or during the final Recovery Quarter, and (b) had not been included in any Quarterly Certificate for any Recovery Quarter because they had not been ac tually paid by or on behalf of the Assuming Bank (in accordance with the terms of this Commercial Shared-Loss Agreement) during any Recovery Quarter, and (c) were actually paid by or on behalf of the Assuming Bank (in accordance with the terms of this Commercial Shared-Loss Agreement) prior to the date the Assuming Bank is required to deliver that final Quarterly Certificate to the Receiver under the terms of Section 2.1(a)(ii).

(iii) With respect to each Shared-Loss Quarter and Recovery Quarter, collections by or on behalf of the Assuming Bank on any charge-off effected by the Failed Bank prior to Bank Closing on an Asset other than a Shared-Loss Asset or Shared-Loss MTM Assets shall be reported as Recoveries under this Section 2.1 only to the extent such collections exceed the Book Value of such Asset, if any. For any Shared-Loss Quarter or Recovery Quarter in which collections by or on behalf of the Assuming Bank on such Asset are applied to both Book Value and to a charge-off effected by the Failed Bank prior to Bank Closing, the amount of expenditures incurred by or on behalf of the Assuming Bank attributable to the collection of any such Asset, that shall be considered a Reimbursable Expense or a Recovery Expense under this Section 2.1 will be limited to a proportion of such expenditures which is equal to the proportion derived by dividing (A) the amount of collections on such Asset applied to a charge-off effected by the Failed Bank prior to Bank Closing, by (B) the total collections on such Assets.

(iv) If the Assuming Bank has duly specified an amount of Reimbursable Expenses on the Quarterly Certificate for the first Recovery Quarter as described above in the last sentence of Section 2.1(a)(ii), then, not later than fifteen (15) days after the date on which the Receiver receives that Quarterly Certificate, the Receiver shall pay to the Assuming Bank an amount equal to eighty percent (80%) (or, if the Cumulative Loss Amount under the Single Family Shared-Loss Agreement plus the cumulative Shared-Loss Amount for all Shared-Loss Quarters equals or exceeds the Stated Threshold, ninety-five percent (95%)) of the amount of such Reimbursable Expenses.

(v) If the First Loss Tranche as determined under the Purchase and Assumption Agreement is a positive number, Receiver has no obligation to make payment for any Shared Loss Quarters until the Shared-Loss Payment Trigger is satisfied.

(c) **Limitation on Shared-Loss Payment**. The Receiver shall not be required to make any payments pursuant to this Section 2.1 with respect to any Charge-Off of a Shared-Loss Asset that the Receiver or the Corporation determines reasonably and in good faith, based upon the Examination Criteria, should not have been effected by the Assuming Bank; provided, (x) the Receiver must provide written notice to the Assuming Bank detailing the grounds for not making such payment, (y) the Receiver must provide the Assuming Bank with a reasonable opportunity to cure any such deficiency and (z) (1)&n bsp;to the extent curable, if cured, the Receiver shall make payment with respect to any properly effected Charge-Off and (2) to the extent not curable, the Receiver shall make a payment as to all Charge-Offs (or portion of Charge-Offs) that were effected which would have been payable as a Charge-Off if the Assuming Bank had properly effected such Charge-Off. In the event that the Receiver does not make any payments with respect to any Charge-Off of a Shared-Loss Asset pursuant to this Section 2.1 or determines that a payment was improperly made, the Assuming Bank and the Receiver shall, upon final resolution, make such accounting adjustments and payments as may be necessary to give retroactive effect to such corrections.

(d) **Sale of, or Additional Advances or Amendments with Respect to, Shared-Loss Loans and Administration of Related Loans**. No Shared-Loss Loan shall be treated as a Shared-Loss Asset pursuant to this Section 2.1 (i) if the Assuming Bank sells or otherwise transfers such Shared-Loss Loan or any interest therein (whether with or without recourse) to any Person, (ii) after the Assuming Bank makes any additional advance, commitment or increase in the amount of a commitment with respect to such Shared-Loss Loan that does not constitute a Permitted Advance or a Shared-Loss Loan Commitment Advance , (ii) after the Assuming Bank makes any amendment, modification, renewal or extension to such Shared-Loss Loan that does not constitute a Permitted Amendment, or (iii) after the Assuming Bank has managed, administered or collected any "Related Loan" (as such term is defined in Section 3.4 of Article III of this Commercial Shared-Loss Agreement) in any manner which would have the effect of disproportionately increasing the amount of any collections with respect to the Related Loan to the detriment of such Shared-Loss Asset to which such loan is related; provided, that any Charge-Off with respect to a Shared-Loss Loan as to which the Assuming Bank would be entitled to payment from the Receiver in accordance with Section 2.1(b), but for clause (i) of this Section 2.1(d), shall lose such entitlement only if such Charge-Off is associated with the sale or transfer of such Shared-Loss Loan (regardless of whether such Charge-Off was effected before or after such sale or transfer); provided further, that any such Shared-Loss Loan that has been the subject of Charge-Offs prior to the taking of any action described in clause (i), (ii), or (iii) or (iv) of this Section 2.1(d) by the Assuming Bank shall be treated as a Shared-Loss Asset pursuant to this Section 2.1 solely for the purpose of treatment of Recoveries on such Charge-Offs until such time as the amount of Recoveries with respect to such Shared-Loss Asset equals such Charge-Offs.

(e) **Option to Purchase**.

(i) In the event that the Assuming Bank determines that there is a substantial likelihood that continued efforts to collect a Shared-Loss Asset or an Asset for which a charge-off was effected by the Failed Bank with, in either case, a Legal Balance of $500,000 or more on the Accounting Records of the Assuming Bank will result in an expenditure, after Bank Closing, of funds by on behalf of the Assuming Bank to a third party for a specified purpose (the expenditure of which, in its best judgment, will maximize collections), which do not constitute Reimbursable Expenses or Recovery Expenses, and such expenses will exceed ten percent (10%) of the then book value thereof as reflected on the Accounting Records of the Assuming Bank, the Assum ing Bank shall (i) promptly so notify the Receiver and (ii) request that such expenditure be treated as a Reimbursable Expense or Recovery Expense for purposes of this Section 2.1. (Where the Assuming Bank determines that there is a substantial likelihood that the previously mentioned situation exists with respect to continued efforts to collect a Shared-Loss Asset or an Asset for which a charge-off was effected by the Failed Bank with, in either case, a Legal Balance of less than $500,000 on the Accounting Records of the Assuming Bank, the Assuming Bank may so notify the Receiver and request that such expenditure be treated as a Reimbursable Expense or Recovery Expense.) Within thirty (30) days after its receipt of such a notice, the Receiver will advise the Assuming Bank of its consent or denial, that such expenditures shall be treated as a Reimbursable Expense or Recovery Expense, as the case may be. Notwithstanding the failure of the Receiver to give its consent with respect to such expenditures, the Assuming Bank shall continue to administer such Shared-Loss Asset in accordance with Section 2.2, except that the Assuming Bank shall not be required to make such expenditures. At any time after its receipt of such a notice and on or prior to the Termination Date the Receiver shall have the right to purchase such Shared-Loss Asset or Asset as provided in Section 2.1(e)(iii), notwithstanding any consent by the Receiver with respect to such expenditure.

(ii) During the period prior to the Termination Date, the Assuming Bank shall notify the Receiver within fifteen (15) days after any of the following becomes fully or partially charged-off:

(A) a Shared-Loss Loan having a Legal Balance (or, in the case of more than one (1) Shared-Loss Loan made to the same Obligor, a combined Legal Balance) of $500,000 or more in circumstances in which the legal claim against the relevant Obligor survives; or

(B) a Shared-Loss Loan to a director, an "executive officer" as defined in 12 C.F.R. 215.2(d), a "principal shareholder" as defined in 12 C.F.R. 215.2(1), or an Affiliate of the Assuming Bank.

(iii) If the Receiver determines in its good faith and reasonable discretion that the Assuming Bank is not diligently pursuing collection efforts with respect to any Shared-Loss Asset which has been fully or partially charged-off or written-down (including any Shared-Loss Asset which is identified or required to be identified in a notice pursuant to Section 2.1(e)(ii)) or any Asset for which there exists a Failed Bank Charge-Off/Write-Down, the Receiver may at its option, exercisable at any time on or prior to the Termination Date, require the Assuming Bank to assign, transfer and convey such Shared-Loss Asset or Asset to and for the sole benefit of the

Receiver for a price equal to the Shared-Loss Asset Repurchase Price thereof less the Related Liability Amount with respect to any Related Liabilities related to such Shared-Loss Asset or Asset.

(iv) Not later than ten (10) days after the date upon which the Assuming Bank receives notice of the Receiver's intention to purchase or require the assignment of any Shared-Loss Asset or Asset pursuant to Section 2.1(e)(i) or (iii), the Assuming Bank shall transfer to the Receiver such Shared-Loss Asset or Asset and any Credit Files relating thereto and shall take all such other actions as may be necessary and appropriate to adequately effect the transfer of such Shared-Loss Asset or Asset from the Assuming Bank to the Receiver. Not later than fifteen (15) days after the date upon which the Receiver receives such Shared-Loss Asset or Asset and any Credit Files relating thereto, the Receiver shall pay to the Assuming Bank an amount equal to the Shared-Loss Asset Repurchase Price of such Shared-Loss Asset or Asset less the Related Liability Amount.

(v) The Receiver shall assume all Related Liabilities with respect to any Shared-Loss Asset or Asset set forth in the notice described in Section 2.1(e)(iv).

(f) **Dispute Resolution**.

(i) (A) Any dispute as to whether a Charge-Off of a Shared-Loss Asset was made in accordance with Examination Criteria shall be resolved by the Assuming Bank's Chartering Authority. (B) With respect to any other dispute arising under the terms of this Commercial Shared-Loss Agreement which the parties hereto cannot resolve after having negotiated such matter, in good faith, for a thirty (30) day period, other than a dispute the Corporation is not permitted to submit to arbitration under the Administrative Dispute Resolution Act of 1996 ("ADRA"), as amended, such other dispute shall be resolved by determination of a review board (a "Review Board") established pursuant to Section 2.1(f). Any Review Board under this Section 2.1(f) shall follow the provisions of the Federal Arbitration Act and shall follow the provisions of the ADRA. (C) Any determination by the Assuming Bank's Chartering Authority or by a Review Board shall be conclusive and binding on the parties hereto and not subject to further dispute, and judgment may be entered on said determination in accordance with applicable arbitration law in any court having jurisdiction thereof.

(ii) A Review Board shall consist of three (3) members, each of whom shall have such expertise as the Corporation and the Assuming Bank agree is relevant. As appropriate, the Receiver or the Corporation (the "FDIC Party") will select one member, one member will be selected by the Assuming Bank and the third member (the "Neutral Member") will be selected by the other two members. The member of the Review Board selected by a party may be removed at any time by such party upon two (2) days' written notice to the other party of the selection of a replacement member. The Neutral Member may be removed by unanimous action of the members appointed by the FDIC Party and the Assuming Bank after two (2) da ys' prior written notice to the FDIC Party and the Assuming Bank of the selection of a replacement Neutral Member. In addition, if a Neutral Member fails for any reason to serve or continue to serve on the Review Board, the other remaining members shall so notify the parties to the dispute and the Neutral Member in writing that such Neutral Member will be replaced, and the Neutral Member

shall thereafter be replaced by the unanimous action of the other remaining members within twenty (20) business days of that notification.

(iii) No dispute may be submitted to a Review Board by any of the parties to this Commercial Shared-Loss Agreement unless such party has provided to the other party a written notice of dispute ("Notice of Dispute"). During the forty-five (45)-day period following the providing of a Notice of Dispute, the parties to the dispute will make every effort in good faith to resolve the dispute by mutual agreement. As part of these good faith efforts, the parties should consider the use of less formal dispute resolution techniques, as judged appropriate by each party in its sole discretion. Such techniques may include, but are not limited to, mediation, settlement conference, and early neutral evaluation, if the parties have not agreed to a resolution of the dispute by the end of such forty-five (45)-day period, then, subject to the discretion of the Corporation and the written consent of the Assuming Bank as set forth in Section 2.1(f)(i)(B) above, on the first day following the end of such period, the FDIC Party and the Assuming Bank shall notify each other of its selection of its member of the Review Board and such members shall be instructed to promptly select the Neutral Member of the Review Board. If the members appointed by the FDIC Party and the Assuming Bank are unable to promptly agree upon the initial selection of the Neutral Member, or a timely replacement Neutral Member as set forth in Section 2.1(f)(ii) above, the two appointed members shall apply to the American Arbitration Association ("AAA"), and such Neutral Member shall be appointed in accordance with the Commercial Arbitration Rules of the AAA.

(iv) The resolution of a dispute pursuant to this Section 2.1(f) shall be governed by the Commercial Arbitration Rules of the AAA to the extent that such rules are not inconsistent with this Section 2.1(f). The Review Board may modify the procedures set forth in such rules from time to time with the prior approval of the FDIC Party and the Assuming Bank.

(v) Within fifteen (15) days after the last to occur of the final written submissions of both parties, the presentation of witnesses, if any, and oral presentations, if any, the Review Board shall adopt the position of one of the parties and shall present to the parties a written award regarding the dispute. The determination of any two (2) members of a Review Board will constitute the determination of such Review Board.

(vi) The FDIC Party and the Assuming Bank.will each pay the fees and expenses of the member of the Review Board selected by it. The FDIC Party and Assuming Bank will share equally the fees and expenses of the Neutral Member. No such fees or expenses incurred by or on behalf of the Assuming Bank shall be subject to reimbursement by the FDIC Party under this Commercial Shared-Loss Agreement or otherwise if such dispute is resolved in favor of the FDIC Party; provided, that, if such dispute is resolved in favor of the Assuming Bank, all fees and expenses incurred by or on behalf of the Assuming Bank shall be reimbursed by the FDIC Party.

(vii) Each party will bear all costs and expenses incurred by it in connection with the submission of any dispute to a Review Board. No such costs or expenses incurred by or on behalf of the Assuming Bank shall be subject to reimbursement by the FDIC Party under this Commercial Shared-Loss Agreement or otherwise if such dispute is resolved in favor of the FDIC Party; provided, that, if such dispute is resolved in favor of the Assuming Bank, all fees

and expenses incurred by or on behalf of the Assuming Bank shall be reimbursed by the FDIC Party. The Review Board shall have no authority to award costs or expenses incurred by either party to these proceedings.

(viii) Any dispute resolution proceeding held pursuant to this Section 2.1(f) shall not be public. In addition, each party and each member of any Review Board shall strictly maintain the confidentiality of all issues, disputes, arguments, positions and interpretations of any such proceeding, as well as all information, attachments, enclosures, exhibits, summaries, compilations, studies, analyses, notes, documents, statements, schedules and other similar items associated therewith, except as the parties agree in writing or such disclosure is required pursuant to law, rule or regulation. Pursuant to ADRA, dispute resolution communications may not be disclosed either by the parties or by any member of the Review board unless:

(1) all parties to the dispute resolution proceeding agree in writing;

(2) the communication has already been made public;

(3) the communication is required by statute, rule or regulation to be made public;

or

(4) a court determines that such testimony or disclosure is necessary to prevent a manifest injustice, help establish a violation of the law or prevent harm to the public health or safety, or of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.

(ix) Any dispute resolution proceeding pursuant to this Section 2.1(f) (whether as a matter of good faith negotiations, by resort to a Review Board, or otherwise) is a compromise negotiation for purposes of the Federal Rules of Evidence and state rules of evidence. The parties agree that all proceedings, including any statement made or document prepared by any party, attorney or other participants are privileged and shall not be disclosed in any subsequent proceeding or document or construed for any purpose as an admission against interest. Any document submitted and any statements made during any dispute resolution proceeding are for settlement purposes only. The parties further agree not to subpoena any of t he members of the Review Board or any documents submitted to the Review Board. In no event will the Neutral Member voluntarily testify on behalf of any party.

(x) No decision, interpretation, determination, analysis, statement, award or other pronouncement of any Review Board shall constitute precedent as regards any subsequent proceeding (whether or not such proceeding involves dispute resolution under this Commercial Shared-Loss Agreement) nor shall any Review Board be bound to follow any decision, interpretation, determination, analysis, statement, award or other pronouncement rendered by any previous Review Board or any other previous dispute resolution panel which may have convened in connection with a transaction involving other failed financial institutions or Federal assistance transactions.

(xi) The parties may extend any period of time in this Section 2.1(f) by mutual agreement. Notwithstanding anything above to the contrary, no dispute shall be submitted to a

Review Board until each member of the Review Board, and any substitute member, if applicable, agrees to be bound by the provisions of this Section 2.1(f) as applicable to members of a Review Board. Prior to the commencement of the Review Board proceedings, or, in the case of a substitute Neutral Member, prior to the re-commencement of such proceedings subsequent to that substitution, the Neutral Member shall provide a written oath of impartiality.

(xii) For the avoidance of doubt, and notwithstanding anything herein to the contrary, in the event any notice of dispute is provided to a party under this Section 2.1(g) prior to the Termination Date, the terms of this Commercial Shared-Loss Agreement shall remain in effect with respect to any such items set forth in such notice until such time as any such dispute with respect to such item is finally resolved.

2.2 **__Administration of Shared-Loss Assets__**. The Assuming Bank shall at all times prior to the Termination Date comply with the Rules Regarding the Administration of Shared-Loss Assets as set forth in Article III of this Commercial Shared-Loss Agreement.

2.3 **__Auditor Report; Right to Audit__.**

(a) Within ninety (90) days after the end of each calendar year from and including the calendar year during which Bank Closing falls to and including the calendar year during which the Termination Date falls, the Assuming Bank shall deliver to the Corporation and to the Receiver a report signed by its independent public accountants stating that they have reviewed the terms of this Commercial Shared-Loss Agreement and that, in the course of their annual audit of the Assuming Bank's books and records, nothing has come to their attention suggesting that any computations required to be made by the Assuming Bank during such calendar year by this Article II were not made by the Assuming Bank in accordance herewith. In the event tha t the Assuming Bank cannot comply with the preceding sentence, it shall promptly submit to the Receiver corrected computations together with a report signed by its independent public accountants stating that, after giving effect to such corrected computations, nothing has come to their attention suggesting that any computations required to be made by the Assuming Bank during such year by this Article II were not made by the Assuming Bank in accordance herewith. In such event, the Assuming Bank and the Receiver shall make all such accounting adjustments and payments as may be necessary to give effect to each correction reflected in such corrected computations, retroactive to the date on which the corresponding incorrect computation was made.

(b) The Assuming Bank shall perform on a semi-annual basis an internal audit of its compliance with the provisions of this Article II and shall provide the Receiver and the Corporation with copies of the internal audit reports and access to internal audit workpapers related to such internal audit.

(c) The Receiver or the Corporation may perform an audit to determine the Assuming Bank's compliance with the provisions of this Commercial Shared-Loss Agreement, including this Article II, at any time by providing not less than ten (10) Business Days prior written notice. The scope and duration of any such audit shall be within the reasonable discretion of the Receiver or the Corporation, as the case may be, but shall in no event be administered in a manner that unreasonably interferes with the operation of the Assuming Bank's

business. The Receiver or the Corporation, as the case may be, shall bear the expense of any such audit. In the event that any corrections are necessary as a result of such an audit, the Assuming Bank and the Receiver shall make such accounting adjustments and payments as may be necessary to give retroactive effect to such corrections.

2.4 **__Withholdings__**. Notwithstanding any other provision in this Article II, the Receiver, upon the direction of the Director (or designee) of the Corporation's Division of Resolutions and Receiverships, may withhold payment for any amounts included in a Quarterly Certificate delivered pursuant to Section 2.1, if, in its good faith and reasonable judgment, there is a reasonable basis under the terms of this Commercial Shared-Loss Agreement for denying the eligibility of an item for which reimbursement or payment is sought under such Section. In such event, the Receiver shall provide a written notice to the Assuming Bank detailing the grounds for withholding such payment. At such time as the Assuming Bank demonstrates to the satisfaction of the Receiver that the grounds for such withholding of payment, or portion of payment, no longer exist or have been cured, then the Receiver shall pay the Assuming Bank the amount withheld which the Receiver determines is eligible for payment, within fifteen (15) Business Days. In the event the Receiver or the Assuming Bank elects to submit the issue of the eligibility of the item for reimbursement or payment for determination under the dispute resolution procedures of Section 2.1(f), then (i) if the dispute is settled by the mutual agreement of the parties in accordance with Section 2.1(f)(iii), the Receiver shall pay the amount withheld (to the extent so agreed) within fifteen (15) Business Days from the date upon which the dispute is determined by the parties to be resolved by mutual agreement, and (ii) if the dispute is resolved by t he determination of a Review Board, the Receiver shall pay the amount withheld (to the extent so determined) within fifteen (15) Business Days from the date upon which the Receiver is notified of the determination by the Review Board of its obligation to make such payment. Any payment by the Receiver pursuant to this Section 2.4 shall be made together with interest on the amount thereof from the date the payment was agreed or determined otherwise to be due, at the interest rate per annum determined by the Receiver to be equal to the coupon equivalent of the three (3)-month U.S. Treasury Bill Rate in effect as of the first Business Day of each Calendar Quarter during which such interest accrues as reported in the Federal Reserve Board's Statistical Release for Selected Interest Rates H.15 opposite the caption "Auction Average - 3-Month" or, if not so reported for such day, for the next preceding Business Day for which such rate was so reported.

2.5 **__Books and Records__**. The Assuming Bank shall at all times during the term of this Commercial Shared-Loss Agreement keep books and records which fairly present all dealings and transactions carried out in connection with its business and affairs. Except as otherwise provided for in the Purchase and Assumption Agreement or this Commercial Shared-Loss Agreement, all financial books and records shall be kept in accordance with generally accepted accounting principles, consistently applied for the periods involved and in a manner such that information necessary to determine compliance with any requirement of the Purchase and Assumption Agreement or this Commercial Shared-Loss Agreement will be readily obtainable, and in a manner such that the purposes of the Purchase and Assumption Agreement or this Commercial Shared-Loss Agreement may be effectively accomplished. Without the prior written approval of the Corporation, the Assuming Bank shall not make any change in its accounting principles adversely affecting the value of the Shared-Loss Assets except as required by a change in generally accepted accounting principles. The Assuming Bank shall notify the

Corporation of any change in its accounting principles affecting the Shared-Loss Assets which it believes are required by a change in generally accepted accounting principles.

2.6 **<u>Information</u>**. The Assuming Bank shall promptly provide to the Corporation such other information, including financial statements and computations, relating to the performance of the provisions of the Purchase and Assumption Agreement or otherwise relating to its business and affairs or this Commercial Shared-Loss Agreement, as the Corporation or the Receiver may request from time to time.

2.7 **<u>Tax Ruling</u>**. The Assuming Bank shall not at any time, without the Corporation's prior written consent, seek a private letter ruling or other determination from the Internal Revenue Service or otherwise seek to qualify for any special tax treatment or benefits associated with any payments made by the Corporation pursuant to the Purchase and Assumption Agreement or this Commercial Shared-Loss Agreement.

ARTICLE III — RULES REGARDING THE ADMINISTRATION OF SHARED-LOSS ASSETS AND SHARED-LOSS MTM ASSETS

3.1 **<u>Agreement with Respect to Administration</u>**. The Assuming Bank shall (and shall cause any of its Affiliates to which the Assuming Bank transfers any Shared-Loss Assets or Shared-Loss MTM Assets) to, or a Third Party Servicer to, manage, administer, and collect the Shared-Loss Assets and Shared-Loss MTM Assets while owned by the Assuming Bank or any Affiliate thereof during the term of this Commercial Shared-Loss Agreement in accordance with the rules set forth in this Article III ("Rules"). The Assuming Bank shall be responsible to the Receiver and the Corporation in the performance of its duties hereunder and shall provide to the Receiver and the Corporation such reports as the Receiver or the Corporation reasonably deems advisable, including but not limited to the reports required by Section 3.3 hereof, and shall permit the Receiver and the Corporation at all times to monitor the Assuming Bank's performance of its duties hereunder.

3.2 **<u>Duties of the Assuming Bank with Respect to Shared-Loss Assets</u>**. (a) In performance of its duties under these Rules, the Assuming Bank shall:

(i) manage, administer, collect and effect Charge-Offs and Recoveries with respect to each Shared-Loss Asset in a manner consistent with (A) usual and prudent business and banking practices; (B) the Assuming Bank's (or, in the case a Third Party Servicer is engaged, the Third Party Servicer's) practices and procedures including, without limitation, the then-effective written internal credit policy guidelines of the Assuming Bank, with respect to the management, administration and collection of and taking of charge-offs and write-downs with respect to loans, other real estate and repossessed collateral that do not constitute Shared Loss Assets;

(ii) exercise its best business judgment in managing, administering, collecting and effecting Charge-Offs with respect to Shared-Loss Assets;

(iii) use its best efforts to maximize collections with respect to Shared-Loss Assets and, if applicable for a particular Shared-Loss Asset, without regard to the

effect of maximizing collections on assets held by the Assuming Bank or any of its Affiliates that are not Shared-Loss Assets;

(iv) adopt and implement accounting, reporting, record-keeping and similar systems with respect to the Shared-Loss Assets, as provided in Section 3.4 hereof;

(v) retain sufficient staff (in Assuming Bank's discretion) to perform its duties hereunder;

(vi) provide written notification in accordance with Article IV of this Commercial Shared-Loss Agreement immediately after the execution of any contract pursuant to which any third party (other than an Affiliate of the Assuming Bank) will manage, administer or collect any of the Shared-Loss Assets, together with a copy of that contract.

(b) Any transaction with or between any Affiliate of the Assuming Bank with respect to any Shared-Loss Asset including, without limitation, the execution of any contract pursuant to which any Affiliate of the Assuming Bank will manage, administer or collect any of the Shared-Loss Assets which is not entered into on an arm's length basis on commercially reasonable terms, or any other action involving self-dealing, shall be subject to the prior written approval of the Receiver or the Corporation.

(c) The following categories of expenses shall not be deemed to be Reimbursable Expenses or Recovery Expenses:

(i) Federal, State, or local income taxes and expenses related thereto;

(ii) salaries or other compensation and related benefits of Assuming Bank employees and the employees of its Affiliates including, without limitation, any bonus, commission or severance arrangements, training, payroll taxes, dues, or travel- or relocation related expenses,;

(iii) the cost of space occupied by the Assuming Bank, any Affiliate thereof and their staff, the rental of and maintenance of furniture and equipment, and expenses for data processing including the purchase or enhancement of data processing systems;

(iv) except as otherwise provided herein, fees for accounting and other independent professional consultants (other than consultants retained to assess the presence, storage or release of any hazardous or toxic substance, or any pollutant or contaminant with respect to the collateral securing a Shared-Loss Loan that has been fully or partially charged-off); provided, that for purposes of this Section 3.2(c)(iv), fees of attorneys and appraisers engaged as necessary to assist in collections with respect to Shared-Loss Assets shall not be deemed to be fees of other independent consultants;

(v) allocated portions of any other overhead or general and administrative expense other than any fees relating to specific assets, such as appraisal

fees or environmental audit fees, for services of a type the Assuming Bank does not normally perform internally;

(vi) any expense not incurred in good faith and with the same degree of care that the Assuming Bank normally would exercise in the collection of troubled assets in which it alone had an interest; and

(vii) any expense incurred for a product, service or activity that is of an extravagant nature or design.

(d) Subject to Section 3.7, the Assuming Bank shall not contract with third parties to provide services the cost of which would be a Reimbursable Expense or Recovery Expense if the Assuming Bank would have provided such services itself if the relevant Shared-Loss Assets were not subject to the loss-sharing provisions of Section 2.1 of this Commercial Shared-Loss Agreement.

3.3 **Duties of the Assuming Bank with Respect to Shared-Loss MTM Assets**. (a) In performance of its duties under these Rules, the Assuming Bank shall:

(i) manage, administer, collect and each Shared-Loss MTM Asset in a manner consistent with (A) usual and prudent business and banking practices; (B) the Assuming Bank's practices and procedures including, without limitation, the then-effective written internal credit policy guidelines of the Assuming Bank, with respect to the management, administration and collection of similar assets that are not Shared-Loss MTM Assets;

(ii) exercise its best business judgment in managing, administering, collecting and effecting Charge-Offs with respect to Shared-Loss MTM Assets;

(iii) use its best efforts to maximize collections with respect to Shared-Loss MTM Assets and, if applicable for a particular Shared-Loss MTM Asset, without regard to the effect of maximizing collections on assets held by the Assuming Bank or any of its Affiliates that are not Shared-Loss MTM Assets, provided that, any sale of a Shared-Loss MTM Asset shall only be made with the prior approval of the Receiver or the Corporation;

(iv) adopt and implement accounting, reporting, record-keeping and similar systems with respect to the Shared-Loss MTM Assets, as provided in Section 3.4 hereof;

(v) retain sufficient staff (in Assuming Bank's discretion) to perform its duties hereunder;

(vi) provide written notification in accordance with Article IV of this Commercial Shared-Loss Agreement immediately after the execution of any contract pursuant to which any third party (other than an Affiliate of the Assuming Bank) will manage, administer or collect any of the Shared-Loss MTM Assets, together with a copy of that contract.

(b) Any transaction with or between any Affiliate of the Assuming Bank with respect to any Shared-Loss MTM Asset including, without limitation, the execution of any contract pursuant to which any Affiliate of the Assuming Bank will manage, administer or collect any of the Shared-Loss Assets which is not entered into on an arm's length basis on commercially reasonable terms, or any other action involving self-dealing, shall be subject to the prior written approval of the Receiver or the Corporation.

(c) The Assuming Bank shall not contract with third parties to provide services the cost of which would be a Reimbursable Expense or Recovery Expense if the Assuming Bank would have provided such services itself if the relevant Shared-Loss Assets were not Subject to the loss-sharing provisions of Section 2.1 of this Commercial Shared-Loss Agreement.

3.4 **Records and Reports**. The Assuming Bank shall establish and maintain records on a separate general ledger, and on such subsidiary ledgers as may be appropriate to account for the Shared-Loss Assets and the Shared-Loss MTM Assets, in such form and detail as the Receiver or the Corporation may require, to enable the Assuming Bank to prepare and deliver to the Receiver or the Corporation such reports as the Receiver or the Corporation may from time to time request regarding the Shared-Loss Assets, the Shared-Loss MTM Asset s and the Quarterly Certificates required by Section 2.1 of this Commercial Shared-Loss Agreement.

3.5 **Related Loans.**

(a) The Assuming Bank shall not manage, administer or collect any "Related Loan" in any manner which would have the effect of increasing the amount of any collections with respect to the Related Loan to the detriment of the Shared-Loss Asset to which such loan is related. A "Related Loan" means any loan or extension of credit held by the Assuming Bank at any time on or prior to the end of the final Recovery Quarter that is: (i) made to the same Obligor with respect to a Loan that is a Shared-Loss Asset or with respect to a Loan from which Other Real Estate, Additional ORE or Subsidiary ORE derived, or (ii) attributable to the same primary Obligor with respect to any Loan described in clause (i) under the rules of the Assuming Bank's

Chartering Authority concerning the legal lending limits of financial institutions organized under its jurisdiction as in effect on the Commencement Date, as applied to the Assuming Bank.

(b) The Assuming Bank shall prepare and deliver to the Receiver with the Quarterly Certificates for the Calendar Quarters ending June 30 and December 31 for all Shared-Loss Quarters and Recovery Quarters, a schedule of all Related Loans which are commercial loans or commercial real estate loans with Legal Balances of $500,000 or more on the Accounting Records of the Assuming Bank as of the end of each such semi-annual period, and all other commercial loans or commercial real estate loans attributable to the same Obligor on such loans of $500,000 or more.

3.6 **Legal Action; Utilization of Special Receivership Powers**. The Assuming Bank shall notify the Receiver in writing (such notice to be given in accordance with Article IV below and to include all relevant details) prior to utilizing in any legal action any special legal power or right which the Assuming Bank derives as a result of having acquired a Shared-Loss

Asset from the Receiver, and the Assuming Bank shall not utilize any such power unless the Receiver shall have consented in writing to the proposed usage. The Receiver shall have the right to direct such proposed usage by the Assuming Bank and the Assuming Bank shall comply in all respects with such direction. Upon request of the Receiver, the Assuming Bank will advise the Receiver as to the status of any such legal action. The Assuming Bank shall immediately notify the Receiver of any judgment in litigation involving any of the aforesaid special powers or rights.

3.7 **Third Party Servicer**. The Assuming Bank may perform any of its obligations and/or exercise any of its rights under this Commercial Shared-Loss Agreement through or by one or more Third Party Servicers, who may take actions and make expenditures as if any such Third Party Servicer was the Assuming Bank hereunder (and, for the avoidance of doubt, such expenses incurred by any such Third Party Servicer on behalf of the Assuming Bank shall be Reimbursable Expenses or Recovery Expenses, as the case may be, to the same exten t such expenses would so qualify if incurred by the Assuming Bank); provided, however, that the use thereof by the Assuming Bank shall not release the Assuming Bank of any obligation or liability hereunder.

ARTICLE IV — PORTFOLIO SALE

4.1 **Assuming Bank Portfolio Sales of Remaining Shared-Loss Assets**. The Assuming Bank shall have the right with the concurrence of the Receiver, commencing as of the first day of the third to last Shared-Loss Quarter, to liquidate for cash consideration, in one or more transactions, all or a portion of Shared-Loss Assets held by the Assuming Bank (“Portfolio Sales”). If the Assuming Bank exercises its option under this Section 4.1, it must give thirty (30) days notice in writing to the Receiver setting forth the details and schedule for the Portfolio Sale which shall be conducted by means of sealed bid sales to third parties, not including any of the Assuming Bank’s affiliates, contractors, or any affiliates of the Assuming Bank’s contractors. The Receiver’s review of the Assuming Bank’s proposed Portfolio Sales will be considered in a timely fashion and approval will not be unreasonably withheld, delayed or conditioned. Notwithstanding anything herein to the contrary, in the event the Assuming Bank seeks the consent of the Receiver to undertake a Portfolio Sale in the nine (9) months prior to the fifth (5th) anniversary of the Commencement Date and the Receiver does not consent to such Portfolio Sale, then the Applicable Anniversary of the Commencement Date shall automatically, without any further action, be extended for an additional two years with respect to the Shared-Loss Assets that were the subject of the proposed Portfolio Sale (the “Portfolio Sale Loans 48;) and all provisions hereof shall remain in place for such additional two-year period with respect to such Portfolio Sale Loans. The Assuming Bank shall have the right, without consent of the Receiver, to undertake a Portfolio Sale as to all or any portion of the Portfolio Sale Loans at any time within nine (9) months prior to the Applicable Anniversary of the Commencement Date, as so extended.

4.2 **Calculation of Sale Gain or Loss**. For Shared-Loss Assets gain or loss on the sales under Section 4.1 will be calculated as the sale price received by the Assuming Bank less the book value of the remaining Shared-Loss Assets.

ARTICLE V – LOSS-SHARING NOTICES GIVEN TO CORPORATION AND/OR RECEIVER

As a supplement to the notice provisions contained in Section 13.7 of the Purchase and Assumption Agreement, any notice, request, demand, consent, approval, or other communication (a “Notice”) given to the Corporation and/or the Receiver in the loss-sharing context shall be given as follows:

5.1 With respect to a Notice under Section 2 and Sections 3.1-3.5 of this Commercial Shared-Loss Agreement:

Federal Deposit Insurance Corporation
Division of Resolutions and Receiverships
550 17th Street, N.W.
Washington, D.C. 20429
Attention: Assistant Director, Franchise and Asset Marketing

5.2 With respect to a Notice under Section 3.6 of this Commercial Shared-Loss Agreement:

Federal Deposit Insurance Corporation Legal Division
161 Bryan Street
Dallas, Texas 75201
Attention: Regional Counsel

with a copy to:

Federal Deposit Insurance Corporation Legal Division
550 17th Street, N.W.
Washington, D.C. 20429
Attention: Senior Counsel (Special Issues Group)

ARTICLE VI — MISCELLANEOUS

6.1 **Expenses**. Except as otherwise expressly provided herein, all costs and expenses incurred by a party hereto in connection with this Commercial Shared-Loss Agreement shall be borne by such party whether or not the transactions contemplated herein shall be consummated.

6.2 **Successors and Assigns; Specific Performance**. All terms and provisions of this Commercial Shared-Loss Agreement shall be binding upon and shall inure to the benefit of the parties hereto only; provided, however, that, Receiver may assign or otherwise transfer this Commercial Shared-Loss Agreement (in whole or in part) to the Federal Deposit Insurance Corporation in its corporate capacity without the consent of Assuming Bank. Notwithstanding anything to the contrary contained in this Commercial Shared-Loss Agreement, except as is expressly permitted in this Section 6.2, Assuming Bank may not assign or ot herwise transfer this Commercial Shared-Loss Agreement (in whole or in part) without the prior written consent of the Receiver, which consent may be granted or withheld by the Receiver in its sole discretion, and any attempted assignment or transfer in violation of this provision shall be void *ab initio*.

For the avoidance of doubt, a merger or consolidation of the Assuming Bank with and into another financial institution, the sale of all or substantially all of the assets of the Assuming Bank to another financial institution constitutes the transfer of this Commercial Shared-Loss Agreement which requires the consent of the Receiver; and for a period of eighteen (18) months after Bank Closing, a merger or consolidation shall also include the sale by any individual shareholder, or shareholders acting in concert, of more than 9% of the outstanding shares of the Assuming Bank or its holding company or any subsidiary holding Shared-Loss Assets, or the sale of shares by the Assuming Bank or its holding company or any subsidiary holding Shared-Loss Assets, in a public or private offering, that increases the number of shares outstanding by more than 9%, constitutes the transfer of this Commercial Shared-Loss Agreement which requires the consent of the Receiver. However, no Loss shall be recognized as a result of any accounting adjustments that are made due to any such merger, consolidation or sale consented to by the FDIC. The FDIC's consent shall not be required if the aggregate outstanding principal balance of Shared-Loss Assets is less than twenty percent (20%) of the initial aggregate balance of Shared-Loss Assets. Notwithstanding anything contained herein, the Receiver hereby consents to (i) the transfer of this Commercial Shared-Loss Agreement upon any merger or consolidation of the Assuming Bank with and into another financial institution at any time after the eighteen-month anniversary of Bank Closing and (ii) any private offering of equity securities by Assuming Bank's holding company during the eighteen-month period following Bank Closing to (x) existing investors in Assuming Bank's holding company and (y) persons who are not existing investors in the Assuming Bank's holding company provided that following any such private offering the investors in the Assuming Bank's holding company as of the closing continue to hold seventy-five percent (75%) of the equity in the Assuming Bank's holding company and no person who was not such an existing investor shall own or control more than twenty-four and nine-tenths percent (24.9%) of the Assuming Bank's holding company's equity securities.

6.3 **Governing Law**. This Commercial Shared-Loss Agreement shall be construed in accordance with federal law, or, if there is no applicable federal law, the laws of the State of New York, without regard to any rule of conflict of law that would result in the application of the substantive law of any jurisdiction other than the State of New York.

6.4 **WAIVER OF JURY TRIAL**. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATING TO OR IN CONNECTION WITH THIS COMMERCIAL SHARED-LOSS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

6.5 **Captions**. All captions and headings contained in this Commercial Shared-Loss Agreement are for convenience of reference only and do not form a part of, and shall not affect the meaning or interpretation of, this Commercial Shared-Loss Agreement.

6.6 **Entire Agreement; Amendments**. This Commercial Shared-Loss Agreement, along with the Single Family Shared-Loss Agreement and the Purchase and Assumption Agreement, including the Exhibits and any other documents delivered pursuant hereto, embody

the entire agreement of the parties with respect to the subject matter hereof, and supersede all prior representations, warranties, offers, acceptances, agreements and understandings, written or oral, relating to the subject matter herein. This Commercial Shared-Loss Agreement may be amended or modified or any provision thereof waived only by a written instrument signed by both parties or their respective duly authorized agents.

6.7 **Severability**. Whenever possible, each provision of this Commercial Shared-Loss Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Commercial Shared-Loss Agreement is held to be prohibited by or invalid, illegal or unenforceable under applicable law, such provision, shall be construed and enforced as if it had been more narrowly drawn so as not to be prohibited, invalid, illegal or unenforceable, and the validity, legality and enforceability of the remainder of such provision and the remaining provisions of this Commercial Shared-Loss Agreem ent shall not in any way be affected or impaired thereby.

6.8 **No Third Party Beneficiary**. This Commercial Shared-Loss Agreement and the Exhibits hereto are for the sole and exclusive benefit of the parties hereto and their respective permitted successors and permitted assigns and there shall be no other third party beneficiaries, and nothing in Commercial Shared-Loss Agreement or the Exhibits shall be construed to grant to any other Person any right, remedy or claim under or in respect of this Commercial Shared-Loss Agreement or any provision hereof.

6.9 **Counterparts**. This Commercial Shared-Loss Agreement may be executed separately by Receiver and Assuming Bank in any number of counterparts, each of which when executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

6.10 **Consent**. Except as otherwise provided herein, when the consent of a party is required herein, such consent shall not be unreasonably withheld or delayed.

6.11 Rights Cumulative. Except as otherwise expressly provided herein, the rights of each of the parties under this Commercial Shared-Loss Agreement are cumulative, may be exercised as often as any party considers appropriate and are in addition to each such party's rights under the Purchase and Sale Agreement and any of the related agreements or under law. Except as otherwise expressly provided herein, any failure to exercise or any delay in exercising any of such rights, or any partial or defective exercise of such rights, shall not operate as a waiver or variation of that or any other such right.

Exhibit 9.2

(Note to FDIC Preparer: When preparing the actual Limited Power of Attorney, delete this instruction and the reference to Attachment G above.)

LIMITED POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that the FEDERAL DEPOSIT INSURANCE CORPORATION, a corporation organized and existing under an Act of Congress, hereafter called the "FDIC", hereby designates the individual(s) set out below (the "Attomey(s)- in-Fact") for the sole purpose of executing the documents outlined below:

____

____

WHEREAS, the undersigned has full authority to execute this instrument on behalf of the FDIC under applicable Resolutions of the FDIC's Board of Directors and redelegations thereof.

NOW THEREFORE, the FDIC grants to the above-named Attomey(s)-in-Fact the authority, subject to the limitations herein, as follows:

1. To execute, acknowledge, seal and deliver on behalf of the FDIC as Receiver of BankUnited, FSB all instruments of transfer and conveyance, appropriately completed, with all ordinary or necessary endorsements, acknowledgments, affidavits and supporting documents as may be necessary or appropriate to evidence the sale and transfer of any asset of BankUnited, FSB, including all loans held by BankUnited, FSB to [Assuming Bank] pursuant to that certain Purchase and Assumption Agreement, dated as of 2009, between FDIC as Receiver of BankUnited, FSB, and [Assuming Bank] .

The form which the Attomey(s)-in-Fact shall use for endorsing promissory notes or preparing allonges to promissory notes is as, follows:

Pay to the order of

____
Without Recourse

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for BankUnited, FSB
By: ____________________
Name: ____________________
Title: Attorney-in-Fact

All other documents of assignment, conveyance or transfer shall contain this sentence: "This assignment is made without recourse, representation or warranty, express or implied, by the FDIC in its corporate capacity or as Receiver."

---

2. FDIC further grants to each Attorney-in-Fact full power and authority to do and perform all acts necessary to carry into effect the powers granted by this Limited Power of Attorney as fully as FDIC might or could do with the same validity as if all and every such act had been herein particularly stated, expressed and especially provided for.

This Limited Power of Attorney shall be effective from and shall continue in full force and effect through [two years after date of execution], unless otherwise terminated by an official of the FDIC authorized to do so by the Board of Directors ("Revocation"). At such time this Limited Power of Attorney will be automatically revoked. Any third party may rely upon this document as the named individual(s)' authority to continue to exercise the powers herein granted unless a Revocation has been recorded in the public records of the jurisdiction where this Limited Power of Attorney has been recorded, or unless a third party has received actual notice of a Revocation.

IN WITNESS WHEREOF, the FDIC by its duly authorized officer empowered by appropriate resolution of its Board of Directors, has caused these presents to be executed and subscribed in its name this day of , 20 .

FEDERAL DEPOSIT INSURANCE CORPORATION

By: ____________________
Name: ____________________
Title: ____________________

(CORPORATE SEAL)

ATTEST: ____________________
Name: ____________________

Title: ______________________

Signed, sealed and delivered
in the presence of

By: ______________________
Name: ______________________
Witness

By: ______________________
Name: ______________________
Witness

List of Schedules to the Purchase and Assumption Agreement

The following is a list of the schedules to the Purchase and Assumption Agreement, dated as of May 21, 2009, among the Federal Deposit Insurance Corporation, Receiver of BankUnited, FSB, Coral Cables, Florida, the Federal Deposit Insurance Corporation and BankUnited, which have been omitted from this Exhibit 2.1 pursuant to Item 601(b)(2) of Regulation S-K. BankUnited, Inc. undertakes to furnish copies of the omitted schedules upon request by the SEC.

Schedules

4.15A Single Family Loss Share Loans

4.15B Commercial Loss Share Loans

4.15C Shared-Loss MTM Assets

Amendment No. 1 to the BankUnited
Single Family Shared-Loss Agreement
(the "SFLSA") with the FDIC

This Amendment No. 1 (the "Amendment") is made and effective as of November 2, 2010 (the "Effective Date"), and amends the SFLSA between BankUnited and the FDIC as follows:

WHEREAS, on May 21, 2009 BankUnited entered into the SFLSA with the FDIC as Receiver of BankUnited, FSB, Coral Gables, Florida; and

WHEREAS, under the terms of the above referenced SFLSA the FDIC pays BankUnited a specified percent of the Loss Amount on Short-Sale Losses; and

WHEREAS, the FDIC and BankUnited wish to provide loss coverage for Short Refinance Losses (as hereinafter defined).

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend the SFLSA as follows:

1. Amendments to Article I - Definitions.

(a). The following definitions are hereby inserted in Article I of the SFLSA:

"**Short Refinance Loss**" means the loss realized on a Short Refinance measured by the difference between the outstanding principal balance, including advances to pay taxes and insurance or homeowner's association dues to protect the property pending such refinance, of the Single Family Shared-Loss Loan at the date of Short Refinance less any and all funds received by the Assuming Bank with respect to any Loan or Collateral liquidated through the Short Refinance program; provided that such loss shall be calculated in accordance with the form and methodology specified on Exhibit 2(b)(4) attached hereto.

"**Qualifying Borrower**" means a borrower with respect to a Single Family Shared-Loss Loan meeting the criteria described under "Eligibility — Qualifying Borrower Characteristics" on Exhibit A attached hereto.

"**Short Refinance**" means a transaction where (a) a Qualifying Borrower with respect to a Single Family Shared-Loss Loan refinances such loan through an unaffiliated third-party originator, resulting in a satisfaction of the existing loan, (b) the proceeds to the Assuming Bank are less than the balance due on the loan and (c) the standards set forth on Exhibit A and Exhibit B (attached hereto) are met.

"**Collateral**" means any and all real or personal property, whether tangible or intangible, securing or pledged to secure a Single Family Shared-Loss Loan, including any account, equipment, guarantee or contract right, or other interest that is the subject of any collateral document.

(b). The following definition is hereby amended and restated as follows:

"**Short-Sale Loss**" means the loss resulting from the Assuming Bank's agreement with the mortgagor to accept a payoff in an amount less than the balance due on the loan (including the costs of any cash incentives to borrower to agree to such sale or to maintain the property pending such sale); provided that the term Short-Sale Loss includes a Short Refinance Loss. Short-Sale Losses shall be calculated in accordance with the form and methodology specified in Exhibits 2(b)(1)-(4) as applicable.

2. Amendments to Section 2.1. Section 2.1 is amended by adding the following at the end thereof:

(g)(i) Notwithstanding anything to the contrary set forth in the SFSLA, the Assuming Bank may include a claim for a Short-Sale Loss that is a Short Refinance Loss on the Monthly Certificate with respect to the Shared-Loss Month in which such Short Refinance Loss occurs (which Monthly Certificate shall be in the form attached as Exhibit C hereto). The Assuming Bank agrees that it is not entitled to receive payment on such claim until the earlier of (a) 18 months after the closing of the Short Refinance transaction and (b) the date loss sharing payments are due for the Monthly Certificate delivered in connection with the final Shared-Loss Month. Claim amounts will be determined using the methodology specified on the Short Refinance Loss Certificate attached as Exhibit 2(b)(4); provided, however, that the "Total Cash Recovery" shall in no event be less than 90% of the value of the Collateral. For the avoidance of doubt, a Short Refinance Loss shall be included in the determination of the Stated Threshold for the Monthly Certificate which includes such Short Refinance Loss.

(ii) If the Stated Threshold is crossed for the Single Family Shared-Loss reporting period during which a Short Refinance Loss is claimed, the Short Refinance Loss for the reporting period shall be allocated by applying the following formula:

A = Stated Threshold
B = Total cumulative losses at beginning of period (Certificate page 1 item 4)
C = Covered losses (gains) from Short Refinance during period (Certificate page 1 item 5b)
D = Covered losses (gains) from single family incurred during the period (Certificate page 1 item 5)
E = Cumulative loss at end of month (Certificate page 1 item 7)

Amount of short refinance loss allocated to the 80% tranche $= \frac{(A - B)}{D} * C$

Amount of short refinance loss allocated to the 95% tranche $= \frac{(E - A)}{D} * C$

(iii) Either party may terminate the Pilot Short Refinance program described on Exhibit A upon 30-days prior written notice to the other party, provided that no party may submit any such written notice prior to the nine-month anniversary of the Effective Date hereof; provided, however, that any party may provide such a termination notice if the parties agree in writing that the LPS Applied Analytics model utilized for the Pilot Short Refinance program does not adequately predict loss frequency rates. If either party terminates the program, the FDIC will honor all loss share claims for Short Refinances in process, whether or not a Short Refinance Loss claim has been submitted prior to such termination.

(iv) The Assuming Bank shall provide, on a monthly basis, information on the number of borrowers considered for a Short Refinance and the number of borrowers with a Short Refinance transaction in process.

3. Counterparts. This amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same amendment.

4. No Further Amendment. Except as expressly amended hereby, the SFLSA is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Amendment is limited precisely as written and shall not be deemed to be an amendment to any other term or condition of the SFLSA or any of the documents referred to therein.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Effective Date.

FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER OF BANKUNITED, FSB, CORAL GABLES, FLORIDA

By: /s/ Ralph Malami
Name: Ralph Malami
Title: Assistant Director

Attest:

____

FEDERAL DEPOSIT INSURANCE CORPORATION

By: /s/ Ralph Malami
Name: Ralpha Malami
Title: Assistant Director

Attest:

____

BANKUNITED

By: /s/ Rajinder Singh
Name: Rajinder Singh
Title: COO

Attest:

____

Exhibit A
Pilot Short Refinance Program Terms

Premise

The BankUnited Option ARM (OARM) portfolio is deteriorating quickly with loans rolling current to delinquent at rates as high as 5.4% monthly. The majority of these loans are set to recast in 2011 with the pace accelerating through 2010. BankUnited has proposed including short refinance as a permitted Loss under the Single-Family Shared Loss Agreement (SFSLA), given it is the least costly loss mitigation solution for OARM loans.

BankUnited will enter a joint marketing agreement with an unaffiliated third party originator to solicit borrowers for refinance opportunities. The unaffiliated third party originator will provide financing and will be the originator of the new loans. BankUnited will not receive any compensation and will not retain an interest in the new loan from the unaffiliated third party originator under this arrangement. The unaffiliated third party originator will act independently, and shall not act as BankUnited's agent. Borrowers will not be precluded from seeking refinance opportunities with other lenders, as long as the new lender is not an affiliate of BankUnited and BankUnited is not receiving compensation or retaining an interest in the loan (any such other lender, an "Alternative Lender"). For the avoidance of doubt, a loss may still qualify as a Short Refinance Loss if the refin ance is originated by an Alternative Lender.

BankUnited will not make any representations regarding eligibility or the quality of the new loan.

Eligibility

Qualifying Borrower Characteristics:

- Pre-recast OARM borrowers with an expected recast within one year and an expected payment increase at recast of more than 10%.
- Single Family Shared-Loss Loan is prepaid or due for current month
- Owner-Occupied property, primary residence.

Transaction Requirements:

- After calculation in accordance with the applicable guidelines, the Short Refinance Loss will result in a lesser monetary loss than a Foreclosure Loss.
- BankUnited will not be required to offer borrowers the Short Refinance program where the amount of principal reduced would exceed the lesser of (a) 35 percent of the outstanding unpaid principal balance and (b) $250,000.
- New loan must adhere to FHA, Fannie Mae, or Freddie Mac underwriting standards and balance requirements.
- BankUnited will be required to consider the borrower's ability to make cash contributions towards closing costs and shortfall. The criteria for consideration are outlined in the Borrower Contribution Guidelines document, attached hereto as Exhibit B.

- The borrower will have the option to make additional cash contributions towards the outstanding principal balance in order to qualify for the transaction.
- After the close of a Short Refinance transaction, BankUnited agrees that it will not have any servicing rights on behalf of the unaffiliated third party originator.
- BankUnited will have the option to exclude loans with mortgage insurance from this program since the Short Refinance transaction may jeopardize the mortgage insurance.

Evaluation Analysis and Least Cost Parameters

- The unaffiliated third party originator will provide BankUnited with data used for the borrower's underwriting evaluation in connection with BankUnited's determination of the borrower's eligibility for this program.
- Subject to meeting other guidelines specified herein, a Short Refinance will be approved if the value of Short Refinance exceeds the estimated value of a foreclosure.

Additional Considerations

- The FDIC will not make any representations or warranties in connection with the refinanced loan nor will it have any liability for breaches of representation or warranties made to the originator and/or buyer of any refinanced loan.
- BankUnited will not make any representations or warranties for the eligibility or quality of the new loan.
- BankUnited shall not charge the borrower any prepayment penalty or late fees.
- The third party originator will be entitled to receive reasonable and customary fees for originating and funding each Short Refinance transaction, which may be included on the settlement statement; however, reasonable and customary fees must adhere to Fannie, Freddie, or FHA guidelines.
- If the borrower contributes any cash at closing, regardless of whether this is applied to closing costs, MI premium or other, that amount shall be applied to reduce the amount of the Short Refinance Loss.
- If any future investor incentives apply to Short Refinance transactions, the Short Refinance Loss amount will be reduced by the amount of such investor incentive.

Exhibit B

Short Refinance Pilot Program
Borrower Contribution Guidelines

Required Contribution

Borrowers shall be evaluated for their ability to contribute to short refinance losses. The contribution required from the borrower ("Required Contribution") will be the lesser of (1) the available funds for contribution, or (2) the baseline contribution as defined below.

Available Funds for Contribution

The amount of funds the borrower has available to contribute toward a short refinance; determined as follows

Available Funds for Contribution = Total liquid assets – Exclusions
(Available funds for contribution will be determined using the signed 1003 and 1008 provided for the third party lender's underwriting determination.)

Total liquid assets are assets available in cash, savings, checking, money market funds, certificates of deposit, marketable stocks and bonds. This does not include qualified retirement funds (401K and IRA) and annuities.

Exclusions include:

1. The equivalent of 12 months payments of principal, interest, taxes and insurance ("PITI") for the new loan
2. 50% of any remaining liquid assets in excess of the equivalent 12 months PITI

Baseline Contribution

Baseline contribution = Closing Costs + 50% of Gross loss (as defined below)

Gross loss = Total Debt (UPB & Advances) – New Loan Proceeds (excluding closing costs)

Net Loss

Net Loss = Gross Loss – Required Contribution

Net Loss limit: In no case shall Net Loss recognized by BankUnited exceed 35% of UPB or $250,000

Should the Required Contribution not reduce Net Loss to 35% of Total Debt or $250,000, then borrower is permitted to contribute additional funds to reduce the Net Loss to the limit.

Exhibit C

(See Attached)

Exhibit 2(b)(4)

(See Attached)

SAMPLE CERTIFICATE ONLY
EXHIBIT C

CERTIFICATE

MONTHLY PAYMENT SUMMARY
FOR SINGLE FAMILY SHARED-LOSS

FDIC - RECEIVER OF
BankUnited, FSB

PURCHASE AND ASSUMPTION AGREEMENT DATED: May 21, 2009

Shared-Loss Month Ended:

(Dollars)

Fund ID: 10061
Calculation of Amount Due from (to) FDIC

FDIC % Share	0%	80%	95%	Total
Carry forward from other types of assets:				
1. Cumulative losses from single family **(1a+1b)**	0	916,067,190	0	916,067,190
1a. Cumulative losses from single family (excluding Short Refinance losses)	*0*	*861,067,190*	*0*	*861,067,190*
lb. Cumulative losses from Short Refinance	*0*	*55,000,000*	*0*	*55,000,000*
2. Cumulative losses from securities	0	0	0	0
3. Cumulative losses from non-single family	0	218,003,370	0	218,003,370
4. Total cumulative losses at beginning of period **(1+2+3)**	0	1,134,070,560	0	1,134,070,560
5. Covered losses (gains) from single family incurred during period **(5a+5b)**	0	62,912,074	0	62,912,074
5a. Covered losses (gains) from single family during period (excluding Short Refinance losses)	*0*	*57,912,074*	*0*	*57,912,074*
5b. Covered losses (gains) from Short Refinance during period	*0*	*5,000,000*	*0*	*5,000,000*
6. Cumulative loss at the end of the period **(4+5)**	0	1,196,982,633	0	1,196,982,633

7. Single Family losses (gains) payable at end of period (5a)	0	57,912,074	0	57,912,074
FDIC % Share	x 0%	x 80%	x 95%	
8. Amount claimed and due this period from single family loss **(6*FDIC %)**	0	46,329,659	0	46,329,659
9. Short Refinance - 18 month deferred payment due this period	0	0	0	0
10. Amount Due from (to) FDIC (8+9)	**0+**	**46,329,659+**	**0=**	**46,329,659**
Memo: Threshold for recovery percentage		*4,000,000,000*		
*Memo: Amount due for Short Refinance in 18 months **(5b * FDIC %)***		*4,000,000*		*4,000,000*

Preparer Name:
Preparer Title: Preparer Signature

Officer Name:
Officer Title: Officer Signature

Date:

SAMPLE CERTIFICATE ONLY

CERTIFICATE
MONTHLY PAYMENT SUMMARY
FOR SINGLE FAMILY SHARED-LOSS

FDIC - RECEIVER OF BankUnited, FSB

PURCHASE AND ASSUMPTION AGREEMENT DATED: May 21, 2009

Shared-Loss Period Ended:

Dollars

PART A. Opening/Closing/Net Shared-Loss Asset Balances - Active loans	**Number**	**Balance**
1. Opening Balance (total UPB outstanding)	34,566	7,866,907,507
2. Add: HELOC Advances		3,116,698
3. Add: Capitalization (from restructuring, forbearance plans, etc)		2,366,323
4. Less: a) Principal Collections (amortization/partial)		12,813,515
b) Paid in Full	(142)	23,419,114
c) Foreclosure Sales (UBP transferred to ORE)	(206)	61,141,097
d) Short Sales	(100)	33,026,197
e) Principal Reduction		0
f) Qualifying Charge-Offs (excluding accrued interest)	(19)	4,577,725
g) Loan Sales	0	0
h) Short Refinance	0	0
5. Add: Other Adjustments (net)	9	3,756,338
6. Net (Reduction)/Increase Amount	(458)	(125,738,290)
7. Closing Balance	**34,108**	**7,741,169,217**

PART B. Opening/Closing/Net Shared-Loss Asset Balances - ORE activity	**Number**	**Balance**
8. Opening ORE Balance	971	307,057,628
9. Add: New ORE	206	61,141,097
10. Less: Sold ORE (& Correction for Active SFR)	183	56,580,566
11. Closing Balance	994	311,618,159

PART:C. Loss Events and Charge-offs	**Number**	**Balance**
12. Opening Cumulative Loss Balance (SFR only)	6,116	916,067,190
12a. Opening Cumulative Short Refinance Loss Amount	355	55,000,000
13. Add: a) Foreclosure Sale Loss Amount	180	33,886,988
b) Short Sale Loss Amount	100	18,441,743
c) Restructuring Loss Amount	167	8,608,099
d) Charge-Off Loss Amount	22	4,669,917
e) Deferred Principal Reduction Loss Amount		
f) Short Refinance Loss Amount	35	5,000,000
14. Add: Qualifying Loss on Loan Sale		
15. Less: Recoveries and Other Adjustments (net)		7,694,673
16. Less: FDIC Adjustment (net)		0
17. Shared-Loss Debit (Credit) Amount for Period (excluding Short Refi)	469	57,912,074
18. Cumulative Shared-Loss Debit (Credit) Amount	6,620	978,979,263

SAMPLE CERTIFICATE ONLY

CERTIFICATE
MONTHLY PAYMENT SUMMARY
FOR SINGLE FAMILY SHARED-LOSS

FDIC - RECEIVER OF BankUnited, FSB

PURCHASE AND ASSUMPTION AGREEMENT DATED: May 21, 2009

BankUnited
Single Family Loans
Fund ID: 10061
20100831
7,618,203,092.65
(Dollars)

Loans Secured by 1-4 Family Residential Property

Secured by First Lien

	Number		Balance
Current	19697		4,665,770,035.56
30-59 Days	990		272,166,986.59
60-89 Days	377		110,259,295.60
90-119 Days	212		72,511,518.61
120+ Days	506		160,251,352.39
Bankruptcy (Non FC)	508		174,634,860.33
In FC	5590		1,724,239,412.39
Total	*27,880*	*$*	*7,179,83,461*

Secured by Second Lien

	Number		Balance
Current	5375		*389,839,928.63*
30-59 Days	56		*4,189,139.47*
60-89 Days	33		*4,527,722.62*
90-119 Days	31		*3,789,830.24*
120+ Days	102		*14,980,927.66*
Bankruptcy (Non FC)	33		*3,113,236.82*
In FC	136		*17,928,845.74*
Total	*5,766*	*$*	*438,369,631*

Loans Secured by 1-4 Family Residential Property in Process of Restructuring

Secured by First Lien

	Number		Balance
Current	310		91,219,271.27
30-59 Days	127		37,037,807.81
60-89 Days	62		20,804,903.35
90-119 Days	45		14,225,190.47
120+ Days	295		93,092,534.82
Bankruptcy (Non FC)	27		9,905,351.71
In FC	239		79,922,263.10
Total	*1,105*	*$*	*346,207,323*

Secured by Second Lien

	Number		Balance
Current	0	$	—
30-59 Days	0	$	—
60-89 Days	0	$	—
90-119 Days	0	$	—
120+ Days	0	$	—
Bankruptcy (Non FC)	0	$	—
In FC	0	$	—
Total	*0*		

Loans Secured by 1-4 Family Residential Property Being Considered for a Short Refinance

Secured by First Lien

	Number	Balance
Current	310	91,219,271.27
30-59 Days	127	37,037,807.81
60-89 Days	62	20,804,903.35
90-119 Days	45	14,225,190.47
120+ Days	295	93,092,534.82
Bankruptcy (Non FC)	27	9,905,351.71
In FC	239	79,922,263.10
Total	*1,105*	*$ 346,207,323*

Secured by Second Lien

	Number	Balance
Current	0	$ —
30-59 Days	0	$ —
60-89 Days	0	$ —
90-119 Days	0	$ —
120+ Days	0	$ —
Bankruptcy (Non FC)	*0*	$ —
In FC	0	$ —
Total	0	*$* —

Loans Secured by 1-4 Family Residential Property in Process of a Short Refinance

Secured by First Lien

	Number	Balance
Current	310	91,219,271.27
30-59 Days	127	37,037,807.81
60-89 Days	62	20,804,903.35
90-119 Days	45	14,225,190.47
120+ Days	295	93,092,534.82
Bankruptcy (Non FC)	27	9,905,351.71
In FC	239	79,922,263.10
Total	*1,105*	*$ 346,207,323*

Secured by Second Lien

	Number	Balance
Current	0	$ —
30-59 Days	0	$ —
60-89 Days	0	$ —
90-119 Days	0	$ —
120+ Days	0	$ —
Bankruptcy (Non FC)	*0*	$ —
In FC	0	$ —
Total	0	*$* —

SAMPLE CERTIFICATE ONLY

CERTIFICATE
MONTHLY PAYMENT SUMMARY
FOR SINGLE FAMILY SHARED-LOSS

FDIC - RECEIVER OF BankUnited, FSB

____

PURCHASE AND ASSUMPTION AGREEMENT DATED: May 21, 2009

BankUnited
Fund ID: 10061
SFR Short Refinance Pay Schedule

Shared Loss Period Ended	Loss Amount	Payment Due Shared Loss Period Ending	Amount Due
Oct-10	$ 5,000,000.00	Mar-12	$ 4,000,000.00
Nov-10		Apr-12	
Dec-10		May-12	
Jan-11		Jun-12	
Feb-11		Jul-12	
Mar-11		Aug-12	

Apr-11		Sep-12	
May-11		Oct-12	
Jun-11		Nov-12	
Jul-11		Dec-12	
Aug-11		Jan-13	
Sep-11		Feb-13	
Oct-11		Mar-13	
Nov-11		Apr-13	
Dec-11		May-13	
Jan-12		Jun-13	
Feb-12		Jul-13	
Mar-12		Aug-13	
Apr-12		Sep-13	
May-12		Oct-13	
Jun-12		Nov-13	
Jul-12		Dec-13	
Aug-12		Jan-14	
Sep-12		Feb-14	
Oct-12		Mar-14	
Nov-12		Apr-14	
Dec-12		May-14	
Jan-13		Jun-14	
Feb-13		Jul-14	
Mar-13		Aug-14	
Apr-13		Sep-14	
May-13		Oct-14	
Jun-13		Nov-14	
Jul-13		Dec-14	
Total:	$ 5,000,000.00		$ 4,000,000.00

Short Refinance Loss Certificate

(Fields in gray are not applicable to Short Refinance Loss Claims)

Column	Field #	Field	Description	Type	Comments	2b(1) if written down prior to closing date	2b(2) if NOT previously modified	2b(3) if previously modified	2b(4) Short Refi	2b(5) Short Refi if previously modified
A	1	Shared-Loss Month	The as-of-date for the loan data in the file	D	For example, for a report submitted July 16, 2009 the Shared-Loss Month cutoff date would be June 30, 2009 and the field would appear as 20090630	x	x	x	x	x
B	2	Loan number	Unique identifier used for all reporting records. May be FDIC specific loan ID or other account number	A/N		x	x	x	x	x
C	3	Interest Paid-to-date	Last interest paid date	D		x	x	x	x	x
D	4	Short payoff date	Date short sale transaction completed	D		x	x	x	x	x
E	5	Note Interest rate	Note Interest Rate After Last Paid Installment	N		x	x	x	x	x
F	6	Occupancy	Occupancy status when notice of default was filed	A/N	Please provide data key which specifies owner, non-owner, or vacant occupancy status	x	x		x	
G	7	Household current annual income	Gross annual household income gathered or documented (last documented record)	N	Please provide if property is owner-occupied and data is available	x	x		x	
H	8	Estimated NPV of loan modification	NPV value generated as an alternative to foreclosure	N	Please provide if property is owner-occupied and data is available	x	x		x	
I	9	Valuation Date	Property valuation date: Includes interior and exterior evaluations	D	If more than one valuation occurred within 90 days, please provide all recent valuations. Please provide	x	x	x	x	x
J	10	Valuation Amount	Property value determined by	N	unique field names for each valuation and a data key for	x	x	x	x	x

K	11	Valuation Type	Appraisal, BPO, interior, or exterior evaluation Indicates AVM, BPO, appraisal, interior or exterior	A/N	valuation type. E.g.,val_date1 val_date 2, val_amt1 val_amt2, val_type1 val_type2	x	x	x	x	x
L	12	Loan UPB	Unpaid principal balance at short sale payoff date	N	Principal balance excluding past due interest or accrued fees		x	x	x	x
M	13	Book Value	Book Value at date of Loss Share Agreement	N	For loans written down to book value prior to Loss Share Agreement if not applicable, please insert blank(s)	x			x	
N	14	Post closing principal payments	Principal payments received post closing for loans written down at date of Loss Share agreement	N	For loans written down to book value prior to Loss Share Agreement if not applicable, please insert blank(s)	x			x	
O	15	NPV of projected cash flows at loan modification	NPV submitted for loan restructuring loss share payment	N	Required only for short sales following a covered restructuring			x		x
P	16	Post modification principal payments	Amount of principal payments received between modification and short sale	N	Required only for short sales following a covered restructuring			x		x
Q	17	Accrued interest	Accrued Interest Limited to 90 Days. If accrued interest amounts are claimed, liquidation proceeds must be gross of these amounts.	N	Accrued interest that qualifies as a covered loss — not all accrued interest as reportable under GAAP Accrued interest equals zero in case of short sale following a covered restructuring	x	x		x	
R	18	Attorney's fees	Attorney's fees and costs (BK and	N		x	x			

Column	Field #	Field	Description	Type	Comments	2b(1) if written down prior to closing date	2b(2) if NOT previously modified	2b(3) if previously modified	2b(4) Short Refi	2b(5) Short Refi if previously modified
			FO). May include court fees, publications, title fees, and motions for relief							
S	19	Foreclosure costs/fees	May include origination fees, commissions, title and closing, peer, recording/county fees	N		x	x	x		
T	20	Property preservation costs, maintenance and repairs	May include property securing pool drainage, broken windows, repairs to any structural damage or environmental abatements, grass cutting, and utility bills	N	Any such costs with respect to the remediation activities are limited to $200,000 without assuming Bank having received the prior consent of the FDIC	x	x	x		
U	21	T&I advances	Tax & Insurance Advances	N		x	x	x	x	x
V	22	Appraisal/ Broker's Price Opinion fee	Appraisal / Broker's Price Opinion Fees	N		x	x	x	x	x
W	23	Inspections	Property inspections	N		x	x	x	x	x
X	24	Other advances	Other advances/costs. This includes other claimable closing costs paid by the Assuming Bank to complete the short refinance transaction.	N	Please provide written explanation of other costs or advances	x	x	x	x	x
Y	25	Incentive to	Costs for cash for keys			x	x	x		

		Borrower	or other incentive payment to borrow							
Z	26	Amount accepted in Short-Sale	Net amount accepted at Short Sale or Short Refinance, this amount is gross of accrued interest used to determine the gross balance recoverable by the Assuming Bank		Amount accepted in Purchase Contract (add back the normal property maintenance fees or other fees which are included in the gross balance recoverable by purchaser)	x	x	x	x	x
AA	27	Hazard insurance	Hazard Insurance Proceeds	N		x	x	x	x	x
AB	28	Mortgage insurance	Mortgage Insurance Proceeds	N		x	x	x	x	x
AC	29	T&I escrow balance, if positive	Positive T& I Escrow Account Balance	N		x	x	x	x	x
AD	30	Other credits	Other account credits	N	Please provide written explanation of other credits	x	x	x	x	x
AE	31	Loss Amount	Calculated loss amount submitted for coverage	N		x	x	x	x	x

Date supplied above is used to verify the loss amount provided in Section 2 of the Loss Share Certificate. Specifically the Loss Amount is verified via the following calculations:

No preceding loan mod under loss share-Exhibit 2b(1)

Gross Balance Recoverable	Field 13 minus Field 14 plus Fields 17-25 (only the costs incurred after closing date)
<u>Total Cash Recovery</u>	<u>Less Sum of Field 26-30</u>
(Gain)/Loss Amount	Loss Amount

No preceding loan mod under loss share-Exhibit 2b(2) and Exhibit 2b(4)

Gross Balance Recoverable	Sum of Field 12 and Fields 17-25
<u>Total Cash Recovery</u>	<u>Less Sum of Field 26-30</u>
(Gain)/Loss Amount	Loss Amount

Short Sale after a covered loan mod

Gross Balance Recoverable	Field 15 minus Fields 16 plus Fields 18-25
<u>Total Cash Recovery</u>	<u>Less Sum of Field 26-30</u>
(Gain)/Loss Amount	Loss Amount

EXHIBIT A Restructure Loss — Monthly or Quarterly Download

Column	Field #	Field	Description	Type	Comments	Required Fields	Allowable Values	Formatting Req.	Width	2a(1)	2a(2)
A	**1**	**Shared-Loss Month**	**The as-of-date for the file. For example, for a report submitted July 16, 2009 the Shared-Loss Month cutoff date would be June 30, 2009 and the field would appear as 20090630**	**Date**		**Yes**		**YYYYMMDD**	**8**	**x**	**x**
B	**2**	**Loan Number**	**Unique identifier used for all reporting records. Internal record identifier used by the bank.**	**Alphanumeric**		**Yes**			**34**	**x**	**x**
C	**3**	**Modification Program**	**Modification program type**	**Alphanumeric**	**Allowable program types are: (a) HAMP;**	**Yes**	**HAMP; FDIC; NOO; PRA, OTH**		**4**	**x**	**x**

					b) FDIC = FDIC modification program for owner-occupied; c) NOO = non-owner occupied programs; d) PRA = FDIC's principal reduction alternate program, approved for selected banks; e) OTH = other proprietary programs approved by the FDIC						
D	4	Pre-mod UPB	Unpaid principal balance at restructure	Numeric	Principal balance excluding past due interest or accrued fees.	Yes		9(12),99	15	x	x
E	5	Pre-Mod remaining term	Number of months remaining in the amortization term prior to restructure	Numeric		Yes		9999	4	x	x
F	6	Pre-Mod interest rate	Loan interest rate prior to restructure	Numeric	Please provide interest calculation method in separate file (e.g. 30/360, 30/365,. Actual/365, etc.)	Yes		9999	6	x	x
G	7	Pre-mod next ARM reset rate	Expected interest rate given reset date is within the next 4 months	Numeric	Only provide if reset date is within the next 4 months	No		9999	6	x	x
H	8	Interest Paid-to date	Last interest paid date	Date		Yes		YYYYMMDD	8	x	x
I	9	Delinquency status	Delinquency status as of modification date: 30, 60, 90+ day DQ or Foreclosure status	Alphanumeric	Data Code Field — Populate field with allowable values. If allowable code is not used, data key definition is required.	Yes	C = Current; 3 = 30 days DQ; 6 = 60 days DQ; 9 = 90 days DQ; 4 = 120+ days DQ; F=Foreclosure		1	x	x
J	10	Pre-mod monthly payment — P&I	Scheduled principal and interest payment prior to restructure	Numeric		No		9(12),99	15	x	x
K	11	Pre-mod monthly payment — T&I	Tax & Insurance escrow payment prior to restructure	Numeric		No		9(12),99	15	x	x
L	12	Household current annual income	Gross annual household income gathered or documented within most recent 90 days	Numeric		No		9(12),99	15	x	x
M	13	Valuation Date	Recent property valuation date; includes interior and exterior evaluations (within 90 days). If more than one valuation	Date		Yes		YYYYMMDD	8	x	x

Column	Field #	Field	Description	Type	Comments	Required Fields	Allowable Values	Formatting Req.	Width	2a(1)	2a(2)
			occurred within 90 days, please provide all recent valuations. Provide additional valuation information in a separate date file.								
N	14	Valuation Amount	Property value determined by Appraisal BPO, interior or exterior evaluations (within 90 days)	Numeric		Yes		9(12),99	15	x	x
O	15	Valuation Type	Indicates valuation type	Alphanumeric	Data Code Field — Populate field with allowable values. If allowable code is not used, data key definition is required	Yes	AVM = Automated Valuation Mode; BPO = Broker price Opinion; DA = Desktop Appraisal; DB = Drive By; FA = Full Appraisal; PAU = Prior Appraisal Used; TV = Tax Valuation; None; Other		40	x	x
P	16	1st Trial Payment Due Date	First payment due date under modified terms.	Date		No		YYYYMMDD	8	x	x
Q	17	Modification Date or completed trial period date	Modification Date or completed trial period date	Date		Yes		YYYYMMDD	8	x	x
R	18	Post-mod NET UPB	Unpaid principal balance after restructure (net of principal forbearance & principal reduction)	Numeric	This is the balance for purposes of the loss share agreement and may differ from the balance according to GAAP. It may include up to 90 days of advanced interest and all escrow advances to date	Yes		9(12),99	15	x	x
S	19	Principal forbearance	Dollar amount of principal forbearance	Numeric	Only provided for modifications which include principal forbearance. Insert blanks or zero if not applicable	Yes		9(12),99	15	x	x
T	20	Principal reduction	Dollar amount of principal forgiveness	Numeric	Only provided for modifications which include principal reduction. Insert blanks or zero if not applicable.	Yes		9(12),99	15	x	x
U	21	Post-mod product	Fixed or step product	Alphanumeric	Data Code Filed — Populate field with allowable values. If allowable code is	Yes	F = Fixed; S = Step			x	x

					not used, data key definition is required.						
V	22	Post-mod remaining amortization term	Number of months remaining in the amortization term post restructure	Numeric		Yes		9999	4	x	x
W	23	Post-mod maturity date	Loan maturity date after restructure	Date		Yes		YYYYMMDD	8	x	x
X	24	Post-mod interest rate	Initial post restructure interest rate	Numeric	Please provide interest calculation method (e.g. 30/360, 30/365, Actual/365, etc.)	Yes		9999	6	x	x

Column	Field #	Field	Description	Type	Comments	Required Fields	Allowable Values	Formatting Req.	Width	2a(1)	2a(2)
Y	25	Next payment due date	Date next payment due	Date		Yes		YYYYMMDD	8	x	x
Z	26	Post-mod monthly payment - P&I	Initial scheduled principal and interest payment after restructure	Numeric		No		9(12),99	15	x	x
AA	27	Post-mod monthly payment - T&I	Tax & Insurance escrow payment post restructure	Numeric		No		9(12),99	15	x	x
AB	28	Next reset date	First interest rate step up date	Date	Insert blanks or zero if not applicable	No		YYYYMMDD	8	x	x
AC	29	Interest rate change per adjustment	Interest rate change (in percent) per adjustment	Numeric	Must be less than or equal to 1% (.01)	No		.99999	6	x	x
AD	30	Lifetime interest rate cap	Maximum interest rate charged to the borrower	Numeric	Generally this is the Freddie Mac PMMS rate at time of modification (see HAMP guidelines for exceptions)	No		.99999	6	x	x
AE	31	Back and DTI	Ratio of the borrower's monthly gross expenses divided by the borrower's monthly gross income	Numeric		No		.99999	6	x	x
AF	32	Previous NPV of loan modification	NPV submitted for the first loan restructuring loss share payment.	Numeric	Required only for modifications following a covered restructuring	Yes, if applicable		9(12),99	15		
AG	33	Post modification principal payments	In case of a second modification, please provide the amount of principal payments received between modifications	Numeric	Required only for modifications following a covered restructuring	Yes, if applicable		9(12),99	15		
AH	34	Accrued interest	Accrued interest, limited to 90 Days or days delinquent at modification, whichever is less	Numeric	Accrued interest that qualifies as a covered loss—not all accrued interest as reportable under GAAP. Accrued interest equals zero in case of 2nd restructuring.	Yes, if applicable		9(12),99	15		x

AI	35	Attorney's fees	Attorney's fees and costs (BK and FC). May include court fees, publications, title fees, and motions for relief	Numeric		No		9(12),99	15	x	x
AJ	36	Foreclosure costs/fees	May include origination fees, commissions, titles and closing, pest, and recording/county fees	Numeric		No		9(12),99	15	x	x
AK	37	Property preservation costs, maintenance and repairs	May include property securing, pool drainage, broken windows, repairs to any structural damage or environmental abatements, grass cutting, and utility bills	Numeric	Any such costs with respect to remediation activities are limited to $200,000 without Assuming Bank having received the prior consent of the FDIC	No		9(12),99	15	x	x
AL	38	T&I advances	Tax & Insurance Advances	Numeric		No		9(12),99	15	x	39
AM	39	Appraisal/Broker's Price Opinion fee	Appraisal/Broker's Price Opinion Fees	Numeric		No		9(12),99	15	x	x
AN	40	Inspections	Property inspections	Numeric		No		9(12),99	15	x	x
AO	41	Other advances	Other advances/costs	Numeric	Please provide written explanation of other costs or advances	No		9(12),99	15	x	x
AP	42	MI contribution	If mortgage insurance company makes a payment towards modification, please specify the amount	Numeric		No		9(12),99	15	x	x
AQ	43	Other credits	Other account credits	Numeric	Please itemize other credits	No		9(12),99	15	x	x

Column	Field #	Field	Description	Type	Comments	Required Fields	Allowable Values	Formatting Req.	Width	2a(1)	2a(2)
AR	44	T&I escrow account balance, if positive	Positive T&I Escrow Account Balance	Numeric		No		9(12),99	15	x	x
AS	45	Discount rate for projected cash flows	Discount Rate used for loss share calculation	Numeric	this may differ from the discount rate used in modification NPV decision analysis	No		.99999	15	x	x
AT	46	Loan prepayment in full	NPV Calculation Term used for loss share calculations (in months). This should always be 120 months unless an exception applies	Numeric	This may differ from the amortization term used in the modification NPV decision analysis	No		9999	4	x	x
AU	47	NPV of projected cash flows	NPV of modified loan cash flows per loss share specifications	Numeric	This may differ from the modification value determined by the NPV decision analysis	Yes		9(15),99	15	x	x

AV	**48**	**Loss Amount**	**Calculated loss amount submitted for coverage**	**Numeric**		**Yes**	**9(15),99**	**15**	**x**	**x**
AW	**49**	**FDIC Asset Id**	**FDIC unique asset identifier found in Schedule A. Provide loan id if FDIC asset identifier is not available for loans added to Schedule A after adjustment**	**Alphanumeric**		**Yes**		**34**	**x**	**x**
AX	**50**	**Deferred Principal Reduction Amount**	**Total amount of principal deferred at the date of modification and claimable at subsequent Principal Reduction Dates**	**Numeric**	**This applies only where the modification program = PRA**	**Yes, if applicable**	**9(12),99**	**15**	**x**	**x**
AY	**51**	**Principal Reduction Date**	**First scheduled Principal Reduction Date**	**Date**	**This applies only where the modification program = PRA**	**Yes, if applicable**	**YYYYMMDD**	**15**	**x**	**x**

Date supplied above is used to verify the loss amount provided in Section 2 of the Loss Share Certificate. Specifically the Loss Amount is verified via the following calculation:

Loan written down to book value prior to Loss Share — Exhibit 2a(1)

Net Book Value Less Principal Payments	Sum of Field 4 and Fields 35-41
NPV of loan modification	Less Field 47
Contributions or other credits	Less Fields 42-44
(Gain)/Loss Amount	Loss Amount

First loan modification under loss share — Exhibit 2a(2)

Gross Balance Recoverable	Sum of Field 4 and Fields 34-41
NPV of loan modification	Less Field 47
Contributions or other credits	Less Fields 42-44
(Gain) Loss Amount	Loss Amount

Amendment No. 2 to the BankUnited
Single Family Shared-Loss Agreement
(as previously amended, the "SFLSA") with the FDIC

This Amendment No. 2 (the "Amendment") is made and effective as of December 22, 2010 (the "Effective Date"), and amends the SFLSA between BankUnited and the FDIC as follows:

WHEREAS, on May 21, 2009 BankUnited entered into the SFLSA with the FDIC as Receiver of BankUnited, FSB, Coral Gables, Florida; and

WHEREAS, under the terms of the above referenced SFLSA the FDIC pays BankUnited a specified percent of the Loss Amount on Restructuring Losses; and

WHEREAS, the U.S. Department of the Treasury has developed a Principal Reduction Alternative for the Home Affordable Modification Program that provides for the forgiveness of principal over time pursuant to the Making Home Affordable Supplemental Directives 10-05 and 10-14 (as they may be further modified, supplemented or updated, the "PRA Directives"); and

WHEREAS, the FDIC and BankUnited wish to implement the principal reduction alternative provisions of the PRA Directives in the SFLSA.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend the SFLSA as follows:

1. Amendments to Article 1- Definitions.

(a). The following definitions are hereby inserted in Article I of the SFLSA:

"Deferred Principal Reduction Amount" means the portion of the loan principal balance that is initially forborne and then forgiven by the Assuming Bank according to the PRA Directives.

"**Deferred Principal Reduction Loss**" means the losses incurred by the Assuming Bank upon forgiveness of a Deferred Principal Reduction Amount. A Deferred Principal Reduction Loss shall be calculated in accordance with the form and methodology set forth in Section 2.1(a)(1) and Exhibit A and reported as a Loss Amount for a Single Family Shared-Loss Loan on the Monthly Certificate for the Shared-Loss Month which includes the Principal Reduction Date for such Single Family Shared-Loss Loan (which Monthly Certificate shall be in the form of Exhibit B). For the avoidance of doubt, a Deferred Principal Reduction Loss shall include losses on retroactive PRA modifications in accordance with the PRA Directives.

"HAMP" means the United States Department of the Treasury's Home Affordable Modification Program.

"PRA" means the Principal Reduction Alternative pursuant to the PRA Directives.

"**PRA Directives**" mean the Making Home Affordable Supplemental Directives 10-05 and 10-14, as they may be further modified, supplemented or updated.

"Principal Reduction Date" means the date the principal balance of a Single Family Shared-Loss Loan is reduced in accordance with and pursuant to the PRA Directives (e.g., the first, second and third anniversaries of the applicable trial period effective date and any date prior to the third anniversary if a Single Family Shared-Loss Loan is paid-in-full).

"Qualifying Loan" means a Single Family Shared-Loss Loan that meets (a) the Qualifying Loan criteria in Exhibit 5 of the Single Family Shared-Loss Agreement or (b) the Eligibility Guidelines set forth in the Making Home Affordable Supplemental Directive 09-01 (or such other amended criteria as may be published from time to time by the U.S. Department of the Treasury), and in either case has a current loan-to-value (LTV) position greater than 115%, unless otherwise agreed pursuant to a written instrument signed by both parties to this Single Family Shared-Loss Agreement.

"Waterfall Calculation" means a series of steps taken by the Assuming Bank to reduce the borrower's monthly housing debt to income ratio ("DTI ratio").

(b). The following definitions are hereby amended and restated as follows:

"Loss" means a Foreclosure Loss, Restructuring Loss, Deferred Principal Reduction Loss, Short-Sale Loss, Portfolio Loss, Modification Default Loss or Deficient Valuation.

"Modification Default Loss" means the loss calculated in Exhibits 2b(3) or 2c(3) for single family loans previously modified pursuant to this Agreement, as adjusted for any realized Deferred Principal Reduction Loss, that subsequently default and result in a foreclosure, short sale or Deficient Valuation.

2. Amendments to Section 2.1.

(a). Section 2.1(a) is amended by adding the following at the end thereof:

(1) Principal Reduction Modification Analysis.

(i) Calculation of Monthly Amount. In applying the HAMP PRA Modification Guidelines, to calculate the monthly amount that will reduce the borrower's DTI Ratio to 31%, the Qualifying Loan shall be run through two separate Waterfall Calculations and

---

NPV tests as specified in the PRA Directives. Both Waterfall Calculations shall be based on a target DTI ratio of 31% at the time of modification. If the estimated net present value of the foreclosed collateral upon disposition is less than either the estimated value of the Standard HAMP Modification or the PRA Modification, the Waterfall Calculation yielding the highest net present value will be used for modification. The Deferred Principal Reduction Amount shall not take the MTMLTV ratio below 115% without a written instrument signed by both parties to this Single Family Shared-Loss Agreement.

(ii) Procedure for Calculating and Claiming Deferred Principal Reduction Loss Amounts. The initial Restructuring Loss for a Qualifying Loan shall be determined using the methods specified in Exhibits 2a(1) and 2a(2) and Exhibit A of this Single Family Shared-Loss Agreement, with the Deferred Principal Reduction Amount initially treated as forbearance and deferred to the "Loan prepayment in full" date and the loan amortized according to the adjusted principal balance. At the first Principal Reduction Date, the Deferred Principal Reduction Loss shall equal the difference between the net present value calculated in determining the Restructuring Loss and the net present value calculated after giving effect to the principal reduction (using the same discount rate and "Loan prepayment in full" date specified in the Restructuring Loss calculation). On each subsequent annual Principal Reduction Date, the Deferred Principal Reduction Loss shall equal the difference between the net present value calculated for the previous Deferred Principal Reduction Loss and the net present value calculated after giving effect to the principal reduction (using the same discount rate and "Loan prepayment in full" date specified in the Restructuring Loss calculation).

(iii) Treatment of Incentive Payments. All PRA investor incentive payments described in the PRA Directives shall be treated as Recovery Amounts. For the avoidance of doubt, servicer and borrower incentives will not be treated as Recovery Amounts or otherwise applied to reduce the Deferred Principal Reduction Loss amount with respect to any Single Family Shared-Loss Loan unless borrower incentive payments serve to reduce the outstanding loan balance, it being understood and agreed that neither forbearance nor forgiveness of principal shall constitute borrower incentive payments.

3. Capitalized Terms. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the SFLSA.

4. No Further Amendment. Except as expressly amended hereby, the SFLSA is in all respects ratified and confirmed and all the terms, conditions, and provisions thereof shall remain in full force and effect. This Amendment is limited precisely as written and shall not be deemed to be an amendment to any other term or condition of the SFLSA or any of the documents referred to therein.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Effective Date.

FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER OF BANKUNITED, FSB, CORAL GABLES, FLORIDA

By: /s/ Ralph Malami
Name: Ralph Malami
Title: Assistant Director

Attest:

____

FEDERAL DEPOSIT INSURANCE CORPORATION

By: /s/ Ralph Malami
Name: Ralph Malami
Title: Assistant Director

Attest:

____

BANKUNITED

By: /s/ Rajinder Singh
Name: Rajinder Singh
Title: COO

Attest:

[Signature Page to Amendment No. 2]

EXHIBIT A **Restructure Loss — Monthly or Quarterly Download**

Column	Field #	Field	Description	Type	Comments	Required Fields	Allowable Values	Formatting Req.	Width	2a(1)	2a(2)
A	1	Shared-Loss Month	The as-of-date for the file. For example, for a report submitted July 16, 2009 the Shared-Loss Month cutoff date would be June 30, 2009 and the field would appear as 20090630	Date		Yes		YYYYMMDD	8	x	x
B	2	Loan Number	Unique identifier used for all reporting records. Internal record identifier used by the bank.	Alphanumeric		Yes			34	x	x
C	3	Modification Program	Modification program type	Alphanumeric	Allowable program types are: (a) HAMP; b) FDIC = FDIC modification program for owner-occupied; c) NOO = non-owner occupied programs; d) PRA = FDIC's principal reduction alternate program, approved for selected banks; e) OTH = other proprietary programs approved by the FDIC	Yes	HAMP; FDIC; NOO; PRA, OTH		4	x	x
D	4	Pre-mod UPB	Unpaid principal balance at restructure	Numeric	Principal balance excluding past due interest or accrued fees	Yes		9(12),99	15	x	x
E	5	Pre-Mod remaining term	Number of months remaining in the amortization term prior to restructure	Numeric		Yes		9999	4	x	x
F	6	Pre-Mod interest rate	Loan interest rate prior to restructure	Numeric	Please provide interest calculation method in separate file (e.g. 30/360, 30/365, Actual/365, etc.)	Yes		9999	6	x	x
G	7	Pre-Mod next ARM reset rate	Expected interest rate given reset date is within the next 4 months	Numeric	Only provide if reset date is within the next 4 months	No		9999	6	x	x
H	8	Interest Paid-todate	Last interest paid date	Date		Yes		YYYYMMDD	8	x	x
I	9	Delinquency status	Delinquency status as of modification date: 30, 60, 90+ day DQ, or Foreclosure status	Alphanumeric	Data Code Field — Populate field with allowable values. If allowable code is not used, data key definition is required.	Yes	C = Current, 3 = 30 days DQ; 6 = 60 days DQ; 9 = 90 days DQ; 4 = 120+ days DQ; F=Foreclosure		1	x	x
J	10	Pre-mod	Scheduled principal	Numeric		No		9(12),99	15	x	x

		monthly payment - P&I	and interest payment prior to restructure.								
K	11	Pre-mod monthly payment - T&I	Tax & Insurance escrow payment prior to restructure	Numeric		No		9(12),99	15	x	x
L	12	Household current annual income	Gross annual household income gathered or documented within most recent 90 days	Numeric		No		9(12),99	15	x	x
M	13	Valuation Date	Recent property valuation date; includes interior and exterior evaluations (within 90 days). If more than one valuation occurred within 90 days, please provide all recent valuations.	Date		Yes		YYYYMMDD	8	x	x

Column	Field #	Field	Description	Type	Comments	Required Fields	Allowable Values	Formatting Req.	Width	2a(1)	2a(2)
			Provide additional valuation information in a separate date file.								
N	14	Valuation Amount	Property value determined by Appraisal BPO, interior or exterior evaluations (within 90 days)	Numeric		Yes		9(12),99	15	x	x
O	15	Valuation Type	Indicates valuation type	Alphanumeric	Data Code Field — Populate field with allowable values. If allowable code is not used, data key definition is required	Yes	AVM = Automated Valuation Mode; BPO = Broker price Opinion; DA = Desktop Appraisal; DB = Drive By; FA = Full Appraisal; PAU = Prior Appraisal used; TV = Tax Valuation; None, Other		40	x	x
P	16	1st Trial Payment Due Date	First payment due date under modified terms.	Date		No		YYYYMMDD	8	x	x
Q	17	Modification Date or completed trial period date	Modification Date or completed trial period date	Date		Yes		YYYYMMDD	8	x	x
R	18	Post-mod NET UPB	Unpaid principal balance after restructure (net of principal forbearance & principal reduction)	Numeric	This is the balance for purposes of the loss share agreement and may differ from the balance according to GAAP. It may include up to 90 days of advanced interest and all escrow advances to date	Yes		9(12),99	15	x	x

S	19	Principal forbearance	Dollar amount of principal forbearance	Numeric	Only provided for modifications which include principal forbearance. Insert blanks or zero if not applicable.	Yes		9(12),99	15	x	x
T	20	Principal reduction	Dollar amount of principal forgiveness	Numeric	Only provided for modifications which include principal reduction. Insert blanks or zero if not applicable.	Yes		9(12),99	15	x	x
U	21	Post-mod product	Fixed or step product	Alphanumeric	Data Code Filed — Populate field with allowable values. If allowable code is not used, data key definition is required.	Yes	F = Fixed; S = Step			x	x
V	22	Post-mod remaining amortization term	Number of months remaining in the amortization term post restructure	Numeric		Yes		9999	4	x	x
W	23	Post-mod maturity date	Loan maturity date after restructure	Date		Yes		YYYYMMDD	8	x	x
X	24	Post-mod interest rate	Initial post restructure interest rate	Numeric	Please provide interest calculation method (e.g. 30/360, 30/365, Actual/365, etc.)	Yes		9999	6	x	x
Y	25	Next payment due date	Date next payment due	Date		Yes		YYYYMMDD	8	x	x
Z	26	Post-mod monthly payment - P&I	Initial scheduled principal and interest payment after restructure	Numeric		No		9(12),99	15	x	x

Column	Field #	Field	Description	Type	Comments	Required Fields	Allowable Values	Formatting Req.	Width	2a(1)	2a(2)
AA	27	Post-mod monthly payment - T&I	Tax & Insurance escrow payment post restructure	Numeric		No		9(12),99	15	x	x
AB	28	Next reset date	First interest rate step up date	Date	Insert blanks or zero if not applicable	No		YYYYMMDD	8	x	x
AC	29	Interest rate change per adjustment	Interest rate change (in percent) per adjustment	Numeric	Must be less than or equal to 1% (.01)	No		.99999	6	x	x
AD	30	Lifetime interest rate cap	Maximum interest rate charged to the borrower	Numeric	Generally this is the Freddie Mac PMMS rate at time of modification (see HAMP guidelines for exceptions)	No		.99999	6	x	x
AE	31	Back and DTI	Ratio of the borrower's monthly gross expenses divided by the borrower's monthly gross income	Numeric		No		.99999	6	x	x
AF	32	Previous NPV of loan modification	NPV submitted for the first loan restructuring loss share payment	Numeric	Required only for modifications following a covered restructuring	Yes, if applicable		9(12),99	15		
AG	33	Post modification	In case of a second	Numeric	Required only	Yes, if		9(12),99	15		

		principal payments	modification, please provide the amount of principal payments received between modifications		for modifications following a covered restructuring	applicable					
AH	34	Accrued interest	Accrued interest, limited to 90 Days or days delinquent at modification, whichever is less	Numeric	Accrued interest that qualifies as a covered loss—not all accrued interest as reportable under GAAP. Accrued interest equals zero in case of 2nd restructuring.	Yes, if applicable		9(12),99	15		x
AI	35	Attorney's fees	Attorney's fees and costs (BK and FC). May include court fees, publications, title fees, and motions for relief	Numeric		No		9(12),99	15	x	x
AJ	36	Foreclosure costs/fees	May include origination fees, commissions, titles and closing, pest, and recording/county fees	Numeric		No		9(12),99	15	x	x
AK	37	Property preservation costs, maintenance and repairs	May include property securing, pool drainage, broken windows, repairs to any structural damage or environmental abatements, grass cutting, and utility bills	Numeric	Any such costs with respect to remediation activities are limited to $200,000 without Assuming Bank having received the prior consent of the FDIC	No		9(12),99	15	x	x
AL	38	T&I advances	Tax & Insurance Advances	Numeric		No		9(12),99	15	x	39
AM	39	Appraisal/Broker's Price Opinion fee	Appraisal/Broker's Price Opinion Fees	Numeric		No		9(12),99	15	x	x
AN	40	Inspections	Property inspections	Numeric		No		9(12),99	15	x	x
AO	41	Other advances	Other advances/costs	Numeric	Please provide written explanation of other costs or advances	No		9(12),99	15	x	x
AP	42	MI contribution	If mortgage insurance company makes a payment towards modification, please specify the amount	Numeric		No		9(12),99	15	x	x
AQ	43	Other credits	Other account credits	Numeric	Please itemize other credits	No		9(12),99	15	x	x
AR	44	T&I escrow account balance, if positive	Positive T&I Escrow Account Balance	Numeric		No		9(12),99	15	x	x
AS	45	Discount rate for projected cash flows	Discount Rate used for loss share calculation	Numeric	this may differ from the discount rate used in modification NPV decision analysis	No		.99999	15	x	x
AT	46	Loan prepayment in full	NPV Calculation Term used for loss share calculations (in months). This should always be	Numeric	This may differ from the amortization term used in the modification NPV decision analysis	No		9999	4	x	x

Column	Field #	Field	Description	Type	Comments	Required Fields	Allowable Values	Formatting Req.	Width	2a(1)	2a(2)

			120 months unless an exception applies							
AU	**47**	**NPV of projected cash flows**	**NPV of modified loan cash flows per loss share specifications**	**Numeric**	**This may differ from the modification value determined by the NPV decision analysis**	**Yes**	**9(15),99**	**15**	**x**	**x**
AV	**48**	**Loss Amount**	**Calculated loss amount submitted for coverage**	**Numeric**		**Yes**	**9(15),99**	**15**	**x**	**x**
AW	**49**	**FDIC Asset Id**	**FDIC unique asset identifier found in Schedule A. Provide loan id if FDIC asset identifier is not available for loans added to Schedule A after adjustments**	**Alphanumeric**		**Yes**		**34**	**x**	**x**
AX	**50**	**Deferred Principal Reduction Amount**	**Total amount of principal deferred at the date of modification and claimable at subsequent Principal Reduction Dates**	**Numeric**	**This applies only where the modification program = PRA**	**Yes, if applicable**	**9(12),99**	**15**	**x**	**x**
AY	**51**	**Principal Reduction Date**	**First scheduled Principal Reduction Date**	**Date**	**This applies only where the modification program = PRA**	**Yes, if applicable**	**YYYYMMDD**	**15**	**x**	**x**

Date supplied above is used to verify the loss amount provided in Section 2 of the Loss Share Certificate. Specifically the Loss Amount is verified via the following calculation:

Loan written down to book value prior to Loss Share — Exhibit 2a(1)

Net Book Value Less Principal Payments	Sum of Field 4 and Fields 35-41
NPV of loan modification	Less Field 47
<u>Contributions or other credits</u>	<u>Less Fields 42-44</u>
(Gain)/Loss Amount	Loss Amount

First loan modification under loss share — Exhibit 2a(2)

Gross Balance Recoverable	Sum of Field 4 and Fields 34-41
NPV of loan modification	Less Field 47
<u>Contributions or other credits</u>	<u>Less Fields 42-44</u>
(Gain) Loss Amount	Loss Amount

EXHIBIT A
Deferred PRA 2d(1)

Column	Field #	Field	Description	Type	Comments
A	1	Shared-Loss Month	The as-of-date for the file	D	For example, for a report submitted July 15, 2009 the Shared-Loss Month cutoff date would be June 30, 2009 and the field would appear as 20090630
B	2	Loan number	Unique identifier used for all reporting records. May be FDIC specific loan ID or other account number	A/N	
C	3	1st Trial Payment Due Date	First payment due date under modified terms	D	

D	4	Modification Effective Date	Modification Date or completed trial period date	D
E	5	Next payment due date	Date next payment due	D
F	6	Paid in Full Date	Date loan paid in full	D
G	7	Deferred Principal Reduction Amount	Amount of Deferred Principal forgiven in the reporting period	N
H	8	Deferred Principal Reduction Outstanding	Deferred Principal amount outstanding net of amounts claimed during the reporting period	
I	9	Deferred Loss Amount	Deferred Principal Reduction Loss	N
		FDIC Asset Id	FDIC unique asset identifier found in Schedule A. Provide loan id if FDIC asset identifier is not available for loans added to Schedule A after adjustments	A/N

EXHIBIT B
CERTIFICATE

MONTHLY PAYMENT SUMMARY
FOR SINGLE FAMILY SHARED-LOSS

SAMPLE CERTIFICATE ONLY

FDIC - RECEIVER OF
BankUnited, FSB

PURCHASE AND ASSUMPTION AGREEMENT DATED: May 21, 2009
Shared-Loss Month Ended:

(Dollars)

Fund ID: 10061
Calculation of Amount Due from (to) FDIC

FDIC % Share	**0%**	**80%**	**95%**	**Total**
Carry forward from other types of assets:				
1. Cumulative losses from single family **(1a+1b)**	0	916,067,190	0	916,067,190
1a. Cumulative losses from single family (excluding Short Refinance losses)	*0*	*861,067,190*	*0*	*861,067,190*
lb. Cumulative losses from Short Refinance	*0*	*55,000,000*	*0*	*55,000,000*
2. Cumulative losses from securities	0	0	0	0
3. Cumulative losses from non-single family	0	218,003,370	0	218,003,370
4. Total cumulative losses at beginning of period **(1+2+3)**	0	1,134,070,560	0	1,134,070,560
5. Covered losses (gains) from single family incurred during period **(5a+5b)**	0	62,912,074	0	62,912,074
5a. Covered losses (gains) from single family during period (excluding Short Refinance losses)	*0*	*57,912,074*	*0*	*57,912,074*
5b. Covered losses (gains) from Short Refinance during period	*0*	*5,000,000*	*0*	*5,000,000*
6. Cumulative loss at the end of the period **(4+5)**	0	1,196,982,633	0	1,196,982,633
7. Single Family losses (gains) payable at end of period **(5a)**	0	57,912,074	0	57,912,074
FDIC % Share	x 0%	x 80%	x 95%	
8. Amount claimed and due this period from single family loss **(6*FDIC %)**	0	46,329,659	0	46,329,659
9. Short Refinance - 18 month deferred payment due this period	0	0	0	0
10. Amount Due from (to) FDIC (8+9)	**0**+	**46,329,659**+	**0**=	**46,329,659**
Memo: Threshold for recovery percentage		*4,000,000,000*		
Memo: Amount due for Short Refinance in 18 months ***(5b * FDIC %)***		*4,000,000*		*4,000,000*

Preparer Name: ______________________

Preparer Title: Preparer Signature

Officer Name: ______________________

Officer Title: Officer Signature

Date:

EXHIBIT B
CERTIFICATE
MONTHLY PAYMENT SUMMARY
FOR SINGLE FAMILY SHARED-LOSS

FDIC – RECEIVER OF BankUnited, FSB

SAMPLE CERTIFICATE ONLY

PURCHASE AND ASSUMPTION AGREEMENT DATED: May 21, 2009
Shared-Loss Period Ended:

Dollars

PART A. Opening/Closing/Net Shared-Loss Asset Balances - Active loans			**Number**	**Balance**
1.	Opening Balance (total UPB outstanding)		34,566	7,866,907,507
2.	Add: HELOC Advances			3,116,698
3.	Add: Capitalization (from restructuring, forbearance plans, etc)			2,366,323
4.	Less:	a) Principal Collections (amortization/partial)		12,813,515
		b) Paid in Full	(142)	23,419,114
		c) Foreclosure Sales (UBP transferred to ORE)	(206)	61,141,097
		d) Short Sales	(100)	33,026,197
		e) Principal Reduction		0
		f) Qualifying Charge-Offs (excluding accrued interest)	(19)	4,577,725
		g) Loan Sales	0	0
		h) Short Refinance	0	0
5.	Add: Other Adjustments (net)		9	3,756,338
6.	Net (Reduction)/Increase Amount		(458)	(125,738,290)
7.	Closing Balance		**34,108**	**7,741,169,217**

PART B. Opening/Closing/Net Shared-Loss Asset Balances - ORE activity		**Number**	**Balance**
8.	Opening ORE Balance	971	307,057,628
9.	Add: New ORE	206	61,141,097
10.	Less: Sold ORE (& Correction for Active SFR)	183	56,580,566
11.	Closing Balance	994	311,618,159

PART:C. Loss Events and Charge-offs			**Number**	**Balance**
12.	Opening Cumulative Loss Balance (SFR only)		6,116	916,067,190
	12a. Opening Cumulative Short Refinance Loss Amount		355	55,000,000
13.	Add:	a) Foreclosure Sale Loss Amount	180	33,886,988
		b) Short Sale Loss Amount	100	18,441,743
		c) Restructuring Loss Amount	167	8,608,099
		d) Charge-Off Loss Amount	22	4,669,917
		e) Deferred Principal Reduction Loss Amount		
		f) Short Refinance Loss Amount	35	5,000,000
14.	Add: Qualifying Loss on Loan Sale			
15.	Less: Recoveries and Other Adjustments (net)			7,694,673
16.	Less: FDIC Adjustment (net)			0
17.	Shared-Loss Debit (Credit) Amount for Period (excluding Short Refi)		469	57,912,074
18.	Cumulative Shared-Loss Debit (Credit) Amount		6,620	978,979,263

EXHIBIT B
CERTIFICATE
MONTHLY PAYMENT SUMMARY
FOR SINGLE FAMILY SHARED-LOSS

FDIC - RECEIVER OF BankUnited, FSB

SAMPLE CERTIFICATE ONLY

PURCHASE AND ASSUMPTION AGREEMENT DATED: May 21, 2009

BankUnited
Single Family Loans
Fund ID: 10061

20100831
7,618,203,092.65
(Dollars)

Loans Secured by 1-4 Family Residential Property

Secured by First Lien

	Number	Balance
Current	19697	4,665,770,035.56
30-59 Days	990	272,166,986.59
60-89 Days	377	110,259,295.60
90-119 Days	212	72,511,518.61
120+ Days	506	160,251,352.39
Bankruptcy (Non FC)	508	174,634,860.33
In FC	5590	1,724,239,412.39
Total	*27,880*	*$ 7,179,833,461*

Secured by Second Lien

	Number	Balance
Current	5375	389,839,928.63
39-59 Days	56	4,189,139.47
60-89 Days	33	4,527,722.62
90-119 Days	31	3,789,830.24
120+ Days	102	14,980,927.66
Bankruptcy (Non FC)	33	3,113,236.82
In FC	136	17,928,845.74
Total	*5,766*	*$ 438,369,631*

Loans Secured by 1-4 Family Residential Property in Process of Restructuring

Secured by First Lien

	Number	Balance
Current	310	91,219,271.27
39-59 Days	127	37,037,807.81
60-89 Days	62	20,804,903.35
90-119 Days	45	14,225,190.47
120+ Days	295	93,092,534.82
Bankruptcy (Non FC)	27	9,905,351.71
In FC	239	79,922,263.10
Total	*1,105*	*$ 346,207,323*

Secured by Second Lien

	Number	Balance
Current	0	$ —
39-59 Days	0	$ —
60-89 Days	0	$ —
90-119 Days	0	$ —
120+ Days	0	$ —
Bankruptcy (Non FC)	0	$ —
In FC	0	$ —
Total	*0*	

Loans Secured by 1-4 Family Residential Property Being Considered for a Short Refinance

Secured by First Lien

	Number	Balance
Current	310	91,219,271.27
39-59 Days	127	37,037,807.81
60-89 Days	62	20,804,903.35
90-119 Days	45	14,225,190.47
120+ Days	295	93,092,534.52
Bankruptcy (Non FC)	27	9,905,351.71
In FC	239	79,922,263.10
Total	*1,105*	*$ 346,207,323*

Secured by Second Lien

	Number	Balance
Current	0	$ —
39-59 Days	0	$ —
60-89 Days	0	$ —
90-119 Days	0	$ —

120+ Days	0	$ —
Bankruptcy (Non FC)	0	$ —
In FC	0	$ —
Total	*0*	*$ —*

Loans Secured by 1-4 Family Residential Property in Process of a Short Refinance

Secured by First Lien

	Number	Balance
Current	310	91,219,271.27
30-59 Days	127	37,037,807.81
60-89 Days	62	20,804,903.35
90-119 Days	45	14,225,190.47
120+ Days	295	93,092,534.82
Bankruptcy (Non FC)	27	9,905,351.71
In FC	239	79,922,263.10
Total	*1,105*	*$ 346,207,323*

Secured by Second Lien

	Number	Balance
Current	0	$ —
39-59 Days	0	$ —
60-89 Days	0	$ —
90-119 Days	0	$ —
120+ Days	0	$ —
Bankruptcy (Non FC)	0	$ —
In FC	0	$ —
Total	*0*	*$ —*

EXHIBIT B
CERTIFICATE
MONTHLY PAYMENT SUMMARY
FOR SINGLE FAMILY SHARED-LOSS

FDIC - RECEIVER OF BankUnited, FSB

SAMPLE CERTIFICATE ONLY

BankUnited
Fund ID: 10061
SFR Short Refinance Pay Schedule

PURCHASE AND ASSUMPTION AGREEMENT DATED: May 21, 2009

Shared Loss Period Ended	Loss Amount	Payment Due Shared Loss Period Ending	Amount Due
Oct-10	$ 5,000,000.00	Mar-12	$ 4,000,000.00
Nov-10		Apr-12	
Dec-10		May-12	
Jan-11		Jun-12	
Feb-11		Jul-12	
Mar-11		Aug-12	
Apr-11		Sep-12	
May-11		Oct-12	
Jun-11		Nov-12	
Jul-11		Dec-12	
Aug-11		Jan-13	
Sep-11		Feb-13	
Oct-11		Mar-13	
Nov-11		Apr-13	
Dec-11		May-13	
Jan-12		Jun-13	
Feb-12		Jul-13	
Mar-12		Aug-13	
Apr-12		Sep-13	

May-12			Oct-13		
Jun-12			Nov-13		
Jul-12			Dec-13		
Aug-12			Jan-14		
Sep-12			Feb-14		
Oct-12			Mar-14		
Nov-12			Apr-14		
Dec-12			May-14		
Jan-13			Jun-14		
Feb-13			Jul-14		
Mar-13			Aug-14		
Apr-13			Sep-14		
May-13			Oct-14		
Jun-13			Nov-14		
Jul-13			Dec-14		
Total:	**$**	**5,000,000.00**		**$**	**4,000,000.00**

Exhibit 3.1

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

BANKUNITED, INC.

The undersigned, John A. Kanas, certifies that he is the Chairman, President and Chief Executive Officer of BankUnited, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), and does hereby further certify as follows:

(1) The name of the Corporation is BankUnited, Inc.

(2) The name under which the Corporation was originally incorporated was JAK InterCo, Inc. and the original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on April 28, 2009. The original Certificate of Incorporation was amended on May 21, 2009, November 12, 2009, October 22, 2010 and January [ ], 2011, in each case by filing a certificate of amendment with the Secretary of State of the State of Delaware (collectively, the "Original Certificate of Incorporation"). Pursuant to the certificate of amendment filed on October 22, 2010, the Corporation changed its name to BankUnited, Inc.

(3) This Amended and Restated Certificate of Incorporation was duly adopted by the Board of Directors of the Corporation (the "Board of Directors") in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL"). In lieu of a meeting, the Corporation's sole stockholder has, by unanimous written consent dated January [ ], 2011 approved the amendment and restatement of the Original Certificate of Incorporation as set forth herein in accordance with the provisions of Section 228 of the DGCL, and such consent has been filed with the minutes of the proceedings of stockholders of the Corporation.

(4) This Amended and Restated Certificate of Incorporation restates and integrates and further amends the Original Certificate of Incorporation, as heretofore amended or supplemented.

The text of the Original Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

FIRST: The name of the Corporation is BankUnited, Inc. (hereinafter, the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at that address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

FOURTH:

(a) Authorized Capital Stock. The total number of shares of stock which the Corporation shall have authority to issue is 500,000,000 of which the Corporation shall have authority to issue 400,000,000 shares of common stock, each having a par value of one cent per share ($0.01) (the "Common Stock"), and 100,000,000 shares of preferred stock, each having a par value of one cent per share ($0.01) (the "Preferred Stock").

(b) Common Stock. The powers, preferences and rights, and the qualifications, limitations and restrictions, of the Common Stock are as follows:

(1) Each holder of record of shares of Common Stock shall be entitled to one vote for each share of Common Stock held on all matters submitted to a vote of stockholders of the Corporation on which holders of Common Stock are entitled to vote.

(2) The holders of shares of Common Stock shall not have cumulative voting rights (as defined in Section 214 of the DGCL).

(3) Subject to the rights of the holders of Preferred Stock, and subject to any other provisions of this Amended and Restated

---

Certificate of Incorporation, as it may be amended from time to time, holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, stock or property of the Corporation if, as and when declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor.

(4) In the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, after payment or provision for the payment of the debt and liabilities of the Corporation and subject to the prior payment in full of the preferential amounts, if any, to which any series of Preferred Stock may be entitled, the holders of shares of Common Stock shall be entitled to receive the assets and funds of the Corporation remaining for distribution in proportion to the number of shares held by them, respectively.

(5) No holder of shares of Common Stock shall be entitled to preemptive or subscription rights.

(c) Preferred Stock. The Board of Directors is expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more classes or series, and to fix for each such class or series such voting powers, full or limited, or no voting powers, and such distinctive designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors pr oviding for the issuance of such class or series and as may be permitted by the DGCL, including, without limitation, the authority to provide that any such class or series may be (i) subject to redemption at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes of stock or any other series of stock; (iii) entitled to such rights upon any liquidation, dissolution or winding-up, whether voluntary or involuntary, of the Corporation; or (iv) convertible into, or exchangeable for, shares of any other class or classes of stock, or shares of any other series of the same class of stock, of the Corporation at such price or prices or at such

rates of exchange and with such adjustments; all as may be stated in such resolution or resolutions.

(d) Power to Sell and Purchase Shares. Subject to the requirements of applicable law, the Corporation shall have the power to issue and sell all or any part of any shares of any class of stock herein or hereafter authorized to such persons, and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not greater consideration could be received upon the issue or sale of the same number of shares of another class or of shares of another series of such class, and as otherwise permitted by la w. Subject to the requirements of applicable law, the Corporation shall have the power to purchase any shares of any class of stock herein or hereafter authorized from such persons, and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not less consideration could be paid upon the purchase of the same number of shares of another class or of shares of another series of such class, and as otherwise permitted by law.

FIFTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

(a) The business and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors. In addition to the powers and authority expressly conferred upon the Board of Directors by applicable law, this Amended and Restated Certificate of Incorporation or the Amended and Restated By-Laws of the Corporation (as amended from time to time, the "By-Laws"), the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the DGCL and this Amended and Restated Certific ate of Incorporation.

(b) The number of directors of the Corporation shall be fixed from time to time exclusively by resolution of the Board of Directors.

(c) Subject to the terms of any one or more classes or series of Preferred Stock then outstanding, any vacancy on the Board of Directors that results from an increase in the number of directors may be filled by a majority of the Board of Directors then in office, provided that a quorum is present, and any other vacancy occurring on the Board of Directors may be filled by a majority of the Board of Directors then in office, even if less than a quorum, or by a sole remaining director. The right of stockholders to fill vacancies on the Board of Directors is hereby specifically denied. Any di rector elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor.

(d) Except as otherwise required by applicable law and subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, any director or the entire Board of Directors may be removed from office at any time, but only for cause, and only by the affirmative vote of the holders of shares representing a majority of the votes entitled to be cast by the shares of the then outstanding capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock").

(e) Notwithstanding the foregoing, the election, term, removal and filling of vacancies with respect to directors, if any, elected separately by the holders of one or more classes or series of Preferred Stock shall not be governed by this Article FIFTH, but rather shall be as provided for in the resolutions adopted by the Board of Directors creating and establishing such class or series of Preferred Stock.

(f) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the Board of Directors is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the DGCL and this Amended and Restated Certificate of Incorporation and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

SIXTH: No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of any fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL. If the DGCL is amended hereafter to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent authorized by the DGCL, as so amended. Any repeal or modification of this Article SIXTH shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

SEVENTH. The Corporation shall indemnify any person that is or was a director or officer (and any person that is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation (or such other corporation, partnership, joint venture, trust or other enterprise) and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The right to indemnification conferred by this Article SEVENTH shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition.

The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article SEVENTH.

The rights to indemnification and to the advance of expenses conferred in this Article SEVENTH shall not be exclusive of any other right which any person may have or hereafter acquire under this Amended and Restated Certificate of Incorporation, the By-Laws of the Corporation, any statute or other law, by agreement, vote of stockholders or approval of the directors of the Corporation or otherwise.

Any repeal or modification of this Article SEVENTH shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

EIGHTH. Any action required or permitted to be taken by the stockholders of the Corporation may be effected only at a duly called annual or special meeting of the stockholders of the Corporation. The ability of stockholders of the Corporation to consent in writing to the taking of any action is hereby specifically denied.

NINTH. Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

TENTH. Except as otherwise required by law, special meetings of stockholders of the Corporation for any purpose or purposes may be called at any time only by (i) the Chief Executive Officer or the President of the Corporation, (ii) the Board of Directors pursuant to a resolution duly adopted by a majority of the total number of authorized directors then in office which states the purpose or purposes thereof, or (iii) any stockholder or stockholders who beneficially own twenty-five percent (25%) or more of the votes entitled to be cast by the Voting Stock. Other than as set forth in clause (iii) of the preceding sentence, any power of the stockholders to call a special meeting of stockholders is hereby specifically denied. No business other than that stated in the notice of such meeting (or any amendment or supplement thereto), which notice, in the case of a special meeting called by a stockholder or stockholders shall include all business requested by such stockholder or stockholders to be transacted at such meeting, shall be transacted at any special meeting.

ELEVENTH. The Corporation expressly elects not to be governed by Section 203 of the DGCL.

TWELFTH. In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, the Board of Directors shall have the power without the assent or vote of the stockholders to adopt, amend, alter or repeal the By-Laws of the Corporation. The affirmative vote of at least a

majority of the Board of Directors shall be required to adopt, amend, alter or repeal the By-Laws of the Corporation. The Corporation's By-Laws also may be adopted, amended, altered or repealed by the affirmative vote of the holders of a majority of the votes entitled to be cast by the shares of outstanding capital stock entitled to vote thereon; provided, however, no such repeal or modification of Article VIII of the Corporation's By-Laws may adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

THIRTEENTH. To the fullest extent permitted by applicable law (including, without limitation, Section 122(17) of the DGCL (or any successor provision)), the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to any of the Equity Sponsors or any of their affiliates (other than the Corporation and its subsidiaries) or to any of the directors or officers of the Corporation, even if such opportunity is of a character that, if referred or presented to the Corporation or any subsidiary thereof, could be taken by the Corporation or any subsidiary thereof, and, except as set forth in the exception at the end of this sentence, even if the opp ortunity is presented to any such person in part or in whole in his, her or its capacity as such stockholder, affiliate, director or officer of the Corporation, and none of the foregoing persons shall (i) have any duty to communicate or offer such corporate opportunity to the Corporation, or (ii) to the fullest extent permitted by law, be liable to the Corporation or any of its subsidiaries for breach of any fiduciary or other duty, as a director or officer or otherwise, in each case, by reason of the fact that such person pursues or acquires such business opportunity for its own account (individually or as a partner, shareholder, member, participant or fiduciary), directs such business opportunity to another person or fails to present such business opportunity, or information regarding such business opportunity, to the Corporation or its subsidiaries unless, in the case of any such person who is a director or officer of the Corporation, such business opportunity is expressly offered to such direct or or officer in writing solely in his or her capacity as a director or officer of the Corporation. Any person purchasing or otherwise acquiring any interest in any shares of stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article THIRTEENTH. Neither the alteration, amendment or repeal of this Article THIRTEENTH nor the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article THIRTEENTH shall eliminate or reduce the effect of this Article THIRTEENTH in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article

THIRTEENTH, would accrue or arise, prior to such alteration, amendment, repeal or adoption. The term "the Equity Sponsors" shall mean each of WLR Recovery Fund IV, L.P., WLR IV Parallel ESC, L.P., WLR/GS Master Co-Investment, L.P., Carlyle Partners V, L.P., Carlyle Partners V-A, L.P., CP V Coinvestment A, L.P., CP V Coinvestment B, L.P., Carlyle Strategic Partners II, L.P., CSP II Co-Investment, L.P., Carlyle Financial Services BU, L.P., Centerbridge Capital Partners, L.P., Centerbridge Capital Partners SBS, L.P., Centerbridge Capital Partners Strategic, L.P., CB BU Investors, L.L.C., CB BU Investors II, L.L.C., CB BU Investors III, L.L.C., Blackstone Capital Partners V L.P., Blackstone Capital Partners V-AC L.P., Blackstone Family Investment Partnership V L.P. and Blackstone Participa tion Partnership V L.P. and their respective affiliates and subsidiaries (other than the Corporation and its subsidiaries).

FOURTEENTH. If any provision or provisions of this Amended and Restated Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of this Amended and Restated Certificate of Incorporation (including, wi thout limitation, each such portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law).

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed on its behalf this day of , 2011.

BANKUNITED, INC.

By: ______________________________
Name: John A. Kanas
Title: Chairman, President and Chief Executive Officer

Exhibit 3.2

AMENDED AND RESTATED BY-LAWS

OF

BANKUNITED, INC.

A Delaware Corporation

Effective , 2011

TABLE OF CONTENTS

ARTICLE V

STOCK

ARTICLE VI

NOTICES

ARTICLE VII

GENERAL PROVISIONS

ARTICLE VIII

INDEMNIFICATION

ARTICLE IX

AMENDMENTS

AMENDED AND RESTATED BY-LAWS

OF

BANKUNITED, INC.

(hereinafter called the "Corporation")

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the Corporation shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 2. Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that a meeting of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication in the manner authorized by the General Corporation Law of the State of Delaware (the "DGCL").

Section 2. Annual Meetings. The Annual Meeting of Stockholders (the "Annual Meeting") for the election of directors shall be held on such date and at such time as

shall be designated from time to time by the Board of Directors. Any other proper business may be transacted at the Annual Meeting.

Section 3. Special Meetings. Unless otherwise required by law, Special Meetings of Stockholders (a "Special Meeting"), for any purpose or purposes, shall be called in the manner provided by the Amended and Restated Certificate of Incorporation of the Corporation, as may be amended and restated from time to time (the "Certificate of Incorporation"). At a Special Meeting, only such business shall be conducted as shall be specified in the notice of meeting (or any amendment or supplement thereto), which notice, in the case of a Special Meeting called by a Stockholder or Stockholders, shall include all business requested by such Stockholder or Stockholders to be transacted at such S pecial Meeting.

Section 4. Nature of Business at Meetings of Stockholders. Only such business (other than nominations for election to the Board of Directors, which must comply with the provisions of Section 5 of this Article II) may be transacted at an Annual Meeting as is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the Annual Meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the Annual Meeting by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Sectio n 4 of this Article II and on the record date for the determination of stockholders entitled to notice of and to vote at such Annual Meeting and (ii) who complies with the notice procedures set forth in this Section 4 of this Article II.

In addition to any other applicable requirements, for business to be properly brought before an Annual Meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation, (the "Secretary").

To be timely, a stockholder's notice to the Secretary must be delivered to or be mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding Annual Meeting; provided, however, that in the event that the Annual Meeting is called for a date that is not within twenty-five (25) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the Annual Meeting was mailed or such public disclosure of the date of the Annual Meeting was made, whichever first occurs. In no event shall the adjournment or postponement of an Annual Meeting, or the public announcement of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

To be in proper written form, a stockholder's notice to the Secretary must set forth the following information: (a) as to each matter such stockholder proposes to bring before the Annual Meeting, a brief description of the business desired to be brought before the Annual Meeting and the reasons for conducting such business at the Annual Meeting, and (b) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is being made, (i) the name and record address of such person, (ii) (A) the class or series and number of all shares of stock of the Corporation which are owned beneficially or of record by such person and any affiliates or associates of such person, (B) the name of each nominee holder

of shares of all stock of the Corporation owned beneficially but not of record by such person or any affiliates or associates of such person, and the number of such shares of stock of the Corporation held by each such nominee holder, (C) whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to stock of the Corporation and (D) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such person , the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for, such person, or any affiliates or associates of such person, or to increase or decrease the voting power or pecuniary or economic interest of such person, or any affiliates or associates of such person, with respect to stock of the Corporation, (iii) a description of all agreements, arrangements, or understandings (whether written or oral) between or among such person, or any affiliates or associates of such person, and any other person or persons (including their names) in connection with the proposal of such business and any material interest of such person or any affiliates or associates of such person, in such business, including any anticipated benefit therefrom to such person, or any affiliates or associates of such person, (iv) a representation that the stockholder giving notice intends to appear in person or by proxy at the Annual Meeting to bring such business before the meeting, and (v) any other information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies by such person with respect to the proposed business to be brought by such person before the Annual Meeting pursuant to Section 14 of the Securities

Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder.

A stockholder providing notice of business proposed to be brought before an Annual Meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 4 of this Article II shall be true and correct as of the record date for determining the stockholders entitled to receive notice of the Annual Meeting and such update and supplement shall be delivered to or be mailed and received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for determining the stockholders entitled to receive notice of the Annual Meeting.

No business shall be conducted at the Annual Meeting except business brought before the Annual Meeting in accordance with the procedures set forth in this Section 4 of this Article II; provided, however, that, once business has been properly brought before the Annual Meeting in accordance with such procedures, nothing in this Section 4 of this Article II shall be deemed to preclude discussion by any stockholder of any such business. If the chairman of an Annual Meeting determines that business was not properly brought before the Annual Meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

Nothing contained in this Section 4 of this Article II shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act (or any successor provision of law).

Section 5. Nomination of Directors. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the

Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board of Directors may be made at any Annual Meeting, or at any Special Meeting called for the purpose of electing directors, in either case, (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 5 of this Article II and on the record date for the determination of stockholders entitled to notice of and to vote at such Annual Meeting or Special Meeting and (ii) who complies with the notice procedures set forth i n this Section 5 of this Article II.

In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary.

To be timely, a stockholder's notice to the Secretary must be delivered to or be mailed and received at the principal executive offices of the Corporation (a) in the case of an Annual Meeting, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding Annual Meeting; provided, however, that in the event that the Annual Meeting is called for a date that is not within twenty-five (25) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the Annual Meeting was mailed or such public disclosure of the date of the Annual Meeting was made, whichever first occurs; and (b) in the case of a Special Meeting called for the purpose of electing directors, not later than the close of business on the

tenth (10th) day following the day on which notice of the date of the Special Meeting was mailed or public disclosure of the date of the Special Meeting was made, whichever first occurs. In no event shall the adjournment or postponement of an Annual Meeting or a Special Meeting called for the purpose of electing directors, or the public announcement of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

To be in proper written form, a stockholder's notice to the Secretary must set forth the following information: (a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of such person, (ii) the principal occupation or employment of such person, (iii) (A) the class or series and number of all shares of stock of the Corporation which are owned beneficially or of record by such person and any affiliates or associates of such person, (B) the name of each nominee holder of shares of all stock of the Corporation owned beneficially but not of record by such person or any affiliates or associates of such person, and the number of such shares of stock of the Corporation held by each such nominee holder, (C) whether and the extent to which any derivative instrument, swap, o ption, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to stock of the Corporation and (D) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for, such person, or any affiliates or associates of such person, or to increase or decrease the voting power or pecuniary or economic interest of such person, or any affiliates or associates of such person, with respect to stock of the Corporation, and (iv) any other information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder; and (b) as to the stockholder giving the notice, and the beneficial owner, if any, on whose behalf the nomination is being made, (i) the name and record address of such person, (ii) (A) the class or series and number of all shares of stock of the Corporation which are owned beneficially or of record by such person and any affiliates or associates of such person, (B) the name of each nominee holder of shares of all stock of the Corporation owned beneficially but not of record by such person or any affiliates or associates of such person, and the number of such shares of stock of the Corporation held by each such nominee holder, (C) whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to stock of the Corporation and (D) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for, such person, or any affiliates or associates of such person, or to increase or decrease the voting power or pecuniary or economic interest of such person, or any affiliates or associates of such person, with respect to stock of the Corporation, (iii) a description of all agreements, arrangements, or understandings (whether written or oral) between or among such person, or any affiliates or

associates of such person, and any proposed nominee or any other person or persons (including their names) pursuant to which the nomination(s) are being made by such person, and any material interest of such person, or any affiliates or associates of such person, in such nomination, including any anticipated benefit therefrom to such person, or any affiliates or associates of such person, (iv) a representation that the stockholder giving notice intends to appear in person or by proxy at the Annual Meeting or Special Meeting to nominate the persons named in its notice, and (v) any other information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. 0; Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

A stockholder providing notice of any nomination proposed to be made at an Annual Meeting or Special Meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 5 of this Article II shall be true and correct as of the record date for determining the stockholders entitled to receive notice of the Annual Meeting or Special Meeting, and such update and supplement shall be delivered to or be mailed and received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for determining the stockholders entitled to receive notice of such Annual Meeting or Special Meeting.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 5 of this Article II. If the chairman of the meeting determines that a nomination was not made in accordance with the

foregoing procedures, the chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

Notwithstanding any provision of this Section 5 of this Article II to the contrary, a nomination of persons for election to the Board of Directors may be submitted for inclusion in the Corporation's proxy materials pursuant to the final rules adopted by the Securities and Exchange Commission (the "SEC") providing for such nominations and inclusion ("final proxy access rules"), and, if such nomination is submitted under the final proxy access rules, such submission (a) in order to be timely, must be delivered to, or be mailed and received by, the Secretary at the principal executive offices of the Corporation no later than 120 calendar days before the date that the Corporation mailed (or otherwise disseminated) its proxy materials for the prior year's Annual Meeting (or such other date as may be set forth in the final proxy access rules for companies without advance notice bylaws); (b) in all other respects, must be made pursuant to, and in accordance with, the terms of the final proxy access rules, as in effect at the time of the nomination, or any successor rules or regulations of the SEC then in effect; and (c) must provide the Corporation with any other information required by this Section 5 of this Article II for nominations not made under the final proxy access rules except to the extent that requiring such information to be furnished is prohibited by the final proxy access rules. The provisions of this paragraph of this Section 5 of this Article II do not provide stockholders of the Corporation with any rights, nor impose upon the Corporation any obligations, other than the rights and obligations set forth in the final proxy access rules.

Notwithstanding anything to the contrary contained in these By-Laws, nothing contained in this Section 5 of this Article II or in any other provision of these By-laws shall affect or impair any rights of any persons party to the Director Nomination Agreement dated

January [·], 2011 by and among the Corporation and the stockholders party thereto (as such agreement may be amended, supplemented, modified or replaced from time to time, the "Nomination Agreement") to have any person designated by such person to be a nominee for election to the board of directors to have such nominee included in the Corporation's proxy statement.

Section 6. Notice. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and, in the case of a Special Meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to notice of and to vote at such meeting.

Section 7. Adjournments. Any meeting of the stockholders may be adjourned from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place, if any, thereof and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if, after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting in accordance with the requirements of Section 6 hereof shall be given to each stockholder of record entitled to notice of and to vote at the meeting.

Section 8. Quorum. Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 7 hereof, until a quorum shall be present o r represented.

Section 9. Voting. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, or permitted by the rules of any stock exchange on which the Corporation's shares are listed and traded, any question brought before any meeting of the stockholders, other than the election of directors, shall be decided by the vote of the holders of a majority of the total number of votes of the Corporation's capital stock represented at the meeting and entitled to vote on such question, voting as a single class. Unless otherwise provided in the Certificate of Incorporation, and subject to Section 12 of this Article II, each stockholder represented at a meeting of the stockholders shall be entitled to cast one (1) vote for each share of the capital stock entitled to vote thereat held by such stockholder. Such votes may be cast in person or by proxy as provided in Section 10 of this Article II. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of the stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 10. Proxies. Each stockholder entitled to vote at a meeting of the stockholders or to express consent or dissent to corporate action in writing without a meeting

may authorize another person or persons to act for such stockholder as proxy, but no such proxy shall be voted upon after three years from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors,

such other persons making that determination shall specify the information on which they relied.

Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided, however, that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 11. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be

open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 12. Record Date.

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of the stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of o r to vote at a meeting of the stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 13. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 11 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of the stockholders.

Section 14. Conduct of Meetings. The Board of Directors may adopt by resolution such rules and regulations for the conduct of any meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as

adopted by the Board of Directors, the chairman of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and con stituted proxies or such other persons as the chairman of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants.

Section 15. Inspectors of Election. In advance of any meeting of the stockholders, the Board of Directors, by resolution, the Chairman of the Board of Directors (the "Chairman") or the President shall appoint one or more inspectors to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of the stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by applicable law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithful ly to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the

duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by applicable law.

Section 16. No Consent of Stockholders in Lieu of Meeting. Any action required or permitted to be taken at any Annual or Special Meeting of the stockholders of the Corporation may be taken only upon the vote of the stockholders at an Annual or Special Meeting duly called and may not be taken by written consent of stockholders.

ARTICLE III

DIRECTORS

Section 1. Number and Election of Directors. The Board of Directors shall consist of the number of directors as set forth in, or as determined pursuant to, the Certificate of Incorporation. Except as provided in Certificate of Incorporation, directors shall be elected by a plurality of the votes cast at each Annual Meeting and each director so elected shall hold office until the next Annual Meeting and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal. Directors need not be stockholders.

Section 2. Vacancies. Any vacancy in the Board of Directors, however resulting, may be filled only in the manner provided in, and only to the extent permitted under, the Certificate of Incorporation.

Section 3. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation required to be exercised or done by the stockholders.

Section 4. Meetings. The Board of Directors and any committee thereof may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors or any committee thereof may be held without notice (provided that a schedule of meetings referencing the time and place of such meeting shall have been delivered to the Board of Directors not less than three business days prior to such regular meeting) at such time and at such place as may from time to time be determined by the Board of Directors or such committee, respectively. Special meetings of the Board of Directors may be called by the Chairman, if there be one, the President, a majority of the directors then serving on the Board of Directors or a number of directors designated for nomination pursuant to the Nomination Agreement by Investor Stockholders (as defined therein) owning in the aggregate at least 25% of the outstanding common stock of the Corporation. Special meetings of any committee of the Board of Directors may be called by the chairman of such committee, if there be one, the President, or any director serving on such committee. Notice thereof stating the place, date and hour of the meeting shall be given to each director (or, in the case of a committee, to each member of such committee) either by mail not less than forty-eight (48) hours before the date of the meeting, or by telephone, telegram or electronic means on at least twenty-four (24) hours' notice.

Section 5. Organization. At each meeting of the Board of Directors or any committee thereof, the Chairman or the chairman of such committee, as the case may be, or, in his or her absence or if there be none, a director chosen by a majority of the directors present, shall act as chairman. Except as provided below, the Secretary shall act as secretary at each meeting of the Board of Directors and of each committee thereof. In case the Secretary shall be absent from any meeting of the Board of Directors or of any committee thereof, an Assistant

Secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary and all the Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting. Notwithstanding the foregoing, the members of each committee of the Board of Directors may appoint any person to act as secretary of any meeting of such committee and the Secretary or any Assistant Secretary of the Corporation may, but need not if such committee so elects, serve in such capacity.

Section 6. Resignations and Removals of Directors. Any director of the Corporation may resign from the Board of Directors or any committee thereof at any time, by giving notice in writing or by electronic transmission to the Chairman, if there be one, the President or the Secretary and, in the case of a committee, to the chairman of such committee, if there be one. Such resignation shall take effect at the time therein specified or, if no time is specified, immediately; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Any director may be removed only in the manner provided in, and only to the extent permitted under, the Certificate of Incorporation. Any director serving on a committee of the Board of Dir ectors may be removed from such committee at any time by the Board of Directors.

Section 7. Quorum. Except as otherwise required by law, or the Certificate of Incorporation or the rules and regulations of any securities exchange or quotation system on which the Corporation's securities are listed or quoted for trading, at all meetings of the Board of Directors or any committee thereof, a majority of the entire Board of Directors or a majority of the directors constituting such committee, as the case may be, shall constitute a quorum for the transaction of business and the act of a majority of the directors or committee members present at any meeting at which there is a quorum shall be the act of the Board of Directors or such

committee, as applicable. If a quorum shall not be present at any meeting of the Board of Directors or any committee thereof, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

Section 8. Actions of the Board by Written Consent. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting, if all the members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 9. Meetings by Means of Conference Telephone. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 9 of Article III shall constitute presence in person at such meeting.

Section 10. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each member of a committee must meet the requirements for membership, if any, imposed by applicable law and the rules and regulations of any securities exchange or quotation system on

which the securities of the Corporation are listed or quoted for trading. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. Subject to the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading, in the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another qualified member of the Board of Directors to act at the meeting in the place of any absent or disqualified member . Any committee, to the extent permitted by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Each committee shall keep regular minutes and report to the Board of Directors when required.

Section 11. Compensation. The directors shall be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary for service as director, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for service as committee members.

Section 12. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE IV

OFFICERS

Section 1. General. The officers of the Corporation shall be chosen by the Board of Directors and shall be a President, a Secretary and a Treasurer. The Board of Directors, in its discretion, also may choose a Chairman (who must be a director) and one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices

may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-Laws. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman, need such officers be directors of the Corporation.

Section 2. Election. The Board of Directors, at its first meeting held after each Annual Meeting, shall elect the officers of the Corporation who shall hold such titles and their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer of the Corporation, including any officer elected by the Board of Directors, may be removed at any time by the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corpor ation shall be fixed by the Board of Directors.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President or any other officer, in each case to the extent authorized to do so by the Board of Directors and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner the reof, the Corporation

might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. Chairman of the Board of Directors. The Chairman, if there be one, shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman shall be the President of the Corporation, unless the Board of Directors designates another director to serve as the Chairman, and, except where by law the signature of the President is required, the Chairman shall possess the same power as the President to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board of Directors. During the absence or disability of the President, the Chairman shall exercise all the powers and discharge all the duties of the President. The Chairman shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these By-Laws or by the Board of Directors.

Section 5. President. The President shall, subject to the control of the Board of Directors and, if there be one, the Chairman, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these By-Laws, the Board of Directors or the President. In the absence or disability of the Chairman, or if there be none, the President shall preside at all meetings of the stockholders and, provided the President is also a director, the Board of Directors. If there be no Chairman, or if the Board of Directors shall otherwise designate, the President shall be the Chief Executive Officer of the Corporation and

references herein to the "President" shall be deemed to refer to the Chief Executive Officer of the Corporation. The President shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these By-Laws or by the Board of Directors.

Section 6. Vice Presidents. At the request of the President or in the President's absence or in the event of the President's inability or refusal to act (and if there be no Chairman), the Vice President, or the Vice Presidents if there are more than one (in the order designated by the Board of Directors), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. If there be no Chairman and no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or re fusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 7. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman or the President, under whose supervision the Secretary shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings

of the Board of Directors, and if there be no Assistant Secretary, then either the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 8. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, th e Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of the Treasurer and for the restoration to the Corporation, in case of the Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Treasurer's possession or under the Treasurer's control belonging to the Corporation.

Section 9. Assistant Secretaries. Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of the Secretary's inability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 10. Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of Assistant Treasurer and for the restorat ion to the Corporation, in case of the Assistant Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Assistant Treasurer's possession or under the Assistant Treasurer's control belonging to the Corporation.

Section 11. Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

ARTICLE V

STOCK

Section 1. Shares of Stock. The shares of capital stock of the Corporation shall be represented by a certificate, unless and until the Board of Directors adopts a resolution permitting shares to be uncertificated. Notwithstanding the adoption of any such resolution providing for uncertificated shares, every holder of capital stock of the Corporation theretofore represented by certificates and, upon request, every holder of uncertificated shares, shall be entitled to have a certificate for shares of capital stock of the Corporation signed by, or in the name of the Corporation by, the Chairman, or the President or any Executive Vice President, and by the Treasurer or an assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation representing the number of shares regi stered in certificate form.

Section 2. Signatures. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Board of Directors may direct a new certificate or uncertificated shares be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issuance of a new certificate or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate or uncertificated shares.

Section 4. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these By-Laws. Transfers of stock shall be made on the books of the Corporation and (a) in the case of certificated shares of stock, only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes or, (b) in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form; provided, however, that such surrender and endorsement, compliance or payment of taxes shall not be required in any case in which an officer of the Corporation shall determine to waive such requirement. With respect to certificated shares of stock, every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 5. Dividend Record Date. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of

Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6. Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 7. Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors.

ARTICLE VI

NOTICES

Section 1. Notices. Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders

given by the Corporation under applicable law, the Certificate of Incorporation or these By-Laws shall be effective if given by a form of electronic transmission if consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed to be revoked if (i) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices by the Corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given by electronic transmission, as describe d above, shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the person has consented to receive notice; (iii) in the case of notices to stockholders, if by a posting on an electronic network, together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) if by any other form of electronic transmission consented to by such person in advance, when directed to such person. Notice to directors or committee members may be given personally or by telegram, telex, cable or by means of electronic transmission.

Section 2. Waivers of Notice. Whenever any notice is required by applicable law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, or a waiver by electronic transmission by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a

person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not properly called or convened. Neither the business to be transacted at, nor the purpose of, any Annual or Special Meeting or any regular or special meeting of the directors or members of a committee of directors need be specified in any written waiver of notice unless so required by law, the Certificate of Incorporation or these By-Laws.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the requirements of the DGCL and the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting of the Board of Directors (or any action by written consent in lieu thereof in accordance with Section 8 of Article III hereof), and may be paid in cash, property or shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be January 1 to December 31 or as otherwise fixed by resolution of the Board of Directors.

Section 4. Corporate Seal. The corporate seal, if any, shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII

INDEMNIFICATION

Section 1. Power to Indemnify in Actions, Suits or Proceedings Other than Those by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, the Corporation shall, to the fullest extent permitted by applicable law, indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or ot her enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the

Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, the Corporation shall, to the fullest extent permitted by applicable law, indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually a nd reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in

view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 3. Authorization of Indemnification. Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 4. Good Faith Defined. For purposes of any determination under Section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable

cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 4 of Article VIII shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be.

Section 5. Indemnification by a Court. Notwithstanding any contrary determination in the specific case under Section 3 of this Article VIII, and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Section 1 or Section 2 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Neither a contrary determination in the specific case under Section 3 of this Article VIII nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5 shall be given to the Corporation promptly upon the filing of such

application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 6. Expenses Payable in Advance. Expenses (including attorneys' fees) incurred by a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

Section 7. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Section 1 and Section 2 of this Article VIII shall be made to the fullest extent permitted by law. The provisions of this Article&n bsp;VIII shall not be deemed to preclude the indemnification of any person who is not specified in Section 1 or Section 2 of this Article VIII but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

Section 8. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VIII.

Section 9. Certain Definitions. For purposes of this Article VIII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Articl e VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term "another enterprise" as used in this Article VIII shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article VIII, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VIII.

Section 10. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 11. Limitation on Indemnification. Notwithstanding anything contained in this Article VIII to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 5 of this Article VIII), the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors.

Section 12. Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VIII to directors and officers of the Corporation.

ARTICLE IX

AMENDMENTS

Section 1. Amendments. These By-Laws may be altered, amended or repealed, in whole or in part, or new By-Laws may be adopted by the stockholders or by the Board of Directors; provided, however, that notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such meeting of the stockholders or Board of Directors, as the case may be. All such amendments must be approved by either the holders of a majority of the outstanding capital stock entitled to vote thereon or by a majority of the Board of Directors then in office. Notwithstanding anything to the contrary contained in these By-Laws, any repeal or modification of Article VIII of these By-Laws shall not adversely affect any rights to indemnification and to the advancement of expenses of a director, officer, employee or other agent of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

Section 2. Entire Board of Directors. As used in this Article IX and in these By-Laws generally, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

Exhibit 4.1


02987

THIS SECURITY IS NOT A SAVINGS ACCOUNT OR DEPOSIT AND IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION

BKU

BankUnited

BankUnited, Inc.

ORGANIZED UNDER THE LAWS OF THE STATE OF DELAWARE

CERTIFICATE FOR SHARES OF COMMON STOCK

SEE REVERSE FOR CERTAIN DEFINITIONS

CUSIP 06652K 10 3

THIS CERTIFIES THAT

SPECIMEN

is the owner of

FULLY-PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK, PAR VALUE $.01 PER SHARE, OF

BANKUNITED, INC.

transferable on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this Certificate properly endorsed. This Certificate and the shares represented hereby are issued and shall be held subject to all of the provisions of the Amended and Restated Certificate of Incorporation and By-Laws of the Corporation, each as from time to time amended, to all of which the holder by acceptance hereof assents.

This Certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

WITNESS the facsimile Seal of the Corporation and the facsimile signatures of its duly authorized officers.

Dated:

SECRETARY

BANKUNITED, INC. CORPORATE SEAL 2010 DELAWARE

CHAIRMAN OF THE BOARD OF DIRECTORS

COUNTERSIGNED AND REGISTERED:
REGISTRAR AND TRANSFER COMPANY
(Cranford, NJ)
TRANSFER AGENT AND REGISTRAR

By

AUTHORIZED SIGNATURE

NOTICES

THE CORPORATION WILL FURNISH TO ANY SHAREHOLDER UPON REQUEST AND WITHOUT CHARGE A FULL STATEMENT OF THE DESIGNATIONS, PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS OF THE SHARES OF EACH CLASS AND SERIES AUTHORIZED TO BE ISSUED, THE VARIATIONS IN THE RELATIVE RIGHTS AND PREFERENCES BETWEEN THE SHARES OF EACH SUCH CLASS AND SERIES SO FAR AS THE SAME HAVE BEEN FIXED AND DETERMINED, AND THE AUTHORITY OF THE DIRECTORS TO FIX AND DETERMINE THE RELATIVE RIGHTS AND PREFERENCES OF SUBSEQUENT CLASSES AND SERIES. ANY SUCH REQUEST SHALL BE ADDRESSED TO THE SECRETARY OF THE CORPORATION.

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

TEN COM – as tenants in common

TEN ENT – as tenants by the entireties

JT TEN – as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT– ________ (Cust) Custodian ________ (Minor) under Uniform Gifts to Minors Act ________ (State)

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

For value received ______________________ *hereby sell, assign and transfer unto*

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER

____

Please print or typewrite name and address including zip code of assignee

____

____

____ *shares of the stock represented by the within Certificate, and do hereby irrevocably constitute and appoint*

____

Attorney to transfer the said shares on the books of the within-named Corporation with full power of substitution in the premises.

Dated ______________________

____

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement or any change whatever.

Exhibit 5.1

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036-6522

January 18, 2011

BankUnited, Inc.
14817 Oak Lane
Miami Lakes, Florida 33016

Re: BankUnited, Inc.
Registration Statement on Form S-1
(File No. 333-170203)

Ladies and Gentlemen:

We have acted as special counsel to BankUnited, Inc., a Delaware corporation (the "Company"), in connection with the initial public offering by the Company of up to 4,000,000 (the "Primary Shares") and the sale by the selling stockholders (the "Selling Stockholders") named in the Underwriting Agreement (defined below), of up to 26,187,500 shares (including 3,937,500 shares subject to an over-allotment option) (the "Secondary Shares") of the Company's common stock, par value $0.01 per share ("Common Stock").

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K of the General Rules and Regulations under the Securities Act of 1933, as amended (the "Act").

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of (a) the Registration Statement on Form S-1 (File No. 333-170203) of the Company, as filed with the Securities and Exchange Commission (the "Commission") under the Act; (b) Pre-Effective Amendments No. 1 through No. 3 thereto (such Registration Statement, as so amended, being hereinafter referred to as the "Registration Statement"); (c) the form of underwriting agreement (the "Underwriting Agreement") proposed to be entered into by and among Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representatives of the several underwriters named in Schedule II

thereto (the "Underwriters"), the Selling Stockholders and the Company filed as Exhibit 1.1 to Registration Statement; (d) a specimen certificate evidencing the Common Stock in the form of Exhibit 4.1 to the Registration Statement; (e) the Certificate of Incorporation of the Company, as amended to date and currently in effect (the "Charter"); (f) the By-Laws of the Company, as amended to date and currently in effect (the "By-Laws"); (g) the form of the Amended and Restated Certificate of Incorporation (the "New Charter") of the Company, to be effective upon consummation of the IPO and filed as an exhibit to the Registration Statement; (h) the form of Amended and Restated By-Laws of the Company, to be effective upon consummation of the IPO and filed as an exhibit to the Registration Statement; (i) certain resolutions of the Board of Directors of the Company relating to the reorganization transactions described in the Registration Statement pursuant to which the Secondary Shares will be issued to the Selling Stockholders preceding the IPO, the issuance of the Primary Shares, the New Charter and related matters; and (j) certain resolutions of the sole stockholder of the Company relating to the New Charter. We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates and receipts of public officials, certificates of officers or other representatives of the Company and others, and such other documents, certificates and records as we have deemed necessary or appropriate as a basis for the opinions set forth below.

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such copies. In making our examination of executed documents, we have assumed that the parties thereto, other than the Company, had the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties of such documents and the validity and binding effect thereof on such parties. As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied upon statements and representations of officers and other representatives of the Company and others and of public officials.

Members of our firm are admitted to the bar in the State of New York and we do not express any opinion with respect to the law of any jurisdiction other than Delaware corporate laws (including, to the extent applicable, the Delaware constitution and judicial decisions) and we do not express any opinion as to the effect of any other laws on the opinions herein stated.

Based upon and subject to the foregoing, we are of the opinion that:

1. When (i) the Registration Statement becomes effective under the Act; (ii) a duly appointed committee of the Board of Directors of the Company determines the price per share of the Primary Shares; (iii) the Underwriting Agreement has been duly executed and delivered; and (iv) certificates representing the Primary Shares in the form of the specimen certificate examined by us have been manually signed by an authorized officer of the transfer agent and registrar for the Common Stock and registered by such transfer agent and registrar, and have been delivered to and paid for by the Underwriters as contemplated by the Underwriting Agreement at a price per share approved by the Company's Bo ard of Directors or a duly authorized committee thereof, the issuance and sale of the Primary Shares will have been duly authorized, and the Primary Shares will be validly issued, fully paid and nonassessable.

2. The issuance and sale of the Secondary Shares have been duly authorized, and, when the reorganization transactions are consummated as contemplated by the Registration Statement, the Secondary Shares will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement. We also consent to the reference to our firm under the caption "Legal Matters" in the Registration Statement. In giving this consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission.

Very truly yours,

/s/ Skadden, Arps, Slate, Meagher & Flom LLP

Exhibit 10.1

EXECUTION COPY
As Amended to January 15, 2011

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

BU FINANCIAL HOLDINGS LLC

DATED AS OF

May 21, 2009

THE INTERESTS ISSUED PURSUANT TO THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES OR "BLUE SKY" LAWS OF ANY STATE OR OTHER JURISDICTION, AND MAY NOT BE SOLD OR TRANSFERRED UNLESS THEY ARE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY OTHER APPLICABLE SECURITIES OR "BLUE SKY" LAWS, OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE. SUCH INTERESTS ARE SUBJECT TO THE RESTRICTIONS ON TRANSFER SET FORTH IN THIS AGREEMENT.

Table of Contents

ARTICLE XI

LIABILITY, EXCULPATION AND INDEMNIFICATION

ARTICLE XII

TRANSFERS OF INTERESTS

ARTICLE XIII

DISSOLUTION, LIQUIDATION AND TERMINATION

ARTICLE XIV

MISCELLANEOUS

ARTICLE XV

DEFINED TERMS

SCHEDULES

Schedule C:	Initial Directors
Schedule 3.7	Excluded Persons
Schedule 4.10:	List of Senior Officers

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
BU FINANCIAL HOLDINGS LLC

This Amended and Restated Limited Liability Company Agreement of BU Financial Holdings LLC (the "**Company**") is dated as of May 21, 2009, by and among the entities listed under the headings "WL Ross Members", "Carlyle Members", "Centerbridge Members" and "Blackstone Members" on Schedule A hereto (each, respectively, a "**WL Ross Member**," "**Carlyle Member**," "**Centerbridge Member**," and "**Blackstone Member**" (which respective terms shall include their Affiliates who become members of the Company and are designated "Investor Members" after the date hereof in accordance with Section 3.9 of this Agreemen t) and, collectively, the "**Investor Members**," which term shall also include such other Persons who become members of the Company and are designated "Investor Members" after the date hereof in accordance with Section 3.9 of this Agreement), John A. Kanas ("**Kanas**"), Rajinder P. Singh ("**Singh**"), John N. DiGiacomo ("**DiGiacomo**") and John Bohlsen ("**Bohlsen**," and collectively with Kanas, Singh and DiGiacomo and such other management employees of the Company or any of its Subsidiaries who become members of the Company and are designated "Management Members" after the date hereof in accordance with this Agreement (including Section 3.9 hereof), the "**Management Members**," and each individually, a "**Management Member**"), each of the entities listed under the heading "Outside Member" on Schedule A hereto (each, an "**Outside Member**" and, together with any Persons who become members of the Company and are designated "Outside Members" after the date hereof in accordance with Section 3.9 of this Agreement, the "**Outside Members**"), and, solely for purposes of Section 5.6 hereof, BankUnited, a newly formed federal savings association ("**NewBank**"). The Management Members and the Inactive Management Members are collectively referred to herein as the "**Non-Investor Members**." The Investor Members and the Outside Members are collectively referred to herein as the "**Non-Management Members** ." The Non-Investor Members and the Non-Management Members are collectively referred to herein as the "**Members**." Any capitalized term used herein without definition shall have the meaning set forth in Section 15.1.

WHEREAS, on May 21, 2009, the Federal Deposit Insurance Corporation Receiver of BankUnited, FSB (the "**Receiver**"), the Federal Deposit Insurance Corporation (which together with the Receiver shall be referred to herein as the "**FDIC**") and NewBank, entered into a purchase and assumption agreement (the "**FDIC Purchase Agreement**"), pursuant to which NewBank agreed to purchase certain assets (including loan assets and certain operations), and assume the deposits, certain unfunded commitments and certain other liabilities, of BankUnited, FSB from the Receiver;

WHEREAS, all of the equity interests of NewBank are directly owned by BU Financial Corporation, a Delaware corporation that is a wholly-owned Subsidiary of the Company ("**InterCo**");

WHEREAS, in connection with the original formation of the Company, the Company entered into a Limited Liability Company Agreement with Kanas (the "**Prior LLC Agreement**"), on April 29, 2009, to govern the affairs of the Company pending the execution of this Agreement;

WHEREAS, concurrently with the execution of this Agreement and from time to time hereafter in accordance with Section 7.1(b), each Original Management Member shall enter into a profits interest unit agreement with the Company (as amended, supplemented or modified from time to time in accordance with the terms thereof, the "**Management Profits Interest Unit Agreements**") pursuant to which the Original Management Members have been or will be granted profits interests in the Company, in accordance with and subject to the terms and conditions of this Agreement, in the form of Profits Interest Units (as hereinafter defined); and

WHEREAS, in anticipation of the closing of the transactions contemplated by the FDIC Purchase Agreement (the "**Closing**"), expected to take place on the date hereof, the parties hereto desire to enter into this Agreement for the purpose of adopting the terms of this Agreement as the complete expression of the covenants, agreements and undertakings of the parties hereto with respect to the affairs of the Company, the conduct of its business and the rights and obligations of the Members, thereby amending, restating, replacing and superseding the Prior LLC Agreement in its entirety.

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

FORMATION OF THE COMPANY

Section 1.1 Formation. The Company was formed upon the filing of the Certificate with the Secretary of State of the State of Delaware on April 27, 2009.

Section 1.2 Company Name. The name of the Company as reflected in the amendment to the Certificate filed on May 21, 2009, is "BU Financial Holdings LLC". The business of the Company may be conducted under such other names as the Board may from time to time designate; provided that the Company complies with all relevant state laws relating to the use of fictitious and assumed names.

Section 1.3 The Certificate, etc. The designation of Catherine Davis Ledyard as an authorized person within the meaning of the Delaware Act and the actions taken by Catherine Davis Ledyard in causing the Certificate to be executed, delivered and filed with the Secretary of State of the State of Delaware on April 27, 2009, are hereby ratified, adopted and approved. Any authorized person of the Company shall execute, deliver, file and record all such other certificates and documents, including amendments to or restatements of the Certificate, and to do such other acts as may be appropriate to comply with all requirements for the formation, continuation and operation of a limited liability company, the ownership of property, and the conduct of business under the laws of the State of Delaware a nd any other jurisdiction in which the Company may own property or conduct business.

Section 1.4 Term of Company. The term of the Company commenced on the date of the initial filing of the Certificate with the Secretary of State of the State of Delaware. The Company may be terminated in accordance with the terms and provisions hereof, and shall

continue unless and until dissolved as provided in Article XIII. The existence of the Company as a separate legal entity shall continue until the cancellation of the Certificate as provided in the Delaware Act.

Section 1.5 Registered Agent and Office. The Company's registered agent and office in the State of Delaware shall be The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The Board may designate another registered agent and/or registered office from time to time in accordance with the then applicable provisions of the Delaware Act and any other applicable laws.

Section 1.6 Principal Place of Business. The principal place of business of the Company is located in Miami-Dade County, Florida at such address as shall be established by the Board. The location of the Company's principal place of business may be changed by the Board from time to time in accordance with the then applicable provisions of the Delaware Act and any other applicable laws.

Section 1.7 Qualification in Other Jurisdictions. Any authorized officer of the Company shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

Section 1.8 Fiscal Year; Taxable Year. The fiscal year of the Company for financial accounting purposes ("**Fiscal Year**") shall end on December 31. The taxable year of the Company for federal, state and local income tax purposes shall end on December 31.

ARTICLE II

PURPOSE AND POWERS OF THE COMPANY

Section 2.1 Purpose. The purposes of the Company are, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Delaware Act and engaging in all acts or activities as the Company deems necessary, advisable or incidental to the furtherance of the foregoing, including engaging in such transactions contemplated by the FDIC Purchase Agreement and owning, directly or indirectly, capital stock in InterCo and NewBank. The Company may pursue its purposes and exercise its powers and rights either directly or indirectly through one or more Subsidiaries.

Section 2.2 Powers of the Company. Subject to the provisions of this Agreement, the Company shall have the power and authority to take any and all actions that are necessary, appropriate, advisable, incidental or convenient to, or in furtherance of, the purposes and business of the Company described herein, and, in furtherance of the foregoing, shall have and may exercise all of the powers and rights that can be conferred upon limited liability companies formed pursuant to the Delaware Act.

Section 2.3 Application of the Act. Except as expressly provided in this Agreement, the rights and liabilities of the Members shall be as provided in the Delaware Act. In the event

of any inconsistency between any terms and conditions contained in this Agreement and any non-mandatory provisions of the Delaware Act, the terms of this Agreement shall govern.

Section 2.4 Certain Tax Matters. The Company shall not elect, and the Board shall not permit the Company to elect, to be treated as an association taxable as a corporation for U.S. federal, state or local income tax purposes under Treasury Regulations section 301.7701-3 or under any corresponding provision of state or local law. The Company and the Board shall not permit the registration or listing of the Interests on an "established securities market," or a "secondary market or the substantial equivalent thereof" as such terms are used in Treasury Regulations section 1.7704-1. The Company shall use its best efforts to conduct its operations and the operations of its Subsidiaries so as not to give rise to "unrelated business taxable income" as defined in Section&nb sp;512 of the Code or income "effectively connected" with the conduct of a trade or business within the United States under Section 864(c) of the Code, in each case, to the Members.

ARTICLE III

MEMBERS AND INTERESTS GENERALLY

Section 3.1 Powers of Members. The Members shall have the power to exercise any and all rights or powers granted to the Members pursuant to the express terms of this Agreement. The approval or consent of the Members shall not be required in order to authorize the taking of any action by the Company unless and then only to the extent that (a) this Agreement shall expressly provide therefor, (b) such approval or consent shall be required by non-waivable provisions of the Delaware Act (or by waivable provisions that have not been waived) or (c) the Board shall have determined in its sole discretion that obtaining such approval or consent would be appropriate or desirable. The Members, as such, shall have no right or authority to act for or bind the Company.

Section 3.2 Interests Generally. As of the date hereof, the Company has three authorized classes of Interests: Common Units, Class B Units and Profits Interest Units (which will consist of either Time-Based Profits Interest Units or IRR-Based Profits Interest Units, as described below). Additional Common Units may be authorized and issued from time to time as approved by the Board without obtaining the consent of any Member except as may be required in accordance with Section 4.11. No additional Class B Units shall be issued following the date hereof. Until Capital Contributions have been received up to the Threshold Amount, the Company shall issue Profits Interest Units in accordance with Section 7.1(b) concurrently with each such approved issuance of Common Unit s. The price of any Common Units issued after the date hereof shall be determined exclusively under the provisions of Section 10.4 hereof. A Member's Interest shall for all purposes be personal property. Unless and until the Board shall determine otherwise, Interests shall be uncertificated and recorded in the books and records of the Company. If at any time the Board shall determine to certificate Interests, such certificates will contain such legends as the Board shall reasonably determine are necessary or advisable. The names, amount of Capital Contributions, number and class of Interests (including, in respect of Profits Interest Units, the number and grant date thereof), the Percentage Interests held by the Members and the Profits Interest Percentage of each Management Member are set forth on Schedule A, in each case, as such information is segregated for each applicable Tranche. The

Company shall amend and revise Schedule A from time to time to properly reflect any changes to the information included therein, including to reflect the admission or substitution of Members, the withdrawal of any Members, any modification to a Member's Percentage Interest, transfers of Interests or the issuance of additional Interests, in each case in accordance with, and subject to the express terms and conditions of, this Agreement. Any such amendment or revision to Schedule A or to the Company's records to reflect information regarding Members shall not be deemed an amendment to this Agreement.

(a) Common Units.

(i) General. The holders of Common Units will have voting rights with respect to their Common Units as provided in Section 3.3(d) and shall have the rights with respect to profits and losses of the Company and distributions from the Company as are set forth herein. The number of Common Units of each Member as of any given time shall be set forth on Schedule A, as it may be updated from time to time in accordance with this Agreement.

(ii) Price. In connection with the Closing, the Common Units will initially be issued for the Capital Contribution per Common Unit as described in Schedule A. The price of any Common Units issued after the date hereof shall be determined exclusively under the provisions of Section 10.4 hereof.

(b) Profits Interest Units.

(i) General. The Company will have two sub-classes of Profits Interest Units: Time-Based Profits Interest Units and IRR-Based Profits Interest Units. The holders of Profits Interest Units will have no voting rights with respect to their Profits Interest Units but shall have the rights with respect to profits of the Company and distributions from the Company as are set forth herein. The number of Profits Interest Units issued to a Management Member as of any given time shall be set forth on Schedule A, as it may be updated from time to time in accordance with this Agreement.

(ii) Price. The holders of Profits Interest Units shall not be required to make any Capital Contribution to the Company in exchange for their Profits Interest Units, it being recognized that, unless otherwise determined by the Board, such Units shall be issued only to Management Members who own Common Units.

(c) Class B Units.

(i) General. The holders of Class B Units will have neither voting rights nor rights with respect to profits and losses of the Company, but will have rights with respect to distributions of the Company as are set forth in Section 9.1(a)(ii) only. The number of Class B Units of each Member as of any given time shall be set forth on Schedule A, as it may be updated from time to time in

accordance with this Agreement. The Class B Units shall be cancelled in accordance with, and subject to the terms and conditions of, Section 9.1(a)(ii).

(ii) Price. In connection with the Closing, the Class B Units will initially be issued to each Non-Management Member for a Capital Contribution per Class B Unit as described in Schedule A. No Class B Units shall be issued after the Closing.

Section 3.3 Meetings of Members.

(a) Meetings; Notice of Meetings.

(i) Meetings. The annual meeting of the Members shall be held each year on a date set by the Board (the first of which shall be no earlier than eleven months from the date hereof) at the principal offices of the Company, or on such other date or at such other place as may be designated by the Board. Special meetings of the Members may be called from time to time by the Board, by Members holding Common Units representing a Percentage Interest of at least 60% or by any three Investor Member Directors, and shall be called by the Board (x) in connection with any matter requiring the approval of the Members pursuant to Section 4.11 hereof or (y) for purposes of electing directors to fill seats on the Board as described in Sections 4.1(b)(ii)(6), (7) and (8).

(ii) Notice. Notice of any such meeting shall be given to all Members not less than two nor more than thirty Business Days prior to the date of such meeting and shall state the location, date and hour of the meeting and, in the case of a special meeting, the nature of the business to be transacted. Meetings shall be held at the location (within or without the State of Delaware) at the date and hour set forth in the notice of the meeting.

(b) Waiver of Notice. No notice of any meeting of Members need be given to any Member who submits a signed waiver of notice, whether before or after the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Members need be specified in a written waiver of notice. The attendance of any Member at a meeting of Members shall constitute a waiver of notice of such meeting, except when the Member attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) Quorum. Except as otherwise required by applicable law, the Certificate or this Agreement (including Section 4.11), the presence in person of the holders of record of Members holding Common Units representing a Percentage Interest of at least 60% shall constitute a quorum for the transaction of business at a meeting of the Members. If a quorum shall not be present at any meeting of Members, the Members present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present; provided, however, that notice for any reconvened meeting shall have been given in accordance with Section 3.3(a)(ii).

(d) Voting. If the Board has fixed a record date, every holder of record of Common Units entitled to vote at a meeting of Members or to consent in writing in lieu of a meeting of Members as of such date shall be entitled to one vote for each such Common Unit outstanding in such Member's name at the close of business on such record date. If no record date has been so fixed, then every holder of record of such Common Units entitled to vote at a meeting of Members or to consent in writing in lieu of a meeting of Members shall be entitled to one vote for each Common Unit outstanding in his name on the close of business on the day next preceding the day on which notice of the meeting is given or the first consent in respect of the applicable action is executed and delivered to the Company, or, if notice is waived, at the close of busi ness on the day next preceding the day on which the meeting is held. Holders of record of Profits Interest Units will have no voting rights with respect to such Units. Except as otherwise required by applicable law, the Certificate or this Agreement (including Sections 4.1, 4.8 and 4.11), the vote of a Majority in Interest at any meeting at which a quorum is present shall be sufficient for the transaction of any business at such meeting.

(e) Organization. Each meeting of Members shall be conducted by the Chairman of the Board, or in his absence such other Person as the Board may designate.

(f) Action Without a Meeting. Any action which may be taken at any meeting of the Members may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by a Majority in Interest (or such other required vote with respect to any such particular matter as may be otherwise provided in this Agreement (including Sections 4.1, 4.8 and 4.11)). All Members holding Common Units shall be contemporaneously notified in writing of the solicitation of any such written consent, and if within two Business Days of being so informed any of them objects to the taking of the proposed action by written consent in lieu of a meeting, such action may not be taken by written consent and must instead be considered at a meeting of Members. Subject to the preceding senten ce, prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to those Members who are entitled to voting or consent rights hereunder in respect of Units held thereby but who have not consented in writing.

(g) Presence. Any or all Members may participate in any annual or special Members' meeting by, or through the use of, any means of telephone or other communication by which all Members participate and may simultaneously hear each other during the meeting. A Member so participating is deemed to be present in person at the meeting.

Section 3.4 Business Transactions of a Member with the Company. A Member may transact any business with the Company or any of its Subsidiaries; provided that any such transaction (i) shall have been approved as may be required by Section 4.11, (ii) must be on terms which are no less favorable to the Company or such Subsidiary than those terms which would be obtained in a comparable arm's-length transaction with an unrelated third party, (iii) must not contravene any agreement with, or commitment to, the Office of Thrift Supervision (the "**OTS**") or any applicable regulatory authority, and (iv) shall be subject to any other applicable terms and conditions of this Agreement.

Section 3.5 No Cessation of Membership upon Bankruptcy. A Person shall not cease to be a Member of the Company upon the happening, with respect to such Person, of any of the

events specified in Section 18-304 of the Delaware Act. Upon the occurrence of any event specified in Section 18-304 of the Delaware Act, the business of the Company shall be continued pursuant to the terms hereof without dissolution.

Section 3.6 Confidentiality.

(a) Without the approval of the Board, except (i) to the extent required by law, rule, regulation or, as contemplated by and subject to subsection (b) below, court order, subpoena or similar legal process, (ii) for disclosure made by a Member to any Person who is an officer, director, employee, or agent of such Member, in the case of Non-Management Members, or counsel to, accountants of, consultants to or other advisors or representatives ("**Representatives**") for, such Member, in such Person's capacity as a Representative and who is informed of the confidential nature of such disclosure and in each case who have a need to know (as used herein, such term shall include, without limitation, monitoring investment performance and making investment decisions in respect thereof) such informat ion, (iii) for disclosures made by a Member to any Person to which such Member offers to Transfer any Interests of the Company (so long as such Member is permitted to Transfer such Interests at such time in accordance with Article XII hereof) (provided that the prospective transferee shall agree to be bound by a confidentiality agreement for the benefit of the Company containing provisions substantially similar to the provisions of this Section 3.6), (iv) for disclosure to the shareholders, direct or indirect limited partners, co-investors, partners or members of a Non-Management Member or of Affiliates thereof and their respective Representatives, in each case who have a need to know such information and who have agreed to maintain the confidentiality of such information; provided any disclosure pursuant to this clause (iv) is generally consistent with the scope and nature of disclosure made by such Non-Management Member to such Persons in respect of such Non-Managemen t Member's other investments, and (v) for disclosures made by a Member to any Person in connection with an Initial Public Offering, IPO Conversion or IPO Liquidation, which is, in each case, approved in accordance with Section 4.11(b)(iv), or in connection with an Exit Event or other action expressly permitted herein (provided that such Person shall agree to be bound by a confidentiality agreement for the benefit of the Company containing provisions substantially similar to the provisions of this Section 3.6), no Member shall disclose (or shall permit its Representatives to disclose) the terms and conditions of this Agreement or any trade secrets, customer lists, drawings, designs, information regarding product development, marketing plans, sales plans, management organization information (including data and other information relating to members of the Board or management), operating policies or manuals, business plans, financial records, packaging design or other financial, c ommercial, business, technical or other information relating to the Company or any of its Subsidiaries or information designated as confidential or proprietary that the Company or any of its Subsidiaries may receive belonging to the Company or any of its Subsidiaries or to any suppliers, customers or others who do business with the Company or any of its Subsidiaries (collectively, "**Confidential Information**") to any third Person unless such Confidential Information (x) has been previously disclosed to the public by the Company or is in the public domain (other than by reason of such Member's breach of this Section 3.6), (y) was or becomes available to the Member on a non-confidential basis from a source other than the Company, its Subsidiaries or any of their respective officers, directors or employees or other Representatives (provided that such source is not known to the Member to be bound by a confidentiality obligation to the Company or its Subsidiaries or their respective Representatives with respect to such information) or (z) is developed independently of and

without reference to or use of any non-public information received from the Company, its Subsidiaries or any of their respective officers, directors or employees or other Representatives.

(b) In the event that any party hereto or any of its Representatives becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar judicial or administrative process to disclose any Confidential Information, the disclosing party shall provide the Company with prompt prior written notice of such requirement and shall cooperate with the Company, at the Company's expense, to obtain a protective order or similar remedy to cause such Confidential Information not to be disclosed, including interposing all available objections thereto, such as objections based on settlement privilege. In the event that such protective order or other similar remedy is not obtained, the disclosing party shall furnish only that portion of such Confidential Information that has been legally compelled to be furnished.

(c) In the event of a conflict between the covenants and restrictions (with respect to confidentiality) contained in this Agreement and those contained in a Management Member's (or Inactive Management Member's) employment, severance, services or other agreement with the Company or any of its Subsidiaries, the more restrictive covenants and restrictions shall apply. Notwithstanding anything to the contrary contained in this Section 3.6, and for the avoidance of doubt, it is understood that the covenants and restrictions (with respect to confidentiality) contained in this Agreement shall not restrict any Management Member with respect to the disclosure or use of confidential information in the course of such Management Member exercising his or her duties as an executive officer of the Company or any of its Subsidiaries which are fulfi lled in good faith and in accordance with the authority delegated to such Management Member in this Agreement and the terms of such Management Member's employment, severance, services or other agreement with the Company or any of its Subsidiaries.

Section 3.7 Other Business for Non-Management Members.

(a) Subject to this Section 3.7, any Non-Management Member or any of its Affiliates may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Company or any Subsidiary thereof, and the Company, any Subsidiary of the Company, the Directors, the directors of any Subsidiary of the Company and the other Members shall have no rights by virtue of this Agreement in and to such ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Company or any Subsidiary thereof, shall not be deemed wrongful or improper.

(b) Subject to this Section 3.7, to the fullest extent permitted by applicable law or regulation, no Non-Management Member, nor any of its Affiliates or its Investor Member Director, nor any other Director shall be obligated to refer or present any particular business opportunity to the Company or any Subsidiary thereof unless such opportunity is presented to such Member or individual expressly and solely as a business opportunity for the Company, even if such opportunity is of a character that, if referred or presented to the Company or any Subsidiary thereof, could be taken by the Company or any Subsidiary thereof, and any such Non-Management Member or any of its Affiliates shall have the right to take for its own account (individually or as a partner, shareholder, member, participant or fiduciary) or to recommend to

others such particular opportunity; provided that in the case where such opportunity is presented to such Member or individual expressly and solely as a business opportunity for the Company, such Member or individual shall present such business opportunity to the Company and, if the Company does not decide to pursue such business opportunity within ten Business Days of notice thereof (or such longer period (which shall be not more than five Business Days after such date the Company makes a determination to pursue such business opportunity within the aforementioned ten Business Day period) as is necessary to the extent the pursuit of such business opportunity requires approval under Section 4.11 hereof), or subsequently determines to abandon the pursuit of such business opportunity, such Member or individual or its Affiliates shall have the right to take for its own account or to recommend to others such bu siness opportunity.

(c) Notwithstanding anything to the contrary contained in this Section 3.7 or this Agreement, until such date as is six months after the date on which any Non-Management Member and its Affiliates (provided that for purposes of this Section 3.7(c), the term "Affiliate" shall specifically exclude each of the Persons listed on Schedule 3.7 with respect to the Member or Members listed beside the name of such Person on Schedule 3.7) cease to hold collectively a number of Common Units that represents at least 25% of the Original Amount applicable to such Non-Management Member and its Affiliates, neither such Non-Management Member nor any of its Affiliates shall hold, directly or indirectly, 4.9 percent or more of the stock or equity interests in (or any other ownership interests in or other rights to share in the profits of) any depository institution (as defined in 12 U.S.C. Section 1813(c)(1)) or holding company thereof that:

(i) has more than 75% of its deposits (as defined in 12 U.S.C. Section 1813(l)) in the State of Florida (with such applicable percentage reduced to 50% of deposits after the one-year anniversary of Closing);

(ii) has more than 75% of its branches (measured by physical presence) in the State of Florida (with such applicable percentage reduced to 50% of branches after the one-year anniversary of Closing);

(iii) has its principal place of business or headquarters in the State of Florida; or

(iv) is an entity (or successor thereto) that has previously been agreed upon by the Members prior to the date hereof.

Section 3.8 Avoidance of Cross-Guaranty Liability.

(a) Neither the Company nor any Member shall take, permit or allow any action that would cause the Company or any Subsidiary to become a "commonly controlled insured depository institution" (as that term is defined and interpreted for purposes of 12 U.S.C. § 1815(e), as may be amended or supplemented from time to time, and any successor thereto) with respect to any institution that is not a direct or indirect Subsidiary of the Company.

(b) Each Member that breaches its obligations under clause (a) of this Section 3.8 or that believes that it is reasonably likely to breach such obligation, shall immediately notify the

Members and the Company, and shall cooperate in good faith with the Board promptly to modify any ownership or other arrangements or take any other action, in each case, as is necessary to cure or avoid such breach.

Section 3.9 Additional Members.

(a) Admission Generally. With the requisite approval required under Section 4.11, the Company may admit one or more additional Members (each, an "**Additional Member**"), to be treated as a "Member" or one of the "Members" for all purposes hereunder.

(b) Rights of Additional Members. The approval under Section 4.11 of the admission of an Additional Member shall include the determination of the rights and obligations of the Additional Member with respect to the following matters, which shall, in each case, otherwise remain subject to the other applicable terms and conditions of this Agreement:

(i) the Capital Contribution (if any) of such Additional Member;

(ii) the rights, if any, of such Additional Member to appoint Directors to the Board (which rights shall be subject to the terms and conditions of Section 4.1(b) and the approval set forth in Section 4.11) and, if such rights are granted, the circumstances in which such Additional Member shall lose the right to so appoint a Director (any such Director, an "**Additional Member Director**");

(iii) subject to compliance with the provisions of Section 6.4(b) hereof (with respect to Common Units) and Section 7.1 (with respect to Profits Interest Units), the number of Units to be granted to such Additional Member and whether such Units shall be Common Units, Profits Interest Units or Units of an additional class of Interests (other than Class B Units) authorized in accordance with this Agreement (including Section 4.11) (it being understood that all issuances of Common Units to such Additional Member shall be valued at Fair Market Value determined in accordance with Section 10.4); and

(iv) whether such Additional Member will be a Management Member, an Investor Member or an Outside Member; provided that (a) an Additional Member may only be designated a WL Ross Member with the additional consent of the WL Ross Members, (b) an Additional Member may only be designated a Carlyle Member with the additional consent of the Carlyle Members, (c) an Additional Member may only be designated a Centerbridge Member with the additional consent of the Centerbridge Members, (d) an Additional Member may only be designated a Blackstone Member with the additional consent of the Blackstone Members, and (e) the rights and obligations of any Outside Member shall be as specified by the Board and, if such terms are different from the terms applicable to the Outside Member as provided herein, this Agreement shal l be amended, to the extent approved in accordance with Sections 4.11 and 14.9, to reflect such terms.

(c) Admission Procedure. Subject to this Section 3.9 and Section 4.11, each Person shall be admitted as an Additional Member at the time such Person (i) executes a joinder agreement to this Agreement, (ii) makes a Capital Contribution (if any) to the Company in an amount determined in accordance with Section 3.9(b), (iii) complies with the applicable Board and Member resolutions (if any) with respect to such admission, (iv) is issued Units (if any) by the Company and (v) is named as a Member in Schedule A (as described in Section 3.2) hereto. Pursuant to Section 3.2, the Company shall promptly amend Schedule A to reflect any issuance of Units and any such admission and any actions pursuant to this Section 3.9.

ARTICLE IV

MANAGEMENT

Section 4.1 Board.

(a) Generally. The business and affairs of the Company shall be managed by or under the direction of a committee of the Company (the "**Board**"), which, subject to the provisions of this Section 4.1, shall consist of nine individuals (one of whom shall be nominated and elected as soon as practicable following the Closing as described in Section 4.1(b)(i) below) (each, a "**Director**") as shall be established pursuant to Section 4.1(b) below, and as may be increased or decreased in accordance with Section 4.11; provided, that the total number of Directors on the Board, as of any date of determination, shall not be less than the sum of (i) the number of Directors that the Members in the aggregate have the exc lusive right to designate pursuant to this Section 4.1 and (ii) the number of Directors that have been nominated and elected pursuant to this Section 4.1 to serve as the Ninth Director or an Independent Director, or the number of seats available to be filled by individuals that are available for nomination and election pursuant to Section 4.1(b)(ii)(8) to serve as the Ninth Director or an Independent Director. Subject to any rights that may be granted pursuant to, and in accordance with, Section 3.9(b) and subject to the other provisions of this Section 4.1, following the Closing the Directors shall be appointed to the Board in accordance with this Section 4.1; it being understood and agreed that pursuant to Section 4.1(b)(i), by executing this Agreement each Member agrees that the persons listed on Schedule C hereto shall serve as the initial Directors. Directors need not be Members. Each person named as a Director herein or subsequently appointed as a Director is hereby designated as a "manager" (within the meaning of the Delaware Act) of the Company. Except as otherwise provided herein, and notwithstanding the last sentence of Section 18-402 of the Delaware Act, no Director, acting solely in its capacity as such, shall have the right, power or authority to act as an agent of the Company, to bind the Company or to execute any documents to be signed by the Company unless expressly authorized in writing by the Board or a duly authorized committee thereof, and the Board shall have the power to act only collectively in accordance with the provisions and in the manner specified herein. Except as otherwise provided in this Agreement, each Director shall hold office until a successor is appointed in accordance with Section 4.1(b) or until such Director's earlier death, resignation or removal in accordance with the provisions hereof.

(b) Appointment of Directors.

(i) Initial Directors. On the Closing Date, the Board shall consist of eight Directors. The initial Directors of the Company shall be those individuals listed on Schedule C hereto, and, each such Director is classified on Schedule C as either a Management Director, WL Ross Director, Centerbridge Director, Carlyle Director, Blackstone Director, Independent Director or Ninth Director, as applicable. As soon as practicable following the Closing, one individual that is (w) approved by Kanas, (x) approved by a majority of the Board, (y) approved by the affirmative vote of Members holding Common Units representing a Percentage Interest of at least 60% and (z) meets the eligibility requirements under Section 4.1(b)(iii) applicable to Independent Directors, shall be nominated and duly appointed by the Board as an Independent Director to fill the vacancy on the Board that exists as of the Closing Date such that the Board shall consist of nine Directors following such appointment.

(ii) Composition. From and after the Closing:

(1) Kanas shall have the right, in his sole discretion, to designate two of the Directors for election to the Board (one of whom will be Kanas (who will be the Chairman of the Board so long as he is the Chief Executive Officer of the Company or any of its Material Subsidiaries) (collectively, the "**Management Directors**"); provided, however, from and after the time that Kanas is no longer the Chief Executive Officer of the Company or any of its Material Subsidiaries, such Management Directors shall immediately resign or be removed as Directors and the vacancies created by the resignation or removal of the Management Directors designated by Kanas shall be filled in accordance with Section 4.9(c);

(2) the WL Ross Members shall have the right, in their sole discretion, to designate one Director for election to the Board for so long as the WL Ross Members, together with their Affiliate transferees, collectively continue to hold a number of Common Units that represents at least 40% of the Original Amount of the WL Ross Members (such designated Director, the "**WL Ross Director**");

(3) the Centerbridge Members shall have the right, in their sole discretion, to designate one Director for election to the Board for so long as the Centerbridge Members, together with their Affiliate transferees, collectively continue to hold a number of Common Units that represents at least 40% of the Original Amount of the Centerbridge Members (such designated Director, the "**Centerbridge Director**");

(4) the Carlyle Members shall have the right, in their sole discretion, to designate one Director for election to the Board for so long as the Carlyle Members, together with their Affiliate transferees, collectively continue to hold a number of Common Units that represents at least 40% of the Original Amount of the Carlyle Members (such designated Director, the "**Carlyle Director**");

(5) the Blackstone Members shall have the right, in their sole discretion, to designate one Director for election to the Board for so long as the Blackstone Members, together with their Affiliate transferees, collectively continue to hold a number of Common Units that represents at least 40% of the Original Amount of the Blackstone Members (such designated Director, the "**Blackstone Director**," and together with the WL Ross Director, the Centerbridge Director and the Carlyle Director, together with their permitted successors designated and elected in accordance with the terms and conditions of this Article IV, the "**Investor Member Directors**," which definition shall also include the Additional Member Directors to the extent applicable pursuant to Sec tion 3.9(b)(ii) and Section 4.1(b)(ii)(6) below);

(6) the initial ninth member of the Board is as set forth on Schedule C hereto, and from and after the Closing until such time, if any, as the Ninth Director is removed and replaced with the Additional Member Director as contemplated in the proviso in this Section 4.1(b)(ii)(6), (x) immediately prior to each annual meeting of the Members (or any special meeting of the Members called for the purpose of voting on the Ninth Director as contemplated by this Agreement), each Director (including the then existing Ninth Director) shall have the right, but not the obligation, to nominate one individual to be considered by the Members at such meeting for potential election to the Board to fill the ninth seat on the Board (there being no particular Board approval threshold for any such individual to be so nominated; it being understood that no such i ndividual may be nominated if the election of such nominee as a Director would violate the eligibility requirements set forth in Section 4.1(b)(iii) and the Director that nominates such individual shall provide a certification to such effect to the Members and the Company, and any such other biographical information, business affiliations or other information reasonably relevant to the credentials of such nominee to serve on the Board, provided that the foregoing shall not apply to the then existing Ninth Director if such individual is so nominated), (y) the individuals that are nominated in accordance with the foregoing shall constitute the slate of nominees to fill the ninth seat on the Board that shall be considered by the Members at such meeting, and (z) at such meeting of the Members, the Members holding Common Units shall have the right to vote (with each Common Unit entitling such Member to cast one vote for the election of one of the individuals on such slate of nominees being con sidered at such meeting of the Members) to elect one of such nominated individuals, and the nominee, if any, that receives the affirmative vote of Members holding Common Units representing a Percentage Interest of at least 60% shall be elected to the Board as the ninth member of the Board (the "**Ninth Director**"); provided, however, following the date hereof, the first time that an Additional Member is admitted as an "Investor Member" under Section 3.9 and the Board determines to grant such Additional Member the right to designate a Director to the Board (with the approval of the Members contemplated by Section 4.11), then (unless it is contemplated that the Ninth Director will continue as the Additional Member Director) the existing Ninth Director on the Board shall be automatically removed

(and the Members and the Company agree to take such actions as are necessary or appropriate to remove such Ninth Director in accordance with Section 4.1(b)(iv) and Section 4.8) and such Additional Member shall have the right to designate one Director for election to the Board to replace the vacancy created by the removal of the Ninth Director (until such time as the Additional Member loses the right to so designate a Director as provided in Section 3.9(b)(ii), at which point, the vacancy on the Board shall be filled in accordance with Section 4.9(b) (such Director designated by such Additional Member shall thereafter be referred to as the "Additional Member Director" or one of the "Investor Member Directors" and there shall cease to be any Ninth Director (designated as such pursuant to this Agreement) on the Board from and after such time;

(7) the initial independent director of the Board at the Closing is as set forth on Schedule C hereto and the second independent director of the Board shall be appointed as provided in Section 4.1(b)(i), and from and after the Closing, (x) immediately prior to each annual meeting of the Members (or special meeting called for the purpose of voting on the election of Independent Directors as contemplated by this Agreement), each Director (other than the then existing Independent Directors) shall have the right, but not the obligation, to nominate one or more individuals (up to the number of seats on the Board then held by Independent Directors) to be considered by the Members at such meeting for potential election to the Board to fill the seats allocated to independent directors in accordance with this Agreement (there being no particular Boa rd approval threshold for any such individual to be so nominated; it being understood that no such individual may be nominated if the election of such nominee as a Director would violate the eligibility requirements set forth in Section 4.1(b)(iii) and the Director that nominates such individual shall provide a certification to such effect to the Members and the Company, and any such other biographical information, business affiliations or other information reasonably relevant to the credentials of such nominee to serve on the Board, provided that the foregoing shall not apply to any then existing Independent Director if any such individual is so nominated), and (y) the individuals that are so nominated in accordance with the foregoing shall constitute the slate of independent director nominees that shall be considered by the Members at such meeting and (z) at such meeting of the Members, the Members holding Common Units shall have the right to vote (with each Common Unit entitling such M ember to cast one vote for the election of the number of individuals on such slate of nominees being considered at such meeting of the Members for seats on the Board allocated to independent directors in accordance with this Agreement; it being understood that no Member may use more than one such vote per Common Unit for any one individual on such slate of nominees but may cast one vote for each of the number of seats on the Board allocated to independent directors in accordance with this Agreement) to elect the number of nominated individuals available to fill such independent director seats on the Board, and the number of such nominees, if any, that receive (i) the affirmative vote of Members holding Common Units representing a Percentage Interest of at least 60% and (ii) for so long as Kanas is

the Chief Executive Officer of the Company or any of its Material Subsidiaries, the affirmative vote of at least a majority of the Common Units held by the Management Members, shall be elected to the Board as the independent members of the Board (such Directors, the "**Independent Directors**" which definition shall also include the additional independent directors elected in accordance with the following proviso of this Section 4.1(b)(ii)(7)); provided, however, from and after such time as the Board and the Members have approved (in accordance with Section 4.11) an increase in the number of Directors above nine members as a result of an Additional Member being granted the right to designate a Director as contemplated by Section 3.9(b)(ii) (other than the initial Additional Member that was designated such right and as a result designated an Additional Member Director to replace the Ninth Director as described in Section 4.1(b)(ii)(6)), the Directors then in office shall take all actions necessary to increase the size of the Board by one additional seat which seat on the Board shall be filled, at such time or as soon as practicable after the admission of the new Additional Member Director, by an independent director with the approval of a majority of the Board (prior to such increase in size) and for so long as Kanas is the Chief Executive Officer of the Company or any of its Material Subsidiaries, the affirmative vote of at least a majority of the Common Units held by the Management Members. From and after the appointment of such additional Independent Director in accordance with the foregoing, the seat held by such additional Independent Director shall be subject to the same annual election process and procedures described above as applies to the original two seats held by the Independent Directors; and

(8) during such time and at all times that an Additional Member does not have the right to designate an Additional Member Director (in lieu of the Ninth Director) as provided in Section 4.1(b)(ii)(6), if, at any meeting of Members at which a vote is taken for this purpose, there is a failure to elect a Ninth Director in accordance with paragraph (6) above, the Ninth Director then serving on the Board shall continue to hold office until a successor is elected in accordance with the last sentence of this Section 4.1(b)(ii)(8) (or until such Ninth Director's earlier death, resignation or removal). If, at any meeting of Members at which a vote is taken for this purpose, there is a failure to elect one or more Independent Director in accordance with paragraph (7) above, then the Independent Director(s) who failed t o be so reelected shall continue to hold office until a successor is elected in accordance with the provisions set forth below in this Section 4.1(b)(ii)(8) (or until such Independent Director's earlier death, resignation or removal), and at such time as the successor(s) to such Independent Director(s) have been elected as set forth below, the Members and the Company agree to take such actions as are necessary or appropriate to remove such Independent Director(s) and appoint the agreed upon replacement Directors as set forth below. In such event where there is a failure to elect either or both of the Independent Directors or the Ninth Director, the remaining Directors will continue to work in good faith to identify candidates for the Board to nominate to the Members for potential election to the Board to fill such seats. A special

meeting of the Members shall be held for the purpose of voting on such nominees as soon as reasonably practicable following such annual meeting of the Members (and the Board shall in good faith consider reducing the slate of nominees presented for consideration at such meeting of the Members based on such factors as are deemed relevant by the Board, including the results of the prior vote of the Members in the election of such prior slate of individuals, it being understood that the Board does not have the authority to prevent any duly nominated candidate from being included in the slate). Any nominee that is elected by the Members at such special meeting (with the requisite approval and affirmative vote of the Members as is specified in Section 4.1(b)(ii)(6) or Section 4.1(b)(ii)(7), as applicable) shall be elected to the Board as a Ninth Director or Independent Director, as applicabl e, to serve until the next annual meeting of Members, at which point, the Ninth Director and the Independent Directors shall again be subject to the same annual election process and procedures described above as applies to the Ninth Director and Independent Directors in accordance with Sections 4.1(b)(ii)(6), (7) and (8), as applicable.

(iii) Eligibility.

(1) The Investor Member Directors, Independent Directors and Ninth Director shall at all times during their service be independent of and not affiliated with any Management Member.

(2) The Independent Directors and the Ninth Director shall at all times during their service be independent of and not affiliated with any Investor Member.

(3) No Investor Member Director may be affiliated with (and not independent of) any Investor Member other than the Investor Member that designated such Investor Member Director.

(4) Notwithstanding anything in this Agreement to the contrary, no Person shall be eligible to serve as a Director if such service would be prohibited by the Depository Institution Management Interlocks Act, 12 U.S.C. §§ 3201 — 3208, as the same may be amended or supplemented from time to time, and any successor thereto, and any applicable rules, regulations, policies or interpretations of the OTS, the Federal Reserve Board, the FDIC, the Office of the Comptroller of the Currency or the National Credit Union Administration issued thereunder.

(5) For the avoidance of doubt, it is agreed and understood that notwithstanding the fact that the Investor Directors do not qualify as "Independent Directors" for purposes of this Agreement, the Investor Directors may nonetheless qualify as independent directors for purposes of applicable regulatory requirements.

(iv) Voting. Each Director on the Board, Subsidiary Board or any committee thereof, as applicable, will be entitled to cast one vote at the meeting of the Board, Subsidiary Board or committee, as applicable. Each Member shall vote all of the Units over which it exercises voting control and shall take all other necessary or desirable actions within such Member's control (whether in such Member's capacity as a Member, Director, officer, member of a Board committee or otherwise, and including attendance at meetings in person for purposes of obtaining a quorum, execution of written consents in lieu of meetings and approval of amendments and/or restatements of the Certificate or this Agreement), and the Company shall take all necessary and desirable actions within its control (including calling special Board or Member meetings and approval of amendments and/or restatements of the Certificate or this Agreement) to cause the terms set forth in this Section 4.1 to be applied in respect of the Board.

(c) Observer. Each Investor Member shall have the right, exercisable by delivering notice to the Company, to designate a non-voting observer to attend any meetings of the Board and of any Subsidiary Board; provided, however, such Investor Member shall lose the right to so designate a non-voting observer to the Board and any Subsidiary Board at such time as such Investor Member (together with its Affiliates) ceases to hold Common Units representing a Percentage Interest of at least 5%. Notice of Board meetings shall be furnished to each non-voting observer no later than, and using the same form of communication as, notice of Board meetings are furnished to Directors in accordance with this Agreement.

(d) Subsidiaries.

(i) Composition. The composition of the board of directors of each of the Material Subsidiaries (each, a "**Subsidiary Board**") shall be the same as the composition of the Board. Without limiting the foregoing, all of the members of the Board shall have the right to serve as members of the board of directors of InterCo (the "**InterCo Board**") and NewBank (the "**NewBank Board**") and Kanas shall be the Chairman of the InterCo Board and the NewBank Board (so long as Kanas is the Chief Executive Officer of the Company, InterCo or NewBank). Notwithstanding the foregoing, at such time as an Independent Director resigns or is removed as a Director on the Board o f the Company in accordance with Section 4.1(b)(ii)(8) and a replacement Independent Director is elected in accordance with Section 4.1(b)(ii)(8) above, such Independent Director shall resign from the InterCo Board, the NewBank Board and any other Subsidiary Board and the vacancy created by such resignation shall be filled by the same replacement Independent Director who was elected to the Board of the Company in accordance with Section 4.1(b)(ii)(8).

(ii) Protections. All Material Subsidiaries of the Company shall be governed in a manner consistent with the applicable provisions of this Agreement (including with respect to Board composition, quorum, notice and consent requirements). The Company shall take such actions, including causing its Subsidiaries to take such actions, to ensure that the provisions of Material Subsidiaries' organizational documents applicable to such Subsidiary Boards

---

reflect the provisions of this Agreement applicable to the Board or any Subsidiary Board, except, in each case, as may be necessary to comply with applicable regulatory requirements.

Section 4.2 Meetings of the Board. The Board shall meet from time to time to discuss the business of the Company as may be presented by any Director, and in any case shall meet at least quarterly. The Board may hold meetings either within or without the State of Delaware. Meetings of the Board may be held at such time and at such place as shall from time to time be determined by the Board. Special meetings of the Board may be called by (i) the majority of the Board, (ii) Investor Member Directors representing Investor Members holding a Percentage Interest of 40% or more and (iii) the Chairman of the Board. Special meetings of the Board shall be called by delivering notice to each Director at least three Business Days' prior to such meeting, with such notice being deliv ered either personally, by telephone, by facsimile or by any other similarly timely means of communication; provided, however, no notice need be given to any Director who waives notice in writing before or after the meeting or who attends the meeting without objecting to the inadequacy of notice to him or her at or before the commencement of such meeting.

Section 4.3 Quorum and Acts of the Board. No action may be taken at a meeting of the Board unless, (i) in the case of a nine member Board, six of the nine Directors and (ii) in all other cases, more than 60% of the total number of Directors then serving, are present. Except as otherwise provided in this Agreement, the act of a simple majority (i.e., more than 50%) of all of the Directors then serving on the Board (i.e., at least five of the nine Directors of the Company) taken at any meeting at which a quorum shall exist shall be the act of the Board; provided, however, if at a meeting of the Board where a quorum is present, a Director is not present at such meeting, then, if any other present Director at such meeting believes in good faith that the Director that is absent from such meeting should be given an additional opportunity to be present at such meeting for purposes of casting a vote, or participating in the deliberations of the Board, with respect to a particular matter that is being acted upon by the Board at such meeting, then upon the request of such other present Director, such particular matter shall not be acted upon at such meeting of the Board (and the meeting of the Board with respect to such matter shall be adjourned and reconvened, and the Chairman shall deliver notice of such adjourned meeting to consider such matter in accordance with Section 4.2); provided, further, that for any such reconvened meeting relating to such matter, so long as a quorum (as described above) is present, no Director may request an additional adjournment for any reason (including the absence of any Director at such meeting). If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time, without notice other than ann ouncement at the meeting, until a quorum shall be present; provided, however, that notice for any reconvened meeting shall have been given in accordance with Section 4.2. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, without prior notice and without a vote if a unanimous consent in writing, setting forth the actions so taken, shall be signed by all Directors or all of the members of the committee, as the case may be, and the writing or writings are filed with the minutes of proceedings of the Board or committee. Except as permitted by Section 4.11, Board or committee actions by less than unanimous written consent are hereby specifically denied.

Section 4.4 Electronic Communications. Members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 4.5 Committees of Directors. The Board and the NewBank Board may, by resolution passed by the Board or NewBank Board and with the approval of Members holding Common Units having a Percentage Interest of at least 60%, designate one or more committees each of which may act by a majority vote of the members of such committee. Such resolution shall specify the duties, quorum requirements and qualifications of the members of such committees, each such committee to consist of such of the Directors as the Board may agree with the approval of Members holding Common Units having a Percentage Interest of at least 60%. Subject to Section 4.11, any such committee, to the extent provided in the resolution of the Board authorizing the creation of such committee, shall have and may exercise all the pow ers and authority of the Board in the management of the business and affairs of the Company. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. Notwithstanding the foregoing, each Member that has the exclusive right to designate a Director pursuant to Section 4.1 shall have a right, at its option, to have the Director designated by such Member to serve on each committee of the Board that shall be formed pursuant to the provisions of this Section 4.5, and in the event a "Nominating Committee" or other committee with similar authority shall be formed, a majority of the members of any such Nominating Committee shall be comprised of designees of the Non-Managing Members.

Section 4.6 Compensation of Directors. The Board shall have the authority to fix the compensation (if any) of the Independent Directors and the Ninth Director; it being understood that the Management Directors and any Investor Member Director shall not be entitled to any compensation for serving as a Director. However, the Company shall reimburse the Directors for their reasonable expenses, if any, of attendance at each meeting of the Board. Members of any committee of the Board shall also be paid their reasonable expenses, if any, for attending committee meetings.

Section 4.7 Resignation. Any Director may resign at any time by giving written notice to the Company. The resignation of any Director shall take effect upon receipt of such notice or at such later time as shall be specified in the notice; and, unless otherwise specified in the notice, the acceptance of the resignation by the Company, the Members or the remaining Directors shall not be necessary to make it effective. In addition, in the event that any Investor Member loses its respective right to designate a Director pursuant to Section 4.1(b)(ii) as a result of ceasing to hold the requisite Original Amount described in Section 4.1(b) with respect to such Investor Member, then in each case, such Investor Member that ceased to have the right to designate a Director pursuant to Section 4.1(b)(ii) shall cause its designee to resign from the Board (and if such Director fails to so resign, the Company and the Members agree to take such actions as are necessary or appropriate to remove such Director in accordance with Section 4.8), and in any event such Director shall be deemed to have resigned from the Board effective immediately upon the occurrence of such event. In addition, in the event that Kanas shall cease

---

to be the Chief Executive Officer of the Company or any of its Subsidiaries, then Kanas shall resign from the Board and shall cause the other Management Director to resign from the Board (and if Kanas and/or such other Management Director fails to so resign, the Company and the Members agree to take such actions as are necessary or appropriate to remove Kanas and/or such other Management Director in accordance with Section 4.8), and in any event Kanas and such Management Director shall be deemed to have resigned from the Board effective immediately at such time as Kanas shall cease to be the Chief Executive Officer of the Company or any of its Subsidiaries. In addition, in the event that a Ninth Director or Independent Director, as applicable, is not reelected at a meeting of Members in accordance with Section 4.1(b)(ii), then such Ninth Director or Independent Director shall remain on the Board until a replacement is duly elected in accordance with the terms of this Agreement.

Section 4.8 Removal of Directors. Any Investor Member having the right to designate an Investor Member Director shall have the right to replace their incumbent designated Investor Member Director at any time in their sole discretion. Subject to the automatic resignation of Directors provided in Section 4.7 and rights of the Members to remove Directors as provided in Section 4.7, (a) the removal from the Board or a Subsidiary Board or a committee (with or without cause) of the WL Ross Director, the Carlyle Director, the Centerbridge Director or the Blackstone Director, respectively, shall be only at the written request of the WL Ross Members, the Carlyle Members, the Centerbridge Members, or the Blackstone Members, respectively, (b) the removal from the Board or a Subsidiary Board or a committee (with or without cause) of any Management Director, shall, to the extent Kanas remains Chief Executive Officer of the Company or any of its Material Subsidiaries, be only at the written request of Kanas, (c) the removal from the Board or a Subsidiary Board or a committee (with or without cause) of any Independent Director shall only occur with the prior approval of Members holding Common Units representing a Percentage Interest of at least 60%, (d) except as set forth in Section 4.1(b)(ii)(6), the removal from the Board or a Subsidiary Board or a committee (with or without cause) of the Ninth Director, shall only occur with the prior approval of Members holding Common Units representing a Percentage Interest of at least 60% and (e) the removal from the Board or a Subsidiary Board or a committee (with or without cause) of any Additional Member Director shall be only at the written request of the Additional Member that had the right to appoint and designate such Additional Me mber Director pursuant to Section 3.9(b)(ii), subject to such other terms and conditions that may have been imposed by the Board in connection with the admission of such Additional Member. Upon receipt of any such written request, the Board and the Members will promptly take all such actions as shall be necessary or desirable to cause the removal of such Director. Any vacancy caused by any such removal shall be filled in accordance with this Agreement.

Section 4.9 Vacancies.

(a) If any vacancies shall occur in the Board by reason of death, resignation, deemed resignation, removal or otherwise, the Directors then in office shall continue to act, and in the event the Directors then in office do not constitute a quorum, actions that could otherwise have been taken by Directors holding a majority of the votes of the full Board at any meeting at which there was a quorum may be taken by Directors holding a majority of the votes of the Directors then in office, even if less than a quorum.

(b) Notwithstanding anything to the contrary, in the event that an Investor Member Director is required to be removed or is deemed to resign as a result of the Investor Member that designated and appointed such Investor Member Director ceasing to hold the requisite Original Amount described in Section 4.1(b)(ii) (a "**Sold-Down Investor**") with respect to such Investor Member (such Director, the "**Sold-Down Investor Director**"), such Sold-Down Investor Director shall remain on the Board until the replacement is elected in accordance with this Section 4.9(b). As soon as reasonably practicable following such time as the Sold-Down Investor ceases to hold the requisite Original Amount described in Section 4.1(b)(ii), there shall be a special meeting of the Board and at such special meeting each Director (including the Sold-Down Investor Director) shall have the right, but not the obligation, to nominate one individual to be considered by the Members at a special meeting of the Members for potential election to the Board to fill the seat on the Board that was held by the Sold-Down Investor Director (there being no particular Board approval threshold for any such individual to be so nominated; it being understood that no such individual may be nominated if the election of such nominee as a Director would violate the eligibility requirements set forth in Section 4.1(b)(iii) and the Director that nominates such individual shall provide a certification to such effect to the Members and the Company, and any such other biographical information, business affiliations or other information reasonably relevant to the credentials of such nominee to serve on the Board, provided that the foregoing shall not apply to the Sold-Down Investor Director). If any individuals are so nominated by the Directors in accordance with the foregoing, such individuals shall constitute the slate of nominees to fill the seat on the Board then held by the Sold-Down Investor Director that shall be considered by the Members at a special meeting called for such purpose. At such special meeting of the Members, the Members holding Common Units shall have the right to vote (with each Common Unit entitling such Member to cast one vote for the election of one of the individuals on such slate of nominees being considered at such meeting of the Members) to elect one of such nominated individuals, and the nominee, if any, that receives the affirmative vote of Members holding Common Units representing a Percentage Interest of at least 60% shall be elected to the Board as the replacement for such Sold-Down Investor Director. In the event no nominated individual receives the affirmative vote of Members holding Common Units representing a Percentage Interest of at least 60% at such meeting, then the Board vacancy will be filled by the Investor Member who has (together with its Affiliates) a Percentage Interest that is the largest Percentage Interest in the Company at such time held by all of the Investor Members that do not then have a right to designate an Investor Member Director pursuant to Section 4.1(b)(ii) (which, for the avoidance of doubt, may be the Sold-Down Investor) as contemplated in this Section 4.9(b).

(c) Any vacancies caused by the removal of the Management Directors as a result of Kanas ceasing to serve as the Chief Executive Officer of the Company or any of its Subsidiaries shall be filled by a vote of the majority of the Directors remaining in office following such removal and affirmative vote of Members holding Common Units representing a Percentage Interest of at least 60%, which replacement Director or Directors will serve until the next annual or special meeting of Members. For the avoidance of doubt, in such an event, the Board, with the consent of Members holding a Percentage Interest of at least 60%, may choose to reduce the size of the Board.

(d) Except (i) in the case of vacancies caused by deemed resignations pursuant to Section 4.7, and (ii) as set forth otherwise in this Section 4.9, any vacancy shall be filled at any

time in accordance with Section 4.1(b). Except as otherwise provided in this Agreement, a Director elected to fill a vacancy shall hold office until his or her successor has been elected and qualified or until his or her earlier death, resignation or removal.

Section 4.10 Day-to-Day Management; Appointment of Officers.

(a) The initial Senior Officers that are hereby appointed by the Board, effective as of the Closing are set forth on Schedule 4.10 hereof. Subject to Section 4.11(a)(iv), the Board may designate one or more individuals to be officers of the Company (including Senior Officers). Except as otherwise provided herein and subject to the limitations described in Section 4.11, the Senior Officers shall have the authority customarily associated with the respective positions and titles held by such Senior Officers, with such additional or other power and authority as may be determined from time to time by the Board, have the authority to manage and conduct the day-to-day business of the Company. Any delegation of authority given by the Board to the Senior Officers (whether pursuant to this Section 4.10 or otherwise) may be revoked at any time by th e Board. Subject to Section 4.11(a)(iv), each officer of the Company (including Senior Officers) shall hold office until his or her successor has been duly appointed and qualified, or until his or her death or until he or she resigns or has been removed by the Board (with or without cause, at any time).

(b) The Members (other than the Management Members) will not take part in the management, conduct or control of the operations of the Company, except with respect to the voting rights associated with the Common Units held by such Members and any representation such Members may have on the Board as described above, and such Members will have no right or authority to act for or bind the Company in any manner.

Section 4.11 Certain Approvals. Notwithstanding anything to the contrary herein (but subject to any specific provision herein that might require an approval by the Members or the Board that is different than the approvals described in this Section 4.11), the Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, take any of the following actions without the prior affirmative vote of or written consent (to the extent written consent with respect thereto is permitted in accordance with this Agreement) of (i) a majority of all the members of the Board or Subsidiary Board, as applicable, acting in accordance with Article IV (provided, that the Management Directors of the Board shall be disregarded in the case of any decision by the Company to repurchase Profits Interest Units under any Management Profits Interest Unit Agreement or decisions regarding the employment or compensation of Kanas or, if applicable, such other Management Member), and (ii) Members holding Common Units representing a Percentage Interest of at least 60% acting at a duly called and held meeting of the Members in accordance with Section 3.3:

(a) Operational Matters:

(i) approving, agreeing or consenting to, or making any material change in, the Company's or any Subsidiary's lines of business, other than as set forth in the Annual Budget;

(ii) subject to Section 3.4, engaging in any transaction (except (A) for ordinary course deposit relationships with a Management Member, (B) for extensions of credit to a Management Member that are in compliance with OTS regulations at 12 C.F.R. section 563.43, which incorporate Federal Reserve Board Regulation O at 12 C.F.R. part 215, as those provisions may be amended or succeeded, (C) for ordinary course deposit relationships with a Non-Management Member that (1) would not exceed $500,000 in the aggregate and (2) would be on substantially the same terms as those prevailing for comparable accounts held by third parties at NewBank, or (D) as otherwise expressly contemplated by this Agreement) with any Member or any Affiliate of any Member (a "**Related Party**& #148;); provided, that, any such transaction must be on terms that are no less favorable to the Company or a Subsidiary, as applicable, than those terms which would be obtained in a comparable arm's-length transaction with an unrelated third party; provided, further, that, for purposes of determining whether the requisite approval for such transaction has been obtained in accordance with this Section 4.11, (x) any Director appointed by, or Affiliated with, such Related Party, shall not be entitled to participate in any discussions or deliberations of the Board with respect to such transaction, and the vote required to approve such transaction under this Section 4.11 shall be a majority of all the members of the Board or NewBank Board, as applicable, excluding such Director appointed by, or Affiliated with, such Related Party and (y) the Member in respect of such transaction, shall be deemed to vote such Member's Interest (other than Class B Units) in the same proportion as the votes of the other Members (in the aggregate) with respect to such transaction;

(iii) adopting and approving the Annual Budget, or modifying, amending or deviating in any material respect from any such Annual Budget; provided, that in the event that the approval and adoption of any Annual Budget is not obtained as contemplated by this Section 4.11, then the Annual Budget in place at the time of such vote will remain in place and serve as the Annual Budget until such approval and adoption is obtained in accordance with this Section 4.11;

(iv) approving the hiring, firing and compensation (including any grants of Profits Interest Units) of Senior Officers (including delivery of a notice of non-renewal of the employment term of such Senior Officer under an employment or other similar agreement between such Senior Officer and the Company or any of its Subsidiaries) (excluding the hiring and initial compensation of the Original Management Members pursuant to the employment agreements entered into as of the date hereof among the Original Management Members, the Company and the other parties named therein and excluding the grant of the Profits Interest Units to the Original Management Members on the date hereof and the grant of Issuable IRR-Based Profits Interest Units or Issuable Time-Based Profits Interest Units, as applicable, after the date hereof in accordance with Sections 7.1(b)(i), (i i) and (iii));

(v) approving any amendments to the Management Profits Interest Unit Agreements, and adopting and approving an Implemented Equity Plan and any amendments thereto;

(b) Capitalization Matters:

(i) issuing shares of capital stock or securities convertible into shares, or warrants, options or other rights to acquire shares or limited liability interests, partnership interests or Interests (including Common Units and Profits Interest Units, but not including Class B Units) in the Company or any of its Subsidiaries (including any such actions taken in connection with the admission of an Additional Member under Section 3.9, but excluding any issuances to the Company or a wholly-owned Subsidiary of the Company); provided, that, in any such case, issuance of Interests shall be subject to Section 6.4(b);

(ii) repurchasing any Interests in the Company (including exercising any "Call Option" available to the Company pursuant to the terms of the Management Profits Interest Unit Agreements) or any shares of capital stock or securities convertible into shares of capital stock of any Subsidiary of the Company, except as contractually required by a Management Profits Interest Unit Agreement;

(iii) issuing a material amount of indebtedness for borrowed money or guaranteeing the obligations of third parties; and/or securing any such borrowings, indebtedness and/or guaranties by pledges or other liens on any material assets of the Company or any of its Subsidiaries, in each case, except for any such actions taken in the ordinary course of business (including, without limitation, issuing or incurring of customer related indebtedness, or other forms of bank liabilities, creating deposit liabilities, purchasing of federal funds, selling certificates of deposit, entering into repurchase agreements or issuing letters of credit, in each case, in the ordinary course of business) or as otherwise contemplated in any Annual Budget approved pursuant to this Section 4.11;

(iv) initiating an Initial Public Offering, IPO Conversion or IPO Liquidation;

(c) Transactional Matters:

(i) entering into any transaction or series of transactions involving (x) a merger, consolidation, amalgamation, recapitalization or other business combination involving the Company or any of its Material Subsidiaries, in each case except for a sale of the Company pursuant to Section 12.6(b), (y) any sale, divestiture or other Transfer of more than 10% of the outstanding interest in the capital stock of any Material Subsidiary, or more than 10% of the consolidated assets of the Company or its Material Subsidiaries, or (z) an acquisition of, or investment in, any other company or business or any assets and/or liabilities of any other company or business, in each of cases (y) and (z), involving aggregate

consideration in any one such transaction in excess of an amount equal to 10.0% of the shareholders equity of the Company and its Subsidiaries (on a consolidated basis) as reflected in the latest Quarterly Valuation (or, $75 million, to the extent the initial Quarterly Valuation has not been completed prior to the transaction in question);

(ii) liquidating, winding up or dissolving the Company or any of its Material Subsidiaries;

(iii) other than as contemplated by the Annual Budget in effect at the time of such transaction, entering into any material joint ventures or partnerships;

(iv) commencing a voluntary procedure for reorganization, arrangement, adjustment, relief or composition of indebtedness or bankruptcy, receivership or a similar proceeding, or consenting to the entry of an order for relief in an involuntary procedure for reorganization, arrangement, adjustment, relief or composition of indebtedness or bankruptcy, receivership or a similar proceeding or consenting to the appointment of a receiver, liquidator, custodian or trustee, in each case, with respect to the Company or any of its Subsidiaries, or any other liquidation or dissolution;

(d) Governance Matters:

(i) amending or repealing any provision of this Agreement or the certificate of incorporation or bylaws or other organizational governing documents of the Company or any of its Material Subsidiaries; it being understood that any amendment to this Agreement shall also be subject to Section 14.9(a) hereof;

(ii) any increase or decrease in the number of Directors that shall constitute the Board (it being understood that such increase or decrease shall in any event only be permissible to the extent permitted by the express terms of Section 4.1), excluding the increase in the number of Directors necessary to add additional Independent Directors to the extent contemplated by Section 4.1(b)(ii)(7);

(iii) changing any provision requiring the approval of specified Members, or a specified percentage of the Directors or of the outstanding Interests, without the approval required by such provision; and

(iv) agreeing or otherwise committing to take any actions set forth in the foregoing subparagraphs of this Section 4.11.

provided, that, notwithstanding the foregoing, (x) from and after the third anniversary of the Closing, the matters set forth in Section 4.11(b)(iv) and Section 4.11(c)(i) above shall be permitted with the approval of (I) a majority of all the members of the Board or Subsidiary Board, as applicable, acting in accordance with Article IV and (II) Members holding Common

Units representing a Percentage Interest of at least 50% acting at a duly called and held meeting of the Members in accordance with Section 3.3 and (y) no approval pursuant to this Section 4.11 shall be required in connection with a Member’s use of one or more affiliated investment vehicles to acquire additional Interests in the Company when exercising its Preemptive Rights in accordance with Section 6.4.

Section 4.12 Implementation of Approval Matters. In connection with any of the matters described in Section 4.11 that have been approved in accordance with the terms and conditions of this Agreement, the Members shall take all actions reasonably necessary and appropriate, as may be requested by the Senior Officers or the Board, to implement the matters that were so approved in accordance with Section 4.11.

Section 4.13 Annual Budgets. No later than December 1 of each Fiscal Year (commencing with December 1, 2009), the Senior Officers shall prepare and deliver to the Board a proposed annual budget (each, an “**Annual Budget**”) for the Company and any of its Subsidiaries on a consolidated basis with respect to the next succeeding Fiscal Year, which Annual Budget shall be subject to the approval required under Section 4.11. Until an Annual Budget is approved in accordance with Section 4.11, the most recently approved Annual Budget shall be the Annual Budget then in effect.

ARTICLE V

INVESTMENT REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 5.1 Representations, Warranties and Covenants of Members.

(a) Investment Intention and Restrictions on Disposition. Each Member represents and warrants that such Member is acquiring the Interests solely for such Member’s own account for investment and not with a view to resale in connection with any distribution thereof. Each Member agrees that such Member will not, directly or indirectly, Transfer any of the Interests (or solicit any offers to buy, purchase or otherwise acquire or take a pledge of any of the Interests) or any interest therein or any rights relating thereto or offer to Transfer, except in compliance with the Securities Act, all applicable state securities or “blue sky” laws and this Agreement, as the same shall be amended from time to time. Any attempt by a Member, directly or indirectly, to Transfer, or offer to Transfer, any Interests or any interest therein or any rights rel ating thereto without complying with the provisions of this Agreement, shall be void and of no effect.

(b) Securities Laws Matters. Each Member acknowledges receipt of advice from the Company that (i) the Interests have not been registered under the Securities Act or qualified under any state securities or “blue sky” laws, (ii) it is not anticipated that there will be any public market for the Interests, (iii) the Interests must be held indefinitely and such Member must continue to bear the economic risk of the investment in the Interests unless the Interests are subsequently registered under the Securities Act and such state laws or an exemption from registration is available, (iv) Rule 144 promulgated under the Securities Act (“**Rule 144**”) is not presently available with respect to sales of any securities of the Company and the Company has made no covenant to make Rule& nbsp;144 available and Rule 144 is not anticipated to be available in the foreseeable future, (v) when and if the Interests may be disposed of without registration in

reliance upon Rule 144, such disposition can be made only in limited amounts and in accordance with the terms and conditions of Rule 144 and the provisions of this Agreement, (vi) if the exemption afforded by Rule 144 is not available, public sale of the Interests without registration will require the availability of an exemption under the Securities Act, (vii) restrictive legends shall be placed on any certificate representing the Interests and (viii) a notation shall be made in the appropriate records of the Company indicating that the Interests are subject to restrictions on transfer and, if the Company should in the future engage the services of a transfer agent, appropriate stop-transfer instructions will be issued to such transfer agent with respect to the Interests.

(c) Ability to Bear Risk. Each Member represents and warrants that (i) such Member's financial situation is such that such Member can afford to bear the economic risk of holding the Interests for an indefinite period and (ii) such Member can afford to suffer the complete loss of such Member's investment in the Interests.

(d) Access to Information; Sophistication; Lack of Reliance. Each Member represents and warrants that (i) such Member is familiar with the business and financial condition, properties, operations and prospects of the Company and that such Member has been granted the opportunity to ask questions of, and receive answers from, representatives of the Company concerning the Company and the terms and conditions of the purchase of the Interests and to obtain any additional information that such Member deems necessary, (ii) such Member's knowledge and experience in financial and business matters is such that such Member is capable of evaluating the merits and risk of the investment in the Interests and (iii) such Member has carefully reviewed the terms and provisions of this Agreement and has evaluated the restrictions and obligations contained t herein. In furtherance of the foregoing, each Member represents and warrants that (i) no representation or warranty, express or implied, whether written or oral, as to the financial condition, results of operations, prospects, properties or business of the Company or as to the desirability or value of an investment in the Company has been made to such Member by or on behalf of the Company, (ii) such Member has relied upon such Member's own independent appraisal and investigation, and the advice of such Member's own counsel, tax advisors and other advisors, regarding the risks of an investment in the Company, (iii) such Member will continue to bear sole responsibility for making its own independent evaluation and monitoring of the risks of its investment in the Company and (iv) such Member acknowledges that it has conducted to its satisfaction an independent investigation of the financial condition, liabilities, results of operations and projected operations of the Company and the nature and condition of its assets and businesses and, in making the determination to proceed with the investment in the Company, has relied solely on the results of its own independent investigation. For purposes of this Section 5.1(d), the Company includes each of the businesses and assets to be acquired by the Company or any of its Subsidiaries pursuant to the FDIC Purchase Agreement.

(e) Accredited Investor. Each Member represents and warrants that such Member is an "accredited investor" as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act and, in connection with the execution of this Agreement, agrees to deliver such certificates to that effect as the Board may request.

(f) Independence of Members. Each Member represents that such Member is not an Affiliate of any other Member. Each Member represents that such Member's decision to invest

in the Company has been reached independently from the other Members. Each Member represents, to its actual knowledge, that such Member is not managed or advised by an investment manager or investment advisor who performs the same services for another Member. Each Member represents that it has not engaged and will not engage as part of a group consisting of substantially the same entities as the Members, in substantially the same combination of interests, in any additional banking or nonbanking activities or business ventures in the United States. Each Member represents that it is not a party to any agreements or understandings between any Members for the purpose of controlling the Company or any of its Subsidiaries other than the agreements set forth in this Agreement. Each Member represents that it is not a party to any agreements or understandings between any Members to act in concert in re spect of the Company or any of its Subsidiaries, other than agreements that are set forth in this Agreement (or with Members that are part of the same group (as evidenced by the listing of such Members as a group on the signature pages hereto; provided, for clarity, that Outside Members are not part of the same group). Each Member represents that it is not a party to any agreements or understandings pursuant to which it has the right to acquire the Interests of any other Member. Notwithstanding anything in the foregoing to the contrary, this Section 5.1(f) shall not apply with respect to affiliations and relationships between or among a Non-Management Member, on the one hand, and the other Non-Management Members that are part of the same group of such first Non-Management Member (as evidenced by the listing of such Non-Management Members as a group on the signature pages hereto; provided, for clarity, that Outside Members are not part of the same group), on the other hand.

Section 5.2 Additional Representations and Warranties of Non-Investor Members. Each Non-Investor Member represents and warrants that (i) such Non-Investor Member has duly executed and delivered this Agreement, (ii) all actions required to be taken by or on behalf of the Non-Investor Member to authorize it to execute, deliver and perform its obligations under this Agreement have been taken and this Agreement constitutes such Non-Investor Member's legal, valid and binding obligation, enforceable against such Non-Investor Member in accordance with the terms hereof, (iii) the execution and delivery of this Agreement and the consummation by the Non-Investor Member of the transactions contemplated hereby in the manner contemplated hereby do not and will not conflict with, or result in a breac h of any terms of, or constitute a default under, any agreement or instrument or any applicable law, or any judgment, decree, writ, injunction, order or award of any arbitrator, court or governmental authority which is applicable to the Non-Investor Member or by which the Non-Investor Member or any material portion of its properties is bound, (iv) no consent, approval, authorization, order, filing, registration or qualification of or with any court, governmental authority or third person is required to be obtained by such Non-Investor Member in connection with the execution and delivery of this Agreement or the performance of such Non-Investor Member's obligations hereunder, (v) if such Non-Investor Member is an individual, such Non-Investor Member is a resident of the state set forth opposite such Non-Investor Member's name on Schedule A and (vi) if such Non-Investor Member is not an individual, such Non-Investor Member's principal place of business and mailing address is in th e state set forth opposite such Non-Investor Member's name on Schedule A.

Section 5.3 Additional Representations and Warranties of Investor Members and Outside Members.

(a) Due Organization; Power and Authority, etc. Each of WLR Recovery Fund IV, L.P. and WLR IV Parallel ESC, L.P. represents and warrants that it is a limited partnership duly formed, validly existing and in good standing under the laws of the State of Delaware. WLR/GS Master Co-Investment, L.P. represents and warrants that it is a limited partnership duly formed, validly existing and in good standing under the laws of the Cayman Islands. Each of Carlyle Partners V, L.P., Carlyle Partners V-A, L.P., CP V Coinvestment A, L.P., CP V Coinvestment B, L.P., Carlyle Strategic Partners II, L.P., CSP II Co-Investment, L.P. and Carlyle Financial Services BU, L.P. represents and warrants that it is a limited partnership duly formed, validly existing and in good standing under the laws of the State of Delaware. Each of Centerbridge Capital Partner s, L.P., Centerbridge Capital Partners SBS, L.P. and Centerbridge Capital Partners Strategic, L.P. represents and warrants that it is a limited partnership duly formed, validly existing and in good standing under the laws of the State of Delaware, and each of CB BU Investors, L.L.C., CB BU Investors II, L.L.C. and CB BU Investors III, L.L.C. represents and warrants that it is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware. Each of Blackstone Capital Partners V L.P., Blackstone Capital Partners V-AC L.P., Blackstone Family Investment Partnership V L.P. and Blackstone Participation Partnership V L.P. represents and warrants that it is a limited partnership duly formed, validly existing and in good standing under the laws of the State of Delaware. LeFrak Organization, Inc. represents and warrants that it is a corporation duly formed, validly existing and in good standing under the laws of the State of New York, and LF Moby LLC re presents and warrants that it is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware. The Wellcome Trust Limited represents and warrants that it is a corporation duly formed, validly existing and in good standing under the laws of the United Kingdom, and The Wellcome Trust represents and warrants that it is a trust duly formed, validly existing and in good standing under the laws of the United Kingdom. Greenaap Consultants represents and warrants that it is a corporation duly formed, validly existing and in good standing under the laws of Bermuda, and Davy Global Opportunities Fund represents and warrants that it is a corporation duly formed, validly existing and in good standing under the laws of Ireland. Each of East Rock Capital GP, LLC, East Rock Focus Fund GP, LLC and EREF Special Situations, LLC represents and warrants that it is a limited liability company duly formed, validly existing and in good standing under the la ws of the State of Delaware, and East Rock Focus Fund, LP represents and warrants that it is a limited partnership duly formed, validly existing and in good standing under the laws of the State of Delaware. Each Investor Member and Outside Member further represents and warrants that it has all necessary power and authority to enter into this Agreement to carry out the transactions contemplated herein.

(b) Authorization; Enforceability. All actions required to be taken by or on behalf of such Investor Member or such Outside Member to authorize it to execute, deliver and perform its obligations under this Agreement have been taken, and this Agreement constitutes the legal, valid and binding obligation of such Investor Member or such Outside Member, enforceable against such Investor Member or such Outside Member in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(c) Compliance with Laws and Other Instruments. The execution and delivery of this Agreement and the consummation by such Investor Member or such Outside Member of the transactions contemplated hereby in the manner contemplated hereby do not and will not conflict with, or result in a breach of any terms of, or constitute a default under, any agreement or instrument or any applicable law, or any judgment, decree, writ, injunction, order or award of any arbitrator, court or governmental authority which is applicable to such Investor Member or such Outside Member or by which such Investor Member or such Outside Member or any material portion of its properties is bound, except for conflicts, breaches and defaults that, individually or in the aggregate, will not have a material adverse effect upon the financial condition, business or operations of such Investor M ember or such Outside Member or upon such Investor Member's or such Outside Member's ability to enter into and carry out its obligations under this Agreement.

(d) Executing Parties. The person executing this Agreement on behalf of each Investor Member and each Outside Member has full power and authority to bind such Investor Member or such Outside Member to the terms hereof.

Section 5.4 Additional Representations and Warranties of Kanas. Kanas represents and warrants that, prior to the capitalization of the Company in connection with the consummation of the transactions contemplated by the FDIC Purchase Agreement, the Company had no assets or liabilities and did not engage in any business, other than as an incident to attempting to be chosen to enter the FDIC Purchase Agreement.

Section 5.5 83(b) Election. In accordance with the Management Profits Interest Unit Agreements, each Management Member has agreed that it shall make an election pursuant to section 83(b) of the Code with respect to its receipt of any Profits Interest Unit.

Section 5.6 ERISA Matters. Each Member and, at the request of a Member, each investor therein that indirectly has an interest in the Company, in each case that is intended to qualify as a "venture capital operating company" (a "**VCOC**") as defined in the Plan Asset Regulations (each, a "**VCOC Investor**"), will have customary and appropriate VCOC rights (including consultation rights, inspection and access rights, and rights to receive materials for all meetings of the Board and the NewBank Board, as applicable (as well as board committees thereof), and the right to audited and unaudited financial statements, annual budget and other financial and operations information, including advance notification of and consultation with respect to significant corporate actions) relating to inspection, information and consultation with respect to the Company and NewBank, as applicable; provided that this provision shall not entitle any Member to designate any members of the Board, except as provided above under Section 4.1 of this Agreement. The Company and NewBank each agree to consider, in good faith, the recommendations of the VCOC Investor or its designated representative in connection with the matters on which it is consulted as described above, recognizing that the ultimate discretion with respect to all such matters shall be retained by the Company and NewBank, as the case may be.

Section 5.7 Regulatory Matters.

(a) Unless agreed in advance by such Member and approved by the Board, no Member shall, directly or indirectly, together with any other Person deemed to be acting in concert with such Member under the Control Regulations or other applicable regulations: (i) acquire 25% or more of any class of voting securities of the Company, (ii) acquire irrevocable proxies representing 25% or more of any class of voting securities of the Company, (iii) acquire any combination of voting securities and irrevocable proxies representing 25% or more of any class of voting securities of the Company, (iv) control in any manner the election of a majority of the directors of the Company, (v) serve as a general partner of the Company, (vi) contribute 25% or more of the capital of the Company, or (vii) serve as a trustee of the Company; it being understood that the Company shall not redeem or repurchase any Interests, or take or cause to be taken any action, nor shall the Board authorize any of the foregoing, to the extent such action would, or would be reasonably likely to, result in a breach of this provision.

(b) Unless agreed in advance by such Member and approved by the Board, no Member that is (i) a bank holding company for purposes of the BHC Act, (ii) a savings and loan holding company ("**SLHC**") for purposes of the Home Owners' Loan Act, as amended (the "**HOLA**"), or (iii) controlled by a company described in (i) or (ii), shall, directly or indirectly, together with any other Person deemed to be acting in concert with such Member under the Control Regulations or other applicable regulations, own or control an aggregate Percentage Interest of 5% or more; it being understood that the Company shall not redeem or repurchase any Interests, or take or cause to be taken any action to the extent such action would result in a breach of this provision.

(c) Subject to the foregoing, to the extent necessary, the Members will cooperate in good faith to restructure the investment of a Member to ensure that such Member does not exceed the foregoing ownership limitations (except for any Member whose ownership exceeds such limitations as of the date of this Agreement); provided that no such restructuring shall require any other Member to increase or decrease its Percentage Interest without the consent of such Member.

(d) In the event that (i) failure by any Member to submit to the OTS a request for a determination of rebuttal of control or of rebuttal of concerted action pursuant to 12 C.F.R. § 574.4(e) or enter into a Rebuttal of Control Agreement with the OTS in substantially the form set forth at 12 C.F.R. § 574.100 would result in the Member being subject to a presumption of control of the Company for purposes of the Control Regulations, (ii) any Member is required by the OTS or any successor regulator to apply to become a SLHC or the equivalent or (iii) any Member is required by the OTS to accept other burdensome regulatory conditions on its investment in the Company, the Company and the Members will cooperate in good faith to restructure the investment of such Member, including through the issuance of non-voting Units, to avoid any such p resumption or requirement, as applicable; provided that no such restructuring shall (x) require any other Member to increase or decrease its Percentage Interest without the consent of such Member or (y) be required pursuant to clause (i) with respect to those Members that were subject to a presumption of control as of the Closing Date.

(e) At the request of the Company, each Member agrees to promptly provide any such information that the OTS or any other bank or thrift regulatory agency may request in connection with any application or other filing required to be made by the Company, and undertakes that

such information shall be true and accurate; provided, however, that in lieu of the foregoing, any Member may, in its sole discretion, provide directly to the OTS or such other regulatory agency any such information that such Member deems to be proprietary or confidential in nature.

(f) Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 5.7 shall supersede and control with respect to any other provisions of this Agreement that may conflict with or that may result in a breach of any of the provisions described in this Section 5.7 and the provisions of this Section 5.7 shall apply, *mutatis mutandis*, to all of the provisions of this Agreement to the extent necessary to cause such other provisions of this Agreement to comply with this Section 5.7.

ARTICLE VI

CAPITAL ACCOUNTS; CAPITAL CONTRIBUTIONS

Section 6.1 Capital Accounts. A separate capital account (a "**Capital Account**") shall be established and maintained for each Member. The initial balance in each Member's Capital Account shall be as set forth on Schedule A.

Section 6.2 Adjustments.

(a) Each Member's Capital Account shall be credited with the amount of cash contributed by such Member on the date hereof, which will be set forth on Schedule A, and shall also be credited with the Fair Market Value of the property (if any) contributed by such Member on the date hereof, which will be set forth on Schedule A.

(b) As of the end of each Accounting Period, the balance in each Member's Capital Account shall be adjusted by (i) increasing such balance by (A) such Member's allocable share of Net Income (allocated in accordance with Section 8.1), (B) the items of income or gain allocated to such Member pursuant to Section 8.2 and (C) the amount of cash and the Fair Market Value of any property (as of the date of the contribution thereof and net of any liabilities encumbering such property) contributed to the Company by such Member during such Accounting Period, if any, and (ii) decreasing such balance by (A) the amount of cash and the Fair Market Value of any property (as of the date of the distribution thereof and net of any liabilities encumbering such property) distributed to such Member during such Accounting Period, (B) such Member's allocable share of Net Loss (allocated in accordance with Section 8.1) and (C) the items of deduction or loss allocated to such Member pursuant to Section 8.2. The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations section 1.704-1(b) and section 1.704-2 and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

Section 6.3 Closing Capital Contributions.

(a) On the date hereof each Member shall make a cash Capital Contribution to the Company in the amount set forth opposite such Member's name on Schedule A (and as otherwise contemplated by the equity commitment letter delivered by such Member to the Company prior to the date hereof) and, in consideration thereof, the Company shall issue to such Member the

number of Common Units and, with respect to Non-Management Members, Class B Units, in each case as set forth opposite such Member's name on Schedule A.

(b) With respect to cash Capital Contributions received by the Company on the date hereof (as set forth in Section 6.3(a) above), any of the Senior Officers of the Company shall be authorized to authorize the contribution on or around the date hereof of all or a portion of such funds promptly to InterCo and/or any other Subsidiary of the Company as may be required to consummate the transactions contemplated by the FDIC Purchase Agreement, and to make the payments in accordance with the Transaction Fee Agreement, dated May 21, 2009, among the Company and the other parties thereto and to pay fees and expenses in accordance with Section 10.5. Notwithstanding anything to the contrary, no further approval of the Board or the Members shall be required with respect to the foregoing.

Section 6.4 Additional Capital Contributions.

(a) Following the Closing, no Member shall be required to make any additional Capital Contribution to the Company in respect of the Interests then owned by such Member. Subject to, and in accordance with the provisions of this Agreement, including Section 6.4(b) and Section 4.11, a Member may make additional Capital Contributions to the Company in exchange for Common Units upon the approval of the Board. Any contributions of property after the date hereof shall be valued at their Fair Market Value.

(b) Without limiting the generality of Section 6.4(a) (and without duplication), if after the Closing and prior to an Initial Public Offering, the Company proposes to issue, other than any Exempt Issuances, any Interests (the "**Proposed Third Party Interests**"), the Company shall first offer (the "**Preemptive Rights Notice**") to sell to each Member holding Common Units their respective Pro Rata Share of such Proposed Third Party Interests. A Member, upon receipt of an Initial Preemptive Rights Notice, shall have a reasonable amount of time (but in no event fewer than five Business Days), as determined by the Board in light of the circumstances, to indicate in writing whether it accepts the offer to participate in such issuance, setting forth the number of Propo sed Third Party Interests it wishes to purchase (up to its Pro Rata Share of such Proposed Third Party Interests, such portion that such Member wishes to purchase, the "**Preemptive Purchase Amount**"); provided that in order to exercise its rights under this Section 6.4(b) ("**Preemptive Rights**"), such Member must execute all customary transaction documents in connection with such issuance on the same terms as each other Member that elects to participate in such issuance; provided further that in the event that the Company is issuing more than one type or class of securities in connection with such issuance, each Member participating in such issuance shall be required to acquire the same percentage of all such types and classes of securities. Upon the earlier of the expiration of such relevant offering period or the date upon which the Members receiving the Preemptive Rights No tice have responded thereto to the Company, (x) if all of the Members have affirmatively responded to such Preemptive Rights Notice to purchase each such Member's entire Pro Rata Share of such Proposed Third Party Interests, the Company may no longer issue and sell such Proposed Third Party Interests to the offerees thereof or (y) if not all of such Members have affirmatively responded to such Preemptive Rights Notice, then such Proposed Third Party Interests specified in the Preemptive Rights Notice that are not purchased by the Members receiving the Preemptive Rights Notice (the "**Declined Interests**") pursuant to the terms of this Section 6.4(b) may be issued and sold by

the Company to the offerees thereof (at a purchase price and on terms no less favorable to the Company than the terms set forth in the Preemptive Rights Notice) within forty-five days of the earlier of the expiration of such ten-Business Day period or the date upon which the Members receiving the Preemptive Rights Notice have responded thereto to the Company. The Company shall issue an aggregate number of Proposed Third Party Interests to each Member that has given written notice of the exercise of its rights hereunder (or to such Member's designee that is an Affiliate of such Member, which Affiliate shall automatically be admitted as a Non-Management Member after complying with the provisions of Section 3.9) equal to the Preemptive Purchased Amount applicable to such Member as soon as practicable, and in no event later than the later of (i) five Business Days after receipt of such notice, and (ii) the closing of the issuance of such Interests to the third-party purchaser, against payment to the Company by such Member of solely cash consideration for such Interests. Any equity securities not issued within such period will be subject to the provisions of this Section 6.4(b) upon subsequent issuance. The Company shall provide that the issuance of interests in any Subsidiary shall be subject to preemptive rights substantially similar to, and in favor of the holders of, the rights described in this Section 6.4(b); provided, however, that such preemptive rights relating to any Subsidiary shall terminate upon the Initial Public Offering. Notwithstanding the foregoing, in the event a Non-Managing Member, directly or indirectly, is pursuing an acquisition outside the Company in connection with which the Company is seeking to raise capital for the purpose of financing such acquisition, the Board may make alternative arrangements appropriate under the circumstances with regard to such Preemptive Rights of such Non-Managing Member.

(c) Notwithstanding anything to the contrary herein, except upon the unanimous approval of the Board, no Member shall have the right to make additional Capital Contributions to the Company or purchase additional Units or equity securities pursuant to this Section 6.4 and the Company shall not be required to deliver a Preemptive Rights Notice in connection with (i) issuances to management, employees, officers or directors of the Company or any of its Subsidiaries pursuant to management incentive programs approved by the Board, including any issuances of Profits Interest Units under this Agreement or any issuances pursuant to an Implemented Equity Plan, (ii) issuances, deliveries or sales of securities by the Company or any of its Subsidiaries to a Third Party as consideration in connection with (but not in connection with raising capital to fund) the acquis ition, strategic business combination or investment by the Company approved by the Board in any party which is not, prior to such transaction, an Affiliate of the Company or any Member (whether by merger, consolidation, stock swap, sale of assets or securities, or otherwise), (iii) issuances, deliveries or sales of securities by the Company in an IPO or a registration pursuant to the Registration Rights Agreement or (iv) issuances of securities upon the conversion or exchange of securities that were previously authorized and approved in accordance with this Agreement (collectively, "**Exempt Issuances**"). The provisions of this Section 6.4 are intended solely to benefit the Members and, to the fullest extent permitted by applicable law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor shall be a third party beneficiary of this Agreement), and no Member shall have any duty or obligation t o any creditor of the Company to make any additional Capital Contributions or to cause the Board to consent to the making of additional Capital Contributions.

(d) Notwithstanding anything to the contrary contained herein, the Preemptive Rights set forth in Section 6.4(b) shall cease to apply from and after the Initial Public Offering.

Section 6.5 Negative Capital Accounts. Except as otherwise required by this Agreement, no Member shall be required to make up a negative balance in its Capital Account.

ARTICLE VII

ADDITIONAL TERMS APPLICABLE TO PROFITS INTEREST UNITS

Section 7.1 Certain Terms.

(a) General. There shall be established two classes of Profits Interest Units, consisting of IRR-Based Profits Interest Units and Time-Based Profits Interest Units. At the Closing, in accordance with the Management Profits Interest Unit Agreements, the Original Management Members shall be issued a number of IRR-Based Profits Interest Units and Time-Based Profits Interest Units as set forth opposite their respective names on Schedule A, and such Profits Interest Units shall constitute all of the Profits Interest Units available for allocation as of the Closing. The Board, in consultation with Kanas (for so long as Kanas is Chief Executive Officer of the Company or any of its Material Subsidiaries), shall have discretionary authority, but shall not be required, to allocate to any Active Management Member or other employee of the Company or its Subs idiaries any unallocated Profits Interest Units that may exist from time to time after the Closing, including any Profits Interest Units that are forfeited in accordance with this Agreement, the Management Profits Interest Unit

Agreement or an employment agreement or services agreement between any Management Member and the Company or any Subsidiary of the Company. Schedule A will be amended to reflect any of the actions taken pursuant to, and in accordance with, this Section 7.1(a).

(b) Initial and Subsequent Allocation of Profits Interest Units.

(i) Initial and Subsequent Allocation of IRR-Based Profits Interest Units. The initial pool of IRR-Based Profits Interest Units at the Closing shall consist of 51,388.89 IRR-Based Profits Interest Units, all of which have been allocated to the Original Management Members on the Closing as set forth on Schedule A hereto and as of the date hereof there are no unallocated IRR-Based Profits Interest Units. From and after the date hereof and up to such time as the Threshold Amount has been reached, each time additional Capital Contributions are made to the Company (both the initial Capital Contribution and each subsequent round of Capital Contributions being referred to as a "**Tranche**", and with each such Tranche (or portion thereof) that is prior to the Threshold Amount being reached being referred to as a "**Pre-Threshold Tranche**"), such Capital Contributions will be made in consideration of the issuance of Common Units designated as relating to the relevant Tranche. For the avoidance of doubt, the Capital Contributions in respect of the Class B Units shall be deemed to be part of the same Tranche as the Common Units issued on the date hereof (i.e., the initial Tranche only) solely for purposes of Section 9.1(a)(ii) and for no other purposes hereunder. In connection with each Pre-Threshold Tranche occurring after the date hereof, the Company shall issue an additional number of IRR-Based Profits Interest Units in respect of such Tranche equal to the product of (x) the aggregate number of Common Units issued in such Tranche, times (y) one eighteenth, times

(z) a fraction, the numerator of which is the sum of the Profits Interest Percentage at such time of all Original Management Members who are Active Management Member at such time (each such Member, an "**AOM Member**"), and the denominator of which is 100%. Such product represents the number of "**Issuable IRR-Based Profits Interest Units**" for such Tranche. The Company shall then allocate and grant to each AOM Member then holding IRR-Based Profits Interest Units (and shall amend Schedule A to reflect such allocation) an additional number of IRR-Based Profits Interest Units in respect of such Tranche equal to the product of (x) the aggregate number of Issuable IRR-Based Profits Interest Units for such Tranche, times (y) a fraction, the numerator of which is the Profits Interest Percentage of such AOM Member at such time and the denominator of which is the sum of the Profits Interest Percentage at such time of all AOM Members. The "**Non-Issuable IRR-Based Profits Interest Units**" for a particular Tranche is a number of IRR-Based Profits Interest Units equal to the product of (x) the aggregate number of Common Units issued in such Tranche, times (y) one eighteenth, times (z) a fraction, the numerator of which is 100% minus the sum of the Profits Interest Percentage at such time of all AOM Members at such time and the denominator of which is 100%. The Board will have the same discretion to allocate Non-Issuable IRR-Based Profits Interest Units to any employee that it has with respect to the reallocation of forfeited IRR-Based Profits Interest Units as specified in Section 7.1(a). The parties understand and acknowledge that the purpose of the foregoing is to provide AOM Members holding IRR-Based Profits Interes t Units anti-dilution protection from and after the Closing until Capital Contributions are made up to the Threshold Amount (and such anti-dilution protection is necessary for the allocated IRR-Based Profits Interest Units) in order to ensure that AOM Members maintain the same relative economic interest in the Company by virtue of IRR-Based Profits Interest Units held by AOM Members, as the AOM Members had immediately prior to such additional Capital Contributions. The issuance and allocation of Issuable IRR-Based Profits Interest Units pursuant to this Section 7.1(b)(i) shall not require any approval of the Members or the Board and shall occur simultaneously with the issuance of any Common Units after the date hereof. IRR-Based Profits Interest Units so issued shall always relate to the Pre-Threshold Tranche to which they originally related.

(ii) Initial and Subsequent Allocation of Time-Based Profits Interest Units. The initial pool of Time-Based Profits Interest Units on the date hereof consists of 51,388.89 Time-Based Profits Interest Units, all of which have been allocated to the Original Management Members on the date hereof as set forth on Schedule A hereto and as of the date hereof there are no unallocated Time-Based Profits Interest Units. In connection with each Pre-Threshold Tranche occurring after the date hereof, the Company shall issue an additional number of Time-Based Profits Interest Units in respect of such Tranche equal to the product of (x) the aggregate number of Common Units issued in such Tranche, times (y) one eighteenth, times (z) a fraction, the numerator of which is the sum of t he Profits Interest Percentage at such time of all AOM Members at such time, and the

denominator of which is 100%. Such product represents the number of "**Issuable Time-Based Profits Interest Units**" for such Tranche. The Company shall then allocate and grant to each AOM Member then holding Time-Based Profits Interest Units (and shall amend Schedule A to reflect such allocation) an additional number of Time-Based Profits Interest Units in respect of such Tranche equal to the product of (x) the aggregate number of Issuable Time-Based Profits Interest Units for such Tranche, times (y) the numerator of which is the Profits Interest Percentage of such AOM Member at such time and the denominator of which is the sum of the Profits Interest Percentage at such time of all AOM Members. The "**Non-Issuable Time-Based Profits Interest Units**" for a particular Tranche is a number of Time-Based Profits Interest Units equal to the product of (x) the aggregate number of Common Units issued in such Tranche, times (y) one eighteenth, times (z) a fraction, the numerator of which is 100% minus the sum of the Profits Interest Percentage at such time of all AOM Members at such time and the denominator of which is 100%. The Board will have the same discretion to allocate Non-Issuable Time-Based Profits Interest Units to any employee that it has with respect to the reallocation of forfeited Time-Based Profits Interest Units as specified in Section 7.1(a). The parties understand and acknowledge that the purpose of the foregoing is to provide AOM Members holding Time-Based Profits Interest Units anti-dilution protection from and after the Closing until Capital Contributions are made up to the Threshold Amount (and such anti-dilution protection is necessary for the allocated Time-Based Profits Interest Units) in order to ensure that AOM Members maintain the same relative economic interest in the Company by virtue of Time-Based Profits Interest Units held by AOM Members, as the AOM Members had immediately prior to such additional Capital Contributions. The issuance and allocation of Issuable Time-Based Profits Interest Units pursuant to this Section 7.1(b)(ii) shall not require any approval of the Members or the Board and shall occur simultaneously with the issuance of any Common Units after the date hereof. Time-Based Profits Interest Units so issued shall always relate to the Pre-Threshold Tranche to which they originally related.

(iii) In connection with any subsequent allocation and grant of Profits Interest Units in accordance with this Section 7.1(b) to an AOM Member, such AOM Member and the Company shall enter into a management profits interest unit agreement (substantially similar to the Management Profits Interest Unit Agreement entered into as of the date hereof, with only such adjustments as are necessary to account for the new grant date (and, accordingly, vesting terms) of the Time-Based Profits Interests Units issued under this Section 7.1(b) (which grant date shall be the date of the additional Capital Contribution that triggered the corresponding issuance of the Profits Interest Units to Management Members in accordance with this Section 7.1(b)) as shall be set forth on Schedule A hereto).

(iv) If Capital Contributions are made to the Company in excess of the Threshold Amount, the Board may (but shall not be obligated to) grant additional Profits Interest Units or other equity-linked arrangements to the Management Members.

(c) Participation and Forfeiture of Time-Based Profits Interest Units. A Management Member's Time-Based Profits Interest Units may be subject to forfeiture and repurchase rights in accordance with the applicable provisions of such Management Member's Management Profits Interest Unit Agreement. Only Vested Time-Based Profits Interest Units held by Management Members and Inactive Management Members shall participate in distributions under Article IX.

Section 7.2 Inactive Management Members. If a Management Member ceases to be employed by the Company or one of its Subsidiaries in connection with the termination of employment of such Member for any reason (including death or disability), such Member (and such Management Member's permitted transferees) shall be thereafter referred to herein as an "**Inactive Management Member**" with only the rights of an Inactive Management Member specified herein. Notwithstanding the foregoing, such Inactive Management Member shall continue to be treated as a Member (including, for the avoidance of doubt, for purposes of Article IX hereof).

Section 7.3 Tier 2 Management Incentive Plan. From and after the Closing and subject to the approval pursuant to Section 4.11, if the Board determines to implement an option plan or other incentive plan (whether at the Company level or at any Subsidiary) covering employees of the Company or any of its Subsidiaries (unless otherwise determined by the Board, other than the Management Members) (an "**Implemented Equity Plan**"), such Implemented Equity Plan shall have terms and conditions, including those relating to vesting criteria, as may be determined by the Board (in consultation with, and after taking into account the advice and recommendations of, Kanas, for so long as Kanas is Chief Executive Officer of the Company or any of its Material Subsidiaries) . No additional shares of InterCo shall be issued to the Company and no additional Units will be issued to the Members solely in respect of such Implemented Equity Plan, it being understood that the Implemented Equity Plan is intended to, and shall, dilute the Members (in respect of their Common Units) and the Management Members (in respect of their Profits Interest Units) on a pro rata basis.

Section 7.4 Adjustment Events.

(a) Proposed Adjustment. Notwithstanding any other provisions in this Agreement to the contrary, in the event of any change in the outstanding Units after the date hereof by reason of any equity dividend or split, reorganization, recapitalization, merger, consolidation, spin-off, combination, or transaction or exchange of Units or other corporate exchange, or any distribution to Members of equity or other extraordinary distribution (regardless of whether outstanding Units are changed) (collectively, "**Adjustment Events**"), after taking into account the principles described in this Section 7.4 and other applicable provisions set forth in this Agreement, the Board shall (before the occurrence of the Adjustment Event or, if reasonably necessary in order to facilitate the occurrence of the Adjustment Event and /or the calculations hereunder on a timely basis, coincident with or promptly following the Adjustment Event), deliver to the Original Management Members who then hold Profits Interest Units a detailed summary of the manner in which the Board proposes to make adjustments, substitutions, exchanges and/or modifications (the "**Proposed Adjustment**") in respect of the Profits Interest Units as a result of the Adjustment Event (which summary shall include the amount and all material terms (including any applicable vesting criteria or conversion ratios) of each class of equity or other instrument proposed to be issued in exchange for the Profits Interest Units held by the Original Management

Members and other Management Members as a result of such Adjustment Event (the "**Proposed Adjustment Summary**")).

(b) Board Proposal. The Proposed Adjustment Summary shall be prepared, and the Proposed Adjustment shall be effected, taking into account the principles described in this Section 7.4 and other applicable principles set forth in this Agreement and shall be determined on an equitable basis (taking into consideration such matters, without limitation, as relative value of each class of Profits Interest Units, status of vesting and the nature of the Adjustment Event and its impact on the Profits Interest Units) to the Original Management Members as a group, as to (i) the number or kind of Units or other securities issued or reserved for issuance hereunder, (ii) the applicable vesting terms, (iii) the distribution priorities contained herein and/or (iv) any other affected terms hereunder.

(c) No Adjustment for Taxes; Section 409A. For the avoidance of doubt, no adjustment shall be made for differences in the tax treatment in the Proposed Adjustment. The Proposed Adjustment shall be structured in a manner intended to not violate Section 409A of the Code, to the extent subject thereto.

(d) Dispute Resolution. Kanas, if he is then either Chairman or Chief Executive Officer of the Company or any of its Subsidiaries (or, if not, a majority of the Original Management Members who are then still in the employment of the Company or any of its Subsidiaries or, if no Original Management Member is then still in the employment of the Company or any of its Subsidiaries, a majority of the group comprised of any Original Management Member who then holds Profits Interest Units with an estimated Fair Market Value (determined in accordance with the procedures set forth in the Management Profits Interest Unit Agreement for purposes of exercising a "Call Option") in excess of $2,000,000 (or if no Original Management Member holds such Profits Interest Units with such value, then the Original Management Member that holds Profits Interest Units with t he greatest Fair Market Value at such time); the deciding Original Management Member(s), the "**Deciding OMM**") shall have five Business Days following receipt of the Proposed Adjustment Summary to challenge in writing (with reasonable detail) the Proposed Adjustment Summary. In the case of such a challenge, the Board and the Original Management Members shall negotiate in good faith to resolve such dispute for no more than two Business Days, and if such dispute is not so resolved in such period, the dispute shall be submitted to an independent accounting firm, investment bank or valuation firm of nationally recognized standing or other arbitrator ("**Adjustment Appraiser**") mutually agreed upon by the Board and the Deciding OMM for resolution within 10 Business Days, and the determination of such Adjustment Appraiser shall be final and binding on the Members and the Company (provided that if such Adjustm ent Appraiser approves the Proposed Adjustment specified in the Proposed Adjustment Summary without any significant modification, then the Original Management Members (on a pro rata basis by reference to the relative Fair Market Value of their respective Profits Interest Units) shall bear the costs and expenses of such third party; otherwise, the Company shall bear such costs and expenses).

(e) Adjustment. Following the distribution of the Proposed Adjustment Summary in accordance with the foregoing, if (x) the Deciding OMM does not exercise its rights under this Section 7.4 within the time period specified therein, (y) the Deciding OMM and the Board agree on an alternative Proposed Adjustment or (z) the Adjustment Appraiser makes a final and binding determination, the Board shall take such actions as are necessary and appropriate to implement the Proposed Adjustment (as described in the Proposed Adjustment Summary, as agreed by the Deciding OMM and the Board or as determined by the Adjustment Appraiser, as applicable); it being understood that such actions may take effect before, promptly following or coincident with the Adjustment Event, as appropriate in light of the circumstances as determined by the Board. Notwithstanding anything to the contrary contained in this Agreement, any actions with respect to the Units in connection with an IPO Conversion or IPO Liquidation shall be governed exclusively by Section 12.7 hereof and not this Section 7.4.

Section 7.5 Treatment of Profits Interest Units; Change in Law. Unless otherwise required by a change in law or as a result of a successful challenge by the IRS after the date hereof, the Company (i) will report on its U.S. federal income tax returns Profits Interest Units as issued and outstanding on the applicable grant date and with an initial Capital Account of $0 and (ii) as a result of the receipt, vesting or disposition of, or lapse of any restriction with respect to, any Profits Interest Units granted to an Original Management Member, (A) will not report on its U.S. federal income tax returns any amou nts as compensation income to such Original Management Member and (B) will not withhold any taxes thereon with respect to such Original Management Member. In the event of any change in law or as a result of a successful challenge by the IRS after the date hereof that is reasonably expected to result in either (x) the receipt of Profits Interest Units or (y) capital gains of the Partnership allocated with respect thereto, in either case, being taxed to any Original Management Member as ordinary compensation income, the Board and each Member agree to cooperate in good faith, to the extent requested by the Deciding OMM in writing on a timely basis, to restructure or modify the Profits Interest Units to provide the most efficient overall tax result as is practicable to the Original Management Members without causing an adverse effect on any other Member that is more than de minimis (it being understood that the incurrence of reasonable and customary expenses incurred in providing such cooper ation and restructuring or modification and other reasonable and customary incidental expenses shall not be treated as causing an adverse effect), including by exchanging Profits Interest Units into economically equivalent (on a pre-tax basis) equity and equity-based awards of InterCo or such other Subsidiary of the Company. Notwithstanding anything to the contrary and for the avoidance of doubt, no Management Member shall be entitled to any additional payments, property or compensation in the event of any such change in law or as a result of a successful challenge by the IRS after the date hereof and/or restructuring or modification, including if the parties are unable to reach an agreement regarding such restructuring or modification. In the event that the Company incurs costs defending an IRS challenge to the tax treatment of the Profits Interest Units set forth in this Section 7.5 or as a result of any restructuring or modification pursuant to this Section 7.5, the Original Manageme nt Members shall reimburse the Company for such costs in excess of $350,000.

ARTICLE VIII
ALLOCATIONS

Section 8.1 Book Allocations of Net Income and Net Loss.

(a) Except as provided in Section 8.2, Net Income and Net Loss of the Company shall be allocated among the Members' Capital Accounts as of the end of each Accounting Period or portion thereof in a manner such that if the Company were dissolved, its affairs wound up and its

assets distributed to the Members in accordance with their respective Capital Account balances immediately after making such allocations, such distributions would, as nearly as possible, be equal to the distributions that would be made pursuant to Section 9.1.

(b) Except as otherwise provided in Section 8.2, all items of gross income, gain, loss and deduction included in the computation of Net Income and Net Loss shall be allocated in the same proportion as are Net Income and Net Loss.

Section 8.2 Special Book Allocations.

(a) Qualified Income Offset. If any Member unexpectedly receives any adjustment, allocation or distribution described in Treasury Regulations section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) and such adjustment, allocation or distribution causes or increases a deficit in such Member's Capital Account in excess of its obligation to make additional Capital Contributions (a "**Deficit**"), items of gross income and gain for such Accounting Period and each subsequent Accounting Period shall be specifically allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Deficit of such Member as quickly as possible; provided that an allocation pursuant to this Section 8.2(a) shall be made only if and to the extent that such Me mber would have a Deficit after all other allocations provided for in this Article VIII have been tentatively made as if this Section 8.2(a) were not in this Agreement. This Section 8.2(a) is intended to comply with the qualified income offset provision of Treasury Regulations section 1.704-1(b)(2)(ii)(d) and shall be interpreted in a manner consistent therewith.

(b) Minimum Gain Chargeback. Notwithstanding any other provision of Section 8.1 or this Section 8.2 (other than Section 8.2(d)), if there is a net decrease in Minimum Gain during any Accounting Period, then, subject to the exceptions set forth in Treasury Regulations section 1.704-2(f)(2), (3), (4) and (5), each Member shall be specially allocated items of the Company income and gain for such Accounting Period (and, if necessary, subsequent Accounting Periods) in an amount equal to such Member's share of the net decrease in Minimum Gain, as determined under Treasury Regulations section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Tr easury Regulations section 1.704-2(f). This Section 8.2(b) is intended to comply with the minimum gain chargeback requirements in Treasury Regulations § 1.704-2(f) and shall be interpreted consistently therewith.

(c) Member Minimum Gain Chargeback. Notwithstanding any other provision of Section 8.1 or this Section 8.2, except Sections 8.2(b) and 8.2(d), if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any fiscal year, then, subject to the exceptions set forth in Treasury Regulations 1.704-2(i)(4), each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations section 1.704-2(i)(5), shall be specially allocated items of the Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations section 1.704-2(i)(4). A llocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations 1.704-2(i)(4). This Section 8.2(c) is intended to comply with the minimum gain chargeback requirement in such section of the Treasury Regulations and shall be interpreted consistently therewith.

(d) Notwithstanding anything to the contrary in this Agreement, items of gross income, gain, loss or deduction shall be specifically allocated to particular Members to the extent necessary to comply with applicable law (including the requirement to make "forfeiture allocations" within the meaning of Prop. Treas. Reg. Section 1. 704- 1(b)(4)(xii)).

(e) Restorative Allocations. Any special allocations of items of income or gain pursuant to this Section 8.2 shall be taken into account in computing subsequent allocations pursuant to this Agreement so that the net amount for any item so allocated and all other items allocated to each Member pursuant to this Agreement shall be equal, to the extent possible, to the net amount that would have been allocated to each Member pursuant to the provisions of this Agreement if such special allocations had not occurred.

Section 8.3 Tax Allocations. The income, gains, losses, credits and deductions recognized by the Company shall be allocated among the Members, for U.S. federal, state and local income tax purposes, to the extent permitted under the Code and the Treasury Regulations, in the same manner that each such item is allocated to the Members' Capital Accounts. Notwithstanding the foregoing, the Board shall have the power to make such allocations for U.S. federal, state and local income tax purposes so long as such allocations have substantial economic effect, or are otherwise in accordance with the Members' Interests, in each case within the meaning of the Code and the Treasury Regulations. In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for U.S. federal income tax purposes and its Book Value.

ARTICLE IX

DISTRIBUTIONS

Section 9.1 Distributions Generally.

(a) This section provides for the distribution of certain amounts ("**Distributable Amounts**") to the Members. The term "Distributable Amounts" means at any time determined by the Board as may be permitted under laws or regulatory requirements applicable to the Company and its Subsidiaries, any amounts designated by the Board to the extent that the cash available to the Company is in excess of the reasonably anticipated needs of the business (including reserves). Immediately prior to the making of any distribution, a tentative distribution schedule shall be prepared for approval by the Board (and no distribution shall be made without such approval), including for the purpose of determining the number of Participating Units in each Tranche (and the corresponding determination of whether the Tranche IRR H urdle has been met in respect of each such Tranche (calculated on a Tranche-by-Tranche basis) and whether the

IRR-Based Profits Interest Units of each such Tranche will participate in such distribution in accordance with their terms and this Agreement). In determining the amount distributable to each Member in each Tranche, the provisions of this Section 9.1 shall be applied in an iterative manner with respect to the participation of Profits Interest Units in such Tranche. Distributable Amounts shall be first allocated among the various Tranches outstanding at the time of the record date for the distribution thereof based on each such Tranche's "**Tranche Percentage**", which is equal to the number of Participating Units attributable to such Tranche divided by the total number of Participating Units outstanding at the time of the record date for such distribution. The aggregate Distributable Amount for each Tranche allocated to each such Tranche in accordanc e with the preceding sentence shall be referred to herein, with respect to each such Tranche, as such Tranche's "**Tranche Distributable Amount**". The Tranche Distributable Amount shall then be distributed as follows, with each Tranche receiving the Tranche Distributable Amount applicable to such Tranche and the allocation of the Tranche Distributable Amount for such Tranche among the Participating Units of such Tranche being determined independently and exclusively of each other Tranche:

(i) *First*, pro rata to each Member holding Common Units attributable to such Tranche based on the percentage obtained by dividing the number of Common Units attributable to such Tranche held by each such Member by the aggregate number of all Common Units attributable to such Tranche held by all Members holding Common Units in such Tranche as of the time of such distribution, until each such Member holding Common Units in such Tranche has received an aggregate amount of distributions in respect of such Common Units under this Section 9.1(a)(i) equal to its Capital Contributions relating to the Common Units in such Tranche;

(ii) *Second*, pro rata to each Member holding Class B Units attributable to such Tranche based on the percentage obtained by dividing the number of Class B Units attributable to such Tranche held by each such Member by the aggregate number of all Class B Units attributable to such Tranche held by all Members holding Class B Units in such Tranche as of the time of such distribution, until each such Member holding Class B Units in such Tranche has received an aggregate amount of distributions in respect of such Class B Units under this Section 9.1(a)(ii) equal to its Capital Contributions relating to the Class B Units in such Tranche; it being understood, that distributions under this Section 9.1(a)(ii) shall in no event exceed $20,000,000 in the aggregate and will only ap ply to distributions made in respect of the initial Tranche; provided, however, notwithstanding anything to the contrary contained herein, immediately following such time as the holders of Class B Units have received aggregate distributions under this Section 9.1(a)(ii) equal to $20,000,000, the Class B Units held by such holders shall be immediately cancelled and shall cease to be outstanding and issued for any purposes of this Agreement and the holders of such Class B Units shall have no further rights with respect to such Class B Units following such cancellation (and the books and records of the Company, including Schedule A hereto, shall be appropriately updated to reflect the cancellation of such Class B Units);

(iii) *Third*, pro rata to each Member holding Vested Time-Based Profits Interest Units attributable to the initial Tranche (i.e., the Tranche that included Class B Units), an amount equal to the product of (x) $20,000,000 (which is the amount distributed to holders of the Class B

Units pursuant to Section 9.1(a)(ii)) times (y) a fraction, the numerator of which is the number of Vested Time-Based Profits Interest Units attributable to such Tranche held by each such Member, and the denominator of which is the sum of the aggregate number of Common Units (which, for the avoidance of doubt, does not include Class B Units), Unvested Time-Based Profi ts Interest Units, Vested Time-Based Profits Interest Units, Unvested IRR-Based Profits Interest Units and Vested IRR-Based Profits Interest Units, in each case, solely to the extent such Units are attributable to such Tranche and are outstanding as of the applicable date of determination (such sum, as determined as of the time of any applicable distribution hereunder with respect to each applicable Tranche, the "**Maximum Participating Units**"), until each such Member holding Vested Time-Based Profits Interest Units in such Tranche has received an aggregate amount of distributions in respect of such Vested Time-Based Profits Interest Units of such Tranche under this Section 9.1(a)(iii) equal to the product of (x) $20,000,000 times (y) a fraction, the numerator of which is the number of Vested Time-Based Profits Interest Units attributable to such Tranche held by such Member and the denominator of which is the Maximum Participating Units of s uch Tranche;

(iv) *Fourth*, until each Member holding Common Units in such Tranche has received cumulative distributions in respect of such Common Units attributable to such Tranche in an amount that represents an aggregate internal rate of return of 15.0%, compounded annually, on the amount of such holder's Capital Contributions relating to the Common Units (but not Class B Units) in such Tranche (as calculated for each such Tranche individually, the "**Tranche IRR Hurdle**") (provided, that when determining the amount of distrib utions received by the holders of Common Units in the initial Tranche (and calculating the Tranche IRR Hurdle under this Section 9.1(a)(iv) with respect to such initial Tranche), an amount equal to the $20,000,000 distribution made to holders of the Class B Units pursuant to Section 9.1(a)(ii) shall be deemed to have been distributed to the holders of Common Units under this Section 9.1(a)(iv) in respect of Capital Contributions made by such holders of Common Units in such initial Tranche (it being understood that such $20,000,000 shall not have been actually distributed to the holders of Common Units in such Tranche but is merely deemed to have been so distributed for purposes of calculating the Tranche IRR Hurdle for the initial Tranche), there will be distributed pari pasu:

(1) pro rata to the holders of Common Units attributable to such Tranche based on the relative number of Common Units held by them, a portion of the remaining Tranche Distributable Amount applicable to such Tranche being distributed pursuant to this Section 9.1(a)(iv), with such portion being equal to (x) such remaining Tranche Distributable Amount times (y) a fraction, the numerator of which is (I) the aggregate number of Maximum Participating Units attributable to such Tranche minus (II) the aggregate number of Vested Time-Based Profits

Interest Units attributable to such Tranche and the denominator of which is the Maximum Participating Units attributable to such Tranche; and

(2) pro rata to the holders of Vested Time-Based Profits Interest Units attributable to such Tranche based on the relative number of such Units held by them, a portion of the remaining Tranche Distributable Amount applicable to such Tranche being distributed pursuant to this Section 9.1(a)(iv), with such portion being equal to (x) such remaining Tranche Distributable Amount times (y) a fraction, the numerator of which is the aggregate number of Vested Time-Based Profits Interest Units attributable to such Tranche and the denominator of which is the Maximum Participating Units attributable to such Tranche;

(v) *Fifth*, if such Tranche includes IRR-Based Profits Interest Units, pro rata to each holder of a IRR-Based Profits Interest Unit attributable to such Tranche based on the percentage obtained by dividing the number of IRR-Based Profits Interest Units attributable to such Tranche held by each such holder by the aggregate number of all IRR-Based Profits Interest Units attributable to such Tranche held by all holders of IRR-Based Profits Interest Units in such Tranche as of the time of such distribution, until each such holder of an IRR-Based Profits Interest Unit in such Tranche has received the same amount that would have been distributed under each of Sections 9.1(a)(iii) and 9.1(a)(iv) in respect of such IRR-Based Profits Interest Unit of such Tranche if such IRR-Based Profits Interest Unit was participating in distributions applicable to such Tranche in the same manner as a Vested-Time Based Profits Interest Unit participated in such distributions of such Tranche at the time of any and all prior distributions under Section 9.1(a)(iii) or 9.1(a)(iv) above (it being understood that the aggregate amount distributable in respect of Section 9.1(a)(iii) or 9.1(a)(iv) shall be calculated by substituting all references to "Vested Time-Based" Profits Interest Units with "IRR-Based" Profits Interest Units, other than the third time that "Vested Time-Based" Profits Interest Units appears in Section 9.1(a)(iii)); and

(vi) *Sixth*, there will be distributed pari pasu:

(1) pro rata to the holders of Common Units attributable to such Tranche based on the relative number of Common Units held by them, a portion of the remaining Tranche Distributable Amount applicable to such Tranche being distributed pursuant to this Section 9.1(a)(vi), with such portion being equal to (x) such remaining Tranche Distributable Amount times (y) a fraction, the numerator of which is (I) the Maximum Participating Units attributable to such Tranche minus (II) the aggregate number of Vested Profits Interest Units attributable to such Tranche and the denominator of which is the Maximum Participating Units attributable to such Tranche;

(2) pro rata to the holders of Vested Profits Interest Units attributable to such Tranche based on the relative number of such Units held by them, a portion of the remaining Tranche Distributable Amount applicable to such Tranche being distributed pursuant to this Section 9.1(a)(vi), with such portion

being equal to (x) such remaining Tranche Distributable Amount times (y) a fraction, the numerator of which is the number of Vested Profits Interest Units attributable to such Tranche and the denominator of which is the Maximum Participating Units attributable to such Tranche.

(b) For purposes of this Agreement, "**Participating Units**", with respect to a particular Tranche and any distribution in question, means (i) all Common Units attributable to such Tranche, (ii) all Vested Time-Based Profits Interest Units at such time attributable to such Tranche and (iii) all Vested IRR-Based Profits Interest Units at such time attributable to such Tranche.

(c) Notwithstanding anything to the contrary, (i) the Management Members shall be entitled to receive priority catch up payments in respect of Time-Based Profits Interest Units that have become Vested Time-Based Profits Interest Units and which did not participate in earlier Interim Distributions (as defined below) and (ii) this Section 9.1(c) shall not result in any adjustment to any applicable Tranche Percentage on account of the fact that an applicable

Interim Distribution may have involved different vesting circumstances with respect to Time-Based Profits Interests attributable to such Interim Distribution. Accordingly, at the time of any Interim Distribution, a Catch Up Payment (as defined below) shall be paid to each of the Management Members holding N ewly Vested Time-Based Profits Interest Units (as defined below) as a priority distribution before any amounts are distributed to the other Members pursuant to Sections 9.1(a)(iii), 9.1(a)(iv) or 9.1(a)(vi); provided that once the applicable Catch Up Payment is paid in full to an individual in respect of the applicable Newly Vested Time-Based Profits Interest Units such individual shall no longer have a right to receive any Catch Up Payment under this Agreement in respect of the applicable Newly Vested Time-Based Profits Interest Units. For purposes of this Agreement, (i) "**Catch Up Payment**" means, with respect to the individuals holding Newly Vested Time-Based Profits Interest Units, the aggregate incremental amount (in excess of actual receipts) that such Management Member would have received pursuant to Sections 9.1(a)(iii), 9.1(a)(iv), 9.1(a)(v) or 9.1(a)(vi) based on the then applicable Tranche Percentage pursuant to any and all prior Interim Distributions to the Members if such Member's Newly Vested Time-Based Profits Interest Units had been considered Vested Time-Based Profits Interest Units at the time of any such Interim Distribution (and for the avoidance of doubt, no such payments shall be made in respect of any changes to the applicable Tranche Percentage(s) occurring after the date(s) of such Interim Distributions), (ii) "**Newly Vested Time-Based Profits Interest Units**" shall mean Time-Based Profits Interest Units (a) which became Vested Time-Based Profits Interest Units since the time of any prior Interim Distribution and (b) for which the applicable Catch Up Payment has not yet been made and (iii) "**Interim Distribution**" means a distribution other than in connection with an Exit Event. The implementation of, and all decisions with respect to, this Section 9.1(c) shall be determined by the Board, in each case, in consultation with the Management Members.

Section 9.2 Distributions In Kind. In the event of a distribution of Company property, such property shall for all purposes of this Agreement be deemed to have been sold at its Fair Market Value and the proceeds of such sale shall be deemed to have been distributed to the Member receiving such Company property.

Section 9.3 No Withdrawal of Capital. Except as otherwise expressly provided in Article XIII or in an applicable Management Profits Interest Unit Agreement, no Member shall have the right to withdraw capital from the Company or to receive any distribution or return of such Member's Capital Contributions.

Section 9.4 Withholding.

(a) Each Member shall, to the fullest extent permitted by applicable law, indemnify and hold harmless each Person who is or who is deemed to be the responsible withholding agent for U.S. federal, state or local income tax purposes against all claims, liabilities and expenses of whatever nature (other than any claims, liabilities and expenses in the nature of penalties and accrued interest thereon that result from such Person's fraud, willful misfeasance, bad faith or gross negligence) relating to such Person's obligation to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Company or as a result of such Member's participation in the Company.

(b) Notwithstanding any other provision of this Article IX, (i) each Member hereby authorizes the Company to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Company or any of its Affiliates with respect to such Member or as a result of such Member's participation in the Company and (ii) if and to the extent that the Company shall be required to withhold or pay any such taxes (including any amounts withheld from amounts payable to the Company to the extent attributable, in the judgment of the Board, to such Member's Interest), such Member shall be deemed for all purposes of this Agreement to have received a payment from the Company as of the time such withholding or tax is required to be paid, which payment shall be deemed to be a distribution with respect to such Member's Interest to the extent that the Member (or any successor to such Member's Interest) is then entitled to receive a distribution. To the extent that the aggregate of such payments to a Member for any period exceeds the distributions to which such Member is entitled for such period, such Member shall make a prompt payment to the Company of such overage amount. If the Company makes a distribution in kind and such distribution is subject to withholding or other taxes payable by the Company on behalf of any Member, such Member shall make a prompt payment to the Company of the amount of such withholding or other taxes by wire transfer.

Section 9.5 Restricted Distributions. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to any Member on account of its Interest if such distribution would violate Section 18-607 of the Delaware Act or other applicable law.

Section 9.6 Tax Distributions. Notwithstanding any provision to the contrary contained in this Agreement, in the event that the Members are allocated taxable income from the Company (excluding for the avoidance of doubt, taxable income that arises from the receipt of equity interests from the Company or its Subsidiaries), the Company shall make distributions to such Members to the extent of available cash (as determined by the Board in its reasonable discretion) in an amount equal to such income multiplied by a tax rate equal to 45% or such higher rate as reasonably determined by the Board to take into account increases in tax rates after the date hereof; it being underst ood that, if the Members are allocated material taxable income without corresponding cash distributions sufficient to pay the resulting tax liabilities, it is the

Company's intention to make the tax distributions referred to herein. In addition, in the event that the tax distributions to a Member pursuant to the previous sentence with regard to any calendar year are greater than such Member's proportionate share of distributions under Section 9.1, then, to the extent of available cash, an additional amount shall be distributed under this Section 9.6 and shall be apportioned among the other Members such that the total amount distributed under this Section 9.6 to all Members shall be allocated among the Members in accordance with each Member's proportionate share of distributions under Section 9.1. Any distributions made to a Member pursuant to this Section 9.6 shall reduce the amount otherwise distributable to such Member pursuant to the other provisions of this Agreement, so that to the maximum extent possible, the tota l amount of distributions received by each Member pursuant to this Agreement at any time is the same as such Member would have received if no distribution had been made pursuant to this Section 9.6. Notwithstanding the foregoing, the Company shall not make any distributions under this Section 9.6 with respect to taxable income attributable to the sale, exchange or other disposition by the Company of shares of InterCo, NewBank or any other Subsidiary of the Company, including upon the occurrence of any transaction contemplated by Section 12.7 to the extent that the proceeds of such sale, exchange or other disposition are distributed to the Members.

ARTICLE X

BOOKS AND RECORDS

Section 10.1 Books, Records and Financial Statements.

(a) At all times during the continuance of the Company, the Company shall maintain, at its principal place of business, separate books of account for the Company that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received and all U.S. income derived in connection with the operation of the Company's business in accordance with generally accepted accounting principles consistently applied, and, to the extent inconsistent therewith, in accordance with this Agreement. Such books of account, together with a copy of this Agreement and the Certificate, shall at all times be maintained at the principal place of business of the Company and shall be open to inspection and examination at reasonable times and upo n reasonable notice by each Member and its duly authorized representative for any purpose reasonably related to such Member's Interest; provided that the Company may maintain the confidentiality of Schedule A.

(b) Within a reasonable number of days after the end of each month, the Company shall provide to the Directors and the Members, the consolidated balance sheet of the Company and its Subsidiaries as at the end of such month and the related consolidated statements of income, board package and retained earnings for such month and for the elapsed portion of the Fiscal Year ended with the last day of such month together with such other information as reasonably requested by any Member, in each case setting forth comparative figures for the related periods in the prior Fiscal Year and prepared in conformity with GAAP applied on a consistent basis, except as otherwise noted therein, and subject to year-end adjustments and the absence of footnotes.

(c) The Company shall keep and maintain full and accurate books of account for the Company in accordance with GAAP consistently applied. Such books shall be maintained at the principal office of the Company. The books of account and records of the Company shall be audited as of the end of each Fiscal Year by a nationally recognized independent certified public accounting firm approved by the Board (the "**Auditor**").

Section 10.2 Filings of Returns and Other Writings; Tax Matters Partner.

(a) The Company shall timely file all Company tax returns and shall timely file all other writings required by any governmental authority having jurisdiction to require such filing. The Company will use commercially reasonable efforts to send to each Person that was a Member at any time during such year copies of Schedule K-1, "Partner's Share of Income, Credits, Deductions, Etc.", or any successor schedule or form, with respect to such Person, together with such additional information as may be necessary for such Person to file his, her or its United States federal income tax returns within 30 days of the end of the each fiscal year of the Company. However, the parties hereto recognize that the success of commercially reasonable efforts to accomplish this will depend in large part on the quantity and complexity of transactions and dividends that would need to be reported thereon or analyzed in connection therewith. If it becomes apparent that such K-1's will not be able to be delivered in compliance with such requirement, despite a diligent, good faith effort to do so, the Management Members and the Company will work diligently and in good faith with the Investor Members to deliver such K-1's as expeditiously as reasonably possible.

(b) Kanas (or if Kanas shall not be the Chief Executive Officer of the Company or any of its Material Subsidiaries, the then current Chief Executive Officer of the Company) shall be the tax matters partner of the Company, within the meaning of section 6231 of the Code (the "**Tax Matters Partner**"), unless a Majority in Interest votes otherwise; provided that the Tax Matters Partner shall give prompt notice to any Non-Management Member of any item or event with respect to taxes, including a proposed administrative or judicial proceeding involving taxes, and any proposed deficiency or similar notice of intention to assess taxes that could have more than an immaterial effect on such Non-Management Member. The Tax Matters Partner will not take any action that could be reasonably expected to have an affect on any Non-Management Member that is not immaterial without such Non-Management Member's consent. Each Member hereby consents to such designation and agrees that upon the request of the Tax Matters Partner, such Member will execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent.

(c) Promptly following the written request of the Tax Matters Partner, the Company shall, to the fullest extent permitted by applicable law, reimburse and indemnify the Tax Matters Partner for all reasonable expenses, including reasonable legal and accounting fees, claims, liabilities, losses and damages incurred by the Tax Matters Partner in connection with any administrative or judicial proceeding with respect to the tax liability of the Members, except to the extent arising from the bad faith, gross negligence, willful violation of law, fraud or breach of this Agreement by such Tax Matters Partner.

(d) The provisions of this Section 10.2 shall survive the termination of the Company or the termination of any Member's Interest and shall remain binding on the Members for as long a period of time as is necessary to resolve with the Internal Revenue Service any and all matters regarding the U.S. federal income taxation of the Company or the Members.

(e) The Tax Matters Partner is authorized and directed to elect the liquidation valuation safe harbor provided by proposed Treasury Regulations section 1.83-3(l) (and any successor provision) and IRS Notice 2005-43, and the Company and each of its Members (including any person to whom an interest in the Company is transferred in connection with the performance of services) agree to comply with all requirements of such safe harbor with respect to all interests in the Company transferred in connection with the performance of services while such election remains effective. In addition, the Members agree to amend this Agreement as and if required by the finalized guidance in order to ensure that the Transfer of Profits Interest Units in connection with the performance of services to, or on behalf of, the Company is eligible for the benefits of such safe harbor provided that any such amendment does not cause any material adverse consequence to the Company, any Subsidiary of the Company or any Member.

Section 10.3 Accounting Method. For both financial and tax reporting purposes, the books and records of the Company shall be kept on the accrual method of accounting applied in a consistent manner and shall reflect all Company transactions and be appropriate and adequate for the Company's business.

Section 10.4 Appraisal; Valuation.

(a) From and after the Closing, commencing with the fiscal quarter ending on September 30, 2009 and thereafter on a quarterly basis (or more frequently than quarterly to the extent provided in Section 10.4(c)), the Senior Officers shall, within thirty days of the fiscal quarter then ended (it being understood that with respect to the first two fiscal quarters ending after the Closing, such thirty-day period may be reasonably extended as deemed necessary by the Senior Officers) provide to the Board and an independent appraiser or investment banker of national standing with experience in the valuation of banks, savings associations or other institutions similar in nature and scope to the Company and its Subsidiaries that is approved b y Members holding Common Units representing a Percentage Interest of at least 60% (the "**Valuation Firm**") historical and projected financial information for the business and operations of the Company and its Subsidiaries (as well as other material information relevant to the industry, business and operations of the Company and its Subsidiaries as may be reasonably requested by such Valuation Firm). In addition, each Director shall be entitled to provide the Valuation Firm with other material information relevant to the industry, business and operations of the Company and its Subsidiaries. The Valuation Firm shall be instructed to, within 15 days of the delivery of the financial and other information described above to such Valuation Firm, use its best efforts to appraise the Fair Market Value of the Company's equity as of the most recent practicable date on or after the last date of such fiscal quarter (the "**Valuation Date**") and to prepare and deliver a report to the Company describing the results of such appraisal (the "**Quarterly Valuation**"), such valuation to be done using valuation and appraisal methods as are customary and appropriate in the industry (and, to the extent performed by the same Valuation Firm, each Quarterly Valuation following the initial Quarterly Valuation shall be on a basis consistent with, and without material changes to the valuation and appraisal methods or

principles used in determining, the initial Quarterly Valuation, unless such valuation and appraisal methods or principles are, in the judgment of the Board, no longer customary or appropriate). The Company shall bear the fees and expenses of each Quarterly Valuation.

(b) Absent manifest error or gross negligence on the part of the Valuation Firm, the Fair Market Value for the Common Units reflected in the last Quarterly Valuation (subject to Section 10.4(c)) shall serve as the basis for calculating the price per-Common Unit for any issuances of Common Units pursuant to the terms of the Agreement; provided however that, with the approval of the Board, an issuance of Common Units may be effected at a price per-Common Unit greater than that derived from the last Quarterly Valuation. In the event the Board proposes to issue Common Units at a price per-Common Unit less than that derived from the last Quarterly Valuation, such issuance shall require the approval of (i) a major ity in interest of the Members that are not acquiring Common Units in such issuance (such Members, the "**Non-Participating Members**") if such Non-Participating Members hold an aggregate number of Common Units representing a Percentage Interest at such time of 10% or more, or (ii) the affirmative vote of at least a majority of the Common Units held by the Management Members at such time if the Non-Participating Members in connection with such issuance hold an aggregate number of Common Units representing a Percentage Interest at such time of less than 10% and Kanas is a Non-Participating Member in connection with such issuance; provided, however, if the Non-Participating Members in connection with such issuance hold an aggregate number of Common Units representing a Percentage Interest at such time of less than 10% and Kanas is participating in such issuance and acquiring additional Common Units (i.e., Kanas is not a Non-Participating Member) then the price per-Common Unit applicable to such issuance may be less than that derived from the last Quarterly Valuation if so approved by the Board. The determination of Fair Market Value in accordance with the foregoing shall be final and binding on all Members for purposes of determining the Fair Market Value of the Common Units issued after the Closing; it being understood that the determination of Fair Market Value for purposes of the put and call rights applicable to Management Members under a Management Profits Interest Unit Agreement shall be determined exclusively in accordance with the provisions of such Management Profits Interest Unit Agreements, which determination in accordance therewith shall be final and binding on all the Members and the Company.

(c) Notwithstanding the foregoing, Members holding Common Units representing a Percentage Interest of at least 33% may require (by delivery of written notice to the Company no later than 15 days after the end of any calendar month) that an appraisal of the Fair Market Value of the Company's equity be conducted as of the end of such calendar month; provided, that if such request is made and such appraisal shall be completed prior to any issuance of Common Units for which an appraisal would be required in accordance with the foregoing, such appraisal shall be used in lieu of the most recent Quarterly Valuation. Any such monthly appraisal shall be done using valuation and appraisal methods as are customary and appropriate in the indus try, and to the extent performed by the same Valuation Firm, such appraisal shall be on a basis consistent with, and without material changes to the valuation and appraisal methods or principles used in determining, the initial Quarterly Valuation, unless such valuation and appraisal methods or principles are no longer customary or appropriate.

Section 10.5 Expenses Through Closing.

(a) At the Closing, the Company shall reimburse each of the Investor Members and Kanas for all out-of-pocket fees and expenses incurred between February 1, 2009 and the Closing by each such Member in connection with such Member's investment in the Company and the transactions contemplated by the FDIC Purchase Agreement, including out-of-pocket organizational, transaction and legal expenses (which expenses shall include, without limitation, all fees and expenses of Skadden, Arps, Slate, Meagher & Flom LLP and Simpson Thacher & Bartlett LLP, and all accounting and financial advisory fees and expenses).

(b) The Company shall pay all expenses relating to its operation, including administrative expenses and fees, that are incurred by or on behalf of the Company, subject to any approvals required pursuant to Article IV.

ARTICLE XI

LIABILITY, EXCULPATION AND INDEMNIFICATION

Section 11.1 Liability. Except as otherwise provided by the Delaware Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Covered Person.

Section 11.2 Exculpation. No Covered Person shall be liable to the Company or any other Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence, willful misconduct or willful breach of this Agreement.

Section 11.3 Fiduciary Duty. Any duties (including fiduciary duties) of a Covered Person to the Company or to any other Covered Person that would otherwise apply at law or in equity are hereby eliminated to the fullest extent permitted under the Delaware Act and any other applicable law; provided that (i) the foregoing shall not eliminate the obligation of each Covered Person to act in compliance with the express terms of this Agreement and (ii) the foregoing shall not be deemed to eliminate the implied contractual covenant of good faith and fair dealing.

Section 11.4 Indemnification. To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence, willful misconduct or willful breach of this Ag reement with respect to such acts or omissions; provided, that any indemnity under this Section 11.4 shall be provided out of and to the extent of Company assets only, and no Covered Person shall have any personal liability on account thereof.

Section 11.5 Expenses. To the fullest extent permitted by applicable law, expenses (including, without limitation, reasonable attorneys' fees, disbursements, fines and amounts paid in settlement) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding made by one or more third parties relating to or arising out of the performance of their duties on behalf of the Company shall, from time to time, be advanced by the Company prior to the final disposition of such third party claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that the Covered Person is not entitled to be indemnified as authorized in Section 11.4.

Section 11.6 Severability. To the fullest extent permitted by applicable law, if any portion of this Article shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify each Director or officer (including the Senior Officers) and may indemnify each employee or agent of the Company as to costs, charges and expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Company, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated.

ARTICLE XII

TRANSFERS OF INTERESTS

Section 12.1 Restrictions on Transfers of Interests by Members.

(a) Transfers by Non-Management Members. Until the earlier of (x) the one year anniversary of the Closing, and (y) the Initial Public Offering (such earlier date, the "**Initial Holding Period**"), no Non-Management Member may Transfer any Interests including, without limitation, to any other Member, or by gift, or by operation of law or otherwise; provided that, subject to Section 12.2, Interests may be Transferred by a Non-Management Member (i) to an Affiliate of such Non-Management Member or, in the case of The Wellcome Trust Limited, to any successor trustee of The Wellcome Trust (but only for so long as such Affiliate or successor trustee (in the case of The Wellcome Trust), as applicable, remains such, applying the principles set forth in Section 12.10), and (ii) pursuant to Section 12.7 in anticipation of an Initial Public Offering. After the Initial Holding Period, any Transfer of Interests by a Non-Management Member (other than pursuant to Section 12.1(a)(i) or 12.1(a)(ii)), shall (x) only be permitted if such Transfer of Interest represents at least 5% (or such lesser amount that constitutes all of such Non-Management Members Interests in the Company) of the Common Units in the Company than outstanding, and (y) be subject to Sections 12.2 and 12.6(a).

(b) Transfers by Management Members. No Management Member may Transfer any Interests including, without limitation, to any other Member, or by gift, or by operation of law or otherwise; provided that, subject to Section 12.2, Interests may be Transferred by a Management Member (1) at any time (i) as required by Section 12.7 in anticipation of an Initial Public Offering, (ii) pursuant to Section 12.3 ("Estate Planning Transfers, Transfers Upon Death of a Management Member"), (iii) to the Company or its Affiliates in accordance with the Management Profits Interest Unit Agreements, or (iv) pursuant to the prior written approval of

the Board in its sole discretion (excluding any Management Directors) and subject to Section 4.11 and (2) at any time after the Initial Holding Period, (x) pursuant to Section 12.6(a) ("Tag-Along Rights"), or (y) pursuant to Section 12.6(b) ("Drag-Along Rights").

Section 12.2 General Principles with respect to Transfers.

(a) Any Transfer in violation of this Article XII shall be null and void ab initio, and the provisions of Section 12.2(d) and Section 12.2(f) shall not apply to any such Transfers. The approval of any Transfer in any one or more instances shall not limit or waive the requirement for such approval in any other or future instance.

(b) All Transfers permitted under this Article XII are subject to this Section 12.2 and Section 12.4.

(c) In addition to meeting all of the other requirements of this Agreement, any proposed Transfer by a Member pursuant to the terms of this Article XII shall satisfy the following conditions:

(i) the proposed Transfer will not be effected on or through an "established securities market" or a "secondary market or the substantial equivalent thereof," as such terms are used in Treasury Regulations section 1.7704-1, and, at the request of the Board, the transferor and the transferee will have each provided the Company a certificate to such effect;

(ii) the proposed Transfer will not result in the Company having more than 95 Members, within the meaning of Treasury Regulations section 1.7704-1(h)(1) (determined pursuant to the rules of Treasury Regulations section 1.7704-1(h)(3));

(iii) the proposed Transfer will not violate the registration provisions of the Securities Act of 1933, as amended, or the securities laws of any applicable jurisdiction;

(iv) the proposed Transfer will not cause the Company to not be entitled to one or more exemptions from registration as an "investment company" pursuant to the Investment Company Act of 1940, as amended;

(v) the proposed Transfer will not cause the Company to be required to register Interests with the Securities and Exchange Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended;

(vi) the proposed Transfer will not result in the termination of the Company or a Subsidiary under the Code;

(vii) the proposed Transfer will not cause the Company or any Subsidiary to fail to satisfy the requirements of any otherwise applicable safe harbor from treatment as a "publicly traded partnership" under Treasury Regulations Section 1.7704-1;

(viii) the proposed Transfer will not cause all or any portion of the assets of the Company or the actions of the Board being subject to Part 4 of Subtitle B of Title I of ERISA and/or Code Section 4975;

(ix) the proposed Transfer will not cause the Company, any Subsidiary or any Member to be in violation of any law, contract or other obligation legally binding upon any of them or otherwise suffer any material adverse consequence;

(x) the proposed Transfer will not cause the Company or any Subsidiary to become a "commonly controlled insured depository institution" (as that term is defined and interpreted for purposes of 12 U.S.C. § 1815(e), as may be amended or supplemented from time to time, and any successor thereto) with respect to any institution that is not a direct or indirect Subsidiary of the Company;

(xi) the proposed Transfer will not cause any affiliation that is prohibited by the FDIA, 12 U.S.C. § 1828(s), as may be modified or amended from time to time, and any successor thereto; and

(xii) the proposed Transfer will not result in a Transfer to a Person reasonably determined by the Board (other than any Director that was appointed by the Member that proposed to make such Transfer) to be a competitor of the Company or any of its Subsidiaries in the jurisdictions in which the Company or any such Subsidiary operate.

The Board may require reasonable evidence as to the foregoing, including, without limitation, a favorable Opinion of Counsel. Except to the extent waived by the Board, any assignment or transfer that violates the conditions of this Section 12.2 shall be null and void ab initio.

(d) The Company shall promptly amend Schedule A to reflect any permitted transfers of Interests pursuant to and in accordance with this Article XII.

(e) Notwithstanding anything to the contrary herein, no Member or Members acting in concert shall Transfer any Interests in one transaction or series of related transactions if such Transfer would require the consent of the FDIC under the Shared-Loss Agreements attached as exhibits to the FDIC Purchase Agreement.

(f) The Company shall, from the effective date of any permitted assignment of an Interest (or part thereof), thereafter pay all further distributions on account of such Interest (or part thereof) to the assignee of such Interest (or part thereof); provided that such assignee shall have no right or powers as a Member unless such assignee complies with Section 12.4.

Section 12.3 Estate Planning Transfers; Transfers upon Death of a Management Member. Subject to the approval of the Board (not to be unreasonably withheld), Interests held by Management Members may be transferred for estate-planning purposes of such Management Member to (A) a trust under which the distribution of the Interests may be made only to beneficiaries who are such Management Member or his or her Immediate Family, (B) a

charitable remainder trust, the income from which will be paid to such Management Member during his or her life, (C) a corporation, the shareholders of which are only such Management Member or his or her Immediate Family or (D) a partnership or limited liability company, the partners or members of which are only such Management Member or his or her Immediate Family; provided that any heirs, executors or other beneficiaries shall remain subject to the terms of this Agreement as if the applicable transferor Management Member continued to hold the applicable Interests directly. Interests may be transferred as a result of the laws of descent; provided that, in each such case, such Management Member or his or her executor, as the case may be, provides prior written notice to the Board of such proposed Transfer and makes available to the Board documentation, as the Board may reasonably r equest, in order to verify such Transfer.

Section 12.4 Substitute Members. In the event any Member Transfers its Interest in compliance with the other provisions of this Article XII, the transferee thereof shall have the right to become a substitute Member (of the same class as the transferring Member (i.e., Investor Member, Outside Member or Management Member)), as the case may be, but only upon satisfaction of the following:

(a) execution of such instruments as the Board deems reasonably necessary or desirable to effect such substitution; and

(b) acceptance and agreement in writing by the transferee of the Member's Interest to be bound by all of the terms and provisions of this Agreement and assumption of all obligations under this Agreement (including breaches hereof) applicable to the transferor and in the case of a transferee of a Management Member who resides in a state with a community property system, such transferee causes his or her spouse, if any, to execute a customary

Spousal Waiver. Upon the execution of the instrument of assumption by such transferee and, if applicable, the Spousal Waiver by the spouse of such transferee, such transferee shall enjoy all of the rights and shall be subject to all of the restrictions and obligations of the transferor of such transferee.

Section 12.5 Release of Liability. In the event any Member shall Transfer such Member's entire Interest (other than in connection with a Transfer to an Affiliate or pursuant to Section 12.3) in compliance with the provisions of this Agreement, without retaining any interest therein, directly or indirectly, then the selling Member shall, to the fullest extent permitted by applicable law, be relieved of any further liability arising hereunder for events occurring from and after the date of such Transfer; provided, however, that no such Transfer shall relieve any Member of its (i) confidentiality obligations pursuant to Section 3.6 hereof and such obligations shall survive any termination of such Member's membership in the Company, (ii) obligations under Section 12.6(b)(iii) in connection with an Exit Event, and (iii) obligations under Section 3.7 hereof, which obligations shall survive in accordance with the terms thereof.

Section 12.6 Tag-Along and Drag-Along Rights.

(a) Tag-Along Rights. In the event that a Non-Management Member proposes a Transfer of Interests (which, for the avoidance of doubt, shall not include Class B Units) that is otherwise permitted by this Agreement (such transferring Member, in such capacity, the "**Selling Member**"), other than any Transfer pursuant to Section 12.1(a)(i) or 12.1(a)(ii), then at least

twenty days prior to effecting such Transfer, such Selling Member shall give the Company and each other Member written notice of such proposed Transfer. Each other Member shall then have the right (the "**Tag-Along Right**"), exercisable by written notice to the Selling Member, to participate in such sale by selling a Pro Rata Share of such other Member's Common Units on substantially the same terms and subject to the same conditions as the Selling Member (each such participating Member, other than the Selling Member, a "**Tagging Member**"). Such terms and conditions shall include, without limitation, (i) the sale consideration and (ii) the provision of information, representations, warranties, covenants and requisite indemnifications; provided, however, that (x) any representation s and warranties relating specifically to any Member shall only be made by that Member; and (y) any indemnification provided by the Members (other than with respect to the representations referenced in the foregoing subsection (x)) shall be based solely on the relative Interests being sold by each Member in the proposed sale, in all cases on a several, not joint, basis and shall apply solely with recourse to an escrow established for the benefit of the proposed purchaser (the Members' contributions to such escrow to be on a pro-rata basis in accordance with the proceeds received from such sale), it being understood and agreed that any such indemnification obligation of an Member shall in no event exceed the net proceeds to such Member from such proposed Transfer; provided, further, however, that, the Management Members, the Outside Members and the Investor Members (other than the Selling Member) shall receive the same amount and form (or a more liquid form) of consideration as the Selling Member in connection with the proposed sale unless they otherwise agree. The Selling Member and each Tagging Member will be responsible for its proportionate share (based on the Percentage Interest of each such Member participating in such sale) of the costs of the tag-along sale contemplated by this Section 12.6(a) to the extent not paid or reimbursed by the proposed purchaser.

(b) Drag-Along Rights. (i) In the event that (x) prior to the third anniversary of the Closing, Members holding Common Units representing a Percentage Interest of at least 60% or (y) following the third anniversary of the Closing, Members holding Common Units representing a Percentage Interest of at least 50% (in their capacity as such under clause (x) or (y), as applicable, under this 12.6(b), the "**Dragging Members**") propose to Transfer Interests, other than any Transfer to an Affiliate of any such Dragging Member, and such Interests would represent 100% of the Common Units then owned by such Dragging Members, such Dragging Members shall have the right (the "**Drag-Along Right**"), upon written notice to the other Members, to require that each other Member join in such sale by selling 100% of such other Member's Common Units and Profits Interest Units on substantially the same terms as such Dragging Members. Such terms and conditions shall include, without limitation, (i) the sale consideration and (ii) the provision of information, representations, warranties, covenants and requisite indemnifications; provided, however, that (x) any representations and warranties relating specifically to any Member shall only be made by that Member and (y) any indemnification provided by the Members (other than with respect to the representations referenced in the foregoing subsection (x)) shall be based solely on the relative proceeds being received by each Member in the proposed sale, in all cases on a several, not joint, basis and shall apply solely with recourse to an escrow est ablished for the benefit of the proposed purchaser (the Members' contributions to such escrow to be on a pro rata basis in accordance with the proceeds received from such sale), it being understood and agreed that any such indemnification obligation of a Member shall in no event exceed the net proceeds to such Member from such

proposed Transfer; provided, further, however, that, the Management Members, the Outside Members and the Investor Members (other than the Dragging Members) shall receive the same amount and form (or a more liquid form) of consideration as the Dragging Members in connection with the proposed sale unless they otherwise agree. For purposes of this Section 12.6, for each Member "joining the Selling Member in such sale" or "joining the Dragging Members in such sale", as the case may be, shall include voting its Interests consistently with the Selling Member or Dragging Members, as the case may be, agreeing to tender and tendering its Interests in connection with any tender or exchange offer, agreeing to waive any applicable appraisal or dissenters' rights in connection with such transaction, executing and delivering agreements and documents which are being executed and delivered by the Selling Member or Dragging Members, as applicable, and providing such other cooperation as the Selling Member or Dragging Members, as applicable, may reasonably request. Any expenses incurred for the benefit of the Company or all Members in connection with a drag-along sale contemplated by this Section 12.6(b) that are not paid by the Company or the proposed purchaser shall be paid by the Members in accordance with their respective Percentage Interests.

(ii) Any Exit Event may be structured as an auction and may be initiated by the delivery to the Company and the other Members of a written notice that the Dragging Members have elected to initiate an auction sale procedure. The Dragging Members shall be entitled to take all steps reasonably necessary to carry out an auction of the Company, including, without limitation, selecting an investment bank, providing confidential information (pursuant to confidentiality agreements), selecting the winning bidder and negotiating the requisite documentation. The Company and each Member shall provide assistance with respect to these actions as reasonably requested.

(iii) In the event that an Exit Event is structured as a sale of Interests by the Members, rather than a sale of the Company's assets with a subsequent distribution of proceeds by the Company, then the purchase agreement governing such Interest sale will have provisions therein which replicate, to the greatest extent possible, the economic result which would have been attained under Article IX had the Exit Event been structured as a sale of a corresponding portion of the Company's assets and a distribution of proceeds. In addition, the purchase agreement governing such Interest sale will have provisions that require the consideration to be received by the Members in such Exit Event to be decreased on a pro rata basis and i nstead contributed to the Company to the extent necessary to satisfy any obligations of the Company under that certain Warrant issued by the Company to the FDIC in connection with the closing of the transactions contemplated by the FDIC Purchase Agreement.

(c) Any transaction costs, including transfer taxes and legal, accounting and investment banking fees incurred by the Company and the Selling Member or the Dragging Members and any other Member participating in a Transfer pursuant to Section 12.6(a) or 12.6(b), as applicable, in connection with an Exit Event shall, unless the applicable purchaser refuses, be borne by the Company in the event of a merger, consolidation or sale of assets and shall otherwise be borne by the Members on a pro rata basis based on the consideration received by each Member in such Exit Event; provided that following receipt of notification of any such

transaction by the non-initiating Members, no Member shall retain (or shall be reimbursed for the fees and expenses of) independent legal, accounting or investment bankers without the prior written consent of the Company, which will not be unreasonably withheld.

(d) Notwithstanding anything to the contrary contained herein, the Tag-Along Rights set forth in Section 12.6(a) and the Drag-Along Rights set forth in Section 12.6(b) shall cease to apply from and after an IPO Liquidation following the Initial Public Offering (but subject to the consummation of such Initial Public Offering, to the extent such Initial Public Offering has not occurred at the time of such IPO Liquidation).

Section 12.7 Initial Public Offering.

(a) Generally. Subject to Section 12.7(c) and Section 12.7(d), in connection with any proposed Initial Public Offering approved in accordance with this Agreement (including Section 4.11), the Board may (i) amend this Agreement to provide for a conversion of the Company in accordance with Delaware law to a corporation or such other capital structure as the Board may determine, (ii) distribute shares of any Subsidiary of the Company to the Members, (iii) form a subsidiary holding company and distribute its shares to the Members, (iv) move the Company or any successor to another jurisdiction to facilitate any of the foregoing, (v) determine to effect an Initial Public Offering through a sale of shares of InterCo or any other Subsidiary of the Company, or (vi) take such other steps or no steps as it deems necessary to create a suitable vehicle for an offering, including a merger or consolidation of the Company with any of its Subsidiaries, in each such case in accordance with the Delaware Act and applicable law (InterCo, or such other entity (including any successor of the Company) or any such Subsidiary of the Company that effects the Initial Public Offering, the "**Registering Entity**"), and in each case for the express purpose of facilitating an offering of the securities of such Registering Entity for sale to the public in a registered public offering pursuant to the Securities Act pursuant to an Initial Public Offering (an "**IPO Conversion**"). Notwithstanding the foregoing it is currently the expectation that any Initial Public Offering would be effected through the public offering of the stock of InterCo, and as such InterCo would be the Registering Entity (although the Board is not obligated to follow this expectation).

(b) Implementation of IPO Conversion. Subject to Section 12.7(c) and Section 12.7(d), in connection with any proposed IPO Conversion, at the option of the Board and subject to the approvals required under this Agreement (including Section 4.11) all or any portion of the Interests may be converted into or redeemed for shares (or other equity securities and/or options or restricted shares in the manner described in this Section 12.7) and other rights which, in the aggregate (determined with respect to each class of Interests and with respect to each Tranche such Interests relate to), provide for comparable economic, governance, priority and other rights and privileg es as in effect immediately prior to such IPO Conversion (disregarding the tax treatment of such conversion or redemption or the potential tax treatment upon disposition, distribution or realization of any such rights), in each case, to the extent such governance and other rights (other than comparable economic rights) are permitted under applicable laws and regulatory requirements. If any such conversion or redemption is to be effected in accordance with this Agreement, each Member shall consent, and hereby does consent, to such conversion or redemption and shall agree, and hereby does agree, to execute and deliver all agreements, instruments and documents as may be reasonably required in order to consummate such

conversion or redemption. In connection with any proposed IPO Conversion, each Member shall take such actions as may be reasonably required and otherwise cooperate in good faith with the mandates of the Board consistent with this Agreement, in connection with consummating the IPO Conversion (including the voting of any Units (including any voting as may be necessary to effect a transfer by continuation or to authorize an increase in share capital, whether by liquidation of the Company and creation of a new entity, amendment to this Agreement or otherwise), to approve such IPO Conversion and to take any other reasonable actions required in order to effectuate an IPO Conversion). Notwithstanding anything to the contrary contained herein, this Section 12.7(b) shall be subject in all respects to Section 12.7(c) and Section 12.7(d).

(c) Certain Terms Relating to IPO Liquidation. Notwithstanding anything to the contrary contained in this Agreement, if, in connection with any IPO Conversion, the Company does not remain in place as a limited liability company and is liquidated or otherwise converted into a corporation or other entity in which shares of common stock of the Registering Entity or an equivalent security or instrument (the "**Registering Entity Common Shares**," and together with all other equity interests (including options to acquire Registering Entity Common Shares or any equivalent security or instrument ("**Registering Enti ty Options**"), restricted shares ("**Registering Entity Restricted Common Shares**") or other capital stock equivalents being collectively referred to herein as the "**Registrable Securities**") are distributed to Members in exchange for their Interests herein), and such liquidation has been approved in accordance with Section 4.11 (an "**IPO Liquidation**"), the terms and conditions of such IPO Liquidation and distribution shall comply with, and be subject to the terms and conditions of, Section 12.7(d). If such IPO Conversion does not involve an IPO Liquidation of the Company (and distribution of Registrable Securities of the Registering Entity to the Members), then this Agreement shall remain in full force and effect in accordance with its terms until such time as an IPO Liquidation and distribution of Registrable Securities of the Registerin g Entity to the Members is approved in accordance with Section 4.11, at which time the terms and conditions of such IPO Liquidation and distribution shall comply with, and be subject to the terms and conditions of, Section 12.7(d). To the extent permitted by applicable law, if, in connection with, or at any time following, the Initial Public Offering, with the requisite approval described in Section 4.11, an IPO Liquidation occurs and the Registrable Securities of the Registering Entity are distributed to the Members in accordance with Section 12.7(d), then the Company shall and shall cause the Registering Entity to enter into (x) a shareholders agreement with the Members that receive Registrable Securities of the Registering Entity with such terms as are necessary or appropriate to provide, to the greatest extent possible under applicable law and regulatory requirements, the continuation of the rights to nominate and designate directors to the board of directors of the Registering E ntity and to continue the approval requirements set forth in Section 4.11 and (y) a Registration Rights Agreement as provided in Section 12.8.

(d) Implementation of IPO Liquidation.

(i) Liquidation of the Company. Notwithstanding anything to the contrary contained herein, at any time that a liquidation of the Company occurs in anticipation of an Initial Public Offering or after an Initial Public Offering, if such action is approved in accordance with Section 4.11, the Company shall take all actions as are necessary or appropriate to cause an exchange of Interests held by the Members as contemplated by, and subject to the terms and conditions of, this

Section 12.7(d) as part of the IPO Liquidation. The principles described in this Section 12.7(d) shall also apply in the event of a liquidation of the Company that occurs in accordance with this Agreement and is not in anticipation of or following an Initial Public Offering (but excluding a liquidation in connection with the winding down of the business of the Company and its Subsidiaries in accordance with Section 13.1 or Section 13.2; it being understood that such principles shall be appropriately modified (without altering the equitable manner in which such liquidation is to be affected as described in the principles set forth in this Agreement) as necessary to reflect the fact that the securities received by the Members in such liquidation will not immediately be publicly traded.

(ii) Proposed Liquidation Adjustment.

(1) Proposal. In connection with an IPO Liquidation approved under this Agreement (including Section 4.11), after taking into account the principles described in this Section 12.7(d) and other applicable principles set forth in this Agreement, the Board shall (before the occurrence of the IPO Liquidation or, if reasonably necessary in order to facilitate the occurrence of the IPO Liquidation and/or the calculations hereunder on a timely basis, coincident with or promptly following the IPO Liquidation) deliver to the Original Management Members who then hold Profits Interest Units a detailed summary of the manner in which the Board proposes to make adjustments, substitutions, exchanges and/or modifications (the "**Proposed Liquidation Adjustment**") in respect of the Profits Interest Units as a result of the IPO Liquidation (which summary shall include the amount and all material terms (including the vesting criteria and conversion ratios) of each class or type of the Registrable Securities of the Registering Entity that the Board proposes to issue, adjust, substitute, exchange or modify, or cause to be issued, adjusted, substituted, exchanged or modified, (segregated by Member based on the applicable Tranche to which such Member's Interests relate; provided that the actual numbers, values or amounts with respect to each Member shall only be provided to the Original Management Members so as to maintain the confidentiality of same) (the "**Proposed Liquidation Adjustment Summary**").

(2) Preservation of Economic Value. The Proposed Liquidation Adjustment Summary shall be prepared, and any IPO Liquidation shall be effected, taking into account the principles described in this Section 12.7(d) and other applicable principles set forth in this Agreement. As more specifically described in Section 12.7(d)(iii), the number and type of Registrable Securities of the Registering Entity issued to the Original Management Members in connection with the IPO Liquidation with respect to Profits Interest Units held by such Original Management Members shall replicate the sum of (x) the Intrinsic Value of such Pro fits Interest Units at the time of such IPO Liquidation (as represented by the Registering Entity Common Shares or Registering Entity Restricted Common Shares, as applicable depending on the status of the vesting of such Profits Interest Units at such time and after giving effect to the IPO Share Price at such time) and (y) the option value of the Profits Interest Units at the time

of the IPO Liquidation (as reflected in the number and terms of vested and unvested Registering Entity Options), in each case, on a pre-tax basis, as determined on an equitable basis as compared to the rights (both intrinsic and option value) such Profits Interest Units had in respect of profits of the Company immediately prior to the IPO Liquidation, without, unless such IPO Liquidation is a Post-Three Year IPO Liquidation described in the following proviso, any downward adjustment in the number of Registering Entity Options as a result of the relative risks and benefits associated with the issuance of the number of Registering Entity Common Shares and Registering Entity Restricted Common Shares relative to the Profits Interest Units held; provided that in the case of any IPO Liquidation occurring after the third anniversary of the Closing in connection with, in anticipation of or following an Initial Pub lic Offering (a "**Post-Three Year IPO Liquidation**"), the exchange of the Profits Interest Units for a combination of Registering Entity Common Shares, Registering Entity Restricted Common Shares and Registering Entity Options issued to the Management Members or Inactive Management Members, as applicable, shall still maintain the economic value of the Profits Interest Units held by the Management Members or Inactive Management Members, as applicable, prior to such IPO Liquidation (with the economic value of such Profits Interest Units prior to such IPO Liquidation, for purposes of such comparison, being determined using the Black-Scholes Value thereof (as described in clause (1) of the definition thereof) and the economic value of the securities received in such IPO Liquidation, for purposes of such comparison, being determined by reference to the value of the Registering Entity Common Shares or Registering Entity Restricted Common Shares issued to the Man agement Members or Inactive Management Members, as applicable, based on the IPO Share Price and the value of the Registering Entity Options being determined using the Black-Scholes Value thereof (as described in clause (2) of the definition thereof)), which exchange is intended to reflect a downward adjustment in the number of Registering Entity Options as compared to an IPO Liquidation that is not a Post-Three Year IPO Liquidation as a result of the relative risks and benefits associated with the issuance of the number of Registering Entity Common Shares and Registering Entity Restricted Common Shares relative to the Profits Interest Units held. Subject to the foregoing and Section 12.7(d)(iii) below, the intent, among others, with respect to the calculation of the number of Registering Entity Common Shares or Registering Entity Restricted Common Shares, on the one hand, and the number of Registering Entity Options, on the other hand, is to maintain the economic value that existed in th e total number of Profits Interest Units held by the Management Members prior to the IPO Liquidation to the profits of the Company in distributions under Article IX hereof had the Company remained in place without such IPO Liquidation (but recognizing that it is not possible to perfectly replicate the returns post-IPO Liquidation).

(iii) Example. The Members hereby agree that the following contains a more specific description of the treatment of the Interests of the Company in an

IPO Liquidation that is implemented in a manner consistent with the principles described in this Section 12.7(d):

(1) Assumptions. For purposes of this Section 12.7(d)(iii), it is assumed that, in respect of the Common Units held by each Member, each such Member will receive one Registering Entity Common Share (and, to the extent a different conversion ratio is utilized in connection with the IPO Liquidation, the examples described herein relating to the Profits Interest Units would be adjusted after giving effect to such conversion ratio). Furthermore, it is assumed that the businesses and assets subject to the Initial Public Offering constitute all of the Company's and its Subsidiaries' businesses and assets and that no Adjustment Events have occurred prior to the IPO Conversion that would make the following examples inequitable.

(2) Vested Profits Interest Units. In respect of the Vested Profits Interest Units held by the Management Members and Inactive Management Members immediately prior to the IPO Liquidation, each holder of a Vested Profits Interest Unit shall receive the following in respect of each such Vested Profits Interest Unit:

(A) a fraction of a Registering Entity Common Share, the numerator of which fraction is the Intrinsic Value of such outstanding Vested Profits Interest Unit and the denominator of which is the IPO Share Price (the "**Common Share Conversion Factor**");

(B) if (x) the IPO Liquidation (or any other liquidation of the Company) is occurring prior to the third anniversary of the Closing or if there is a liquidation of the Company that occurs at any time which is not in connection with, in anticipation of or following, an Initial Public Offering, then, in each case, with respect to each such Vested Profits Interest Unit, such holder of a Vested Profits Interest Unit shall receive a fraction of a Registering Entity Option equal to one *minus* the Common Share Conversion Factor and (y) if the IPO Liquidation is a Post-Three Year IPO Liquidation, then with respect to each such Vested Profits Interest Unit, such holder of a Vested Profits Interest Unit shall receive a fraction o f a Registering Entity Option, the numerator of which fraction is the Black-Scholes Value of such applicable Profits Interest Unit (determined by reference to clause (1) of the definition thereof) minus the value of the fraction of the Registering Entity Common Share received in respect of such Profits Interest Unit as described in clause (A) above and the denominator of which is the Black-Scholes Value of one Registering Entity Option (determined by reference to clause (2) of the definition thereof) (such resulting amount under clause (x) or

(y) above, as applicable under the circumstances of such IPO Liquidation or other liquidation, the "**Option Conversion Factor**");

(C) there shall be established a dividend equivalent right in exchange for each such Vested Profits Interest Unit in an amount per-common share equal to the Option Conversion Factor that shall entitle the Management Member or Inactive Management Member, as applicable, to receive the benefit of any dividends paid on the Registering Entity Common Shares following the IPO Liquidation; and

(D) the Registering Entity Options received under clause (B) above shall (w) have an exercise price per share equal to the IPO Share Price (unless otherwise required by Section 409A of the Code), (y) be fully vested and exercisable on the date of grant and (z) shall have an expiration date on the tenth anniversary of the date on which the IPO Liquidation occurs.

(3) Unvested Profits Interest Units. In respect of the Unvested Profits Interest Units held by the Management Members and Inactive Management Members immediately prior to the IPO Liquidation, each holder of an Unvested Profits Interest Unit shall receive the following in respect of each such Unvested Profits Interest Unit:

(A) a fraction of a Registering Entity Restricted Common Share equal to the Common Share Conversion Factor, and (1) the restrictions on such restricted shares shall lapse and cease to exist as provided in clause (D) below (in the case of Registering Entity Restricted Common Shares received in exchange for an Unvested IRR-Based Profits Interest Unit) or in accordance with the terms of the Management Profits Interest Unit Agreement (i.e., will remain subject to the same time-based vesting schedule) (in the case of Registering Entity Restricted Common Shares received in exchange for an Unvested Time-Based Profits Interest Unit), and (2) the holder of such Registering Entity Restricted Common Share shall be entitled to an aggregat e payment from the Registering Entity at the time the vesting restrictions applicable to such Registering Entity Restricted Common Share have been satisfied in an amount equal to the amount of all dividends that would have been paid to the Registering Entity Restricted Common Shares from and after such IPO Liquidation to the date such vesting restrictions lapse had such Registering Entity Restricted Common Shares not been subject to such vesting restrictions and were instead entitled to participate in dividends on the same basis as the Registering Entity Common Shares;

(B) a fraction of a Registering Entity Option equal to the Option Conversion Factor, which Registering Entity Options shall (w) have an exercise price per share equal to the IPO Share Price (unless otherwise required by Section 409A of the Code), (y) in the case of a Registering Entity Option received in exchange for an Unvested Time-Based Profits Interest Unit, only be exercisable from and after the time the applicable Unvested Time-Based Profits Interest Unit would have vested in accordance with the terms of the Management Profits Interest Unit Agreement (i.e., will remain subject to the same time-based vesting schedule) or in the case of a Registering Entity Option received in exchange for an Unvested IRR-Based Profits Interest Unit, only be exercisable at such time as provided in clause (D) below and (z)& nbsp;shall have an expiration date on the tenth anniversary of the date on which the IPO Liquidation occurs;

(C) there shall be established a dividend equivalent right in exchange for each such Unvested Profits Interest Unit in an amount per-common share equal to the Option Conversion Factor and the holder of such Registering Entity Options shall be entitled to an aggregate payment from the Registering Entity at the time the vesting restrictions applicable to such Registering Entity Options have been satisfied in an amount equal to the amount of all dividends that would have been paid to the Registering Entity Options from and after such IPO Liquidation to the date such vesting restrictions lapse had the vesting restrictions applicable thereto been satisfied and the options thereby exercised at all times following the IPO Liquidation; and

(D) In respect of the vesting restrictions applicable to the Registering Entity Restricted Common Shares and Registering Entity Options received by the Management Members or Inactive Management Members, as applicable, in exchange for the Unvested IRR-Based Profits Interest Units as described in clause (3)(A) and (3)(B) above, on the first Business Day to occur following the date that is four-months after the date of the IPO Liquidation if such IPO Liquidation occurs substantially concurrent with the Initial Public Offering (or, to the extent the IPO Liquidation occurs after the Initial Public Offering, on the first Business Day after the IPO Liquidation that occurs at least four months following the Initial Public Offering) (such initial Business Day, the "**IRR-Vesting Initial Determinatio n Date**"), and, if necessary, on the first calendar day of each month after the IRR-Vesting Initial Determination Date, the Company shall determine whether the vesting restrictions applicable thereto have been achieved, with such determination being made by calculating the

IRR Tranche Hurdle applicable to the Tranche of Unvested IRR-Based Profits Interest Units received as follows: if (x) the aggregate amount and timing of distributions under Sections 9.1(a)(i) and 9.1(a)(iii) in respect of return of capital contributions to holders of Common Units in respect of the Tranche to which the IRR Based Profits Interest Units relate and the distributions of profits prior to the achievement of the Tranche IRR Hurdle, (y) the aggregate amount of the dividends paid (taking into account the timing of such dividends) per share of Registering Entity Common Shares between the date of the IPO Liquidation and the date of such calculation *multiplied by* the number of Common Units in such Tranche plus (z) the product of (1) the volume weighted average stock price (determined on an ex-dividend basis with respect to dividends included in the foregoing provis ion) for the Registering Entity Common Shares in the 90 calendar days immediately preceding such applicable date of determination *multiplied by* (2) the number of Common Units in such Tranche, would satisfy the Tranche IRR Threshold if the amount described in clause (z) were distributed to such holders in respect of such Common Units for such Tranche (and after giving effect to the amount and timing of the distributions and dividends described in clause (x) and (y) above), then the vesting restrictions applicable to the Registering Entity Restricted Common Shares and Registering Entity Options shall be satisfied and no longer subject to any further vesting restrictions.

(4) No Adjustment for Taxes; Section 409A. For the avoidance of doubt, no adjustment shall be made for differences in the tax treatment of Registrable Securities relative to Profits Interest Units. The Proposed Liquidation Adjustment shall be structured in a manner intended to not violate Section 409A of the Code, to the extent subject thereto.

(5) Dispute Resolution. The Deciding OMM shall have five Business Days following receipt of the Proposed Liquidation Summary to challenge in writing (with reasonable detail) the Proposed Liquidation Summary. In the case of such a challenge, the Board and the Original Management Members shall negotiate in good faith to resolve such dispute for no more than two Business Days, and if such dispute is not so resolved in such period, the dispute shall be submitted to an independent accounting firm, investment bank or valuation firm of nationally recognized standing or other arbitrator mutually agreed upon by the Board and the Deciding OMM (the "**Liquidation Appraiser**") for resolution within 10 Business Days, and the determination of such t hird party shall be final and binding on the Members and the Company (provided that if such third party approves the Proposed Liquidation Adjustment without any significant modification, then the Original Management Members (on a pro rata basis by reference the relative Fair Market Value of their respective Profits

Interest Units) shall bear the costs and expenses of such third party; otherwise, the Company shall bear such costs and expenses).

(6) Liquidation Adjustment. Following the distribution of the Proposed Liquidation Summary in accordance with the foregoing, if (x) the Deciding OMM does not exercise its rights under Section 12.7(d)(iii)(5) within the time period specified therein, (y) the Deciding OMM and the Board agree on an alternative Proposed Liquidation Adjustment or (z) the Liquidation Appraiser makes a final and binding determination, the Board shall take such actions as are necessary and appropriate (including causing such actions to be taken by the Registering Entity to the extent applicable) to implement the Proposed Liquidation Adjustment (as described in the Proposed Liquidation Summary, as agreed by the Deciding OMM and the Board or as determined by the Liquidation Appraiser , as applicable); it being understood that such actions may take effect before, promptly following or coincident with the IPO Liquidation, as appropriate in light of the circumstances as determined by the Board.

(iv) Definitions. For purposes of this Section 12.7(d), the following terms shall have the following meanings:

(A) "**Average Qualifying Bank Volatility**" means, as of any determination date, the lesser of (x) 40.0% and (y) the simple (and not weighted) average of the Individual Qualifying Bank Volatilities of each Qualifying Bank.

(B) "**Individual Qualifying Bank Volatility**" means with respect to each Qualifying Bank, as of any determination date, an amount expressed as a percentage equal to the historic volatility in the publicly traded stock price of such Qualifying Bank for the 10-year period prior to such date of determination, with such volatility being determined using customary and standard methods of computation in the industry and giving effect to any stock splits, stock dividends or other recapitalization or restructuring transactions typically and customarily taken into account in determining such volatility.

(C) "**Black-Scholes Value**" means:

(1) in respect of a Profits Interest Unit of a particular Tranche, the value of such Profits Interest Unit using the Black-Scholes calculation method for valuing options, as determined immediately prior to the IPO Adjustment, using the following assumptions: (i) the volatility is the Average Qualifying Bank Volatility, (ii) the exercise price is the price per Common Unit paid by the Members for Common Units relating to the Tranche to which such Profits Interest Unit relates *minus* the amount of distributions (per Common Unit) received by the

Members in respect of the Common Units held by such Members that relate to the Tranche to which such Profits Interest Units relate, (iii) the current stock price is the IPO Share Price, (iv) the maturity or expiration date is 10 years from the date of the IPO Adjustment, (v) the risk free interest rate to be used for such Profits Interest Units shall be an amount equal to the SWAP Rate, and (vi) the dividend yield is the current dividend yield per Registering Entity Common Share at the time of such IPO Liquidation (or in the event that the IPO Liquidation is occurring in anticipation of, but prior to, an Initial Public Offering, such dividend yield as is currently reflected in the dividend policy of the Registering Entity at the time of such IPO Liquidation); and

(2) in respect of a Registered Entity Option, the value of such Registered Entity Option using the Black-Scholes calculation method for valuing options, as determined immediately prior to the IPO Adjustment, using the following assumptions: (i) the volatility is the Average Qualifying Bank Volatility, (ii) the exercise price is IPO Share Price, (iii) the current stock price is the IPO Share Price, (iv) the maturity or expiration date is 10 years from the date of the IPO Adjustment, (v) the risk free interest rate to be used for such Profits Interest Units shall be an amount equal to the SWAP Rate, and (vi) the dividend yield is the current dividend yield per Registering Entity Common Share at the time of such IPO Liquidation (or in the event that the IPO Liquidation is occurring in anticipation of, but prior to, an Initial Public Offering, such dividend yield as is currently reflected in the dividend policy of the Registering Entity at the time of such IPO Liquidation).

(D) "**Intrinsic Value**" means, with respect to a Profits Interest Unit of a particular Tranche, an amount equal to the proceeds that would be delivered to a holder of such Profits Interest Unit assuming a sale of all assets of the Company at the value implied by the IPO Share Price, but disregarding any vesting requirements applicable to the Profits Interest Units.

(E) "**IPO Share Price**" means (1) if the IPO Liquidation is to occur in anticipation of, and in connection with an Initial Public Offering, the price per Registering Entity Common Share paid by the underwriters in such Initial Public Offering, or (2) if the IPO Liquidation is to occur at any time following the consummation of the Initial Public Offering, the price per Registering Entity Common Share on the close of business on the day immediately prior to the IPO Liquidation.

(F) "**Qualifying Banks**" means, as of any determination date, all U.S. federal or state chartered bank or thrift

institutions (or their respective holding companies) that (w) file, as of such date of determination, reports with the SEC pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, (x) have common equity securities traded on a national securities exchange or automated quotation system in the United States for no less than 10 years, and have been so traded on such exchange or system for the ten consecutive years prior to such date of determination, and (y) have between U.S.$ 5,000,000,000 and U.S.$50,000,000,000 in assets, as reflected on the consolidated balance sheet of such entity set forth in the consolidated balance sheet included in the quarterly report of such entity publicly available and filed with the SEC for the most recently ended quarterly period prior to such date of determination.

(G) "**Swap Rate**" means the rate (rounded to the nearest one-thousandth of one percent) appearing on Reuters Screen ISDAFIX1 Page (or on any successor to or substitute for such page providing rate quotations comparable to those currently provided on such page, for purposes of providing quotations of interest rates applicable to a AAA-rated money market swap bid rates for a maturity equal to 10 years) at approximately 11:00 a.m., New York City time, two Business Days prior to the relevant date of determination, as the AAA-rated money market swap bid rate for a maturity equal to 10 years.

Section 12.8 Registration Rights in the Case of an IPO Liquidation.

(a) Registration Rights. The Members hereby acknowledge that, if an IPO Liquidation is anticipated to occur simultaneously with an Initial Public Offering pursuant to, and in accordance with, Sections 12.7(c) and (d) hereof, then prior to effecting such Initial Public Offering and such IPO Liquidation, the Company shall cause the Registering Entity to enter into a customary registration rights agreement with each of the Members that receives Registrable Securities of the Registering Entity and such other shareholders as may be agreed upon by the Board with the consent of Members of Common Units holding a Percentage Interest of at least 60% (collectively, the "**Holders of Registrable Securities**"), pursuant to which the Holders of Registrable Securities will be granted customary demand and "piggyb ack" registration rights in respect of the Registrable Securities of the Registering Entity held by such Holders of Registrable Securities, on the terms set forth in and not inconsistent with this Section 12.8. If an IPO Liquidation does not occur at the time of the Initial Public Offering, the registration rights of the Members shall be governed by Section 12.9 (and not this Section 12.8); provided, however, immediately prior to such time as an IPO Liquidation which is effected following such Initial Public Offering, the registration rights of the Members shall be governed by a registration rights agreement containing the terms described in this Section 12.8 (and not Section 12.9) and the registration rights agreement entered into in accordance with Section 12.9(a) at the time of the Initial Public Offering shall be amended and restated in its entirety to contain the applicable terms described in this Section 12.8. The registration rights agreement describe d in this Section 12.8 and the registration rights agreement described in Section 12.9 (until such time as there is an

IPO Liquidation occurs at or following an Initial Public Offering) shall be referred to herein, as applicable, as the "**Registration Rights Agreement**." The following provisions of this Section 12.8 shall only be operative if there has been an IPO Liquidation in accordance with Section 12.7(d) or otherwise on or following an Initial Public Offering.

(b) Demand Rights. Following an Initial Public Offering, each of the Members listed on Schedule 12.8 (such Member, following an IPO Liquidation, being referred to herein as a "**Demand Shareholder**") shall have the right to cause the Registering Entity to file under the Securities Act a registration statement with respect to all or a portion of such Member's Registrable Securities in the Registering Entity (a "**Shareholder Demand Registration**") and to select the managing underwriter (which shall be of nationally recognized reputation) to administer the offering contemplated by the Shareholder Demand Registration, and to use best efforts to cause such registration statement to become effective; provided, however, that (i) no Demand Sharehold er shall be entitled to effect a Shareholder Demand Registration more than the number of times listed opposite its name on Schedule 12.8; provided, however, that in the event a Demand Shareholder exercises its rights under this Section 12.8(b) and is unable as a result of the operation of

Section 12.8(e) to sell at least 75% of the Registrable Securities proposed to be sold by such Demand Shareholder in such Shareholder Demand Registration, such Shareholder Demand Registration shall not count against the foregoing limitation on the number of Shareholder Demand Registrations such Demand Shareholder is permitted to make pursuant to Schedule 12.8; (ii) the Registering Entity shall not be required to file and cause to become effective more than two (2) registration statements in any twelve (12)-month period; and (iii) the value of the registrable securities that are proposed to be sold in such Shareholder Demand Registration by such Demand Shareholder shall be at least the lesser of $50,000,000 and the value of all Registrable Securities held by such Demand Shareholder. Any such Shareholder Demand Registration shall be subject to piggyback rights as described under Section 12.8(d) below and the limitations described in Section 12.8(e).

(c) Shelf Registration Rights. Members holding Registrable Securities representing at least 60% of all Registrable Securities as of the date of the IPO Liquidation shall have the right to cause the Registering Entity to file a registration statement with the SEC on Form S-3 (provided that the Registering Entity is eligible to use such form) for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act and to use reasonable best efforts to cause such registration statement to become effective and to maintain the effectiveness of such shelf registration statement with respect to all or a portion of such Members' Registrable Securities in the Registering Entity (a "**Shelf Demand Registration**"). The Registration Rights Agreement shall contain customary p rovisions regarding circumstances where one shelf registration may or may not be accessed by Members holding Registrable Securities and, with respect to the level of assistance the Registering Entity shall provide in facilitating sales through the Shelf Demand Registration. The Registering Entity shall not be obligated to file more than one Shelf Demand Registration in any twelve-month period.

(d) Piggyback Rights.

(i) Subject to Section 12.8(e), the Registration Rights Agreement will provide that each Holder of Registrable Securities will be entitled to elect to participate, directly or indirectly, in a sale of Registrable Securities of the

Registering Entity (A) if the Registering Entity proposes to register Registrable Securities (other than (x) a registration on Form S-4, S-8 or a comparable form, or (y) a registration of securities solely relating to an offering and sale to employees pursuant to any employee stock plan or other employee benefit plan arrangement), including as a part of a shelf registration, or (B) if there is a proposed Shareholder Demand Registration pursuant to Section 12.8(b) above (any such proposed registration described in clause (A) or (B), a "**Proposed Registration**"), in each case as described in paragraph (ii) below.

(ii) The Registering Entity shall provide written notice (the "**Shareholder Piggyback Notice**") to each Holder of Registrable Securities of any Proposed Registration promptly following the Registering Entity's determination to effect a Proposed Registration or upon its receipt of notice of such Shareholder Demand Registration. Such Shareholder Piggyback Notice shall set forth the principal terms and conditions of the issuance, including the proposed offering price (or range of offering prices) and the anticipated filing date of the registration statement. Each Holder of Registrable Securities that has received the Shareholder Piggyback Notice shall have a period of ten (10) Business Days from the date the Shareholder Piggyback Notice is delivered to such holder within which to elect to include all or a portion of its Registrable Securities in the Registering Entity, at the price and upon the terms specified in the Shareholder Piggyback Notice, by delivering an irrevocable written notice (the "**Shareholder Piggyback Election Notice**") to the Registering Entity. If any such Holder of Registrable Securities does not deliver a Shareholder Piggyback Election Notice to the Registering Entity as described in the Shareholder Piggyback Notice within the foregoing 10-Business Day period, such holder shall be deemed to have irrevocably waived any and all rights under this Section 12.8(d) with respect to the Proposed Registration (but not with respect to future Proposed Registrations in accordance with this Section 12.8).

(e) Cutbacks; Other Restrictions.

(i) In the case of an underwritten offering under this Section 12.8, the aggregate number of Registrable Securities to be included in a Proposed Registration shall not exceed the number of Registrable Securities that the managing underwriters in good faith advise the Company in writing that can be sold in such offering without being likely to have a material and adverse effect on the price, timing or distribution of the Registrable Securities offered or the market for such Registrable Securities.

(ii) In the case of a Proposed Registration that is initiated by the Registering Entity, such Registrable Securities shall be subject to the following priority: (A) first, to the Registering Entity for any Registrable Securities that it proposes to issue and sell for its own account; (B) second, to the Holders of Registrable Securities pursuant to the Registration Rights Agreement, pro rata in accordance with their respective ownership of such Registrable Securities (but, for any such holder, not to exceed the amount requested to be included in such

holder's Shareholder Piggyback Election Notice); and (C) thereafter, to any other Persons for whom the Company is obligated to register Registrable Securities pursuant to other registration rights agreements.

(iii) In the case of a Proposed Registration that is initiated by a Holder of Registrable Securities pursuant to its rights to a Demand Registration, such Registrable Securities shall be subject to the following priority: (A) to the Holders of Registrable Securities pursuant to the Registration Rights Agreement, pro rata in accordance with their respective ownership of such Registrable Securities (but, for any such holder, not to exceed the amount requested to be included in such holder's Shareholder Piggyback Election Notice); (B) second, to the Registering Entity for any Registrable Securities that it proposes to issue and sell for its own account; and (C) thereafter, to any other Persons for whom the Registering Entity is obligated to register Registrable Securities pursuant to other registration rights agreements .

(iv) Until the date that is 18 months from the date of consummation of the Initial Public Offering, no Management Member shall be permitted to exercise its rights under this Section 12.8 to sell or otherwise Transfer a number of shares in any registered offering to the extent that after giving effect to such sale or Transfer, such Management Member shall have sold Common Units or Registrable Securities representing a greater percentage of the aggregate vested Common Units or Registrable Securities held by such Management Member than the percentage of the aggregate Common Units or Registrable Securities theretofore issued to the Non-Management Members represented by all Common Units or Registrable Securities theretofore sold by the Non-Management Members.

(f) Registration Rights Agreement. The Registration Rights Agreement shall include:

(i) customary provisions permitting the Registering Entity to delay or decline to file a registration statement or to withdraw a registration statement under certain circumstances;

(ii) provisions effectuating the limitations set forth in Section 12.8(e); and

(iii) such other provisions that are reasonable and customary for registration rights agreement for a company in the business and of the size and valuation as the Registering Entity at the time of entering into the Registration Rights Agreement.

Section 12.9 Registration Rights in the Absence of an IPO Liquidation.

(a) Registration Rights. The Members hereby acknowledge that, if and for so long as the Company does not undergo an IPO Liquidation in anticipation of, or following the Initial Public Offering, under Section 12.7(d), then prior to effecting an Initial Public Offering the

Company shall enter into a customary registration rights agreement with the Registering Entity pursuant to which the Company will be granted customary demand and "piggyback" registration rights in respect of registrable securities of the Registering Entity held by the Company on the terms set forth in and not inconsistent with this Section 12.9. The following provisions of this Section 12.9 shall only be operative for so long as there has not been an IPO Liquidation in accordance with Section 12.7(d) or otherwise on or following an Initial Public Offering.

(b) Demand Rights. At any time in connection with or after an Initial Public Offering, the Demand Investors shall have the right, by delivering a joint written notice to the Company (a "**Demand Investor Notice**") to cause the Company to exercise its demand rights under the Registration Rights Agreement (an "**Investor Demand Registration**") such that the Company causes the Registering Entity to register and sell publicly up to a number of LLC Owned Shares equal to the sum (such sum being referred to herein as the "**Demand LLC Owned Shares**") of (x) the number of Individual Attributable Common Shares that such Demand Investors requested to be included in such Investor Demand Registration as set forth in the Demand Investor Notice plus (y) a number of LLC Owned Shares equal to the product of (1) the aggregate number of Individual Attributable Common Shares held by all Members (other than the Demand Investors requesting such Investor Demand Registration) and (2) the Individual Demand Percentage applicable to such Investor Demand Registration as set forth in the Demand Investor Notice (the amount of Individual Attributable Common Shares calculated pursuant to clause (y), the "**Dragged LLC Owned Shares**"), which shall be allocated to each Member (other than the Demand Investors requiring such Investor Demand Registration) according to such Member's Individual Ownership Percentage. Upon receipt by the Company of a Demand Investor Notice, the Company shall promptly deliver a written notice to each other Member regarding such proposed registration (such notice to include the Individual Demand Percentage exercised by such Demand Investors, and the corr esponding number of Dragged LLC Owned Shares relating to each other Member which will be included in such Investor Demand Registration). Within five (5) days of the Company's receipt of the Investor Demand Registration, the Company shall deliver a notice of demand to the Registering Entity which shall include the request to register and sell publicly the Demand LLC Owned Shares. In any Investor Demand Registration, the Demand Investors requesting such registration shall have the right, upon notice to the Company, to select the managing underwriter (which shall be of nationally recognized reputation) to administer the offering contemplated by the Investor Demand Registration. Upon the receipt of such notice, the Company shall, pursuant to rights to be granted to the Company under the Registration Rights Agreement, cause such managing underwriter (as identified by the Demand Investors) to be selected by the Registering Entity for such offering. The Members acknowledge and agree that any cutbacks or o ther restrictions on any Investor Demand Registration under the Registration Rights Agreement will affect each of the Members on a pro rata basis (based on the number of Demand LLC Owned Shares then related to each such Member). The Company shall distribute the proceeds of the sale of any Demand LLC Owned Shares that are the subject of an Investor Demand Registration to the Members in accordance with the provisions of Article IX. Demand Investors may withdraw an Investor Demand Registration at any time prior to its effectiveness by the SEC by delivering a joint written notice to the Company. Upon receipt of a notice of withdrawal from the Demand Investors, the Company shall, and shall cause the Registering Entity to, cease all efforts to secure effectiveness of the applicable registration statement.

(c) Piggyback Rights. If, pursuant to the Registration Rights Agreement, the Registering Entity proposes to register for sale any of its equity securities, the Company shall deliver written notice (the "**LLC Piggyback Notice**") to each of the Members regarding such proposed registration (such LLC Piggyback Notice to include the number of equity securities that the Registering Entity proposes to register in such registration (the "**Incidental Holdings Shares**"). Such LLC Piggyback Notice shall set forth the principal terms and conditions of the issuance, including the proposed offering price (or range of offering prices) and the anticipated filing date of the registration statement. Within 5 Business Days of such Members' receipt of th e LLC Piggyback Notice, if the Piggyback Investors determine to exercise, on behalf of the Company, the "piggyback rights" in whole or in part, then the Piggyback Investors shall deliver a joint written instruction (the "**Piggyback Response Instruction**") to the Company stating that such Piggyback Investors have elected to exercise the "piggyback rights" on behalf of the Company, such notice to include (x) the amount of LLC Owned Shares that such Piggyback Investors have elected to include in such "piggyback" registration plus (y) a number of LLC Owned Shares equal to the product of (1) the aggregate number of Individual Attributable Common Shares held by all Members (other than the Piggyback Investors electing to exercise the "piggyback rights" on behalf of the Company) and (2) the Individual Demand Percentage applicable to such registration as set forth in the Piggyback Response Instruction. Up on receipt by the Company of a Piggyback Response Instruction, the Company shall promptly (i) deliver a written notice to each other Member regarding such proposed registration (such notice to include the amount of LLC Owned Shares that the Piggyback Investors have elected to include in such "piggyback" registration, and the corresponding number of LLC Owned Shares relating to each other Member which will be included in such "piggyback" registration (the "**Individual Piggyback Shares**")) and (ii) deliver a notice to the Registering Entity, which shall include the request to register and sell publicly the aggregate number of LLC Owned Shares indicated in the Piggyback Response Instruction and the aggregate number of LLC Owned Shares relating to each other Member which will be included in such "piggyback" registration. The Company shall distribute the proceeds of the sale of any Individual Piggyback Shares that are in cluded in such "piggyback" registration to the Members in accordance with Article IX. The Members acknowledge and agree that any cutbacks or other restrictions on any "piggyback" registration under the Registration Rights Agreement will affect each of the Members on a pro rata basis (based on the number of Individual Attributable Common Shares then related to each such Member).

(d) For purposes of this Section 12.9, the following terms shall have the following meanings: (i) "**Aggregate LLC Owned Shares**" means, as of any date of determination, the aggregate number of shares of common stock of the Registering Entity that are held by the Company as of such date of determination, (ii) "**Individual Ownership Percentage**" means, as to any individual Member as of any date of determination, the percentage obtained by dividing (x) the number of Common Units held by such Member as of such date of determination by (y) the number of Common Units held by all Members as of such date of determination, (iii) "**LLC Owned Shares**" means, as of any date of determination, any shares of common stock of the Registering Entity that are held by the Company as of such date of determination, (iv) "**LLC Percentage**" means, as of any date of determination, the percentage obtained by dividing (x) the Aggregate LLC Owned Shares as of such date of determination by (y) the aggregate number of registrable securities (to be customarily defined in the Registration Rights Agreement) held by

all shareholders that are parties to the Registration Rights Agreement (including the Company) as of such date of determination, (v) "**Individual Attributable Common Shares**" means, as to any Member on any date of determination, the number of LLC Owned Shares equal to the Aggregate LLC Owned Shares multiplied by the Individual Ownership Percentage of such Member as of such date of determination, (vi) "**Individual Demand Percentage**" means, as to any Investor Demand Registration made by the Demand Investors, means a percentage equal to the actual number of LLC Owned Shares that such Demand Investors requested to be included in such Investor Demand Registration divided by the number of Individual Attributable Common Shares then related to such Demand Investors (it being understood that such percentage may nev er exceed 100%).

Section 12.10 Certain Affiliated Transfers. No Member shall avoid its obligations under this Agreement by making one or more Transfers of Interests to its Affiliates and then disposing of all or any portion of such Member's interest in any such Affiliate (or a direct or indirect parent thereof) transferee without first Transferring all of the Interests back from its Affiliate so that the Affiliate whose interests are disposed of no longer holds any Interests in the Company. Each Investor Member and Outside Member shall cause its Affiliates not to Transfer to Third Parties in one or more transactions equity interests in entities that, directly or indirectly, beneficially own Interests (such entities, as they relate to such Investor Member or Outside Member, as the case may be, are hereinafter referred to as "**Upper Tier Entities**") for the primary purpose of avoiding such Member's obligations under this Agreement; provided, however, that the foregoing (i) shall not apply to transfers in Upper Tier Entities solely in connection with a change of individual's employment status within such Upper Tier Entity so long as such change relates to all of the investments held by such Upper Tier Entity in a similar manner, and (ii) shall not apply to transfers in Upper Tier Entities that occur in the ordinary course and consistent with past practice.

ARTICLE XIII

DISSOLUTION, LIQUIDATION AND TERMINATION

Section 13.1 Dissolving Events. The Company shall be dissolved and its affairs wound up in the manner hereinafter provided upon the happening of any of the following events:

(a) the Board and the Members shall vote or agree in writing to dissolve the Company pursuant to the required votes set forth in Section 3.3(d), Section 4.3 and Section 4.11, respectively; or

(b) any event which, under applicable law, would cause the dissolution of the Company; provided that, unless required by applicable law, the Company shall not be wound up as a result of any such event and the business of the Company shall continue.

Notwithstanding the foregoing, the death, retirement, resignation, expulsion, bankruptcy or dissolution of any Member or the occurrence of any other event that terminates the continued membership of any Member in the Company under the Delaware Act shall not, in and of itself, cause the dissolution of the Company. In such event, the remaining Member(s) shall continue the business of the Company without dissolution.

Section 13.2 Dissolution and Winding-Up. Upon the dissolution of the Company, the assets of the Company shall be liquidated or distributed under the direction of, and to the extent determined by, the Board, and the business of the Company shall be wound up. Within a reasonable time after the effective date of dissolution of the Company, the Company's assets shall be distributed in the following manner and order:

First, to creditors in satisfaction of indebtedness (other than any loans or advances that may have been made by any of the Members to the Company), whether by payment or the making of reasonable provision for payment, and the expenses of liquidation, whether by payment or the making of reasonable provision for payment, including the establishment of reasonable reserves (which may be funded by a liquidating trust) determined by the Board or the liquidating trustee, as the case may be, to be reasonably necessary for the payment of the Company's expenses, liabilities and other obligations (whether fixed, conditional, unmatured or contingent);

Second, to the payment of loans or advances that may have been made by any of the Members to the Company; and

Third, to the Members in accordance with Section 9.1, taking into account any amounts previously distributed under Section 9.1;

provided that no payment or distribution in any of the foregoing categories shall be made until all payments in each prior category shall have been made in full, and provided, further, that, if the payments due to be made in any of the foregoing categories exceed the remaining assets available for such purpose, such payments shall be made to the Persons entitled to receive the same pro rata in accordance with the respective amounts due to them.

Section 13.3 Distributions in Cash or in Kind. Upon the dissolution of the Company, the Board shall use all commercially reasonable efforts to liquidate all of the Company's assets in an orderly manner and apply the proceeds of such liquidation as set forth in Section 13.2; provided that, if in the good faith judgment of the Board, a Company asset should not be liquidated, the Board shall cause the Company to allocate, on the basis of the Fair Market Value of any Company assets not sold or otherwise disposed of, any unrealized gain or loss based on such value to the Members' Capital Accounts as though the assets in question had been sold on the date of distribution and, after giving effect to any such adjustment, distribute such assets in accordance with Section 13.2 as if such Fair Market V alue had been received in cash, subject to the priorities set forth in Section 13.2, and provided, further, that the Board shall in good faith attempt to liquidate sufficient Company assets to satisfy in cash (or make reasonable provision for) the debts and liabilities referred to in Section 13.2.

Section 13.4 Termination. The Company shall terminate when the winding up of the Company's affairs has been completed, all of the assets of the Company have been distributed and the Certificate has been canceled, all in accordance with the Delaware Act.

Section 13.5 Claims of the Members. The Members and former Members shall look solely to the Company's assets for the return of their Capital Contributions, and if the assets of the Company remaining after payment of or due provision for all debts, liabilities and obligations

---

of the Company are insufficient to return such Capital Contributions, the Members and former Members shall have no recourse against the Company or any other Member.

ARTICLE XIV

MISCELLANEOUS

Section 14.1 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) mailed, certified or registered mail with postage prepaid, (c) sent by next-day or overnight mail or delivery or (d) sent by fax, to the address set forth opposite the Company's or such Member's name on Schedule B attached hereto, or at such other address as such Member may hereafter designate by written notice to the Company. All such notices, requests, demands, waivers and other communications shall be deemed to have been received (w) if by personal delivery, on the day delivered, (x) if by certified or registered mail, on the fifth business day after the mailing thereof, (y) if by next-day or overnight mail or delivery, on the day delivered, or (z) if by fax, on the day delivered; provided that such delivery is confirmed.

Section 14.2 Headings. The headings to sections in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

Section 14.3 Entire Agreement. This Agreement, including the Schedules hereto, and the other documents and agreements referred to herein or entered into concurrently herewith embody the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein; provided that such other agreements and documents shall not be deemed to be a part of, a modification of or an amendment to this Agreement except in respect of any individual parties that are parties to such agreements. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. This Agreement and, solely with respect to any individual parties that are party to such agreements, the other documents and agreements referred to her ein or entered into concurrently herewith, supersede all prior agreements and understandings between the parties with respect to such subject matter.

Section 14.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 14.5 Governing Law. This Agreement and the rights and obligations of the Members hereunder and the Persons subject hereto shall be governed by, and construed and interpreted in accordance with, the laws of the State of Delaware, without giving effect to the choice of law principles thereof.

Section 14.6 Waivers. (a) Except as may otherwise be provided by applicable law in connection with the winding-up, liquidation and dissolution of the Company, each Member hereby irrevocably waives any and all rights that it may have to maintain an action for partition of any of the Company's property.

(b) Waiver by any Member hereto of any breach or default by any other Member of any of the terms of this Agreement shall not operate as a waiver of any other breach or default, whether similar to or different from the breach or default waived. No waiver of any provision of this Agreement shall be implied from any course of dealing between the Members hereto or from any failure by any Member to assert its, his or her rights hereunder on any occasion or series of occasions.

(c) EACH MEMBER HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR THE BREACH, TERMINATION OR VALIDITY OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 14.7 Invalidity of Provision. The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of this Agreement, including that provision, in any other jurisdiction.

Section 14.8 Further Actions. Each Member shall execute and deliver such other certificates, agreements and documents, and take such other actions, as may reasonably be requested by the Company in connection with the continuation of the Company and the achievement of its purposes, including, without limitation, (a) any documents that the Company reasonably deems necessary or appropriate to continue the Company as a limited liability company in all jurisdictions in which the Company or its Subsidiaries conduct or plan to conduct business and (b) all such agreements, certificates, tax statements and other documents as may be reasonably required to be filed in respect of the Company to effectuate the foregoing.

Section 14.9 Amendments; Assignments.

(a) Except as expressly provided in this Agreement, this Agreement may not be amended, modified, waived or supplemented except by a written instrument signed by a majority of the members of the Board and Members holding Common Units representing a Percentage Interest of at least 60%. Notwithstanding the foregoing, no amendment, modification, waiver or supplement may:

(i) amend the limited liability of the Members or Covered Persons as set forth in Article XI hereof without the unanimous written consent of the Members;

(ii) increase the commitment of a Member with respect to Capital Contributions required to be made to be made to the Company or adversely affect a Member's rights under Article IV (except to the extent expressly provided for in accordance with Article IV) without the consent of such Member;

(iii) subject to Section 7.4, amend Article VII or Article IX (including related definitions and other provisions) without the unanimous consent of the Members;

(iv) cause a Non-Management Member's ownership of any class of voting securities of the Company (as calculated for purposes of the BHC Act or HOLA, as applicable) to increase without such affected Member's consent;

(v) subject to Section 7.4, disproportionately and adversely affect the Non-Investor Members or Non-Management Members as a class without the consent of a majority of the voting Interest held by the Non-Investor Members or Non-Management Members, as applicable, or, to the extent (and only to the extent) any particular Management Member or Non-Management Member would be adversely affected by a proposed amendment, modification or supplement in a manner different from any Management Member or Non-Management Member, by such Management Member or Non-Management Member, as the case may be; <u>provided</u>, <u>however</u>, that, in either case, no such consent of the Management Members shall be required for (i) any amendments, modifications or supplements effectuated pursuant to Sections 12.7 or 12.8, or (ii) for the issuan ce of additional Units pursuant to Article III; and

(vi) amend, modify, waive or supplement the last sentence of Section 2.4 without the unanimous written consent of the Members.

The Company shall notify all Members after any such amendment, modification or supplement, other than any amendments to Schedule A, as permitted herein, has taken effect.

(b) <u>Tax Matters</u>. Notwithstanding Section 14.9(a), each Member shall, and shall cause each of its Affiliates and transferees to, take any reasonable action jointly requested by the Board that is designed to comply with the finalization of proposed Treasury Regulations relating to the issuance of partnership equity for services and any other Treasury Regulation, Revenue Procedure, or other guidance issued with respect thereto provided that any such action does not cause any material adverse consequence to the Company, any Subsidiary of the Company or any Member or any Affiliate or transferee of a Member. Without limiting the foregoing and subject to the foregoing, such action may include authorizing the Company to make any election, agreeing to any condition imposed on such Member, its Affiliates or its transferee, executing any amendment to t his Agreement or other agreements, executing any new agreement, and agreeing not to take any contrary position on any tax return or other filing.

(c) <u>Assignments</u>. The provisions of this Agreement shall be binding upon and inure to the benefit of the Members hereto and their respective heirs, legal representatives, successors and assigns; <u>provided</u> that no Member may assign any of its rights or obligations hereunder without the consent of Members (other than such assigning Member) holding Common Units representing a Percentage Interest of at least 60% unless such assignment is in connection with a Transfer expressly permitted by this Agreement and, prior to such assignment, such assignee complies with the requirements of Section 12.4.

Section 14.10 <u>No Third Party Beneficiaries</u>. Except for the provisions of Article XI and Section 5.6, which shall be enforceable by a Covered Person, this Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies.

Section 14.11 <u>Injunctive Relief</u>. Each Member hereby irrevocably submits to the non-exclusive jurisdiction of the state courts in Delaware for the purposes of any suit, action or other proceeding arising out of, or based upon, this Agreement or the subject matter hereof. Each Member hereby consents to service of process made in accordance with Section 14.1.

Section 14.12 <u>Regulatory Matters</u>. The Company shall, and shall cause its Subsidiaries to, keep each of the Members informed, on a current basis, of any events, discussions, notices or changes with respect to any criminal or regulatory inquiry, investigation or action involving the Company or any of its Subsidiaries, so that such Members, their respective partners or members, and their respective Affiliates will have the opportunity to take appropriate steps to avoid or mitigate any regulatory consequences to them that might arise from such inquiry, investigation or action.

Section 14.13 <u>Name and Logo</u>. The Company grants each of the Non-Management Members and their respective Affiliates permission to use the Company's and/or any of its Subsidiaries' name and logo in marketing materials, and such Non-Management Member or Affiliate thereof, as applicable, shall include a trademark attribution notice giving notice of the Company's and/or Subsidiary's ownership of trademarks in the marketing materials in which the Company's and/or Subsidiary's name and logo appear.

Section 14.14 <u>Interpretation</u>. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section references are to this Agreement unless otherwise specified. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. In this Agreement all references to "dollars," "US$" or "$" are to United States dollar s unless otherwise stated. All terms defined in this Agreement shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms.

ARTICLE XV

DEFINED TERMS

Section 15.1 Definitions. The following terms as used in this Agreement shall have the following meanings:

"**Accounting Period**" means, for the first Accounting Period, the period commencing on the date hereof and ending on the next Adjustment Date. All succeeding Accounting Periods shall commence on the day after an Adjustment Date and end on the next Adjustment Date.

"Active Management Member" means a Management Member who is not an Inactive Management Member.

"**Additional Member**" has the meaning given in Section 3.9(a).

"**Additional Member Director**" has the meaning given in Section 3.9(b)(ii).

"**Adjustment Appraiser**" has the meaning given in Section 7.4(d).

"**Adjustment Date**" means the last day of each fiscal year of the Company or any other date determined by the Board, in its sole discretion, as appropriate for an interim closing of the Company's books.

"**Adjustment Events**" has the meaning given in Section 7.4(a).

"**Affiliate**" means, with respect to a specified Person, any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person, including any Person that is an "affiliate" as defined in 12 C.F.R. §574.2(d) or 12 C.F.R. §225.2(a); provided, however, no Member shall be deemed an Affiliate of the Company or any of its Subsidiaries for purposes of this Agreement

"**Aggregate LLC Owned Shares**" has the meaning given in Section 12.9(d).

"**Agreement**" means this Amended and Restated Limited Liability Company Agreement of the Company, as this agreement may be amended, modified, supplemented or restated from time to time after the date hereof.

"**Annual Budget**" has the meaning given in Section 4.13.

"**AOM Member**" has the meaning given in Section 7.1(b)(i).

"**Average Qualifying Bank Volatility**" has the meaning given in Section 12.7(d)(iv)(A).

"**Auditor**" has the meaning given in Section 10.1(c).

"**BHC Act**" means the Bank Holding Company Act of 1956, as amended, and any successor thereto.

"**Black-Scholes Value**" has the meaning given in Section 12.7(d)(iv)(C).

"**Blackstone Director**" has the meaning given in Section 4.1(b)(ii)(5).

"**Blackstone Member**" has the meaning given in the introductory paragraph to this Agreement.

"**Board**" has the meaning given in Section 4.1(a).

"**Board Proposed Liquidation Summary**" has the meaning given in Section 12.7(d)(ii).

"**Bohlsen**" has the meaning given in the introductory paragraph to this Agreement.

"**Book Value**" means with respect to any asset, the asset's adjusted basis for U.S. federal income tax purposes, except as follows: (i) the Book Value of any asset contributed or deemed contributed by a Member to the Company shall be the gross fair market value of such asset at the

time of contribution as reasonably determined by the Board; (ii) the Book Value of any asset distributed or deemed distributed by the Company to any Member shall be adjusted immediately prior to such distribution to equal its gross fair market value at such time as reasonably determined by the Board; (iii) the Book Values of all Company assets may be adjusted in the discretion of the Board to equal their respective gross fair market values, as reasonably determined by the Board as of (1) the date of the acquisition of an additional interest in the Company by any new or existing Member in exchange for a contribution to the capital of the Company; or (2) upon the liquidation of the Company (including upon interim liquidating distributions), or the distribution by the Company to a retiring or continuing Member of money or other Company property in reduction of such Member's interest in the Company; (iv) any adjustments to the adjusted basis of any asset of the Company pursuant to Sections 734 or 743 of the Code shall be taken into account in determining such asset's Book Value in a manner consistent with Treasury Regulation Section 1.704-1(b)(2)(iv)(m); and (v) if the Book Value of an asset has been determined pursuant to clause (i) or adjusted pursuant to clauses (iii) or (iv) above, to the extent and in the manner permitted in the Treasury Regulations, adjustments to such Book Value for depreciation and amortization with respect to such asset shall be calculated by reference to Book Value, instead of tax basis.

"**Business Day**" means any day other than Saturday, Sunday, a recognized United States holiday or a day on which commercial banks in New York, New York are closed for business.

"**Capital Account**" has the meaning given in Section 6.1.

"**Capital Contribution**" means, for any Member, the total amount of cash and the Fair Market Value of any property contributed to the Company by such Member, as such amount is set forth opposite the name of such Member on Schedule A hereto under the heading "Capital Contribution" (it being understood that, in the case of a Transfer of Interests by a Member to a Third Party or an Affiliate in accordance with this Agreement, the Third Party or Affiliate transferee, as applicable, shall be deemed to have made a Capital Contribution on the date of such Transfer equal to the amount (and not greater than the amount) made by the transferor in respect of the Interests so Transferred (it being further understood that (x) such amount may be all or a portion of the amount set forth opposite the name of the transferor on Schedule A immediately prior to such Transfer under the heading "Capital Contribution"), and (y) Schedule A shall be amended to set forth the amount of such Capital Contribution opposite the name of such Third Party or Affiliate, as applicable, substitute Member on Schedule A (as amended to give effect to such Transfer), and any amended amount (if any) applicable to the transferor, under the heading "Capital Contribution").

"**Carlyle Director**" has the meaning given in Section 4.1(b)(ii)(4).

"**Carlyle Member**" has the meaning given in the introductory paragraph to this Agreement.

"**Catch Up Payment**" has the meaning given in Section 9.1(c).

"**Centerbridge Director**" has the meaning given in Section 4.1(b)(ii)(3).

"**Centerbridge Member**" has the meaning given in the introductory paragraph to this Agreement.

"**Certificate**" means the Certificate of Formation of the Company and any and all amendments thereto and restatements thereof filed on behalf of the Company with the office of the Secretary of State of the State of Delaware pursuant to the Delaware Act.

"**Class B Units**" means a class of Interests in the Company, as described in Section 3.2(c). For the avoidance of doubt, Class B Units shall not include Common Units or Profits Interest Units.

"**Closing**" has the meaning given in the recitals to this Agreement.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Common Units**" means a class of Interests in the Company, as described in Section 3.2(a). For the avoidance of doubt, Common Units shall not include Class B Units or Profits Interest Units.

"**Common Share Conversion Factor**" has the meaning given in Section 12.7(d)(iii)(2)(A).

"**Company**" has the meaning given in the introductory paragraph to this Agreement.

"**Confidential Information**" has the meaning given in Section 3.6(a).

"**Control**" (including its correlative meanings, "Controlling," "Controlled by" and "under common Control with") means possession, directly or indirectly, of the power to direct or cause the direction of management or policies of another Person whether through ownership of voting securities, by contract or otherwise. A Person shall be deemed to Control (i) any general partnership or limited partnership with respect to which such Person is the general partner or managing partner, respectively, (ii) any limited liability company with respect to which such Person is a manager or managing member and (iii) such Person's Immediate Family.

"**Control Regulations**" means those provisions of the HOLA and the Change in Bank Control Act relating to acquisition of control of a savings association, including the rules, regulations, policies and interpretations of the OTS promulgated thereunder.

"**Covered Person**" means a current or former Member or Director, an Affiliate of a current or former Member or Director, any officer, director, shareholder, partner, member, employee, advisor, representative or agent of a current or former Member or Director or any of their respective Affiliates, or any current or former officer, employee or agent of the Company or any of its Affiliates.

"**Deciding OMM**" has the meaning given in Section 7.4(d).

"**Declined Interests**" has the meaning given in Section 6.4(b).

"**Deficit**" has the meaning given in Section 8.2(a).

"**Delaware Act**" means the Delaware Limited Liability Company Act, 6 Del. C. §18-101, et seq., as amended from time to time.

"**Demand Investor**" means, (i) at any time, Members holding Common Units representing a Percentage Interest of at least 60% or (ii) at any time following the three year anniversary of an IPO, Members holding Common Units representing a Percentage Interest of at least 50%.

"**Demand Investor Notice**" has the meaning given in Section 12.9(b).

“**Demand LLC Owned Shares**” has the meaning given in Section 12.9(b).

“**Demand Shareholder**” has the meaning given in Section 12.8(b).

“**DiGiacomo**” has the meaning given in the introductory paragraph to this Agreement.

“**Director**” has the meaning given in Section 4.1(a).

“**Distributable Amounts**” has the meaning given in Section 9.1(a).

“**Drag-Along Right**” has the meaning given in Section 12.6(b).

“**Dragged LLC Owned Shares**” has the meaning given in Section 12.9(b).

“**Dragging Members**” has the meaning given in Section 12.6(b).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Exempt Issuances**” has the meaning given in Section 6.4(c).

“**Exit Event**” means a transaction or a combination or series of transactions (other than an Initial Public Offering) resulting in:

(a) the sale, transfer or other disposition by the Investor Members to one or more Persons that are not, immediately prior to such sale, Affiliates of the Company or any Investor Member of all or substantially all of the Interests of the Company beneficially owned by the Investor Members as of the date of such transaction; or

(b) the sale, transfer or other disposition of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole (which may include a sale of all or substantially all of the shares in InterCo) to one or more Persons that are not, immediately prior to such sale, transfer or other disposition, Affiliates of the Company or any Investor Member.

“**Fair Market Value**” means, as of any date,

(a) for purposes of determining the value of any property owned by, contributed to or distributed by the Company, (i) in the case of publicly-traded securities, the average of their last sales prices on the applicable trading exchange or quotation system on each trading day during the ten trading-day period ending on such date and (ii) in the case of any other property, the fair market value of such property, as determined in good faith by the Board; and

(b) for purposes of determining the value of the Common Units in connection with any issuance of Common Units by the Company after the Closing, the fair market value of such Common Units as determined by reference to the latest Quarterly Valuation (or more recent valuation), in each case as provided in, and subject to the terms and conditions of, Section 10.4.

“**FDIA**” means the Federal Deposit Insurance Act and any successor thereto.

“**FDIC**” has the meaning given in the recitals to this Agreement.

“**FDIC Purchase Agreement**” has the meaning given in the recitals to this Agreement.

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

“**Fiscal Year**” has the meaning given in Section 1.8.

“**GAAP**” means U.S. generally accepted accounting principals, as in effect from time to time.

“**HOLA**” has the meaning given in Section 5.7(b).

“**Holders of Registrable Securities**” has the meaning given in Section 12.8(a).

“**Immediate Family**” means, with respect to any individual, such individual’s spouse, parents, grandparents, children, and grandchildren and any trust for any of their benefit or any family partnership in which only such Persons participate.

“**Implemented Equity Plan**” has the meaning given in Section 7.3.

“**Inactive Management Member**” has the meaning given in Section 7.2.

“**Incidental Holdings Shares**” has the meaning given in Section 12.9(c).

“**Independent Directors**” has the meaning given in Section 4.1(b)(ii)(7).

“**Individual Attributable Common Shares**” has the meaning given in Section 12.9(d).

“**Individual Demand Percentage**” has the meaning given in Section 12.9(d).

“**Individual Ownership Percentage**” has the meaning given in Section 12.9(d).

“**Individual Piggyback Shares**” has the meaning given in Section 12.9(c).

“**Individual Qualifying Bank Volatility**” has the meaning given in Section 12.7(d)(iv)(B).

“**Initial Holding Period**” has the meaning given in Section 12.1(a).

“**Initial Public Offering**” or “**IPO**” means the first underwritten public offering of the common stock (or other equity interest) of (x) a successor corporation to the Company, or (y) InterCo, NewBank (or such other entity designated as the Registering Entity in accordance with Section 12.8(a) hereof that owns substantially all of the operations held, directly or indirectly, by the Company) to the general public through a registration statement filed with the Securities and Exchange Commission that results (i) in aggregate proceeds (net of offering expenses) to such successor corporation, InterCo, NewBank (or other Registering Entity) of at least $100,000,000 and (ii) in shares of such successor corporation, InterCo, NewBank (or such other Registering Entity) that will be traded on any of the New York Stock Exchange, the American Stock Exchange or the National Association of Securities Dealers Automated Quotation System after the close of any such general public offering.

“**InterCo**” has the meaning given in the recitals to this Agreement.

“**InterCo Board**” has the meaning given in Section 4.1(d)(i).

“**Interest**” means a limited liability interest in the Company, which represents the interest of each Member in and to the profits and losses of the Company and such Member’s right to receive distributions of the Company’s assets, as set forth in this Agreement.

“**Interim Distributions**” has the meaning given in Section 9.1(c).

“**Intrinsic Value**” has the meaning given in Section 12.7(d)(iv)(D).

“**Investor Demand Registration**” has the meaning given in Section 12.9(b).

“**Investor Member Directors**” has the meaning given in Section 4.1(b)(ii)(5).

“**Investor Members**” has the meaning given in the introductory paragraph to this Agreement.

“**IPO Conversion**” has the meaning given in Section 12.7(a).

“**IPO Liquidation**” has the meaning given in Section 12.7(c).

“**IPO Liquidation Date Black-Scholes Value**” has the meaning given in Section 12.7(d)(v)(5).

“**IPO Share Price**” has the meaning given in Section 12.7(d)(iv)(E).

“**IRR-Based Profits Interest Units**” means a sub-class of Profits Interest Units, as described in Section 3.2(b).

“**IRR-Vesting Initial Determination Date**” has the meaning given in Section 12.7(d)(iii)(3)(D).

“**Issuable IRR-Based Profits Interest Units**” has the meaning given in Section 7.1(b)(i).

“**Issuable Time-Based Profits Interest Units**” has the meaning given in Section 7.1(b)(ii).

“**Kanas**” has the meaning given in the introductory paragraph to this Agreement.

“**Liquidation Appraiser**” has the meaning given in Section 12.7(d)(iii)(5).

“**LLC Owned Shares**” has the meaning given in Section 12.9(d).

“**LLC Percentage**” has the meaning given in Section 12.9(d).

“**LLC Piggyback Notice**” has the meaning given in Section 12.9(c).

“**Majority in Interest**” means, as of any given record date or other applicable time, the holders of a majority of the outstanding Units (other than Class B Units) held by Members as of such date that as the holders of such Units are entitled to vote at a meeting of Members or to consent in writing in lieu of a meeting of Members.

“**Management Directors**” has the meaning given in Section 4.1(b)(ii)(1).

“**Management Member**” has the meaning given in the introductory paragraph to this Agreement. A Management Member shall be deemed not to be a “manager” within the meaning of the Delaware Act (except to the extent Section 4.1(b)(i) applies).

“**Management Profits Interest Unit Agreements**” has the meaning given in the recitals to this Agreement.

“**Material Subsidiaries**” means InterCo, NewBank or any other Subsidiary of the Company which (together with its Subsidiaries) represents ten percent (10%) or more of the revenues for the trailing four quarters, or on a book value basis, the assets, of the Company and its Subsidiaries taken as a whole.

“Maximum Participating Units” has the mean given in Section 9.1(a)(iii).

“**Member**” has the meaning given in the introductory paragraph to this Agreement and includes (i) any Person admitted as an additional or substitute Member of the Company pursuant to this Agreement and (ii) for the avoidance of doubt, Inactive Management Members.

“**Member Minimum Gain**” shall mean an amount, with respect to each Member Nonrecourse Debt, equal to Minimum Gain that would result if such Member Nonrecourse Debt

were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulations section 1.704-2(i)(3).

“**Member Nonrecourse Debt**” shall mean a liability defined in Treasury Regulations section 1.704-2(b)(4).

“**Minimum Gain**” shall mean the aggregate gain, if any, that would be realized by the Company for purposes of computing Net Income and Net Loss with respect to each asset of the Company if each asset of the Company subject to a Nonrecourse Liability were disposed of for the amount outstanding on the Nonrecourse Liability by the Company in a taxable transaction for no consideration (other than debt relief). Minimum Gain with respect to each asset of the Company shall be further determined in accordance with Treasury Regulations section 1.704-2(d) and any subsequent rule or regulation governing the determination of minimum gain.

“**Net Income**” and “**Net Loss**” mean, respectively, for any period the taxable income and taxable loss of the Company for the period as determined for U.S. federal income tax purposes; provided that for the purpose of determining Net Income and Net Loss (and for purposes of determining items of gross income, loss, deduction and expense in applying Sections 8.1 and 8.2, but not for income tax purposes): (i) there shall be taken into account any items required to be separately stated under Section 703(a) of the Code, (ii) any income of the Company that is exempt from federal income taxation and not otherwise taken into account in computing Net Income and Net Loss shall be added to such taxable income or loss; (iii) if the Book Value of any asset differs from its adjusted tax basis for federal income tax purposes, any depreciation, amortization or gain or loss resulting from a disposition of such asset shall be calculated with reference to such Book Value; (iv) upon an adjustment to the Book Value of any asset, pursuant to the definition of Book Value, the amount of the adjustment shall be included as gain or loss in computing such taxable income or loss; (v) any expenditure of the Company described in Section 705(a)(2)(B) of the Code or treated as such an expenditure pursuant to Treasury Regulation section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition, shall be subtracted from such taxable income or loss; (vi) to the extent an adjustment to the adjusted tax basis of any asset included in Company property pursuant to Section 734(b) of the Code is required pursuant to Treasury Regulation section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Ca pital Accounts as a result of a distribution other than in liquidation of a Member’s interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for the purposes of computing Net Income and Net Loss; and (vii) items allocated pursuant to Section 8.2 shall not be taken into account in computing Net Income or Net Loss.

“**NewBank**” has the meaning given in the introductory paragraph to this Agreement.

“**NewBank Board**” has the meaning given in Section 4.1(d)(i).

“**Newly Vested Time-Based Profits Interest Units**” has the meaning given in Section 9.1(c).

“**Ninth Director**” has the meaning given in Section 4.1(b)(ii)(6).

“**Non-Investor Members**” has the meaning given in the introductory paragraph to this Agreement.

“**Non-Issuable IRR-Based Profits Interest Units**” has the meaning given in Section 7.1(b)(i).

“**Non-Issuable Time-Based Profits Interest Units**” has the meaning given in Section 7.1(b)(ii).

“**Non-Management Members**” has the meaning given in the introductory paragraph to this Agreement.

“**Non-Participating Members**” has the meaning given in Section 10.4(b).

“**Opinion of Counsel**” means an opinion in writing and in form and substance reasonably satisfactory to the Board, signed by legal counsel either chosen by the Board or, if chosen by a Member, reasonably satisfactory to the Board.

“**Option Conversion Factor**” has the meaning given in Section 12.7(d)(iii)(2)(B).

“**Original Amount**” means, as it relates to any Member, the aggregate number of Common Units held by such Member on the date hereof (after giving effect to the Capital Contributions made by such Member on the date hereof in connection with the Closing of the transactions contemplated by the FDIC Purchase Agreement), or in the case of an Additional Member, as of the date such Additional Member is admitted pursuant to Section 3.9.

“**Original Management Members**” means Kanas, Singh, DiGiacomo and Bohlsen.

“**OTS**” has the meaning given in Section 3.4.

“**Outside Members**” has the meaning given in the introductory paragraph to this Agreement.

“**Participating Units**” has the meaning given in Section 9.1(b).

“**Percentage Interest**” means, with respect to a Member at any time, its percentage interest in the Company at such time, as determined by dividing the number of Common Units held by such Member at such time *by* the aggregate number of Common Units held by all Members at such time. The Percentage Interest of each Member, from time to time, shall be as set forth on Schedule A hereto, as may be amended from time to time in accordance with this Agreement.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof..

“**Piggyback Investor**” means, (i) at any time, Members holding Common Units representing a Percentage Interest of at least 60% or (ii) at anytime following the three year

anniversary of an IPO, Members holding Common Units representing a Percentage Interest of at least 50%.

“**Piggyback Response Instruction**” has the meaning given in Section 12.9(c).

“**Plan Asset Regulations**” means the regulations issued by the Department of Labor at Section 2510.3-101 of Part 2510 of Chapter XXV, Title 29 of the Code of Federal Regulations, as the same may be amended from time to time.

“**Post-Three Year IPO Liquidation**” has the meaning given in Section 12.7(d)(ii)(2).

“**Preemptive Purchase Amount**” has the meaning given in Section 6.4(b).

“**Preemptive Rights**” has the meaning given in Section 6.4(b).

“**Preemptive Rights Notice**” has the meaning given in Section 6.4(b).

“**Pre-Threshold Tranche**” has the meaning given in Section 7.1(b)(i).

“**Prior LLC Agreement**” has the meaning given in the recitals to this Agreement.

“**Profits Interest Percentage**” means, with respect to an AOM Member at any time, its percentage interest in the Profits Interest Units set forth opposite such AOM Member’s name on Schedule A hereto under the heading “Profits Interest Percentage”, it being understood that such percentage for each AOM Member shall only be revised and amended if such AOM Member becomes an Inactive Management Member (in which case the Profits Interest Percentage of the Original Management Member that became an Inactive Management Member shall be reduced to 0% (and Schedule A shall be revised accordingly), but such reduction shall not affect the Profits Interest Percentage of any other AOM Member); provided, however, notwithstanding anything to the contrary, the Profits Interest Percentages of all AOM Members shall not exceed 100% and no Profits Interes t Percentage of any AOM Member shall be affected or altered in any manner as a result of a change in the Profits Interest Percentage of any other AOM Member.

“**Profits Interest Units**” means a class of Interest in the Company, as described in Section 3.2(b). For the avoidance of doubt, Profits Interest Units shall not include Common Units or Class B Units.

“**Pro Rata Share**” means, with respect to any Member as of any particular date of determination, the percentage obtained by dividing the number of Common Units held by such Member by the aggregate number of Common Units issued and outstanding as of such date of determination.

“**Proposed Adjustment**” has the meaning given in Section 7.4(a).

“**Proposed Adjustment Summary**” has the meaning given in Section 7.4(a).

“**Proposed Liquidation Adjustment**” has the meaning given in Section 12.7(d)(ii)(1).

“**Proposed Liquidation Adjustment Summary**” has the meaning given in Section 12.7(d)(ii)(1).

“**Proposed Registration**” has the meaning given in Section 12.8(d)(i).

“**Proposed Third Party Interests**” has the meaning given in Section 6.4(b).

“**Qualifying Banks**” has the meaning given in Section 12.7(d)(iv)(F).

“**Quarterly Valuation**” has the meaning given in Section 10.4(a).

“**Receiver**” has the meaning given in the recitals to this Agreement.

"**Registering Entity**" has the meaning given in Section 12.7(a).

"**Registering Entity Common Shares**" has the meaning given in Section 12.7(c).

"**Registering Entity Options**" has the meaning given in Section 12.7(c).

"**Registering Entity Restricted Common Shares**" has the meaning given in Section 12.7(c).

"**Registrable Securities**" has the meaning given in Section 12.7(c).

"**Registration Rights Agreement**" has the meaning given in Section 12.8(a).

"**Representatives**" has the meaning given in Section 3.6(a).

"**Related Party**" has the meaning given in Section 4.11(a)(ii).

"**Rule 144**" has the meaning given in Section 5.1(b).

"**Securities Act**" means the Securities Act of 1933, as amended from time to time.

"**Selling Member**" has the meaning given in Section 12.6(a).

"**Senior Officer**" means initially those officers listed on Schedule 4.10 hereto, and from time to time after the Closing, shall mean, the Chief Executive Officer, Chief Lending Officer, Chief Financial Officer, Chief Administrative Officer, Head of Consumer Banking, Head of Commercial Banking, Chief Risk Officer, Chief Credit Officer and Director of Internal Audit of the Company or NewBank and such other officers as the Board may designate from time to time as Senior Officers; it being understood that the Management Members shall be deemed Senior Officers for so long as they are employed by the Company or any of its Subsidiaries.

"**Shareholder Demand Registration**" has the meaning given in Section 12.8(b).

"**Shareholder Piggyback Election Notice**" has the meaning given in Section 12.8(d)(ii).

"**Shareholder Piggyback Notice**" has the meaning given in Section 12.8(d)(ii).

"**Shelf Demand Registration**" has the meaning given in Section 12.8(c).

"**Singh**" has the meaning given in the introductory paragraph to this Agreement.

"**SLHC**" has the meaning given in Section 5.7(b).

"**Sold-Down Investor**" has the meaning given in Section 4.9(b).

"**Sold-Down Investor Director**" has the meaning given in Section 4.9(b).

"**Subsidiary**" means, for any Person, any other Person (a) in which it directly or indirectly owns at least fifty percent (50%) of such Person's voting capital securities, or (b) with which it is required to be consolidated under GAAP.

"**Subsidiary Board**" has the meaning given in Section 4.1(d)(i).

"**Swap Rate**" has the meaning given in Section 12.7(d)(iv)(G).

"**Tag-Along Right**" has the meaning given in Section 12.6(a).

"**Tagging Member**" has the meaning given in Section 12.6(a).

"**Tax Matters Partner**" has the meaning given in Section 10.2(b).

"**Third Party**" shall mean any Person other than the Company, any Member or any of their respective Affiliates.

"**Threshold Amount**" shall be deemed to be reached at such time as the aggregate amount of all Capital Contributions other than Capital Contributions made in respect of any Class B Units (without reduction for subsequent distributions or returns of capital) made by the Members has reached an amount equal to $1,200,000,000.

"**Time-Based Profits Interest Unit**" means a sub-class of Profits Interest Units, as described in Section 3.2(b).

"**Tranche**" has the meaning given in Section 7.1(b)(i).

"**Tranche Distributable Amount**" has the meaning given in Section 9.1(a).

"**Tranche IRR Hurdle**" has the meaning given in Section 9.1(a)(iv).

"**Tranche Percentage**" has the meaning given in Section 9.1(a).

“**Transfer**” means, with respect to any Interests, a transfer, sale, exchange, assignment, pledge, or hypothecation of, creation of a lien or other encumbrance or security interest in or upon, or other disposition of, such Interests, including the grant of any option or other right, whether voluntarily, involuntarily or by operation of law.

“**Treasury Regulations**” means the Regulations of the Treasury Department of the United States issued pursuant to the Code.

“**Units**” means any class of Interests provided for herein.

“**Unvested IRR-Based Profits Interest Units**” means, as of any date of determination, all IRR-Based Profits Interest Units that are issued and outstanding at such time and are not Vested IRR-Based Profits Interest Units at such time of determination.

“**Unvested Profits Interest Units**” means all Unvested Time-Based Profits Interest Units and all Unvested IRR-Based Profits Interest Units.

“**Unvested Time-Based Profits Interest Units**” means, as of any date of determination, all Time-Based Profits Interest Units that are issued and outstanding at such time and are not Vested Time-Based Profits Interest Units at such time of determination.

“**Upper Tier Entities**” has the meaning given in Section 12.10.

“**Valuation Date**” has the meaning given in Section 10.4(a).

“**Valuation Firm**” has the meaning given in Section 10.4(a).

“**VCOC**” has the meaning given in Section 5.6.

“**VCOC Investor**” has the meaning given in Section 5.6.

“**Vested IRR-Based Profits Interest Units**” means any IRR-Based Profits Interest Unit held by a Management Member or Inactive Management Member as of the date of determination (and not previously forfeited or repurchased in accordance with the terms of the applicable Management Profits Interest Unit Agreement) if the vesting criteria with respect to the particular Tranche to which such IRR-Based Profits Interest Units relate has been satisfied at (and after giving effect to any distribution or sale proceeds applicable on such date of determination) the time of such distribution in question in respect of the such Tranche as described in Section 9.1(a)(ii).

“**Vested Profits Interest Units**” means all Vested Time-Based Profits Interest Units and all Vested IRR-Based Profits Interest Units.

“**Vested Time-Based Profits Interest Units**” means any Time-Based Profits Interest Unit held by a Management Member or Inactive Management Member as of the date of determination (and not previously forfeited or repurchased in accordance with the terms of the applicable Management Profits Interest Unit Agreement) that has vested as of the date of determination pursuant to the terms of the applicable Management Profits Interest Unit Agreement.

“**WL Ross Director**” has the meaning given in Section 4.1(b)(ii)(2).

“**WL Ross Member**” has the meaning given in the introductory paragraph to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first above written.

INVESTOR MEMBERS:

WL ROSS MEMBERS:

WLR RECOVERY FUND IV, L.P.
By: WLR Recovery Associates IV LLC
Its General Partner

By: WL Ross Group, L.P.
its Managing Member

By: El Vedado, LLC
Its General Partner

By: /s/ David Storper
Name: David H. Storper
Title: Manager

WLR IV PARALLEL ESC, L.P.

By: WLR Recovery Associates IV LLC
Its Attorney-in-fact

By: WL Ross Group, L.P.
its Managing Member

By: El Vedado, LLC
Its General Partner

By: /s/ David Storper
Name: David H. Storper
Title: Manager

WLR/GS Master Co-Investment, L.P.
By: WLR Master Co-Investment GP LLC
Its General Partner

By: /s/ David Storper
Name: David H. Storper
Title: Authorized Signatory

Signature Page to Amended & Restated LLC Agreement

CARLYLE MEMBERS:

CARLYLE PARTNERS V, L.P.

By: TC GROUP V, L.P., its general partner

By: TC GROUP V MANAGING GP, L.L.C., its general partner

By: TC GROUP, L.L.C., its sole member

By: TCG HOLDINGS, L.L.C., its managing member

By: /s/ Pierre Olivier Sarkozy
Name: Pierre Olivier Sarkozy
Title: Partner Managing Director

CARLYLE PARTNERS V-A, L.P.

By: TC GROUP V, L.P., its general partner

By: TC GROUP V MANAGING GP, L.L.C., its general partner

By: TC GROUP, L.L.C., its sole member

By: TCG HOLDINGS, L.L.C., its managing member

By: /s/ Pierre Olivier Sarkozy
Name: Pierre Olivier Sarkozy
Title: Partner Managing Director

Signature Page to Amended & Restated LLC Agreement

CP V COINVESTMENT A, L.P.

By: TC GROUP V, L.P., its general partner

By: TC GROUP V MANAGING GP, L.L.C., its general partner

By: TC GROUP, L.L.C., its sole member

By: TCG HOLDINGS, L.L.C., its managing member

By: /s/ Pierre Olivier Sarkozy
Name: Pierre Olivier Sarkozy
Title: Partner Managing Director

CP V COINVESTMENT B, L.P.

By: TC GROUP V, L.P., its general partner

By: TC GROUP V MANAGING GP, L.L.C., its general partner

By: TC GROUP, L.L.C., its sole member

By: TCG HOLDINGS, L.L.C., its managing member

By: /s/ Pierre Olivier Sarkozy
Name: Pierre Olivier Sarkozy
Title: Partner Managing Director

CARLYLE STRATEGIC PARTNERS II, L.P.

By: CSP II GENERAL PARTNER, L.P., its general partner

By: TC GROUP CSP II, L.L.C., its general partner

By: TC Group, L.L.C., its sole member

By: TCG Holdings, L.L.C., its managing member

By: /s/ Pierre Olivier Sarkozy
Name: Pierre Olivier Sarkozy
Title: Partner Managing Director

CSP II CO-INVESTMENT, L.P.

By: CSP II GENERAL PARTNER, L.P., its general partner

By: TC GROUP CSP II, L.L.C., its general partner

By: TC Group, L.L.C., its sole member

By: TCG Holdings, L.L.C., its managing member

By: /s/ Pierre Olivier Sarkozy
Name: Pierre Olivier Sarkozy
Title: Partner Managing Director

Signature Page to Amended & Restated LLC Agreement

CARLYLE FINANCIAL SERVICES BU, L.P.

By: TCG FINANCIAL SERVICES L.P., its general partner

By: CARLYLE FINANCIAL SERVICES, LTD., its general partner

By: /s/ Pierre Olivier Sarkozy
Name: Pierre Olivier Sarkozy
Title: Partner Managing Director

Signature Page to Amended & Restated LLC Agreement

BLACKSTONE MEMBERS:

BLACKSTONE CAPITAL PARTNERS V L.P.

By: Blackstone Management Associates V L.L.C., its General Partner

By: BMA V L.L.C., its Sole Member

By: /s/ Chinh E. Chu
Name: Chinh E. Chu
Title: Senior Managing Director

BLACKSTONE CAPITAL PARTNERS V-AC L.P.

By: Blackstone Management Associates V L.L.C., its General Partner

By: BMA V L.L.C., its Sole Member

By: /s/ Chinh E. Chu
Name: Chinh E. Chu
Title: Senior Managing Director

BLACKSTONE FAMILY INVESTMENT PARTNERSHIP V L.P.

By: BCP V Side-by-Side GP L.L.C., its General Partner

By: /s/ Chinh E. Chu
Name: Chinh E. Chu
Title: Senior Managing Director

Signature Page to Amended & Restated LLC Agreement

BLACKSTONE PARTICIPATION
PARTNERSHIP V L.P.

By: BCP V Side-by-Side GP L.L.C., its
General Partner

By: /s/ Chinh E. Chu
Name: Chinh E. Chu
Title: Senior Managing Director

Signature Page to Amended & Restated LLC Agreement

CENTERBRIDGE MEMBERS:

CENTERBRIDGE CAPITAL PARTNERS, L.P.

By: Centerbridge Associates, L.P., its
general partner

By: Centerbridge GP Investors, LLC, its
general partner

By: /s/ Lance West
Name: Lance West
Title: Senior Managing Director

CENTERBRIDGE CAPITAL PARTNERS SBS,
L.P.

By: Centerbridge Associates, L.P., its
general partner

By: Centerbridge GP Investors, LLC, its
general partner

By: /s/ Lance West
Name: Lance West
Title: Senior Managing Director

CENTERBRIDGE CAPITAL PARTNERS
STRATEGIC, L.P.

By: Centerbridge Associates, L.P., its
general partner

By: Centerbridge GP Investors, LLC, its
general partner

By: /s/ Lance West
Name: Lance West
Title: Senior Managing Director

Signature Page to Amended & Restated LLC Agreement

CB BU INVESTORS, L.L.C.

By: Centerbridge Associates, L.P., its manager

By: Centerbridge GP Investors, LLC, its general partner

By: /s/ Lance West
Name: Lance West
Title: Senior Managing Director

CB BU INVESTORS II, L.L.C.

By: Centerbridge Associates, L.P., its manager

By: Centerbridge GP Investors, LLC, its general partner

By: /s/ Lance West
Name: Lance West
Title: Senior Managing Director

CB BU INVESTORS III, L.L.C.

By: Centerbridge Associates, L.P., its manager

By: Centerbridge GP Investors, LLC, its general partner

By: /s/ Lance West
Name: Lance West
Title: Senior Managing Director

OUTSIDE MEMBERS

EASTROCK:

EREF SPECIAL SITUATIONS, LLC

By: East Rock Endowment Fund, LP, its managing member

By: East Rock Capital GP, LLC, its general partner

By: /s/ Adam Shapiro
Name: Adam Shapiro
Title: Managing Principal

EAST ROCK FOCUS FUND, L.P.

By: East Rock Focus Fund GP, LLC, its general partner

By: /s/ Adam Shapiro
Name: Adam Shapiro
Title: Managing Principal

GREENAAP:

DAVY GLOBAL OPPORTUNITIES FUND

By: /s/ Tom Berrigan
Name: Tom Berrigan
Title: Director

Signature Page to Amended & Restated LLC Agreement

LEFRAK:

LF Moby LLC

By: Stone Manager Corp, its Manager

By: /s/ Richard N. Papert
Name: Richard. N. Papert
Title: Vice President

THE WELLCOME TRUST:

THE WELLCOME TRUST LIMITED, AS TRUSTEE OF
THE WELLCOME TRUST

By: /s/ Danny Truell
Name: Danny Truell
Title: Chief Investment Officer

MANAGEMENT MEMBERS:

/s/ John A. Kanas
John Adam Kanas

/s/ Rajinder P. Singh
Rajinder Pal Singh

/s/ John N. DiGiacomo
John N. DiGiacomo

/s/ John Bohlsen
John Bohlsen

Signature Page to Amended & Restated LLC Agreement

COMPANY:

BU FINANCIAL HOLDINGS LLC

By: /s/ John A. Kanas
Name: John A. Kanas
Title:

NEWBANK

BANKUNITED

By: /s/ John A. Kanas
Name: John A. Kanas
Title:

Signature Page to Amended & Restated LLC Agreement

SCHEDULE A

Tranche One Capitalization Information (as of January 15, 2011)

WL ROSS MEMBERS

Name	Date of Admission	Capital Contribution	Common Units	Common Units Percentage Interest
WLR Recovery Fund IV, L.P.	May 21, 2009	$ 202,188,000	197,744.31	21.269%
WLR IV Parallel ESC, L.P.	May 21, 2009	$ 812,000	794.15	0.085%
WLR/GS Master Co-Investment, L.P.	May 21, 2009	$ 20,000,000	19,560.44	2.104%
WL Ross Total		*$ 223,000,000*	*218,098.90*	*23.459%*

CARLYLE MEMBERS

Name	Date of Admission	Capital Contribution	Common Units	Common Units Percentage Interest
Carlyle Financial Services BU, L.P.	May 21, 2009	$ 100,000,000	97,802.20	10.520%
Carlyle Partners V, L.P.	May 21, 2009	$ 94,118,185	92,049.65	9.901%
Carlyle Strategic Partners II, L.P.	May 21, 2009	$ 22,227,384	21,738.87	2.338%
CP V Coinvestment A, L.P.	May 21, 2009	$ 3,753,994	3,671.49	0.395%
CP V Coinvestment B, L.P.	May 21, 2009	$ 234,221	229.07	0.025%
Carlyle Partners V-A, L.P.	May 21, 2009	$ 1,893,600	1,851.98	0.199%
CSP II Co-Investment, L.P.	May 21, 2009	$ 772,616	755.64	0.081%
Carlyle Total		*$ 223,000,000*	*218,098.90*	*23.459%*

CENTERBRIDGE MEMBERS

Name	Date of Admission	Capital Contribution	Common Units	Common Units Percentage Interest
Centerbridge Capital Partners, L.P.	May 21, 2009	$ 149,241,516	145,961.48	15.700%
Centerbridge Capital Partners Strategic, L.P.	May 21, 2009	$ 5,512,851	5,391.69	0.580%
Centerbridge Capital Partners SBS, L.P.	May 21, 2009	$ 245,633	240.23	0.026%
CB BU Investors, LLC	May 21, 2009	$ 9,500,000	9,291.21	0.999%
CB BU Investors II, LLC	May 21, 2009	$ 5,500,000	5,379.12	0.579%
CB BU Investors III, LLC	May 21, 2009	$ 5,000,000	4,890.11	0.526%
Centerbridge Total		*$ 175,000,000*	*171,153.85*	*18.409%*

BLACKSTONE MEMBERS

Name	Date of Admission	Capital Contribution	Common Units	Common Units Percentage Interest
Blackstone Capital Partners V L.P.	May 21, 2009	$ 169,522,370	165,796.60	17.833%
Blackstone Capital Partners V-AC, L.P.	May 21, 2009	$ 53,009,330	51,844.29	5.576%
Blackstone Family Investment Partnership V, L.P.	May 21, 2009	$ 296,184	289.67	0.031%
Blackstone Participation Partnership V, L.P.	May 21, 2009	$ 172,116	168.33	0.018%
Blackstone Total		*$ 223,000,000*	*218,098.90*	*23.459%*

MANAGEMENT MEMBERS

Name	Date of Admission	Capital Contribution	Common Units/ % Interest	Time-Based Profits Interest Units	IRR-Based Profits Interest Units	Profits Interest Percentage	Date of Grant of Profits Interest Units
John A. Kanas	May 21, 2009	$23,500,000	23,500.00** / 2.528%	25,355.96	25,355.96	49.09%	Mary 21, 2009
John Bohlsen***	May 21, 2009	$10,000,000	10,000.00 / 1.076%	12,959.71	12,959.71	25.09%	May 21, 2009
Rajinder P. Singh	May 21, 2009	$1,000,000	1,000.00 / 0.108%	11,269.32	11,269.32	21.82%	May 21, 2009
Douglas Pauls	September 1, 2009	$1,000,000 ($500,000 of which was from purchase of DiGiacomo Common Units)	1,000.00 / 0.108%	2,066.04	2,066.04	4.00%	September 1, 2009
Management Total		$35,500,000	35,500.00 / 3.818	51,651.03	51,651.03	100.00%	

* John N. DiGiacomo ceased to hold any Common Units or Profits Interest Units, effective as of September 1, 2009, and as a result is no longer a Member of the Company.

** John Kanas transferred 12,500 of his Common Units to Kanas 2010 Annuity Trust, effective as of December 30, 2010

*** John Bohlsen transferred 10,000 of his Common Units to Bohlsen 2010 Annuity Trust, effective as of December 30, 2010

OUTSIDE MEMBERS

Name	Date of Admission	Capital Contribution	Common Units	Common Units Percentage Interest
LF Moby LLC	May 21, 2009	$ 21,000,000	20,538.46	2.209%
EREF Special Situations LLC	May 21, 2009	$ 18,000,000	17,604.40	1.894%
East Rock Focus Fund, L.P.	May 21, 2009	$ 2,000,000	1,956.04	0.210%
The Wellcome Trust Limited	May 21, 2009	$ 20,000,000	19,560.44	2.104%
Davy Global Opportunities Fund	May 21, 2009	$ 5,000,000	4,890.11	0.526%
Rishi Bansal	July 15, 2009	$ 1,500,000	1,500.00	0.161%
Scott Skorobohaty	October 9, 2009	$ 500,000	448.76	0.048%
Raymond Barbone	October 23, 2009	$ 250,000	224.38	0.024%
Sue M. Cobb	January 6, 2010	$ 1,000,000	897.52	0.097%

Cobb Family Twenty-Second Century Fund I	January 6, 2010	$ 700,000	628.26	0.068%
Cobb Family Foundation	January 6, 2010	$ 300,000	269.25	0.029%
Gene DeMark	September 30, 2010	$ 500,000	250.36	0.027%
Outside Member Total		*$ 70,750,000*	*68,767.98*	*7.397%*

SCHEDULE B

Name and Address of Members

If to the Company:

BU Financial Holdings LLC
32 Adelaide Ave
East Moriches, New York 11940
Attention: John A. Kanas
Facsimile: 631-874-3549

With copies (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
Attention: William Rubenstein
David Ingles
Facsimile No.: (917) 777-2642

If to a Carlyle Member:

c/o The Carlyle Group
520 Madison Avenue
New York, NY 10022
Attention: John Redett
Facsimile: 212-813-4789

With copies (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Maripat Alpuche
Facsimile: 212-455-2502

If to a Centerbridge Member:

c/o Centerbridge Partners, L.P.
375 Park Avenue, 12th Floor
New York, NY 10152
Attention: Lance West
Facsimile: 212-672-4562

With copies (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Wilson S. Neely
Caroline B. Gottschalk
Facsimile: 212-455-2502

New York Life Capital Partners
51 Madison Avenue, Suite 1600
New York, NY 10010
Attention: Amanda Parness
Facsimile No.: (212) 576-5591
Email: amanda_parness@nylim.com
nylcap-reporting@nylim.com

If to a WL Ross Member:

WL Ross & Co. LLC
1166 Avenue of the Americas
New York, NY 10036
Attention: Michael J. Gibbons
Chief Financial Officer
Facsimile: (212) 317-4891

With copies (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Nicholas G. Demmo
Matthew M. Guest
Facsimile: (212) 403-2000

If to a Blackstone Member:

c/o The Blackstone Group
345 Park Avenue
New York, NY 10154
Attention: Chinh E. Chu
Facsimile: 212-583-5722

With copies (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: William R. Dougherty
Facsimile: 212-455-2502

If to an applicable Outside Member:

LF Moby LLC
c/o LeFrak Organization, Inc.
40 West 57th Street, 23rd Floor
New York, NY 10019
Attention: Harrison T. LeFrak
E-Mail: hlefrak@lefrak.com
Facsimile: (212) 708-6611

The Wellcome Trust
Gibbs Building
215 Euston Road
London, NW1 2BE
United Kingdom
Attention: Elizabeth Chapman
E-mail: e.chapman@wellcome.ac.uk
Facsimile: + 44-20-7611-8545

Davy Global Opportunities Fund
C/O Greenaap Consultants
66 Merrion Square
Dublin 2
Ireland
Tel: + 353-1-662-0390
Attention: Karen O’Mahony
E-Mail: Karen@greenaap.ie

EREF Special Situations, LLC
c/o East Rock Capital GP, LLC
10 East 53rd Street, 31st Floor
New York, NY 10022
Attention: Michael Marks
E-Mail: mmarks@eastrockcap.com
Facsimile: (212) 624-0231

East Rock Focus Fund, LP
c/o East Rock Focus Fund GP, LLC
10 East 53rd Street, 31st Floor
New York, NY 10022
Attention: Michael Marks
E-Mail: mmarks@eastrockcap.com
Facsimile: (212) 624-0231

If to a Management Member:

At the address appearing in the personnel records of the Company for the Management Member or at such other address as the Management Member may hereafter designate in writing.

With copies (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
Attention: William Rubenstein
David Ingles
Facsimile No.: (917) 777-2642

SCHEDULE 3.7 — EXCLUDED PERSONS

Excluded Persons	Related Member(s)
New York Life Capital Partners IV, L.P., and its Affiliates	CB BU Investors, L.L.C.
New York Life Capital Partners IV-A, L.P., and its Affiliates	CB BU Investors II, L.L.C.

SCHEDULE C

INITIAL DIRECTORS

Name	Classification of Director
John A. Kanas	Management Director
John Bohlsen	Management Director
Wilbur L. Ross, Jr.	WL Ross Director
Lance N. West	Centerbridge Director
P. Olivier Sarkozy	Carlyle Director
Chinh E. Chu	Blackstone Director
Steve Saiontz	Independent Director
Richard S. LeFrak	Ninth Director

SCHEDULE 4.10: LIST OF SENIOR OFFICERS

John Kanas	Chairman and Chief Executive Officer
John Bohlsen	Head of Commercial Banking and Chief Lending Officer
Rajinder Singh	Head of Consumer Banking
John DiGiacomo	Chief Financial Officer and Chief Administrative Officer

---

BANKUNITED, INC.
2010 OMNIBUS EQUITY INCENTIVE PLAN

Section 1. Purpose of Plan.

The name of the Plan is the BankUnited, Inc. 2010 Omnibus Equity Incentive Plan (the "Plan"). The purposes of the Plan are to provide an additional incentive to selected management, employees, directors, independent contractors, and consultants of the Company or its Affiliates (as hereinafter defined) whose contributions are essential to the growth and success of the Company's business, in order to strengthen the commitment of such persons to the Company and its Subsidiaries, motivate such persons to faithfully and diligently perform their responsibilities and attract and retain competent and dedicated persons whose efforts will result in the long-term growth and profitability of the Company. To accomplish such purposes, the Plan provides that the Company may grant Options, Share Appreciation Rights, Restricted Shares, Deferred Shares, Performance Shares, Other Share-Based Awards, or any combination of the foregoing.

Section 2. Definitions.

For purposes of the Plan, the following terms shall be defined as set forth below:

(a) "Administrator" means the Board, or, if and to the extent the Board does not administer the Plan, the Committee in accordance with Section 3 hereof.

(b) "Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified. An entity shall be deemed an Affiliate of the Company for purposes of this definition only for such periods as the requisite ownership or control relationship is maintained.

(c) "Award" means any Option, Share Appreciation Right, Restricted Share, Deferred Share, Performance Share, or Other Share-Based Award granted under the Plan.

(d) "Award Agreement" means any written agreement, contract or other instrument or document evidencing an Award.

(e) "Beneficial Owner" (or any variant thereof) has the meaning defined in Rule 13d-3 under the Exchange Act.

(f) "Board" means the Board of Directors of the Company.

(g) "By-laws" mean the by-laws of the Company, as may be amended and/or restated from time to time.

(h) "Cause" shall have the meaning assigned to such term in any individual employment or severance agreement or Award Agreement with the Participant or, if no such agreement exists or if such agreement does not define "Cause," Cause shall mean (i) the Participant commits any act of fraud, intentional misrepresentation or serious misconduct in connection with the business of the Company or any Affiliate, including, but not limited to, falsifying any documents or agreements (regardless of form); (ii) the Participant materially violates any rule or policy of the Company or any Affiliate (A) for which violation an employee may be terminated pursuant to the written policies of the Company or any Affi liate reasonably applicable to such an employee, (B) which violation results in material damage to the Company or any Affiliate or (C) which, after written notice to do so, the Participant fails to correct within a reasonable time; (iii) other than solely due to Disability, the Participant willfully breaches or habitually neglects any material aspect of the Participant's duties assigned to the Participant by the Company or any Affiliate, which assignment was reasonable in light of the Participant's position with the Company or its Subsidiaries (all of the foregoing duties, "Duties"); (iv) other than solely due to Disability, the Participant fails, after written notice, adequately to perform any Duties and such failure is reasonably likely to have a material adverse impact upon the Company or any Affiliate or the operations of any of them; provided, that, for purposes of this clause (iv), such a material adverse impact will be solely determined with refere nce to the Participant's Duties and annual compensation as such Duties and compensation relate to the Participant's job classification; (v) the Participant materially fails to comply with a direction from the Chief Executive Officer of the Company, the Board or the board of directors of any Affiliate of the Company with respect to a material matter, which direction was reasonable in light of the Participant's position with the Company or any Affiliate; (vi) while employed by or providing services to the Company or any Affiliate, and without the written approval of the Board, the Participant performs services for any other corporation or person which competes with the Company or any of its Subsidiaries, or otherwise violates any restrictive covenants contained in any Award Agreement or any other agreement between the Participant and the Company or any Affiliate; (vii) the Participant's indictment, conviction, or entering a plea of guilty or *nolo contendere* to, a felon y (other than a traffic or moving violation) or any crime involving dishonesty; (viii) the Participant engages in any other action that may result in termination of an employee for cause pursuant to any generally applied standard, of which standard the Participant knew or reasonably should have known, adopted in good faith by the Board or the board of directors of any of the Company's Subsidiaries from time to time but prior to such action or condition; or (ix) any willful breach by the Participant of his fiduciary duties as a director of the Company or any of its Subsidiaries.

(i) "Change in Capitalization" means any (1) merger, amalgamation, consolidation, reclassification, recapitalization, spin-off, spin-out, repurchase or other reorganization or corporate transaction or event, (2) ordinary or special dividend (whether in the form of cash, Common Stock or other property), share split or reverse share split, (3) combination or exchange of shares, (4) other change in corporate structure, or (5) any other transaction, distribution or action, which, in any such case, the Administrator determines, in its sole discretion, affects the Shares such that an adjustment pursuant to Section 5 hereof is appropriate.

(j) "Change in Control" shall mean the first to occur of the following events:

(1) any Person is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including the securities beneficially owned by such Person or any securities acquired directly from the Company or any Affiliate thereof) representing 50% or more of the combined voting power of the Company's then outstanding securities, excluding any Person who becomes such a Beneficial Owner in connection with a transaction described in clause (A) of paragraph (3) below; or

(2) the following individuals cease for any reason to constitute a majority of the number of directors then serving on the Board: individuals who, on the date hereof, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including, but not limited to, a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company's shareholders was approved or recommended by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors on the date hereof or whose appointment, election or nomination for electio n was previously so approved or recommended; or

(3) there is consummated a merger, amalgamation or consolidation of the Company or any Subsidiary thereof with any other corporation, other than (A) a merger, amalgamation or consolidation which results in the voting securities of the Company outstanding immediately prior to such merger, amalgamation or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least 50% of the combined voting power of the securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger, amalgamation or consolidation or (B) a merger, amalgamation or consolidation effected to implement a recapit alization of the Company (or similar transaction) in which no Person is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities Beneficially Owned by such Person any securities acquired directly from the Company or its Affiliates) representing 50% or more of the combined voting power of the Company's then outstanding securities; or

(4) the shareholders of the Company approve a plan of complete liquidation or dissolution of the Company or there is consummated an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets, other than (A) a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least fifty percent (50%) of the combined voting power of the voting securities of which are owned by shareholders of the Company following the completion of such transaction in substantially the same proportions as their ownership of the Company immediately prior to such sale or (B) a sale or disposition of all or substantially all of the Company's assets immediat ely following which the individuals who comprise the Board immediately prior thereto

constitute at least a majority of the board of directors of the entity to which such assets are sold or disposed or, if such entity is a subsidiary, the ultimate parent thereof.

For each Award that constitutes deferred compensation under Section 409A of the Code, a Change in Control shall be deemed to have occurred under the Plan with respect to such Award, resulting in the payment of such Award, only if a change in the ownership or effective control of the Company or a change in ownership of a substantial portion of the assets of the Company shall also be deemed to have occurred within the meaning of Section 409A of the Code.

Notwithstanding the foregoing, a Change in Control shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the holders of shares of Common Stock immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in an entity which owns all or substantially all of the assets of the Company immediately following such transaction or series of transactions.

(k) "<u>Code</u>" means the Internal Revenue Code of 1986, as amended from time to time, or any successor thereto.

(l) "<u>Committee</u>" means any committee or subcommittee the Board may appoint to administer the Plan. Subject to the discretion of the Board, the Committee shall be composed entirely of individuals who meet the qualifications of an "outside director" within the meaning of Section 162(m) of the Code, a "non-employee director" within the meaning of Rule 16b-3 under the Exchange Act and any other qualifications required by the applicable stock exchange on which the Common Stock is traded. If at any time or to any extent the Board shall not administer the Plan, then the functions of the Administrator specified in the Plan shall be exercised by the Committee. Except as otherw ise provided in the Articles of Incorporation or By-laws of the Company, any action of the Committee with respect to the administration of the Plan shall be taken by a majority vote at a meeting at which a quorum is duly constituted or unanimous written consent of the Committee's members.

(m) "<u>Common Stock</u>" means the common stock of the Company, par value $0.01 per share, of the Company.

(n) "<u>Company</u>" means BankUnited, Inc. (or any successor company, except as the term "Company" is used in the definition of "Change in Control" above).

(o) "<u>Deferred Shares</u>" means the right granted pursuant to Section 9 hereof to receive Shares at the end of a specified deferral period or periods and/or upon attainment of specified performance objectives.

(p) "<u>Disability</u>" means, with respect to any Participant, that such Participant (i) as determined by the Administrator in its sole discretion, is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or (ii) is, by

reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees of the Company or an Affiliate thereof.

(q) "<u>Eligible Recipient</u>" means an employee, director, independent contractor or consultant of the Company or any Affiliate of the Company who has been selected as an eligible participant by the Administrator; <u>provided</u>, <u>however</u>, to the extent required to avoid the imposition of additional taxes under Section 409A of the Code, an Eligible Recipient of an Option or a Share Appreciation Right means an employee, director, independent contractor or consultant of the Company or any Subsidiary of the Company who has been selected as an eligible participant by the Administrator.

(r) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

(s) "Exercise Price" means, with respect to any Award under which the holder may purchase Shares, the per share price at which a holder of such Award granted hereunder may purchase Shares issuable upon exercise of such Award.

(t) "Fair Market Value" as of a particular date shall mean the fair market value of a share of Common Stock as determined by the Administrator in its sole discretion; provided, however, that (i) if the Common Stock is admitted to trading on a national securities exchange, the fair market value of a share of Common Stock on any date shall be the closing sale price reported for such share on such exchange on such date or, if no sale was reported on such date, on the last day preceding such date on which a sale was reported, (ii) if the Common Stock is admitted to quotation on the NASDAQ ("NASDAQ") system or other comparable quotation system and has been designated as a National Ma rket System ("NMS") security, the fair market value of a share of Common Stock on any date shall be the closing sale price reported for such share on such system on such date or, if no sale was reported on such date, on the last date preceding such date on which a sale was reported, or (iii) if the Common Stock is admitted to quotation on NASDAQ but has not been designated as an NMS security, the fair market value of a share of Common Stock on any date shall be the average of the highest bid and lowest asked prices of such share on such system on such date or, if both bid and ask prices were not reported on such date, on the last date preceding such date on which both bid and ask prices were reported.

(u) "Option" means an option to purchase shares of Common Stock granted pursuant to Section 7 hereof.

(v) "Other Share-Based Award" means a right or other interest granted pursuant to Section 10 hereof that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to, shares of Common Stock, including, but not limited to, unrestricted Shares, restricted share units, dividend equivalents or performance units, each of which may be subject to the attainment of

Performance Goals or a period of continued employment or other terms or conditions as permitted under the Plan.

(w) "Participant" means any Eligible Recipient selected by the Administrator, pursuant to the Administrator's authority provided for in Section 3 below, to receive grants of Options, Share Appreciation Rights, Restricted Shares, Deferred Shares, Performance Shares, Other Share-Based Awards or any combination of the foregoing, and, upon his or her death, his or her successors, heirs, executors and administrators, as the case may be.

(x) "Performance Goals" means performance goals based on one or more of the following criteria: (i) earnings, including one or more of operating income, earnings before or after taxes, earnings before or after interest, depreciation, amortization, adjusted EBITDA, economic earnings, or extraordinary or special items or book value per share (which may exclude nonrecurring items); (ii) pre-tax income or after-tax income; (iii) earnings per Share (basic or diluted); (iv) operating profit; (v) revenue, revenue growth or rate of revenue growth; (vi) return on assets (gross or net), return on investment, return on capital, or return on equity; (vii) operating expenses; (viii) share pri ce or total shareholder return; (ix) implementation or completion of critical projects or processes; (x) cumulative earnings per share growth; (xi) net interest margin, operating margin or profit margin; (xii) efficiency ratio, cost targets, reductions and savings, productivity and efficiencies; (xiii) strategic business criteria, consisting of one or more objectives based on meeting specified market penetration, geographic business expansion, customer satisfaction, employee satisfaction, human resources management, supervision of litigation, information technology, and goals relating to acquisitions, divestitures, joint ventures and similar transactions, and budget comparisons; (xiv) personal professional objectives, including any of the foregoing performance goals, the implementation of policies and plans, the negotiation of transactions, the development of long term business goals, formation of joint ventures, and the completion of other corporate transactions; and (xv) any combination of, or a specified increase in, any of the foregoing. Performance goals not specified herein may be used to the extent that an Award is not intended to comply with Section 162(m) of the Code. Where applicable, the Performance Goals may be expressed in terms of attaining a specified level of the particular criteria or the attainment of a percentage increase or decrease in the particular criteria, and may be applied to one or more of the Company or Affiliate thereof, or a division or strategic business unit of the Company, or may be applied to the performance of the Company relative to a market index, a group of other companies or a combination thereof, all as determined by the Committee. The Performance Goals may include a threshold level of performance below which no payment shall be made (or no vesting shall occur), levels of performance at which specified payments shall be made (or specified vesting shall occur), and a maximum level of performance above which no additional payment shall be made (or at which full vesting shall occur). Each of the foregoing Performance Goals shall be determined in accordance with generally accepted accounting principles and shall be subject to certification by the Committee; provided, that, to the extent permitted by Section 162(m) of the Code, the Committee shall have the authority to make equitable adjustments to the Performance Goals in recognition of unusual or non-recurring events affecting the Company or any Affiliate thereof or the

financial statements of the Company or any Affiliate thereof, in response to changes in applicable laws or regulations, or to account for items of gain, loss or expense determined to be extraordinary or unusual in nature or infrequent in occurrence or related to the disposal of a segment of a business or related to a change in accounting principles.

(y) "Performance Shares" means Shares that are subject to restrictions that lapse upon the attainment of specified performance objectives and that are granted pursuant to Section 9 below.

(z) "Person" shall have the meaning given in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof, except that such term shall not include (i) the Company or any Subsidiary thereof, (ii) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary thereof, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities, or (iv) a corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of shares of the Company.

(aa) "Restricted Shares" means Shares granted pursuant to Section 9 below subject to certain restrictions that lapse at the end of a specified period or periods.

(bb) "Retirement" means a termination of a Participant's employment, other than for Cause, on or after the attainment of age 65.

(cc) "Shares" means shares of Common Stock reserved for issuance under the Plan, as adjusted pursuant to the Plan, and any successor security (pursuant to a merger, amalgamation, consolidation or other reorganization).

(dd) "Share Appreciation Right" means the right pursuant to an Award granted under Section 8 below to receive an amount equal to the excess, if any, of (i) the aggregate Fair Market Value, as of the date such Award or portion thereof is surrendered, of the Shares covered by such Award or such portion thereof, over (ii) the aggregate Exercise Price of such Award or such portion thereof.

(ee) "Subsidiary" means, with respect to any Person, as of any date of determination, any other Person as to which such first Person owns or otherwise controls, directly or indirectly, more than 50% of the voting shares or other similar interests or a sole general partner interest or managing member or similar interest of such other Person. An entity shall be deemed a Subsidiary of the Company for purposes of this definition only for such periods as the requisite ownership or control relationship is maintained.

Section 3. Administration.

(a) The Plan shall be administered by the Administrator and shall be administered in accordance with the requirements of Section 162(m) of the Code (but only to the extent necessary and desirable to maintain qualification of awards under the Plan under Section 162(m) of the Code) and, to the extent applicable, Rule 16b-3 under the Exchange Act ("Rule 16b-3"). The Plan is intended to comply with or be exempt

from Section 409A of the Code, and shall be administered, construed and interpreted in accordance with such intent. To the extent that an Award, issuance and/or payment is subject to or exempt from Section 409A of the Code, it shall be awarded and/or issued or paid in a manner that will comply with Section 409A of the Code or the applicable exemption of Section 409A of the Code, including any applicable regulations or guidance issued by the Secretary of the United States Treasury Department and the Internal Revenue Service with respect thereto.

(b) Pursuant to the terms of the Plan, the Administrator, subject, in the case of any Committee, to any restrictions on the authority delegated to it by the Board, shall have the power and authority, without limitation:

(1) to select those Eligible Recipients who shall be Participants;

(2) to determine whether and to what extent Options, Share Appreciation Rights, Restricted Shares, Deferred Shares, Performance Shares, Other Share-Based Awards or a combination of any of the foregoing, are to be granted hereunder to Participants;

(3) to determine the number of Shares to be covered by each Award granted hereunder;

(4) to determine the terms and conditions, not inconsistent with the terms of the Plan, of each Award granted hereunder (including, but not limited to, (i) the restrictions applicable to Restricted Shares or Deferred Shares and the conditions under which restrictions applicable to such Restricted Shares or Deferred Shares shall lapse, (ii) the performance goals and periods applicable to Performance Shares, (iii) the Exercise Price of each Award, (iv) the vesting schedule applicable to each Award, (v) the number of Shares subject to each Award and (vi) subject to the requirements of Section 409A of the Code (to the extent applicable), any amendments to the terms and conditions of outstanding Awards, includin g, but not limited to, extending the exercise period of such Awards and accelerating the vesting schedule of such Awards), and, if the Administrator in its discretion determines to accelerate the vesting of Options and/or Share Appreciation Rights in connection with a Change in Control, the Administrator shall also have discretion in connection with such action to provide that all Options and/or Share Appreciation Rights outstanding immediately prior to such Change in Control shall expire on the effective date of such Change in Control;

(5) to determine the terms and conditions, not inconsistent with the terms of the Plan, which shall govern all written instruments evidencing Options, Share Appreciation Rights, Restricted Shares, Deferred Shares, Performance Shares or Other Share-Based Awards or any combination of the foregoing granted hereunder;

(6) to determine the Fair Market Value;

(7) to determine the duration and purpose of leaves of absence which may be granted to a Participant without constituting termination of the Participant's employment for purposes of Awards granted under the Plan;

(8) to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it shall from time to time deem advisable; and

(9) to construe and interpret the terms and provisions of the Plan and any Award issued under the Plan (and any Award Agreement relating thereto), and to otherwise supervise the administration of the Plan and to exercise all powers and authorities either specifically granted under the Plan or necessary and advisable in the administration of the Plan.

(c) All decisions made by the Administrator pursuant to the provisions of the Plan shall be final, conclusive and binding on all persons, including the Company and the Participants. No member of the Board or the Committee, nor any officer or employee of the Company or any Subsidiary thereof acting on behalf of the Board or the Committee, shall be personally liable for any action, omission, determination, or interpretation taken or made in good faith with respect to the Plan, and all members of the Board or the Committee and each and any officer or employee of the Company and of any Subsidiary thereof acting on their behalf shall, to the maximum extent permitted by law, be fully indemnified and protected by the Company in respect of any such action, omission, determination or interpretation.

Section 4. Shares Reserved for Issuance Under the Plan.

(a) Subject to Section 5 hereof, the number of shares of Common Stock that are reserved and available for issuance pursuant to Awards granted under the Plan is 7,500,000 Shares. From and after such time as the Plan is subject to 162(m) of the Code, the aggregate Awards granted during any single fiscal year to any individual who is likely to be a "covered employee" (as defined in Section 162(m) of the Code) shall not exceed 1,000,000 Shares.

(b) Shares issued under the Plan may, in whole or in part, be authorized but unissued Shares or Shares that shall have been or may be reacquired by the Company in the open market, in private transactions, or otherwise. If any Shares subject to an Award are forfeited, cancelled, exchanged or surrendered, settled in cash or if an Award otherwise terminates or expires without a distribution of Shares to the Participant, the Shares with respect to such Award shall, to the extent of any such forfeiture, cancellation, exchange, surrender, settlement, termination or expiration, again be available for Awards under the Plan. The reserve of Shares shall not be reduced by any Awards granted in substitution for, or in assumption of, outstand ing awards previously granted by an entity acquired by the Company or an Affiliate or with which the Company or Affiliate combines. Notwithstanding the foregoing, Shares surrendered or withheld as payment of either the Exercise Price of an Award (including Shares otherwise underlying an Award of a Share Appreciation Right that are retained by the

Company to account for the grant price of such Share Appreciation Right) and/or withholding taxes in respect of an Award shall no longer be available for grant under the Plan.

Section 5. Equitable Adjustments.

In the event of any Change in Capitalization, an equitable substitution or proportionate adjustment shall be made, in each case, as may be determined by the Administrator, in its sole discretion, in (i) the aggregate number of shares of Common Stock reserved for issuance under the Plan and the maximum number of Shares that may be subject to Awards granted to any Participant in any calendar or fiscal year, (ii) the kind, number and Exercise Price subject to outstanding Options and Share Appreciation Rights granted under the Plan, and (iii) the kind, number and purchase price of Shares subject to outstanding Restricted Shares, Deferred Shares, Performance Shares or Other Share-Based Awards granted under the Plan; provided, however, that any fractional shares resulting from the adjustment shall be eliminated; provided, further, that no such adjustment sh all cause any Award hereunder which is or could be subject to Section 409A of the Code to fail to comply with the requirements thereof. Such other equitable substitutions or adjustments shall be made as may be determined by the Administrator, in its sole discretion. Without limiting the generality of the foregoing, in connection with a Change in Capitalization, the Administrator may provide, in its sole discretion, for the cancellation of any outstanding Award granted hereunder in exchange for payment in cash or other property having an aggregate Fair Market Value of the Shares covered by such award, reduced by the aggregate Exercise Price or purchase price thereof, if any. The Administrator's determinations pursuant to this Section 5 shall be final, binding and conclusive.

Section 6. Eligibility.

The Participants under the Plan shall be selected from time to time by the Administrator, in its sole discretion, from those individuals that qualify as Eligible Recipients.

Section 7. Options.

(a) General. Each Participant who is granted an Option shall enter into an Award Agreement with the Company, containing such terms and conditions as the Administrator shall determine, in its sole discretion, which Award Agreement shall set forth, among other things, the Exercise Price of the Option, the term of the Option and provisions regarding exercisability of the Option. Notwithstanding the foregoing, except as otherwise determined by the Administrator, the prospective recipient of an Option shall not have any rights with respect to such Award, unless and until such recipient has executed an Award Agreement and delivered a fully executed copy thereof to the Company, with in a period of sixty (60) days (or such other period as the Administrator may specify) after the award date. The provisions of each Option need not be the same with respect to each Participant. More than one Option may be granted to the same Participant and be outstanding concurrently hereunder. Options granted under the Plan

shall be subject to the terms and conditions set forth in this Section 7 and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable and set forth in the applicable Award Agreement. Each Option granted hereunder is intended to be a non-qualified Option and is not intended to qualify as an "incentive stock option" within the meaning of Section 422 of the Code.

(b) Exercise Price. The Exercise Price of Shares purchasable under an Option shall be determined by the Administrator in its sole discretion at the time of grant, but in no event shall the exercise price of an Option be less than one hundred percent (100%) of the Fair Market Value of the shares of Common Stock on the date of grant.

(c) Option Term. The maximum term of each Option shall be fixed by the Administrator, but no Option shall be exercisable more than ten (10) years after the date such Option is granted. Each Option's term is subject to earlier expiration pursuant to the applicable provisions in the Plan and the Award Agreement. Notwithstanding the foregoing, the Administrator shall have the authority to accelerate the exercisability of any outstanding Option at such time and under such circumstances as the Administrator, in its sole discretion, deems appropriate.

(d) Exercisability. Each Option shall be exercisable at such time or times and subject to such terms and conditions, including the attainment of preestablished corporate performance goals, as shall be determined by the Administrator in the applicable Award Agreement. The Administrator may also provide that any Option shall be exercisable only in installments, and the Administrator may waive such installment exercise provisions at any time, in whole or in part, based on such factors as the Administrator may determine in its sole discretion. Notwithstanding anything to the contrary contained herein, an Option may not be exercised for a fraction of a share.

(e) Method of Exercise. Options may be exercised in whole or in part by giving written notice of exercise to the Company specifying the number of whole Shares to be purchased, accompanied by payment in full of the aggregate Exercise Price of the Shares so purchased in cash or its equivalent, as determined by the Administrator. As determined by the Administrator, in its sole discretion, with respect to any Option or category of Options, payment in whole or in part may also be made (i) by means of consideration received under any cashless exercise procedure approved by the Administrator (including the withholding of Shares otherwise issuable upon exercise), (ii) in th e form of unrestricted Shares already owned by the Participant which, (x) in the case of unrestricted Shares acquired upon exercise of an Option, have been owned by the Participant for more than six (6) months on the date of surrender, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option shall be exercised, (iii) any other form of consideration approved by the Administrator and permitted by applicable law or (iv) any combination of the foregoing.

(f) Rights as Shareholder. A Participant shall have no rights to dividends or distributions or any other rights of a shareholder with respect to the Shares

subject to an Option until the Participant has given written notice of the exercise thereof, has paid in full for such Shares and has satisfied the requirements of Section 15 hereof.

(g) Termination of Employment or Service.

(1) Unless the applicable Award Agreement provides otherwise, in the event that the employment or service of a Participant with the Company and all Affiliates thereof shall terminate for any reason other than Cause, Retirement, Disability, or death, (A) Options granted to such Participant, to the extent that they are exercisable at the time of such termination, shall remain exercisable until the date that is ninety (90) days after such termination, on which date they shall expire, and (B) Options granted to such Participant, to the extent that they were not exercisable at the time of such termination, shall expire at the close of business on the date of such termination. The ninety (90) day period described in this Section&nb sp;7(g)(1) shall be extended to one (1) year after the date of such termination in the event of the Participant's death during such ninety (90) day period. Notwithstanding the foregoing, no Option shall be exercisable after the expiration of its term.

(2) Unless the applicable Award Agreement provides otherwise, in the event that the employment or service of a Participant with the Company and all Affiliates thereof shall terminate on account of the Retirement, Disability, or death of the Participant, (A) Options granted to such Participant, to the extent that they were exercisable at the time of such termination, shall remain exercisable until the date that is one (1) year after such termination, on which date they shall expire and (B) Options granted to such Participant, to the extent that they were not exercisable at the time of such termination, shall expire at the close of business on the date of such termination. Notwithstanding the foregoing, no Option shall be exercisable after the expiration of its term.

(3) In the event of the termination of a Participant's employment or service for Cause, all outstanding Options granted to such Participant shall expire at the commencement of business on the date of such termination.

(h) Other Change in Employment Status. An Option may be affected, in the sole discretion of the Administrator, both with regard to vesting schedule and termination, by leaves of absence, changes from full-time to part-time employment, partial disability or other changes in the employment status of an Participant.

Section 8. Share Appreciation Rights.

(a) General. Share Appreciation Rights may be granted either alone ("Free Standing Rights") or in conjunction with all or part of any Option granted under the Plan ("Related Rights"). Related Rights may be granted either at or after the time of the grant of such Option. The Administrator shall determine the Eligible Recipients to whom, and the time or times at which, grants of Share Appreciation Rights shall be made, the number of Shares to be awarded, the price per Share, and all other conditions of Share Appreciation Rights. Notwithstanding the foregoing, no Related Right may be granted

for more Shares than are subject to the Option to which it relates and any Share Appreciation Right must be granted with an Exercise Price not less than the Fair Market Value of shares of Common Stock on the date of grant. The provisions of Share Appreciation Rights need not be the same with respect to each Participant. Share Appreciation Rights granted under the Plan shall be subject to the following terms and conditions set forth in this Section 8 and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable, as set forth in the applicable Award Agreement.

(b) Awards; Rights as Shareholder. The prospective recipient of a Share Appreciation Right shall not have any rights with respect to such Award, unless and until such recipient has executed an Award Agreement and delivered a fully executed copy thereof to the Company, within a period of sixty (60) days (or such other period as the Administrator may specify) after the award date. Participants who are granted Share Appreciation Rights shall have no rights as shareholders of the Company with respect to the grant or exercise of such rights.

(c) Exercisability.

(1) Share Appreciation Rights that are Free Standing Rights shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Administrator in the applicable Award Agreement.

(2) Share Appreciation Rights that are Related Rights shall be exercisable only at such time or times and to the extent that the Options to which they relate shall be exercisable in accordance with the provisions of Section 7 hereof and this Section 8 of the Plan.

(d) Payment Upon Exercise.

(1) Upon the exercise of a Free Standing Right, the Participant shall be entitled to receive up to, but not more than, that number of Shares equal in value to the excess of the Fair Market Value as of the date of exercise over the price per share specified in the Free Standing Right

multiplied by the number of Shares in respect of which the Free Standing Right is being exercised, with the Administrator having the right to determine the form of payment.

(2) A Related Right may be exercised by a Participant by surrendering the applicable portion of the related Option. Upon such exercise and surrender, the Participant shall be entitled to receive up to, but not more than, that number of Shares equal in value to the excess of the Fair Market Value as of the date of exercise over the Exercise Price specified in the related Option multiplied by the number of Shares in respect of which the Related Right is being exercised, with the Administrator having the right to determine the form of payment. Options which have been so surrendered, in whole or in part, shall no longer be exercisable to the extent the Related Rights have been so exercised.

(3) Notwithstanding the foregoing, the Administrator may determine to settle the exercise of a Share Appreciation Right in cash (or in any combination of Shares and cash).

(e) Termination of Employment or Service.

(1) In the event of the termination of employment or service with the Company and all Affiliates thereof of a Participant who has been granted one or more Free Standing Rights, such rights shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Administrator in the applicable Award Agreement.

(2) In the event of the termination of employment or service with the Company and all Affiliates thereof of a Participant who has been granted one or more Related Rights, such rights shall be exercisable at such time or times and subject to such terms and conditions as set forth in the related Options.

(f) Term.

(1) The term of each Free Standing Right shall be fixed by the Administrator, but no Free Standing Right shall be exercisable more than ten (10) years after the date such right is granted.

(2) The term of each Related Right shall be the term of the Option to which it relates, but no Related Right shall be exercisable more than ten (10) years after the date such right is granted.

Section 9. Restricted Shares, Deferred Shares and Performance Shares.

(a) General. Restricted Shares, Deferred Shares or Performance Shares may be issued either alone or in addition to other awards granted under the Plan. The Administrator shall determine the Eligible Recipients to whom, and the time or times at which, Restricted Shares, Deferred Shares or Performance Shares shall be made; the number of Shares to be awarded; the price, if any, to be paid by the Participant for the acquisition of Restricted Shares, Deferred Shares or Performance Shares; the period of time prior to which such shares become vested and free of restrictions on Transfer (the “Restricted Period”), if any, applicable to Restricted Shares, Deferred Shar es or Performance Shares; the performance objectives (if any) applicable to Deferred Shares or Performance Shares; and all other conditions of the Restricted Shares, Deferred Shares and Performance Shares. If the restrictions, performance objectives and/or conditions established by the Administrator are not attained, a Participant shall forfeit his or her Restricted Shares, Deferred Shares or Performance Shares, in accordance with the terms of the grant. The provisions of the Restricted Shares, Deferred Shares or Performance Shares need not be the same with respect to each Participant.

(b) Restrictions and Conditions. The Restricted Shares, Deferred Shares and Performance Shares granted pursuant to this Section 9 shall be subject to the following restrictions and conditions and any additional restrictions or conditions as

determined by the Administrator at the time of grant or, subject to Section 409A of the Code, thereafter:

(1) The Administrator may, in its sole discretion, provide for the lapse of restrictions in installments and may accelerate or waive such restrictions in whole or in part based on such factors and such circumstances as the Administrator may determine, in its sole discretion, including, but not limited to, the attainment of certain performance related goals, the Participant’s termination of employment or service as a director, independent contractor or consultant to the Company or any Affiliate thereof, or the Participant’s death or Disability; provided, however, that the Administrator may not waive the attainment of performance-related goals in the case of any Award which is intended to qualify as “performance-ba sed compensation” under Section 162(m) of the Code. Notwithstanding the foregoing, upon a Change in Control, the outstanding Awards shall be subject to Section 13 hereof.

(2) Except as provided in Section 17 or in the applicable Award Agreement, the Participant shall generally have the rights of a shareholder of the Company with respect to Restricted Shares or Performance Shares during the Restricted Period. Except as provided in Section 17 or in the applicable Award Agreement, the Participant shall generally not have the rights of a shareholder with respect to Shares subject to Deferred Shares during the Restricted Period; provided, however, that, subject to Section 409A of the Code, an amount equal to dividends declared during the Restricted Period with respect to the number of Shares covered by Deferred Shares shall be paid to the Participant as set forth in the Award Agr eement, provided that the Participant is then providing services to the Company. Certificates for Shares of unrestricted shares of Common Stock may, in the Company’s sole discretion, be delivered to the Participant only after the Restricted Period has expired without forfeiture in respect of such Restricted Shares, Deferred Shares or Performance Shares, except as the Administrator, in its sole discretion, shall otherwise determine.

(3) The rights of Participants granted Restricted Shares, Deferred Shares or Performance Shares upon termination of employment or service as a director, independent contractor, or consultant to the Company or to any Affiliate thereof terminates for any reason during the Restricted Period shall be set forth in the Award Agreement.

Section 10. Other Share-Based Awards.

The Administrator is authorized to grant Awards to Participants in the form of Other Share-Based Awards, as deemed by the Administrator to be consistent with the purposes of the Plan and as evidenced by an Award Agreement. The Administrator shall determine the terms and conditions of such Awards, consistent with the terms of the Plan, at the date of grant or thereafter, including any Performance Goals and performance periods. Common Stock or other securities or property delivered pursuant to an Award in the nature of a purchase right granted under this Section 10 shall be purchased for such consideration, paid for at such times, by such methods, and in such forms, including,

without limitation, Shares, other Awards, notes or other property, as the Administrator shall determine, subject to any required corporate action.

Section 11. Performance-Based Awards.

To the extent that the Plan is subject to Section 162(m) of the Code, no payment with respect to an Award made under Section 9 or 10 hereof which is intended to qualify as "performance-based compensation" (within the meaning of Section 162(m) of the Code) shall be made to a Participant that is likely to be a "covered employee" (within the meaning of Section 162(m) of the Code) prior to the certification by the Committee that the applicable Performance Goals have been attained.

Section 12. Accelerated Vesting In Connection With a Change in Control.

Unless otherwise determined by the Administrator and evidenced in an Award Agreement, in the event that a Change in Control occurs, then:

(1) any unvested or unexercisable portion of any Award carrying a right to exercise shall become fully vested and exercisable; and

(2) the restrictions, deferral limitations, payment conditions and forfeiture conditions applicable to an Award granted under the Plan shall lapse and such Awards shall be deemed fully vested and any performance conditions imposed with respect to such Awards shall be deemed to be fully achieved.

Section 13. Amendment and Termination.

The Board may amend, alter or terminate the Plan, but no amendment, alteration, or termination shall be made that would impair the rights of a Participant under any Award theretofore granted without such Participant's consent. Unless the Board determines otherwise, the Board shall obtain approval of the Company's shareholders for any amendment that would require such approval in order to satisfy the requirements of Section 162(m) of the Code, any rules of the stock exchange on which the Common Stock is traded or other applicable law, including, without limitation, repricing of stock options and option exchanges. The Administrator may amend the terms of any Award theretofore granted, prospectively or retroactively, but, subject to Section 5 of the Plan and the immediately preceding sentence, no such amendment shall impair the rights of any Participant w ithout his or her consent.

Section 14. Unfunded Status of Plan.

The Plan is intended to constitute an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Participant by the Company, nothing contained herein shall give any such Participant any rights that are greater than those of a general creditor of the Company.

Section 15. Withholding Taxes.

Each Participant shall, no later than the date as of which the value of an Award first becomes includible in the gross income of such Participant for federal and/or state income tax purposes, pay to the Company, or make arrangements satisfactory to the Administrator regarding payment of, any federal, state, or local taxes of any kind required by law to be withheld with respect to the Award. The obligations of the Company under the Plan shall be conditional on the making of such payments or arrangements, and the Company shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to such Participant. Whenever cash is to be paid pursuant to an award granted hereunder, the Company shall have the right to deduct therefrom an amount sufficient to satisfy any federal, state and local withholding tax requirements related thereto . Whenever Shares are to be delivered pursuant to an Award, the Company shall have the right to require the Participant to remit to the Company in cash an amount sufficient to satisfy any related federal, state and local taxes to be withheld and applied to the tax obligations. With the approval of the Administrator, a Participant may satisfy the foregoing requirement by electing to have the Company withhold from delivery of Shares or by delivering already owned unrestricted shares of Common Stock, in each case, having a value not exceeding the minimum federal, state and local taxes required to be withheld and applied to the tax obligations. Such Shares shall be valued at their Fair Market Value on the date of which the amount of tax to be withheld is determined. Fractional share amounts shall be settled in cash. Such an election may be made with respect to all or any portion of the Shares to be delivered pursuant to an award. The Company may also use any other method of obtainin g the necessary payment or proceeds, as permitted by law, to satisfy its withholding obligation with respect to any Option or other Award.

Section 16. Transfer of Awards.

Until such time as the Awards are fully vested and/or exercisable in accordance with the Plan or an Award Agreement, no purported sale, assignment, mortgage, hypothecation, transfer, charge, pledge, encumbrance, gift, transfer in trust (voting or other) or other disposition of, or creation of a security interest in or lien on, any Award or any agreement or commitment to do any of the foregoing (each, a "**Transfer**") by any holder thereof in violation of the provisions of the Plan or an Award Agreement will be valid, except with the prior written consent of the Administrator, which consent may be granted or withheld in the sole discretion of the Administrator. Any purported Transfer of an Award or any economic benefit or interest therein in violation of th e Plan or an Award Agreement shall be null and void *ab initio*, and shall not create any obligation or liability of the Company, and any person purportedly acquiring any Award or any economic benefit or interest therein transferred in violation of the Plan or an Award Agreement shall not be entitled to be recognized as a holder of such Shares. Unless otherwise determined by the Administrator in accordance with the provisions of the immediately preceding sentence, an Option may be exercised, during the lifetime of the Participant, only by the Participant or, during any period during which the Participant is under a legal disability, by the Participant's guardian or legal representative.

Section 17. Continued Employment.

The adoption of the Plan shall not confer upon any Eligible Recipient any right to continued employment or service with the Company or any Affiliate thereof, as the case may be, nor shall it interfere in any way with the right of the Company or any Affiliate thereof to terminate the employment or service of any of its Eligible Recipients at any time. Awards are subject to any clawback policy adopted by the Company from time to time.

Section 18. Effective Date.

The Plan was adopted by the Board on January 14, 2010, and shall become effective without further action as of the later of (a) the effectiveness of the Company's registration statement on Form S-1 filed with the U.S. Securities and Exchange Commission on October 28, 2010, as amended, and (b) the Common Stock being listed or approved for listing upon notice of issuance on the New York Stock Exchange (the date of such effectiveness, the "Effective Date").

Section 19. Term of Plan.

No award shall be granted pursuant to the Plan on or after the tenth anniversary of the Effective Date, but awards theretofore granted may extend beyond that date.

Section 20. Section 409A of the Code.

The intent of the parties is that payments and benefits under the Plan comply with Section 409A of the Code to the extent subject thereto or an exemption therefrom, and, accordingly, to the maximum extent permitted, the Plan shall be interpreted and be administered to be in compliance therewith. Any payments described in the Plan that are due within the "short-term deferral period" as defined in Section 409A of the Code shall not be treated as deferred compensation unless applicable law requires otherwise. Notwithstanding anything to the contrary in the Plan, no payment or distribution under this Plan that constitutes an item of deferred compensation under Section 409A of the Code and becomes payable by reason of a Participant's termination of employment or service with the Company will be made to such Participant until such Participant's terminat ion of employment or service constitutes a "separation from service" within the meaning of Section 409A of the Code. Notwithstanding anything to the contrary in the Plan, to the extent required in order to avoid accelerated taxation and/or tax penalties under Section 409A of the Code, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to the Plan during the six (6) month period immediately following the Participant's termination of employment shall instead be paid on the first business day after the date that is six (6) months following the Participant's separation from service (or upon the Participant's death, if earlier). In addition, for purposes of the Plan, each amount to be paid or benefit to be provided to the Participant pursuant to the Plan, which constitute deferred compensation subject to

Section 409A of the Code, shall be construed as a separate identified payment for purposes of Section 409A of the Code.

Section 21. Governing Law.

The Plan shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law of such state.

Exhibit 10.10

DIRECTOR NOMINATION AGREEMENT

DIRECTOR NOMINATION AGREEMENT, dated as of   , 2011 (this "Agreement"), by and among BankUnited, Inc., a Delaware corporation (the "Company"), John A. Kanas ("Kanas") and the entities listed under the headings "WL Ross Group", "Carlyle Group", "Centerbridge Group" and "Blackstone Group" on Schedule A hereto (each, respectively, an "Investor Group", which respective terms shall include Affiliates of the foregoing who receive any shares of Common Stock (as defined below) from any entity comprising a part of such respective Investor Group).

WHEREAS, the Company has determined that it is in its best interests to effect an initial public offering ("IPO") of shares of common stock, par value $0.01 per share, of the Company (the "Common Stock"); and

WHEREAS, in connection with the IPO, the Company desires to agree with Kanas and each of the Investor Groups and each of Kanas and each Investor Group, severally and not jointly, desire to enter into this Agreement with the Company, setting forth certain rights and obligations with respect to the nomination of directors to the Board of Directors of the Company (the "Board") and other matters relating to the Board and boards of directors of subsidiaries of the Company from and after the IPO.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1   Definitions. As used in this Agreement, the following terms shall have the meanings ascribed to them below:

"Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

"Bank" means BankUnited, a federal savings association, or any successor thereof.

"Bylaws" means the Amended and Restated By-Laws of the Company, as may be amended from time to time.

"Certificate of Incorporation" means the Amended and Restated Certificate of Incorporation of the Company, as may be amended from time to time.

"Management Stockholder" means each of John Adam Kanas, Rajinder Pal Singh, Douglas Pauls, John Bohlsen and each Affiliate of each such Person that receives shares of Common Stock upon transfer by such Person or any Affiliate transferee thereof.

"Material Subsidiary" means any Subsidiary of the Company which (together with its Subsidiaries) represents 10% or more of the revenues for the trailing four quarters, or, on a book value basis, the assets, of the Company and its Subsidiaries, taken as a whole.

"Original Amount" means, as it relates to any Investor Group, the aggregate number of shares of Common Stock held by such Investor Group (or any of its Affiliates) on the date hereof (after giving effect to the reorganization transaction described in the Registration Statement on Form S-1 (File No. 333-170203) relating to the IPO, but prior to giving effect to the sale of shares to be effected pursuant to the IPO), as such number may be adjusted from time to time for any reorganization, recapitalization, stock dividend, stock split, reverse stock split or other similar changes in the Company's capitalization.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Subsidiary" means, of any Person, any other Person (a) in which it directly or indirectly owns at least 50% of such Person's voting capital securities, (b) with which it is required to be consolidated under U.S. generally accepted accounting principles.

Section 2   Board Number; Board Nomination.

(a)   For so long as the Blackstone Group beneficially owns a number of shares of Common Stock that represents at least 40% of the Original Amount of the Blackstone Group (as such number may be adjusted from time to time for any reorganization, recapitalization, stock dividend, stock split, reverse stock split or other similar changes in the Company's capitalization), the Company shall, and shall use its best efforts to cause the Board, whether acting through the Nominating and Corporate Governance Committee of the Board or otherwise, to, include in the slate of nominees recommended to stockholders of the Com pany (the "Stockholders") for election as a director at any annual or special meeting of the Stockholders (or, if permitted, by any action by written consent of the Stockholders) at or by which directors of the Company are to be elected, one individual identified in advance by the Blackstone Group (the "Blackstone Nominee").

(b)   For so long as the WL Ross Group beneficially owns an amount of Common Stock that represents at least 40% of the Original Amount of the WL Ross Group (as such number may be adjusted from time to time for any reorganization, recapitalization, stock dividend, stock split, reverse stock split or other similar changes in the Company's capitalization), the Company shall, and shall use its best efforts to cause the Board, whether acting through the Nominating and Corporate Governance Committee of the Board or otherwise, to, include in the slate of nominees recommended to Stockholders for election as a directo r at any annual or special meeting of the Stockholders (or, if permitted, by any action by written consent of the Stockholders) at or pursuant to which directors of the Company are to be elected, one individual identified in advance by the WL Ross Group (the "WL Ross Nominee").

(c) For so long as the Carlyle Group beneficially owns an amount of Common Stock that represents at least 40% of the Original Amount of the Carlyle Group (as such number may be adjusted from time to time for any reorganization, recapitalization, stock dividend, stock split, reverse stock split or other similar changes in the Company's capitalization), the Company shall, and shall use its best efforts to cause the Board, whether acting through the Nominating and Corporate Governance Committee of the Board or otherwise, to, include in the slate of nominees recommended to Stockholders for election as a d irector at any annual or special meeting of the Stockholders (or, if permitted, by any action by written consent of the Stockholders) at or pursuant to which directors of the Company are to be elected, one individual identified in advance by the Carlyle Group (the "Carlyle Nominee").

(d) For so long as the Centerbridge Group beneficially owns an amount of Common Stock that represents at least 40% of the Original Amount of the Centerbridge Group (as such number may be adjusted may be adjusted from time to time for any reorganization, recapitalization, stock dividend, stock split, reverse stock split or other similar changes in the Company's capitalization), the Company shall, and shall use its best efforts to cause the Board, whether acting through the Nominating and Corporate Governance Committee of the Board or otherwise, to, include in the slate of nominees recommended to Stockholders for election as a director at any annual or special meeting of the Stockholders (or, if permitted, by any action by written consent of the Stockholders) at or pursuant to which directors of the Company are to be elected, one individual identified in advance by the Centerbridge Group (the "Centerbridge Nominee," and together with the Blackstone Nominee, the WL Ross Nominee and the Carlyle Nominee, the "Investor Nominees" and each, an "Investor Nominee").

(e) For so long as Kanas serves as the Chief Executive Officer of the Company, the Company shall, and shall use its best efforts to cause the Board, whether acting through the Nominating and Corporate Governance Committee of the Board or otherwise, to, include in the slate of nominees recommended to Stockholders for election as a director at any annual or special meeting of the Stockholders (or, if permitted, by any action by written consent of the Stockholders) at or pursuant to which directors of the Company are to be elected, two individuals (one of whom shall be Kanas) identified in advance by Kanas (t he "Kanas Nominees").

(f) Vacancies arising through the death, resignation or removal of an Investor Nominee or Kanas Nominee, as applicable, who were nominated to the Board pursuant to this Section 2, may be filled by the Board only with an Investor Nominee or Kanas Nominee, as applicable, and the director so chosen shall hold office until the next election and until his or her successor is duly elected and qualified, or until his or her earlier death, resignation or removal.

(g) The Company shall use its best efforts to ensure that at all times following the date hereof and while this Agreement remains in effect that the Board shall be comprised of Investor Nominees nominated by each Investor Group which is then entitled to nominate an Investor Nominee pursuant to this Section 2, Kanas Nominees to the extent Kanas is then entitled to nominate Kanas Nominees pursuant to this Section 2 and only such other directors as are then eligible to serve in accordance with this Agreement and are elected or appointed pursuant to applicable law and the Certificate of Incorporation and Bylaws. Each Investor Nominee and Kanas Nominee shall be the nominees of the Company and the Nominating and Governance

Committee of the Board and the Company shall solicit proxies for each of such nominees to the same extent it does for any other nominees of the Company to the Board.

(h) Notwithstanding the provisions of this Section 2, neither Kanas nor any Investor Group shall be entitled to designate a Person as a nominee to the Board upon a written determination by the Nominating and Corporate Governance Committee of the Company (which determination shall set forth in writing reasonable grounds for such determination) that such Person would not be qualified under any applicable law, rule or regulation to serve as a director of the Company. In such an event, Kanas or such Investor Group shall be entitled to select a Person as a replacement nominee and the Company shall use its b est efforts to cause such Person to be nominated as the Kanas Nominee or the Investor Nominee of the relevant Investor Group, as the case may be, at the same meeting (or, if permitted, pursuant to the same action by written consent of the Stockholders) as such initial Person was to be nominated. Other than with respect to the issue set forth in the preceding sentence, neither the Company nor any other party to this Agreement shall have the right to object to any Investor Nominee or Kanas Nominee.

(i) So long as an Investor Group holds an amount of Common Stock that represents at least 40% of the Original Amount of such Investor Group (as such number may be adjusted from time to time for any reorganization, recapitalization, stock dividend, stock split, reverse stock split or other similar changes in the Company's capitalization), the Company shall notify such Investor Group in writing of the date on which proxy materials are expected to be mailed by the Company in connection with an election of directors at an annual or special meeting of the Stockholders (and the Company sha ll deliver such notice at least 60 days (or such shorter period to which any Investor Group consents, which consent need not be in writing) prior to such expected mailing date or such earlier date as may be specified by the Company reasonably in advance of such earlier delivery date on the basis that such earlier delivery is necessary so as to ensure that such nominee may be included in such proxy materials at the time such proxy materials are mailed). The Company shall provide each such Investor Group with a reasonable opportunity to review and provide comments on any portion of the proxy materials relating to the Investor Nominee of such Investor Group or the rights and obligations provided under this Agreement and to discuss any such comments with the Company.

(j) Without limiting the nomination rights set forth above, and in addition thereto, for so long as an Investor Group holds a number of shares of Common Stock that represents at least 5% of the outstanding Common Stock, such Investor Group shall have the right, exercisable by delivering written notice to the Company, to designate a non-voting observer to attend any meetings of the Board (or committees thereof); provided, however, that the chairperson of such meeting shall have the right to cause any non-voting observer to leave any such meeting of the Board (or committee thereof) for such perio d as the chairperson of such meeting may specify. Notice of meetings of the Board (or committees thereof) shall be furnished to each non-voting observer no later than, and using the same form of communication as, notice of meetings of the Board are furnished to directors in accordance with the Bylaws.

(k) In the event that any Investor Group loses its respective right to nominate an Investor Nominee pursuant to this Agreement by virtue of ceasing to hold the requisite number of shares of Common Stock, such Investor Group shall use its best efforts to cause its

Investor Nominee to resign from the Board immediately prior to such time as a replacement director is nominated or elected by the Board or the Company's stockholders. In the event Kanas shall cease to be the Chief Executive Officer of the Company or any of its Subsidiaries, then Kanas shall resign from the Board and the Company and Kanas shall use their respective best efforts to cause the other Kanas Nominee to immediately resign from the Board.

(l) So long as this Agreement shall remain in effect, subject to applicable legal requirements, the Bylaws and the Certificate of Incorporation shall accommodate and be subject to and not in any respect conflict with the rights and obligations set forth herein.

Section 3. Subsidiary Boards.

(a) The composition of the Board of Directors of the Bank shall be the same as the composition of the Board.

(b) So long as an Investor Group holds an amount of Common Stock that represents at least 40% of the Original Amount of such Investor Group (as such number may be adjusted from time to time for any reorganization, recapitalization, stock dividend, stock split, reverse stock split or other similar changes in the Company's capitalization), such Investor Group shall have the right to appoint a member of the Board of Directors of each Material Subsidiary.

Section 4. Miscellaneous.

(c) Avoidance of Cross-Guaranty Liability. Neither the Company nor any party hereto shall take, permit or allow any action that would cause the Company or any Subsidiary to become a "commonly controlled insured depository institution" (as that term is defined and interpreted for purposes of 12 U.S.C. § 1815(e), as may be amended or supplemented from time to time, and any successor thereto) with respect to any institution that is not a direct or indirect Subsidiary of the Company. Each party hereto that breaches its obligations under this Section 4(a) or that believes it is reasonably likely to breach such obligation, shall immediately notify the other parties hereto and the Company and shall cooperate in good faith with the Board promptly to take such actions as are necessary to cure or avoid such breach.

(d) Governing Law. This Agreement and the rights and obligations of the parties hereunder and the Persons subject hereto shall be governed by, and construed and interpreted in accordance with, the laws of the State of Delaware, without giving effect to the choice of law principles thereof.

(e) Certain Adjustments. The provisions of this Agreement shall apply to the full extent set forth herein with respect to any and all shares of capital stock of the Company or any successor or assign of the Company (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in exchange for, or in substitution for the shares of Common Stock, by combination, recapitalization, reclassification, merger, consolidation or otherwise and the term "Common Stock" shall include all such other securities.

(f) Enforcement. Each of the parties agrees that in the event of a breach of any provision of this Agreement, the aggrieved party may elect to institute and prosecute

proceedings in any court of competent jurisdiction to enforce specific performance or to enjoin the continuing breach of this Agreement. Such remedies shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy which any party hereto may have. Each party hereto hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts in New York for the purposes of any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof. Subject to applicable law, each party hereto hereby consents to service of process made in accordance with Section 4(g).

(g) Successors and Assigns. Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns. Each party hereto that is a member of an Investor Group may assign its rights and obligations hereunder, in whole or in part, to any other member of such Investor Group in connection with a transfer of shares of Common Stock to such member; provided, however, that each Investor Group shall have the right to designate only one Investor Nominee and one Board ob server as set forth in Section 2 hereof, and such rights shall be exercised collectively by the members of such Investor Group.

(h) Entire Agreement; Termination. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior oral or written (and all contemporaneous oral) agreements or understandings with respect to the subject matter hereof. This Agreement shall terminate and be of no further force and effect at such time as each Investor Group ceases to beneficially own at least 5.0% of the total number of shares of Common Stock outstanding and Kanas ceases to be the Chief Executive Officer of the Company. This Agreement shall cease to be binding or effective against any Investor Group (except with respect to such Investor Group's obligations relating to the resignation of its Investor Nominee), and such Investor Group shall cease to have any rights hereunder, at such time as such Investor Group ceases to beneficially own at least 5.0% of the total number of shares of Common Stock outstanding, and this Agreement shall cease to be binding upon Kanas (except with respect to Kanas's obligations relating to the resignation of the Kanas Nominees), and Kanas shall cease to have any rights hereunder, at such time as Kanas ceases to be the Chief Executive Officer of the Company or any Subsidiary.

(i) Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) mailed, certified or registered mail with postage prepaid, (c) sent by next-day or overnight mail or delivery or (d) sent by fax, as set forth on Schedule B hereto (or to such other address as the party entitled to notice shall hereafter designate in accordance with the terms hereof). All such notices, requests, demands, waivers and othe r communications shall be deemed to have been received by (w) if by personal delivery, on the day delivered, (x) if by certified or registered mail, on the fifth business day after the mailing thereof, (y) if by next-day or overnight mail or delivery, on the day delivered, or (z) if by fax, on the day delivered, provided that such delivery is confirmed.

(j) Waiver. Waiver by any party hereto of any breach or default by the other party of any of the terms of this Agreement shall not operate as a waiver of any other breach or default, whether similar to or different from the breach or default waived. No waiver of any provision of this Agreement shall be implied from any course of dealing between the parties hereto or from any failure by either party to assert its or his or her rights hereunder on any occasion or series of occasions.

(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(l) Headings. The headings to sections in this Agreement are for the convenience of the parties only and shall not control or affect the meaning or construction of any provision hereof.

(m) Invalidity of Provision. The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of this Agreement, including that provision, in any other jurisdiction.

(n) Amendments and Waivers. The provisions of this Agreement may be amended at any time and from time to time, and particular provisions of this Agreement may be waived or modified, with and only with an agreement or consent in writing signed by each of the parties hereto who then have rights hereunder pursuant to Section 4(f) hereof.

(o) Further Assurances. Each party hereto shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments and documents as any other party hereto or Person subject hereto may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement.

(p) Third Party Beneficiaries. This Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF this Agreement has been signed by each of the parties hereto, and shall be effective as of the date first above written.

BANKUNITED, INC.

By: ________________________
Name:
Title:

JOHN A. KANAS

____
John A. Kanas

WLR RECOVERY FUND IV, L.P.
By: WLR Recovery Associates IV LLC
Its General Partner

By: WL Ross Group, L.P.
its Managing Member

By: El Vedado, LLC
Its General Partner

By ________________________
Name:
Title:

WLR IV PARALLEL ESC, L.P.
By: WLR Recovery Associates IV LLC
Its Attorney-in-fact

By: WL Ross Group, L.P.
its Managing Member

By: El Vedado, LLC
Its General Partner

By ________________________
Name:
Title:

WLR/GS Master Co-Investment, L.P.
By: WLR Master Co-Investment GP LLC
Its General Partner

By ______________________________
Name:
Title:

CARLYLE PARTNERS V, L.P.

By: TC GROUP V, L.P., its general partner

By: TC GROUP V MANAGING GP, L.L.C., its general partner

By: TC GROUP, L.L.C., its sole member

By: TCG HOLDINGS, L.L.C., its managing member

By: ______________________________
Name:
Title:

CARLYLE PARTNERS V-A, L.P.

By: TC GROUP V, L.P., its general partner

By: TC GROUP V MANAGING GP, L.L.C., its general partner

By: TC GROUP, L.L.C., its sole member

By: TCG HOLDINGS, L.L.C., its managing member

By: ______________________________
Name:
Title:

CP V COINVESTMENT A, L.P.

By: TC GROUP V, L.P., its general partner

By: TC GROUP V MANAGING GP, L.L.C., its general partner

By: TC GROUP, L.L.C., its sole member

By: TCG HOLDINGS, L.L.C., its managing member

By: ______________________________
Name:
Title:

CP V COINVESTMENT B, L.P.

By: TC GROUP V, L.P., its general partner

By: TC GROUP V MANAGING GP, L.L.C., its general partner

By: TC GROUP, L.L.C., its sole member

By: TCG HOLDINGS, L.L.C., its managing member

By: ____
Name:
Title:

CARLYLE STRATEGIC PARTNERS II, L.P.

By: CSP II GENERAL PARTNER, L.P., its general partner

By: TC GROUP CSP II, L.L.C., its general partner

By: TC Group, L.L.C., its sole member

By: TCG Holdings, L.L.C., its managing member

By: ____
Name:
Title:

CSP II CO-INVESTMENT, L.P.

By: CSP II GENERAL PARTNER, L.P., its general partner

By: TC GROUP CSP II, L.L.C., its general partner

By: TC Group, L.L.C., its sole member

By: TCG Holdings, L.L.C., its managing member

By: ____
Name:
Title:

CARLYLE FINANCIAL SERVICES BU, L.P.

By: TCG FINANCIAL SERVICES L.P., its general partner

By: CARLYLE FINANCIAL SERVICES, LTD., its general partner

By: ____
Name:
Title:

CENTERBRIDGE CAPITAL PARTNERS, L.P.

By: Centerbridge Associates, L.P., its general partner

By: Centerbridge GP Investors, LLC, its general partner

By: ______________________________
Name:
Title:

CENTERBRIDGE CAPITAL PARTNERS SBS, L.P.

By: Centerbridge Associates, L.P., its general partner

By: Centerbridge GP Investors, LLC, its general partner

By: ______________________________
Name:
Title:

CENTERBRIDGE CAPITAL PARTNERS STRATEGIC, L.P.

By: Centerbridge Associates, L.P., its general partner

By: Centerbridge GP Investors, LLC, its general partner

By: ______________________________
Name:
Title:

CB BU INVESTORS, L.L.C.

By: Centerbridge Associates, L.P., its manager

By: Centerbridge GP Investors, LLC, its general partner

By: ______________________________
Name:
Title:

CB BU INVESTORS II, L.L.C.

By: Centerbridge Associates, L.P., its manager

By: Centerbridge GP Investors, LLC, its general partner

By: ______________________________
Name:
Title:

CB BU INVESTORS III, L.L.C.

By: Centerbridge Associates, L.P., its manager

By: Centerbridge GP Investors, LLC, its general partner

By: ______________________________
Name:

Title:

BLACKSTONE CAPITAL PARTNERS V L.P.

By: Blackstone Management Associates V L.L.C., its General Partner

By: BMA V L.L.C., its Sole Member

By: ____________________________
Name:
Title:

BLACKSTONE CAPITAL PARTNERS V-AC L.P.

By: Blackstone Management Associates V L.L.C., its General Partner

By: BMA V L.L.C., its Sole Member

By: ____________________________
Name:
Title:

BLACKSTONE FAMILY INVESTMENT PARTNERSHIP V L.P.

By: BCP V Side-by-Side GP L.L.C., its General Partner

By: ____________________________
Name:
Title:

BLACKSTONE PARTICIPATION PARTNERSHIP V L.P.

By: BCP V Side-by-Side GP L.L.C., its General Partner

By: ____________________________
Name:
Title:

SCHEDULE A

Names of Members of Investor Groups

"WL Ross Group"

WLR Recovery Fund IV, L.P., a Delaware limited partnership
WLR IV Parallel ESC, L.P., a Delaware limited partnership
WLR/GS Master Co-Investment, L.P.

"Carlyle Group"

Carlyle Partners V, L.P., a Delaware limited partnership
Carlyle Partners V-A, L.P., a Delaware limited partnership
CP V Coinvestment A, L.P., a Delaware limited partnership
CP V Coinvestment B, L.P., a Delaware limited partnership
Carlyle Strategic Partners II, L.P., a Delaware limited partnership
CSP II Co-Investment, L.P., a Delaware limited partnership
Carlyle Financial Services BU, L.P., a Delaware limited partnership

"Centerbridge Group"

Centerbridge Capital Partners, L.P., a Delaware limited partnership
Centerbridge Capital Partners SBS, L.P., a Delaware limited partnership
Centerbridge Capital Partners Strategic, L.P., a Delaware limited partnership

CB BU Investors, L.L.C., a Delaware limited liability company
CB BU Investors II, L.L.C., a Delaware limited liability company
CB BU Investors III, L.L.C., a Delaware limited liability company

"Blackstone Group"

Blackstone Capital Partners V L.P., a Delaware limited partnership
Blackstone Capital Partners V-AC L.P., a Delaware limited partnership
Blackstone Family Investment Partnership V L.P., a Delaware limited partnership
Blackstone Participation Partnership V L.P., a Delaware limited partnership

---

SCHEDULE B

Notice Information

If to the Company or Kanas:

BankUnited, Inc.
14817 Oak Lane
Miami Lakes, FL 33016
Attention: John A. Kanas
Facsimile: (866) 509-1301

With copies (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
Attention: Richard Aftanas
Facsimile No.: (212) 735-2000

If to the Carlyle Group:

c/o The Carlyle Group
520 Madison Avenue
New York, NY 10022
Attention: John Redett
Facsimile: 212-813-4789

With copies (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Maripat Alpuche
Facsimile: 212-455-2502

If to the Centerbridge Group:

c/o Centerbridge Partners, L.P.
375 Park Avenue, 12th Floor
New York, NY 10152
Attention: Lance West
Facsimile: 212-672-4562

With copies (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Wilson S. Neely
Caroline B. Gottschalk
Facsimile: 212-455-2502

New York Life Capital Partners
51 Madison Avenue, Suite 1600
New York, NY 10010
Attention: Amanda Parness

Facsimile No.: (212) 576-5591
Email: amanda_parness@nylim.com
nylcap-reporting@nylim.com

If to the WL Ross Group:

WL Ross & Co. LLC
1166 Avenue of the Americas
New York, NY 10036
Attention: Michael J. Gibbons
Chief Financial Officer
Facsimile: (212) 317-4891

With copies (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Nicholas G. Demmo
Matthew M. Guest
Facsimile: (212) 403-2000

If to Blackstone Group:

c/o The Blackstone Group
345 Park Avenue
New York, NY 10154
Attention: Chinh E. Chu
Facsimile: 212-583-5722

With copies (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: William R. Dougherty
Facsimile: 212-455-2502

Exhibit 10.14

BankUnited, Inc.
Policy on Incentive Compensation Arrangements

Purpose of this Policy

The Board of Directors of BankUnited, Inc. has determined that proper incentive compensation arrangements can, among other important objectives, attract skilled staff, promote better organization-wide and employee performance, promote employee retention, provide retirement security to employees, and allow the organization's personnel costs to vary along with its revenues.

This policy sets forth the key principles by which the Board of Directors will make determinations with respect to incentive compensation arrangements. This policy is to be read in conjunction with the Guidance on Sound Incentive Compensation Policies promulgated by the federal banking agencies, a copy of which is attached hereto as Annex A.

Scope

This policy applies to incentive compensation arrangements adopted on or after the date hereof by BankUnited, Inc. or any of its subsidiaries (collectively, the "organization").

This policy applies to incentive compensation arrangements for (i) senior executives and others who are responsible for oversight of the organization's firm-wide activities or material business lines; (ii) individual employees, including non-executives, whose activities may expose the organization to material amounts of risk; and (iii) groups of employees who are subject to the same or similar incentive compensation arrangements and who, in the aggregate, may expose the organization to material amounts of risk.

For purposes of this policy, the term "incentive compensation" means that portion of an employee's current or potential compensation that is tied to achievement of one or more specific metrics. It does not include (a) compensation that is awarded solely for, and the payment of which is solely tied to, continued employment or (b) compensation arrangements that are determined based solely on the employee's level of compensation and does not vary based on one or more performance metrics.

Key Principles

Contribution to the organization. Determinations with respect to incentive compensation shall be based on consideration of the past, present, and expected future contributions of an employee or group of employees to the overall success, safety, and soundness of the organization. Factors considered in evaluating those contributions may include, among other things:

- overall individual performance or achievement;

- overall organizational performance or achievement;
- overall individual contribution to organizational performance;
- business segment performance or achievement;
- successful completion of projects/initiatives; and
- level of individual responsibilities.

Balance risk and financial results. Incentive compensation arrangements shall balance risk and financial results in a manner that does not encourage employees to expose the company to imprudent risks.

Risk management and internal controls. Risk-management processes and internal controls shall reinforce and support the development and maintenance of balanced incentive compensation arrangements.

Strong corporate governance. Corporate governance shall help ensure sound incentive compensation practices, including active and effective oversight by the Board of Directors. The Board of Directors, including through its Compensation Committee as appropriate, shall (i) directly approve incentive compensation arrangements for senior executive and (ii) approve, document, and monitor any material exceptions or adjustments to the incentive compensation arrangements for senior executives.

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED CERTIFIED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of BankUnited, Inc. of our report dated October 27, 2010 relating to the consolidated financial statements of BankUnited FSB and its subsidiaries, which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP
Fort Lauderdale, Florida
January 18, 2011

QuickLinks -- Click here to rapidly navigate through this document

Exhibit 23.2

Consent of Independent Registered Public Accounting Firm

The Board of Directors
BankUnited, Inc.:

In connection with amendment No. 3 of the Form S-1 registration statement to be filed by BankUnited, Inc. and subsidiaries, we consent to the use of our report dated October 25, 2010, except for Note 22, as to which the date is January 10, 2011, with respect to the consolidated balance sheet of BankUnited, Inc. and subsidiaries as of December 31, 2009, and the related consolidated statements of income, stockholder's equity and comprehensive income, and cash flows for the period from April 28, 2009 (date of inception) through December 31, 2009, included herein and to the reference to our firm under the heading "Experts" in the prospectus.

/s/ KPMG LLP

January 18, 2011
Miami, Florida
Certified Public Accountants

QuickLinks