As filed with the Securities and Exchange Commission on October 28, 2010

Registration No. 333-

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

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

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

Delaware	**6035**	**27-0162450**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(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.	**Richard D. Truesdell, Jr., Esq.**
Skadden, Arps, Slate, Meagher & Flom LLP	Davis Polk & Wardwell LLP
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New York, New York 10036	New York, New York 10017
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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(1)**
Common stock, par value $0.01 per share	$300,000,000	$21,390

(1) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(o) 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.

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.

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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 October 28, 2010

PROSPECTUS

Shares

BankUnited, Inc.

Common Stock

This is the initial public offering of our common stock. We are offering shares of our common stock. The selling stockholders identified in this prospectus are offering an additional 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 $ and $ per share. We intend to apply to list our common stock 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 shares of our common stock, the underwriters have the option to purchase up to an additional 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 , 2010.

Morgan Stanley **BofA Merrill Lynch**

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

Prospectus dated , 2010

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.

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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.

BankUnited, Inc.

Summary

BankUnited, Inc. is a savings and loan holding company with two wholly-owned subsidiaries: BankUnited, which is the largest independent depository institution 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 June 30, 2010. We are building 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 six months ended June 30, 2010, the Company was one of the most profitable and well-capitalized bank holding companies in the United States, having earned 2.0% on its average assets and 19.3% on its average common stockholders' equity, and achieved a 40.0% efficiency ratio. BankUnited's tier 1 leverage ratio was 9.8% and its tier 1 risk-based capital ratio was 41.9% at June 30, 2010. The Company's tangible common equity ratio was 10.3% at June 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, for the five- and ten-year periods prior to its sale to Capital One, North Fork generated a total annualized return of 11.2% and 20.5%, respectively, outperforming the S&P 500 by 9.2% and 11.4%, respectively. North Fork distinguished itself as one of the most profitable and 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, which represented a multiple of 4.0 times tangible equity.

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 June 30, 2010, the Covered Assets consisted of assets with a book value of $4.4 billion. The total UPB (or, for investment securities, unamortized cost basis) of the Covered Assets at June 30, 2010 was $9.4 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 June 30, 2010 was $2.9 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 $863.3 million from the FDIC in reimbursements under the Loss Sharing Agreements for claims filed for losses incurred as of June 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 for 76.5% of their $11.4 billion in UPB as of the Acquisition date, which represented the fair market value for those assets. The discount was one of the most favorable achieved relative to other FDIC-assisted transactions. 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. As part of the Purchase and Assumption Agreement, we issued the FDIC a warrant which allows the FDIC to participate in the upside, along with our stockholders, in a liquidity event such as this offering.

Our Competitive Strengths

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

- ***Best-in-class management team.*** 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 six months ended June 30, 2010, the Company earned 2.0% on its average assets and 19.3% on its average common equity, both of which were among the leading ratios in the U.S. banking industry.

- ***Limited credit risk exposure for Covered Assets.*** At June 30, 2010, the Covered Assets under the Loss Sharing Agreements were being carried at a book value of $4.4 billion and the total unpaid principal balance, or UPB (or, for investment securities, unamortized cost basis), of the Covered Assets was $9.4 billion. If the value of the Bank's Covered Assets were to deteriorate more than estimated, 95% of the incremental credit losses 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 June 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 10.3% tangible common equity ratio, and the Bank had a 9.8% tier 1 leverage ratio and a 41.9% tier 1 risk-based ratio. On September 17, 2010, we declared a quarterly dividend of $14.0 million. 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 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 2000 to 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 June 30, 2010, 30 banks with $29.5 billion in assets have failed since 2008 in Florida. Given our competitive strengths, including a best-in-class 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 some of these selected markets.

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.

We are building 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 June 30, 2010 from $2.1 billion to $3.6 billion and lowered our cost of deposits (excluding the impact of accretion from fair value adjustments due to acquisition accounting) from 3.5% to 1.7%. In addition, since the Acquisition to June 30, 2010, we have generated $320.0 million of new 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 June 30, 2010, we have hired 27 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 six months ended June 30, 2010, the Company's efficiency ratio was 40.0%, 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 $863.3 million from the FDIC in reimbursements under the Loss Sharing Agreements for claims filed for losses incurred as of June 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. For additional information, see "Compensation Discussion and Analysis—Executive Officer Compensation—Equity-Based Compensation."

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The Offering

Common stock offered by us	shares of common stock
Common stock offered by the selling stockholders	shares of common stock
Over-allotment option	shares of common stock from the selling stockholders
Common stock to be outstanding after this offering	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 $ million, based on an assumed initial public offering price of $ 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 of this prospectus entitled "Use of Proceeds."
Dividend policy	We initially anticipate paying a quarterly dividend of $ per share on our common stock, subject to the discretion of our board of directors, or our Board. Our ability to pay dividends in the future is limited by various regulatory requirements and policies of bank regulatory agencies having jurisdiction over us and our banking subsidiary, our earnings, cash resources and capital needs, general business conditions and other factors deemed relevant by our Board. For additional information, see the section of this prospectus entitled "Dividend Policy."
New York Stock Exchange symbol	BKU
Risk factors	Please read the section of this prospectus 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 shares of our common stock outstanding and excludes shares of our common stock issuable upon exercise of outstanding stock options at a weighted average exercise price of $ per share and shares of common stock reserved for issuance under our benefit plans, in each case as of , 2010.

Unless otherwise indicated, the information presented in this prospectus:

- gives effect to a -for-1 common stock split, which we will effect prior to the consummation of this offering;
- assumes an initial public offering price of $ 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;

- gives effect to the reorganization transactions that will be completed in connection with this offering (see the section of this prospectus entitled "Reorganization"), including the transactions with respect to profits interest units, or PIUs, in the LLC described under "Compensation Discussion and Analysis—Executive Officer Compensation—Equity-Based Compensation;" 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 six months ended June 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 six months ended June 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 June 30, 2010			At September 30,	
	Actual	As Adjusted(1)	At December 31, 2009	2008	2007
	(unaudited)				
	(dollars in thousands)				
Consolidated Balance Sheet Data:					
Cash and cash equivalents	$ 166,908		$ 356,215	$ 1,223,346	$ 512,885
Investment securities available for sale, at fair value	3,245,453		2,243,143	755,225	1,098,665
Loans held in portfolio, net	4,224,140		4,588,898	11,249,367	12,561,693
FDIC indemnification asset	2,854,175		3,279,165	—	—
Goodwill and other intangible assets	60,832		60,981	28,353	28,353
Total assets	11,212,637		11,129,961	14,088,591	15,107,310
Deposits	7,468,381		7,666,775	8,176,817	7,305,788
Advances from Federal Home Loan Bank	2,264,813		2,079,051	5,279,350	6,234,360
Total liabilities	10,007,781		10,035,701	13,689,821	13,904,508
Total stockholders' equity	1,204,856		1,094,260	398,770	1,202,802

	BankUnited, Inc.		Failed Bank		
	Six Months Ended June 30, 2010	Period from April 28, to December 31, 2009(2)	Period from October 1, 2008 to May 21, 2009(2)	Fiscal Years Ended September 30, 2008	2007
	(unaudited)				
	(dollars in thousands, except share data)				
Consolidated Income Statement Data:					
Interest income	$ 273,585	$ 335,524	$ 339,068	$ 834,460	$ 957,897
Interest expense	84,909	83,856	333,392	555,594	604,558
Net interest income	188,676	251,668	5,676	278,866	353,339
Provision for loan losses	26,091	22,621	919,139	856,374	31,500
Net interest income (loss) after provision for loan losses	162,585	229,047	(913,463)	(577,508)	321,839
Non-interest income (loss)	169,372	252,828	(81,431)	(128,859)	28,367
Non-interest expense	143,302	282,454	238,403	246,480	185,634
Income (loss) before income taxes	188,655	199,421	(1,233,297)	(952,847)	164,572
Provision (benefit) for income before taxes	76,772	80,375	—	(94,462)	55,067
Net income (loss)	$ 111,883	$ 119,046	$ (1,233,297)	$ (858,385)	$ 109,505
Share Data:					
Earnings (loss) per common share, basic and diluted	$ 12.04	$ 12.85	$ (12,332,970)	$ (8,583,850)	$ 1,095,054
Weighted average common shares outstanding	9,294,183	9,266,491	100	100	100
Other Data (unaudited):					
Financial ratios					
Return on average assets(3)	1.98%	1.69%	(14.26)%	(5.94)%	0.78%
Return on average common stockholders' equity(3)	19.25%	18.98%	(2,041.04)%	(75.43)%	10.04%
Yield on earning assets(3)	7.13%	7.42%	3.91 %	5.91 %	6.96%
Cost of interest bearing liabilities(3)	1.81%	1.39%	3.94 %	4.36 %	4.91%
Equity to assets ratio	10.75%	9.83%	(7.25)%	2.83 %	7.96%
Interest rate spread(3)	5.32%	6.03%	(0.03)%	1.55 %	2.05%
Net interest margin(3)	4.90%	5.57%	0.06 %	1.98 %	2.57%
Loan to deposit ratio	57.12%	60.15%	128.73 %	146.33 %	172.74%
Asset quality ratios					
Non-performing loans to total loans(4)	0.55%	0.38%	24.58 %	11.98 %	1.59%
Non-performing assets to total loans and OREO(5)	4.21%	2.91%	25.78 %	12.96 %	1.81%
Non-performing assets to total assets(5)	1.66%	1.24%	23.53 %	11.13 %	1.51%
Allowance for loan losses to total loans	0.97%	0.49%	11.14 %	5.98 %	0.46%
Allowance for loan losses to non-performing loans	177.92%	130.22%	45.33 %	49.96 %	29.15%
Net charge-offs to average loans(3)	0.33%	0.00%	5.51 %	1.58 %	0.08%

	BankUnited, Inc.		Failed Bank	
	At June 30, 2010	At December 31, 2009(2)	At September 30,	
			2008	2007
	(unaudited)			
Capital ratios(6)				
Tangible common equity to tangible assets(7)	10.26%	9.33%	2.63%	7.79%
Tier 1 common capital to total risk weighted assets	41.91%	40.42%	4.90%	14.64%
Tier 1 risk-based capital	41.91%	40.42%	4.90%	14.64%
Total risk-based capital	42.47%	40.55%	6.21%	15.37%
Tier 1 leverage	9.76%	8.78%	2.89%	7.84%

(1) On an as adjusted basis to give effect to the sale of shares of our common stock in this offering at an assumed initial public offering price of $ 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 six months ended June 30, 2010. See note 2 above.

(4) Non-performing loans include nonaccrual loans, loans past due 90 days or more and 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 accounted for in pools are excluded from non-performing loans.

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

(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 stockholders' 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 stockholders' equity to total assets. See the reconciliation under Note 6 under "Selected Historical Consolidated Financial Data."

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) additional cash and cash equivalents, total assets and total stockholders' equity by $ 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. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially adversely affect our business, prospects, financial condition, results of operations and cash flow.

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. We, however, 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."

Our business is highly susceptible to credit risk.

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. Although we have the Loss Sharing Agreements, the agreements do not cover 100% of the losses attributable to Covered Assets, and credit losses on such assets or assets not covered in the Loss Sharing Agreements could still have a material adverse effect on our operating results.

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

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, has been affected by the downturn in commercial and residential property values. 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 an unanticipated 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.

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 collect 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. Home owner 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.

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 cannot predict the nature and timing of the Federal Reserve's interest rate policies or other changes in monetary policies and economic conditions, which could negatively impact our financial performance.

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. The loss of service of one or more of our executive officers or key personnel could reduce our ability to successfully implement our long-term business strategy, our business could suffer and the value of our common stock could be materially adversely affected. Leadership changes will occur from time to time and we cannot predict whether significant resignations will occur or whether we will be able to recruit additional qualified personnel. We believe our senior management team possesses valuable knowledge about 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 these key personnel could negatively impact our banking operations. The loss of key senior 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.

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 meet the cash flow requirements of our depositors and borrowers unless we maintain sufficient liquidity.

Our liquidity is used to make loans and to repay deposit liabilities as they become due or are demanded by customers. As a result of a sudden decline in depositor confidence, if a substantial number of bank customers tried to withdraw their bank deposits simultaneously, our reserves may not be able to cover the withdrawals without sufficient liquidity. Collateralized borrowings such as FHLB advances are an important potential source of liquidity. Our borrowing capacity is generally dependent on the value of the collateral pledged to the FHLB. An adverse regulatory change could reduce our borrowing capacity or eliminate certain types of collateral and could otherwise modify or even terminate FHLB advances. Any such change or termination may have an adverse effect on our liquidity. Our access to other funding sources could be impaired by factors that are not specific to us, such as a disruption in the financial markets or negative views and expectations about the prospects for the financial services industry in light of recent turmoil faced by banking organizations and the unstable credit markets. Without sufficient liquidity, we may not be able to meet the cash flow requirements of our depositors and borrowers.

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. We cannot predict the number, size or timing of acquisitions, or whether any such acquisitions will occur at all. 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.

Hurricanes or other natural or man-made disasters could negatively affect local economies where we maintain branch offices or disrupt our operations, which could have an adverse effect on our business or results of operations.

Like other coastal areas, some of our markets in Florida are susceptible to hurricanes and tropical storms. Such weather events can disrupt our operations, result in damage to our properties, reduce or destroy the value of mortgage properties and negatively affect the local economies in which we operate. We cannot predict whether or to what extent damage that may be caused by future hurricanes or other weather events will affect our operations or the economies in our market areas, but such weather events could result in a decline in loan originations, a decline in the value or destruction of properties securing our loans and an increase in delinquencies, foreclosures and loan losses. Our business or results of operations may be adversely affected by these and other negative effects of hurricanes or other significant weather events. Extensive or multiple disruptions in our operations, whether at our branches or our corporate headquarters, due to natural or man-made disasters could have a material adverse effect on our results of operations.

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 our 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.

As a public company, we will be required to meet periodic reporting requirements under the rules and regulations of the United States Securities and Exchange Commission, or the SEC. Complying with federal securities laws as a public company is expensive, and we will incur significant time and expense enhancing, documenting, testing, and certifying our internal control over financial reporting. Any deficiencies in our financial reporting or internal controls could adversely affect our business and the trading price of our common stock.

We are not yet required to comply with Section 404 of the Sarbanes-Oxley Act of 2002. However, as a publicly traded company following completion of this offering, we will be required to file periodic reports containing our financial statements with the SEC within a specified time following the completion of quarterly and annual periods. Prior to becoming a public company, we have not been required to comply with SEC requirements to have our financial statements completed and reviewed or audited within a specified time. We may experience difficulty in meeting the SEC's reporting requirements. Any failure by us to file our periodic reports with the SEC in a timely manner could harm our reputation and reduce the trading price of our common stock.

As a public company, we will incur significant legal, accounting, insurance and other expenses. Compliance with other rules of 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. Beginning with our Annual Report on Form 10-K for our fiscal year ending December 31, 2012, SEC rules will require that our Chief Executive Officer and Chief Financial Officer periodically certify the existence and effectiveness of our internal controls over financial reporting. Our independent registered public accounting firm will be required to attest to our assessment of our internal controls over financial reporting. This process will require significant documentation of policies, procedures and systems, review of that documentation by our internal auditing staff and our outside auditors, and testing of our internal controls over financial reporting by our internal auditing and accounting staff and our outside independent registered public accounting firm. This process will involve considerable time and expense, may strain our internal resources, and have an adverse impact on our operating costs. We may experience higher than anticipated operating expenses and outside auditor fees during the implementation of these changes and thereafter.

During the course of our testing, we may identify deficiencies that would have to be remediated to satisfy the SEC rules for certification of our internal controls over financial reporting. As a consequence, we may have to disclose in periodic reports we file with the SEC material weaknesses in our system of internal controls. The existence of a material weakness would preclude management from concluding that our internal controls over financial reporting are effective and would preclude our independent auditors from issuing an unqualified opinion that our internal controls over financial reporting are effective. In addition, disclosures of this type in our SEC reports could cause investors to lose confidence in our financial reporting and may negatively affect the trading price of our common stock. Moreover, effective internal controls are necessary to produce reliable financial reports and to prevent fraud. If we have deficiencies in our disclosure controls and procedures or internal controls over financial reporting, it may negatively impact our business, results of operations, and reputation.

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 ended 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.

In order to improve the effectiveness of our internal control over financial reporting for the above material weaknesses, we have taken the following remedial measures:

- hired additional resources to help maintain/update the loan model, and engaged outside consultants to produce a closed form solution for the loan model which eliminates the manual aspect of data processing and aggregation;
- management of the accounting and loan servicing departments has developed procedures designed to ensure the proper fields in the loan servicing system are populated with the most current OREO values to allow for proper recording in our consolidated financial statements;
- hired additional managers and staff in the financial reporting area, and completed conversion to a new general ledger system; and
- in conjunction with the above, monthly closing procedures have been reviewed and revised to incorporate the anticipated efficiencies related to the new general ledger system.

While we are taking steps to address the identified material weaknesses and prevent additional material weaknesses from occurring, there is no guarantee that these steps will 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.

We rely on our systems and employees, and any errors or fraud could materially adversely affect our operations.

We are exposed to many types of operational risk, including the risk of fraud by employees and outsiders, clerical recordkeeping errors and transactional errors. Our business is dependent on our employees as well as third parties to process a large number of increasingly complex transactions. We could be materially adversely affected if one of our employees causes a significant operational breakdown or failure, either as a result of human error or where an individual purposefully sabotages or fraudulently manipulates our operations or systems. Third parties with which we do business also could be sources of operational risk to us, including breakdowns or failures of such parties' own systems or employees. Any of these occurrences could result in a diminished ability of us to operate our business, potential liability to customers, reputational damage and regulatory intervention, which could materially adversely affect us.

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 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 investors in our common stock. 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.

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. There is no guarantee that these increases will be sufficient for the DIF to meet its funding requirements, which may necessitate further special assessments or increases in deposit insurance premiums. 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.

Changes in accounting standards may affect how we report our financial condition and results of operations.

Our accounting policies and methods are fundamental to how we record and report our financial condition and results of operations. From time to time, the Financial Accounting Standards Board, or FASB, or regulatory authorities change the financial accounting and reporting standards that govern the preparation of financial statements. These changes can be hard to predict and can materially impact how we record and report our financial condition and results of operations. In some cases, we could be required to apply a new or revised standard retroactively, resulting in us restating prior period financial statements.

Changes and interpretations of tax laws and regulations may adversely impact our financial statements.

Changes in state and federal tax laws can make our business less profitable. Local, state or federal tax authorities may interpret tax laws and regulations differently than us and challenge tax positions that we have taken on our tax returns. This may result in the disallowance of deductions or differences in the timing of deductions and result in the payment of additional taxes, interests, or penalties that could materially affect our performance.

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 outstanding shares of common stock, assuming no exercise of the underwriters' over-allotment option, and an initial public offering price of $ per share, the midpoint of the price range set forth on the cover of this prospectus. Of the outstanding shares, all of the shares sold in this offering, plus any additional shares sold upon exercise of the underwriters' 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), 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 and Rule 701 of the Securities Act, the remaining shares of our common stock will be available for sale in the public market as follows:

- shares will be eligible for sale on the date of this prospectus; and

- shares will be eligible for sale upon the expiration of the lock-up agreements described below.

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 "Shares Eligible For Future Sale—Lock-Up Agreements."

"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.

We may issue debt and equity securities or securities convertible into equity securities, any of which may be senior to our common stock as to distributions and in liquidation, which could negatively affect the value of our common stock.

Shares of our common stock are equity interests and do not constitute indebtedness. In the future, we may attempt to increase our capital resources by entering into debt or debt-like financing that is unsecured or secured by all or a substantial portion of our assets, or by issuing additional debt or equity securities, which could include the issuance of secured or unsecured commercial paper, medium-term notes, senior notes, subordinated notes, preferred stock or securities convertible into or exchangeable for equity securities. Additionally, we may issue additional debt or equity securities as consideration for future mergers and acquisitions. Such additional debt or equity offerings may place restrictions on our ability to pay dividends on or repurchase our common stock, dilute the holdings of our existing stockholders or reduce the market price of our common stock. In the event of our liquidation, our lenders and holders of our debt and preferred securities would receive a distribution of our available assets before distributions to the holders of our common stock. Because our decision to incur debt and issue securities in our future offerings will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings and debt financings. Furthermore, market conditions could require us to accept less favorable terms for the issuance of our securities in the future.

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

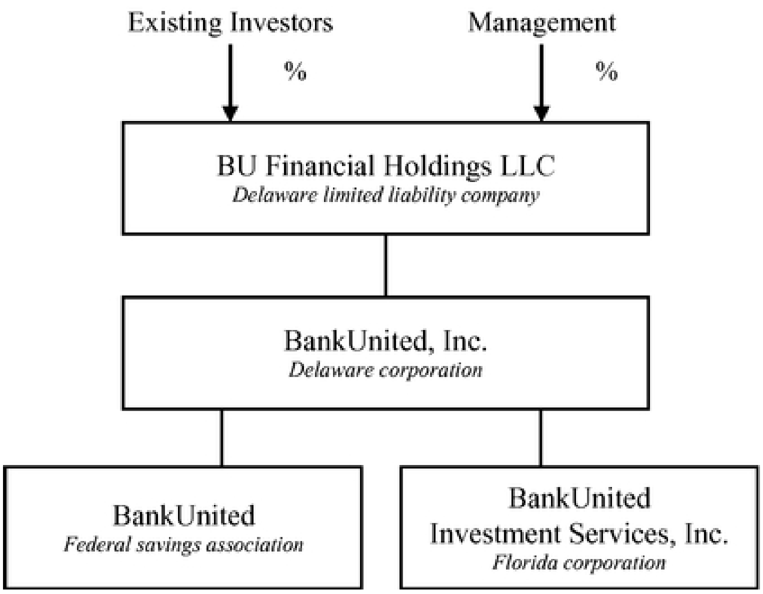
We are currently a direct, wholly-owned subsidiary of the LLC. Prior to the completion of this offering, we will effect reorganization so that our investors, our named executive officers and all other members of the LLC will hold equity interests in us directly rather than indirectly through the LLC.

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. 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."

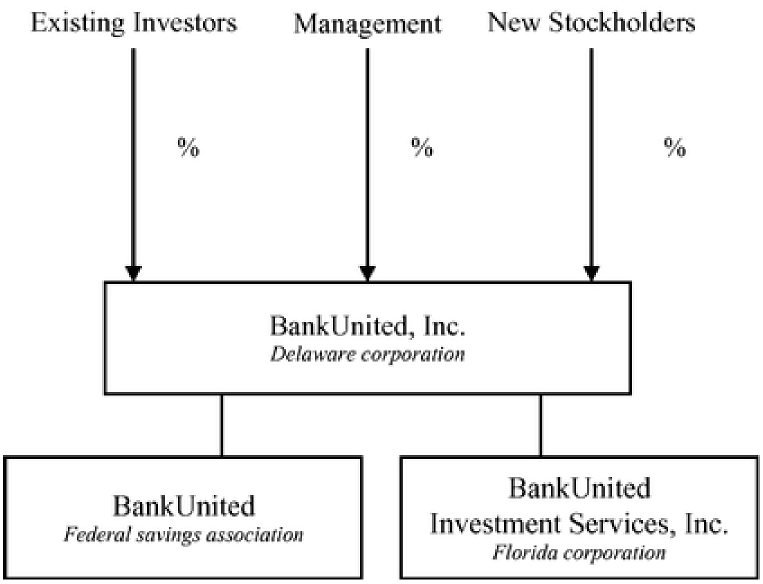
The following diagram shows our organizational structure, including our principal subsidiaries only, prior to giving effect to the Reorganization:

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



USE OF PROCEEDS

We estimate that the net proceeds to us from the sale of our common stock in this offering will be $ million, at an assumed initial public offering price of $ 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 $ 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 $ 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 dividend of $ 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 September 17, 2010, we declared a quarterly dividend of $14.0 million. Additionally, on October 19, 2010, we declared a special one-time dividend of $6.0 million.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and our capitalization at June 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 $ 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 June 30, 2010.

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 June 30, 2010	
	Actual	As Adjusted
	(unaudited) (dollars in thousands, except per share data)	
Cash and cash equivalents	$ 166,908	$
Other borrowings	$ 2,264,813	$
Stockholders' equity:		
Preferred stock $0.01 par value per share: no shares authorized, no shares issued and outstanding, actual; shares authorized, no shares issued and outstanding, as adjusted	—	
Common stock, $0.01 par value per share: 11,000,000 shares authorized, 9,294,681.45 shares issued and outstanding, actual; shares authorized, shares issued and outstanding, as adjusted	93	
Additional paid-in-capital	949,657	
Non-vested stock options	742	
Retained earnings	230,929	
Accumulated other comprehensive income, net	23,435	
Total stockholders' equity	1,204,856	
Total capitalization	$ 3,469,669	$

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) total stockholders' equity and total capitalization by $ 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 June 30, 2010 was $1.1 billion, or $123.08 per share of common stock based on the 9,294,681.45 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 shares of common stock at an assumed initial public offering price of $ 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 June 30, 2010 would have been $ million, or $ per share. This amount represents an immediate increase in net tangible book value to our existing stockholders of $ per share and an immediate dilution to new investors of $ per share.

The following table illustrates this per share dilution:

Assumed initial public offering price per share		$
Net tangible book value per share at June 30, 2010	$ 123.08	
Increase per share attributable to this offering		
As adjusted net tangible book value per share after this offering		
Net tangible book value dilution per share to new investors in this offering		$

Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) our as adjusted net tangible book value by approximately $ million, or approximately $ per share, and the pro forma dilution per share to investors in this offering by approximately $ 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 $ million, or approximately $ per share, and the pro forma dilution per share to investors in this offering by approximately $ per share, assuming the assumed initial public offering price per share of $ 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 June 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 $ 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 Purchase		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percentage	Amount
Existing equity holder		%	$	%	$
Investors participating in this offering					
Total		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 , or approximately % of the total shares of common stock outstanding after this offering, and will increase the number of shares held by new investors to , or approximately % 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 shares, or % of the total shares outstanding, and the number of shares held by investors participating in this offering will be increased to shares, or % of the total shares outstanding.

The above discussion and tables excludes shares of our common stock issuable upon the exercise of outstanding stock options at a weighted average exercise price of $ per share and shares of common stock reserved for issuance under our benefit plans in each case as of , 2010. 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 six months ended June 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 six months ended June 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 June 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	$ 166,908	$ 356,215	$ 1,223,346	$ 512,885	$ 66,600	$ 237,950
Investment securities available for sale, at fair value	3,245,453	2,243,143	755,225	1,098,665	1,520,294	1,912,643
Loans held in portfolio, net	4,224,140	4,588,898	11,249,367	12,561,693	11,400,706	8,027,592
FDIC indemnification asset	2,854,175	3,279,165	—	—	—	—
Goodwill and other intangible assets	60,832	60,981	28,353	28,353	28,353	28,353
Total assets	11,212,637	11,129,961	14,088,591	15,107,310	13,543,992	10,639,895
Deposits	7,468,381	7,666,775	8,176,817	7,305,788	6,044,800	4,705,559
Advances from Federal Home Loan Bank	2,264,813	2,079,051	5,279,350	6,234,360	5,174,350	3,820,385
Total liabilities	10,007,781	10,035,701	13,689,821	13,904,508	12,538,156	9,870,482
Total stockholders' equity	1,204,856	1,094,260	398,770	1,202,802	1,005,836	769,413

	BankUnited, Inc.		Failed Bank				
	Six Months Ended June 30, 2010	Period from April 28, 2009 to December 31, 2009(1)	Period from October 1, 2008 to May 21, 2009(1)	Fiscal Years Ended September 30,			
				2008	2007	2006	2005
	(unaudited)					(unaudited)	(unaudited)
	(dollars in thousands, except share data)						
Consolidated Income Statement Data:							
Interest income	$ 273,585	$ 335,524	$ 339,068	$ 834,460	$ 957,897	$ 712,807	$ 428,692
Interest expense	84,909	83,856	333,392	555,594	604,558	442,333	250,873
Net interest income	188,676	251,668	5,676	278,866	353,339	270,474	177,819
Provision for loan losses	26,091	22,621	919,139	856,374	31,500	10,400	3,840
Net interest income (loss) after provision for loan losses	162,585	229,047	(913,463)	(577,508)	321,839	260,074	173,979
Non-interest income (loss)	169,372	252,828	(81,431)	(128,859)	28,367	32,598	18,213
Non-interest expense	143,302	282,454	238,403	246,480	185,634	136,668	133,327
Income (loss) before income taxes	188,655	199,421	(1,233,297)	(952,847)	164,572	156,004	58,865
Provision (benefit) for income before taxes	76,772	80,375	—	(94,462)	55,067	51,794	17,909
Net income (loss)	$ 111,883	$ 119,046	$ (1,233,297)	$ (858,385)	$ 109,505	$ 104,210	$ 40,956
Share Data:							
Earnings (loss) per common share, basic and diluted	$ 12.04	$ 12.85	$(12,332,970)	$(8,583,850)	$1,095,054	$ 1,042,100	$ 409,560
Weighted average common shares outstanding	9,294,183	9,266,491	100	100	100	100	100
Other Data (unaudited):							
Financial ratios							
Return on average assets(2)	1.98%	1.69%	(14.26)%	(5.94)%	0.78%	0.86%	0.44%
Return on average common stockholders' equity(2)	19.25%	18.98%	(2,041.04)%	(75.43)%	10.04%	12.04%	5.86%
Yield on earning assets(2)	7.13%	7.42%	3.91 %	5.91 %	6.96%	6.06%	4.70%
Cost of interest bearing liabilities(2)	1.81%	1.39%	3.94 %	4.36 %	4.91%	4.16%	3.05%
Equity to assets ratio	10.75%	9.83%	(7.25)%	2.83 %	7.96%	9.45%	5.68%
Interest rate spread(2)	5.32%	6.03%	(0.03)%	1.55 %	2.05%	1.90%	1.65%
Net interest margin(2)	4.90%	5.57%	0.06 %	1.98 %	2.57%	2.30%	1.95%
Loan to deposit ratio	57.12%	60.15%	128.73 %	146.33 %	172.74%	189.21%	171.15%
Asset quality ratios							
Non-performing loans to total loans(3)	0.55%	0.38%	24.58 %	11.98 %	1.59%	0.18%	0.10%
Non-performing assets to total loans and OREO(4)	4.21%	2.91%	25.78 %	12.96 %	1.81%	0.19%	0.11%
Non-performing assets to total assets(4)	1.66%	1.24%	23.53 %	11.13 %	1.51%	0.20%	0.07%
Allowance for loan losses to total loans	0.97%	0.49%	11.14 %	5.98 %	0.46%	0.32%	0.32%
Allowance for loan losses to non-performing loans	177.92%	130.22%	45.33 %	49.96 %	29.15%	175.40%	306.94%
Net charge-offs to average loans(2)	0.33%	0.00%	5.51 %	1.58 %	0.08%	0.00%	0.03%

	BankUnited, Inc.		Failed Bank				
	At June 30, 2010	At December 31, 2009(1)	At May 21, 2009(1)	At September 30,			
				2008	2007	2006	2005
	(unaudited)					(unaudited)	(unaudited)
Capital ratios(5)							
Tangible common equity to tangible assets(6)	10.26%	9.33%	(7.50)%	2.63%	7.79%	7.23%	6.98%
Tier 1 common capital to total risk weighted assets	41.91%	40.42%	n/a	4.90%	14.64%	13.79%	14.03%
Tier 1 risk-based capital	41.91%	40.42%	n/a	4.90%	14.64%	13.79%	14.03%
Total risk-based capital	42.47%	40.55%	n/a	6.21%	15.37%	14.28%	14.49%
Tier 1 leverage	9.76%	8.78%	n/a	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 six months ended June 30, 2010. See note 1 above.

(3) Non-performing loans include nonaccrual loans, loans past due 90 days or more and 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 accounted for in pools are excluded from non-performing loans.

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

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

(6) 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 stockholders' 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 stockholders' equity to total assets. See the reconciliation below:

	BankUnited, Inc.		Failed Bank			
	At June 30, 2010	At December 31, 2009	At September 30,			
			2008	2007	2006	2005
	(unaudited)				(unaudited)	(unaudited)
			(dollars in thousands)			
Total stockholders' equity	$ 1,204,856	$ 1,094,260	$ 398,770	$ 1,202,802	$ 1,005,836	$ 769,413
Less: goodwill and other intangible assets, net	60,832	60,981	28,353	28,353	28,353	28,353
Tangible common stockholders' equity	$ 1,144,024	$ 1,033,279	$ 370,417	$ 1,174,449	$ 977,483	$ 741,060
Total assets	$11,212,637	$ 11,129,961	$14,088,591	$15,107,310	$13,543,992	$10,639,895
Less: goodwill and other intangible assets, net	60,832	60,981	28,353	28,353	28,353	28,353
Tangible assets	$11,151,805	$ 11,068,980	$14,060,238	$15,078,957	$13,515,639	$10,611,542

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 of this prospectus 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 the largest independent depository institution 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 June 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 six months ended June 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
Advances from FHLB	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.

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.

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.

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 June 30, 2010, Covered Loans represented 94.3% of our loan portfolio (based on book value) and Covered Securities represented 8.4% of our investment portfolio. In total, covered interest earning assets represented 55.8% of our interest earning assets at June 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 $14.7 million for the period ending June 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 $14.2 million for the period ended June 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. 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. However, any provision for loan losses on Covered Loans is significantly mitigated by an increase in the FDIC indemnification asset and 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." For the six months ended June 30, 2010 and the period ended December 31, 2009, we recorded provisions for loan losses on Covered Loans of $24.4 million and $21.3 million, respectively. The impact to earnings from these provisions was significantly mitigated by recording non-interest income of $19.0 million and $14.4 million, respectively.

For the six months ended June 30, 2010 and the period ended December 31, 2009, we recorded provisions for loan losses of $1.7 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 six months ended June 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.

In general, 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 six months ended June 30, 2010 and the period ended December 31, 2009, the average rate at which income was accreted on the FDIC indemnification asset was 6.03% and 7.10%, respectively. However, if projected cash flows from ACI loans decrease, a provision for loan losses is recorded, significantly mitigated by recording income associated with the increase in the FDIC indemnification asset reflected within non-interest income, as discussed above.

Each period, the balance of the FDIC indemnification asset is increased for accretion, reduced by the amount of claims filed for losses incurred and increased or reduced as appropriate for changes in estimated discounted future cash flows arising from additional provisions for losses on Covered Assets and estimated income or loss from ultimate sale or resolution of those assets as discussed below. A roll-forward of the FDIC indemnification asset from May 21, 2009 to June 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	91,160
Reduction for claims filed	(469,332)
Net loss on indemnification asset resulting from net recoveries	(46,818)
Balance, June 30, 2010	$ 2,854,175

In the income statement line item "Net loss on indemnification asset resulting from net recoveries," we record income or loss 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. This includes the significantly mitigating impact of loan loss provisions on Covered Loans, income from resolution of Covered Loans, gains or losses on the sale of Covered Loans and impairment of OREO.

Any provision for loan losses on Covered Loans is significantly mitigated by an increase in the FDIC indemnification asset and a corresponding increase in non-interest income.

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 commercial portfolio, charge-offs, during the period. 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 to third parties. This loss was significantly mitigated by income of approximately $37.5 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.

Certain OREO related expenses 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 foreclosure expense" in non-interest income when received from the FDIC. This may result in the expense and the related income from reimbursements being recorded in different periods.

Non-interest expense

Non-interest expense includes employee compensation and benefits, occupancy and equipment, impairment of OREO, professional fees, foreclosure expense, deposit insurance expense, OREO expense, 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. The Company has reached a settlement with the FDIC regarding this dispute. Under the settlement, the Company will receive $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 vest upon attainment of certain investment returns to our investors and a liquidity event as defined in the LLC Agreement (which we refer to as IRR-based PIUs). Fair value of PIUs is estimated using a Black-Scholes option pricing model. 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 six months ended June 30, 2010 and the period ended December 31, 2009, we recorded compensation expense related to Time-based PIUs of $10.6 million and $8.8 million, respectively.

In conjunction with this offering, we expect to record compensation expense related to the IRR-based PIUs in the quarter in which this offering occurs. The amount of compensation expense will be based on the initial public offering price. Assuming an initial public offering price of $ per share, the midpoint of the price range on the cover of this prospectus, we would expect to incur a charge of approximately $ million.

OREO expense and foreclosure expense is comprised of net 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 June 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. The warrant was initially recorded with a fair value of $1.5 million at May 21, 2009. For the six months ended June 30, 2010 and the period ended December 31, 2009, we recorded $3.2 million and $1.7 million, respectively, reflecting the increase in the fair value of the warrant. In October 2010, the Company 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 $6.4 million at June 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 stockholders' 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 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.

The portfolio of available for sale securities has grown to $3.2 billion at June 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 $4.2 billion at June 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 accounted for in pools are not reflected as nonaccrual loans even though they may be contractually delinquent due to continuing discount accretion because these pools are performing substantially as expected at the time of the Acquisition.

As of June 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 June 30, 2010, time deposits accounted for 52.2% of total deposits while consumer core deposits represented 38.7% of the total and commercial core deposits represented 9.1% 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 9.8% and 41.9%, respectively, at June 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 June 30, 2010, the commercial real estate and commercial loan portfolios contained $182.3 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 June 30, 2010, we have increased our core deposits from $2.1 billion to $3.6 billion.

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

- The economic impact of the 2008 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 Board.
- 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 $111.9 million for the six months ending June 30, 2010 and $119.0 million for the period from April 28, 2009 (date of inception) through December 31, 2009.

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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)*:

	Six Months Ended June 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	$ 292,120	$ 3,488	2.39%	$ 69,778	$ 1,999	4.71%
Mortgage-backed securities	2,400,214	57,639	4.80%	889,776	43,143	7.97%
Total investment securities available for sale	2,692,334	61,127	4.54%	959,554	45,142	7.73%
Other interest earning assets	648,527	788	0.25%	1,719,417	2,922	0.28%
Loans receivable	4,332,510	211,670	9.77%	4,754,739	287,460	9.94%
Total interest earning assets	7,673,371	273,585	7.13%	7,433,710	335,524	7.42%
Allowance for loan losses	(25,060)			(101)		
Noninterest earning assets	3,667,121			4,025,699		
Total assets	$ 11,315,432			$ 11,459,308		
Liabilities and Equity:						
Interest bearing liabilities:						
Interest bearing deposits:						
Interest bearing demand	$ 233,580	$ 917	0.79%	$ 183,416	$ 891	0.79%
Savings and money market	2,728,210	18,119	1.34%	2,153,445	25,578	1.94%
Time deposits	4,261,996	37,878	1.79%	5,523,623	31,360	0.93%
Total interest bearing deposits	7,223,786	56,914	1.59%	7,860,484	57,829	1.20%
Borrowings:						
FHLB advances	2,228,703	27,947	2.53%	1,974,755	26,026	2.15%
Repurchase agreements	12,512	48	0.77%	2,091	1	0.02%
Total interest bearing liabilities	9,465,001	84,909	1.81%	9,837,330	83,856	1.39%
Non-interest bearing demand deposits	382,117			303,871		
Other non-interest bearing liabilities	305,678			295,914		
Total liabilities	10,152,796			10,437,115		
Equity	1,162,636			1,022,193		
Total liabilities and equity	$ 11,315,432			$ 11,459,308		
Net interest income		$ 188,676			$ 251,668	
Interest rate spread			5.32%			6.03%
Net interest margin			4.90%			5.57%

(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 six months ended June 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)*:

	Six Months Ended June 30, 2010 Compared to Period From May 22, 2009 to 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	$ 2,654	$ (809)	$ (356)	$ 1,489
Mortgage-backed securities	36,281	(14,103)	(7,682)	14,496
Total investment securities available for sale	38,935	(14,912)	(8,038)	15,985
Other interest earning assets	(1,311)	(256)	(567)	(2,134)
Loans receivable	(20,547)	(4,042)	(51,201)	(75,790)
Total interest earning assets	17,077	(19,210)	(59,806)	(61,939)
Interest Expense Attributable to				
Interest bearing demand deposits	$ 197	$ —	$ (171)	$ 26
Savings and money market deposit accounts	3,870	(6,407)	(4,922)	(7,459)
Time deposits	(10,986)	23,556	(6,052)	6,518
Total interest bearing deposits	(6,919)	17,149	(11,145)	(915)
FHLB advances	3,202	3,721	(5,002)	1,921
Repurchase agreements	39	8	—	47
Total interest bearing liabilities	(3,678)	20,878	(16,147)	1,053
Increase (decrease) in net interest income	$ 20,755	$ (40,088)	$ (43,659)	$ (62,992)

Six months ending June 30, 2010 compared to period from May 22, 2009 to December 31, 2009

Net interest income was $188.7 million for the six months ending June 30, 2010 and $251.7 million for the period ending December 31, 2009, for a decline of $63.0 million. The decline in net interest income was comprised of a decline in interest income of $61.9 million and an increase in interest expense of $1.1 million. On an annualized basis, net interest income was $380.5 million and $410.1 million for the periods ending June 30, 2010 and December 31, 2009, respectively. The decline of $29.6 million, or 7.2%, in annualized net interest income was comprised of an increase of $34.6 million in interest expense partly offset by an increase of $5.0 million in interest income.

The increase in interest income resulted from an increase in the average volume of investment securities significantly mitigated by a decline in the average yield on both the investment and loan portfolios. The average yield on investment securities declined to 4.54% for the period ending June 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 a shift in the type of securities purchased, including $1.3 billion of U.S. Government agency floating rate securities purchased as of June 30, 2010. The average yield on the loan portfolio decreased to 9.77% for the period ending June 30, 2010 from 9.94% for the period ending December 31, 2009. The origination and purchase of new loans at lower prevailing market rates of interest had the effect of reducing the average yield on the portfolio for the period ending June 30, 2010. The average yield on loans originated and purchased since the Acquisition was 5.50% and 6.35% for the periods ending June 30, 2010 and December 31, 2009, respectively.

Interest expense on deposits increased on an annualized basis by $20.5 million for the period ending June 30, 2010 due to lower accretion of fair market value adjustments on time deposits as acquired time deposits matured, offset 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 $14.7 million for the period ending June 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 2.49% for the six months ending June 30, 2010 and 3.28% 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 increased by $13.9 million on an annualized basis as a result of lower accretion of fair value adjustments, as well as increased volume of outstanding advances. Accretion of fair value adjustments on FHLB advances totaled $14.2 million for the period ended June 30, 2010 as compared to $25.1 million for the period ended December 31, 2009 decreasing the average rate paid by 129 and 191 basis points, 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 period ending June 30, 2010 was 4.90% as compared to 5.57% for the period ending December 31, 2009, a decline of 67 basis points. The average yield on interest earning assets declined by 29 basis points for the period ending June 30, 2010 as compared to the period ending December 31, 2009 while the average rate paid on interest bearing liabilities increased by 42 basis points, for a decline in the interest rate spread of 71 basis points. The decline in both net interest margin and interest rate spread resulted from lower accretion of fair value adjustments on interest earning assets and 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 $169.4 million for the six months ending June 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)*:

	Six Months Ended June 30, 2010	Period from May 22, 2009 to December 31, 2009
Accretion of discount on FDIC indemnification asset	$ 91,160	$ 149,544
Income from resolution of Covered Assets, net	98,127	120,954
Net loss on indemnification asset resulting from net recoveries	(46,818)	(22,568)
FDIC reimbursement of foreclosure expense	11,178	8,095
Net loss on sale of loans	—	(47,078)
Non-interest income from Covered Assets	153,647	208,947
Service charges on deposits and other fee income	4,008	4,913
Service charges on loans	1,217	1,509
Loan servicing fees	—	331
Insurance and investment services income	479	830
Gain on extinguishment of debt	—	31,303
Net loss on sale of investment securities	(2,810)	—
Other non-interest income	12,831	4,995
Total non-interest income	$ 169,372	$ 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 periods ended June 30, 2010 and December 31, 2009 *(dollars in thousands)*:

	Six Months Ended June 30, 2010			Period Ended December 31, 2009		
	Transaction Income (Loss)	FDIC Indemnification Income (Loss)	Net Impact on Earnings	Transaction Income (Loss)	FDIC Indemnification Income (Loss)	Net Impact on Earnings
Provision for losses on Covered Loans	$ (24,422)	$ 18,991	$ (5,431)	$ (21,287)	$ 14,433	$ (6,854)
Loans not covered	(1,669)	—	(1,669)	(1,334)	—	(1,334)
Total	(26,091)	18,991	(7,100)	(22,621)	14,433	(8,188)
Income from resolution of Covered Assets, net	98,127			120,954		
Net loss on sale of Covered Loans	—			(47,078)		
Total	98,127	(70,608)	27,519	73,876	(51,201)	22,675
Loss due to impairment of OREO	(5,901)	4,799	(1,102)	(21,055)	14,200	(6,855)
Total	$ 66,135	$ (46,818)	$ 19,317	$ 30,200	$ (22,568)	$ 7,632

Six months ending June 30, 2010 compared to period from May 22, 2009 to December 31, 2009

For the six months ended June 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 $91.2 million for the six months ending June 30, 2010 and $149.5 million for the period ending December 31, 2009. The decrease in accretion for the period ending June 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 6.03% from 7.10%.

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 periods ending June 30, 2010 and December 31, 2009 was $19.3 million and $7.6 million, respectively, as detailed in the table above. For the periods ending June 30, 2010 and December 31, 2009, ACI loans with an UPB of $816.7 million and $1.4 billion were resolved, resulting in income of $98.1 million and $121.0 million, respectively. A loss of $47.1 million was recognized during the period ending December 31, 2009 on non-recourse sales of ACI loans to third parties. Net loss on indemnification asset resulting from net recoveries of $(46.8) million and $(22.6) million was recorded for the periods ending June 30, 2010 and 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.

During the periods ending June 30, 2010 and December 31, 2009, $11.2 million and $8.1 million, respectively, were received from the FDIC in reimbursement of certain expenses incurred with respect to Covered Assets. Non-interest expense for the period ending June 30, 2010 and December 31, 2009 includes $29.0 million and $19.7 million, respectively, in expenses subject to reimbursement under the Loss Sharing Agreements. As of June 30, 2010, $12.8 million of these expenses, based on a reimbursement level of 80%, remains to be submitted for reimbursement from the FDIC in future periods.

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.

Other non-interest income for the period ended June 30, 2010 includes $5.1 million received in settlement of mortgage insurance claims.

Non-Interest Expense

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

	Six Months Ended June 30, 2010	Period from May 22, 2009 to December 31, 2009
Employee compensation and benefits	$ 63,504	$ 62,648
Occupancy and equipment	13,426	19,925
Impairment of OREO	5,901	21,055
Professional fees	4,684	14,854
Foreclosure expense	18,374	16,632
Deposit insurance expense	6,951	11,850
OREO expense	8,886	7,576
Telecommunications and data processing	5,736	6,440
Other non-interest expense	15,840	12,230
	143,302	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	$ 143,302	$ 282,454

Six months ending June 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 2.5% for the six months ended June 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.

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 $24.9 million or 24.4% for the period ending June 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 $10.6 million and $8.8 million for the periods ended June 30, 2010 and December 31, 2009, respectively, related to Time-based PIUs.

The decline in occupancy and equipment expense for the six months ended June 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 six months ended June 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 the first six months of 2010, contributing to reduced impairment charges for the period ending June 30, 2010 as compared to the period ending December 31, 2009. At June 30, 2010, just under 7,000 units were in the foreclosure process, down from a peak of approximately 7,300 units in November of 2009. For the post-Acquisition periods, OREO losses and

OREO related expenses are substantially offset by non-interest income related to indemnification by the FDIC.

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

Income Taxes

The provision for income taxes for the periods ending June 30, 2010 and December 31, 2009 was $76.8 million and $80.4 million, respectively. The Company's effective tax rate was 40.7% and 40.3% for the periods ending June 30, 2010 and 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 June 30, 2010 and December 31, 2009, the Company had net deferred tax assets of $4.2 million and $22.5 million, respectively. Based on an evaluation of the ultimate realization of these 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 asset will be realized.

Balance Sheet Analysis for the Post-Acquisition Periods

Average interest earning assets increased $239.7 million to $7.7 billion for the six months ending June 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 reimbursements under the Loss Sharing Agreements. Average non-interest earning assets declined by $383.5 million, largely attributable to the decrease in the FDIC indemnification asset.

Average interest bearing liabilities decreased by $372.3 million to $9.5 billion for the six months ending June 30, 2010 from $9.8 billion for the period ending December 31, 2009, reflecting a decrease in average total deposits partially offset by an increase in outstanding FHLB advances. The reduction in outstanding deposits resulted from a reduction in rates offered and shift in emphasis away from rate sensitive time deposits. Average non-interest bearing liabilities increased by $88.0 million, primarily as a result of an increase in unrealized losses on interest rate swaps. Average equity increased by $140.4 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 June 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	1,408,963	1,424,445	1,288,277	1,288,643
Other residential collateralized mortgage obligations	789,364	794,234	480,478	476,839
Residential mortgage pass-through certificates	319,749	378,909	318,018	364,672
Asset-backed securities	497,383	496,887	30,000	30,000
Mutual funds and preferred stocks	121,891	120,721	43,344	43,523
State and Municipal obligations	23,447	23,609	23,214	23,356
Other debt securities	3,501	6,648	3,331	6,038
Total investment securities available for sale	$ 3,164,298	$ 3,245,453	$ 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 $1.0 billion, to $3.2 billion, at June 30, 2010. Purchases of investment securities totaled $1.3 billion and $1.8 billion for the periods ending June 30, 2010 and December 31, 2009, respectively, offset by pay-downs and sales of $0.4 billion and $0.2 billion, respectively.

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

	At June 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	$ —	$ —	$ —	$ —	$1,408,963	$ 17,245	$ (1,763)	$1,424,445
Other residential collateralized mortgage obligations	1,733	83	—	1,816	787,631	8,837	(4,050)	792,418
Residential mortgage pass-through certificates	188,719	59,483	(1,171)	247,031	131,030	986	(138)	131,878
Asset-backed securities	—	—	—	—	497,383	544	(1,040)	496,887
Mutual funds and preferred stocks	16,577	56	(351)	16,282	105,314	1,059	(1,934)	104,439
State and municipal obligations	—	—	—	—	23,447	174	(12)	23,609
Other debt securities	3,501	3,147	—	6,648	—	—	—	—
Total investment securities available for sale	$ 210,530	$ 62,769	$ (1,522)	$271,777	$2,953,768	$ 28,845	$ (8,937)	$2,973,676

	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

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

	Fair Value
U.S. Government agency floating rate securities	$ 1,348.1
Private-label residential mortgage-backed securities	180.2
Private-label residential mortgage-backed Re-REMICS	744.1
Asset-backed securities	429.4
Bank preferred stock	94.2
Mutual funds	10.2
Total investment securities available for sale	$ 2,806.2

The following table shows the scheduled maturities, carrying values and current yields for our investment portfolio as of June 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	$ 288,844	1.45%	$ 663,344	1.33%	$ 302,403	1.28%	$ 169,854	1.30%	$ 1,424,445	1.34%
Other residential collateralized mortgage obligations	256,514	5.07%	449,247	4.81%	80,119	5.40%	8,354	4.15%	794,234	4.95%
Residential mortgage pass-through certificates	61,818	9.09%	173,346	8.16%	92,214	7.99%	51,531	8.28%	378,909	8.29%
Asset-backed securities	100,789	1.49%	364,508	2.63%	28,933	3.10%	2,657	2.90%	496,887	2.43%
State and Municipal obligations	10,238	0.80%	11,259	2.31%	1,445	2.96%	667	1.81%	23,609	1.68%
Other debt securities	152	13.95%	501	13.95%	377	13.99%	5,618	6.17%	6,648	7.38%
	$ 718,355	3.40%	$ 1,662,205	3.28%	$ 505,491	3.28%	$ 238,681	3.04%	3,124,732	3.29%
Mutual funds and preferred stocks with no scheduled maturity									120,721	6.58%
Total investment securities available for sale									$ 3,245,453	3.41%

The average effective duration of the portfolio as of June 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 able to retain the securities for 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 six months ending June 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 June 30, 2010, securities in unrealized loss positions included U.S. Government agency mortgage-backed securities with total unrealized losses of $1.8 million, private-label mortgage-backed securities with total unrealized losses of $5.4 million, asset-backed securities with total unrealized losses of $1.0 million, and equity securities with total unrealized losses of $2.3 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 June 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 and the asset-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. Such repurchases have historically been at par value. 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 June 30, 2010, management did not identify any indicators of impairment of FHLB stock.

Loan Portfolio

The loan portfolio comprises the Company's primary interest-earning asset. At June 30, 2010 and December 31, 2009, respectively, 96.9% and 98.4% of real estate loans and 94.1% 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)*:

	At June 30, 2010					At 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	$ 2,948,629	$ 154,849	$ 68,658	$ 3,172,136	73.7%	$ 3,277,423	$ 187,121	$ 43,184	$ 3,507,728	75.4%
Home equity loans and lines of credit	135,664	214,540	2,573	352,777	8.2%	150,257	215,591	2,198	368,046	7.9%
Multi-family	76,358	10,455	9,287	96,100	2.2%	71,321	4,971	700	76,992	1.7%
Commercial real estate	315,676	33,911	43,128	392,715	9.1%	356,169	37,281	24,386	417,836	9.0%
Construction	10,010	—	—	10,010	0.2%	44,812	377	—	45,189	1.0%
Land	48,345	173	1,594	50,112	1.2%	43,903	173	—	44,076	0.9%
Total real estate loans	3,534,682	413,928	125,240	4,073,850	94.6%	3,943,885	445,514	70,468	4,459,867	95.9%
Other loans:										
Commercial	51,713	42,461	128,217	222,391	5.2%	81,765	48,635	51,565	181,965	3.9%
Consumer	5,559	—	1,983	7,542	0.2%	7,065	—	2,568	9,633	0.2%
Total other loans	57,272	42,461	130,200	229,933	5.4%	88,830	48,635	54,133	191,598	4.1%
Total loans	3,591,954	456,389	255,440	4,303,783	100.0%	4,032,715	494,149	124,601	4,651,465	100.0%
Unearned discount, premiums, and deferred costs, net	—	(36,798)	(1,325)	(38,123)		—	(39,986)	40	(39,946)	
Allowance for loan losses	(25,546)	(12,971)	(3,003)	(41,520)		(20,021)	(1,266)	(1,334)	(22,621)	
Total loans, net	$ 3,566,408	$ 406,620	$ 251,112	$ 4,224,140		$ 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.

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.

The majority of the residential loans added to the portfolio since the Acquisition are purchased loans. We do not originate or purchase "no-doc," option ARM or sub-prime products or utilize wholesale origination channels.

One-to-four single family residential mortgages totaled $3.2 billion, or 73.7%, of the portfolio and $3.5 billion, or 75.4%, of the portfolio at June 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 June 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	$ 611,563	$ 55,627	$ 667,190	21.0%	$ 541,438	$ 42,651	$ 584,089	16.7%
Adjustable rate loans(1)	2,491,915	13,031	2,504,946	79.0%	2,923,106	533	2,923,639	83.3%
Total 1-4 single family residential loans	$ 3,103,478	$ 68,658	$ 3,172,136	100.0%	$ 3,464,544	$ 43,184	$ 3,507,728	100.0%

(1) As of June 30, 2010 and December 31, 2009, option ARM loans with UPB of $2.9 billion and $3.7 billion, respectively, were negatively amortizing. Negative amortization included in the UPB of the option ARM portfolio totaled $206.3 million and $258.2 million at June 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 June 30, 2010, 57.6%, 7.6%, 5.8%, 5.8% and 4.1% of 1-4 single family residential loans (based on UPB) were to borrowers domiciled in Florida, California, Illinois, New Jersey and Arizona, respectively. At December 31, 2009, 56.8%, 8.1%, 5.7%, 5.6% and 4.9% of 1-4 single family residential loans 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 71.3% of loans originated or purchased since the Acquisition as of June 30, 2010.

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 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	$ 807,937	$ 4,723,820	$ 2,683,097	$ 8,214,854
Home equity loans and lines of credit	56,513	182,805	232,887	472,205
Multi-family	24,804	42,042	43,877	110,723
Commercial real estate	62,913	204,367	306,422	573,702
Construction	36,641	62,721	10,472	109,834
Land	34,887	66,815	10,614	112,316
Total real estate loans	1,023,695	5,282,570	3,287,369	9,593,634
Other Loans:				
Commercial	46,188	93,007	65,333	204,528
Consumer	7,591	4,139	257	11,987
Total other loans	53,779	97,146	65,590	216,515
Total loans	$ 1,077,474	$ 5,379,716	$ 3,352,959	$ 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	$ 1,112,386	$ 6,294,531	$ 7,406,917
Home equity loans and lines of credit	56,268	359,424	415,692
Multi-family	19,845	66,074	85,919
Commercial real estate	238,833	271,956	510,789
Construction	4,982	68,211	73,193
Land	2,162	75,267	77,429
Total real estate loans	$ 1,434,476	$ 7,135,463	$ 8,569,939
Other Loans:			
Commercial	41,262	117,078	158,340
Consumer	4,393	3	4,396
Total other loans	45,655	117,081	162,736
Total loans	$ 1,480,131	$ 7,252,544	$ 8,732,675

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 June 30, 2010, two originated commercial loans aggregating $6.6 million were rated special mention and none were adversely classified. At December 31, 2009, no originated commercial loans were rated special mention and none were adversely classified.

At June 30, 2010, one non-covered residential loan with a principal balance of $0.1 million was delinquent greater than 30 days. There were no delinquent non-covered home equity loans at June 30,

2010. There were no delinquencies in the non-covered residential mortgage or home equity loan portfolios as of December 31, 2009. At June 30, 2010, the average LTV of the originated 1-4 single family residential portfolio was 60% and the average FICO score was 769.

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

Covered Loans

Covered Loans consist of both ACI loans and non-ACI loans. At June 30, 2010, ACI loans totaled $3.6 billion and non-ACI loans totaled $0.5 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 June 30, 2010, only two of these loans had defaulted through short sale or foreclosure. As of June 30, 2010, 14.9% of the UPB had been repaid in full and additional principal repayments of 14.2% of UPB had been received, demonstrating the intent and ability of borrowers in this group to satisfy their mortgage obligations. The remaining UPB of these loans was $154.8 million at June 30, 2010.

At June 30, 2010, 35.3% of the total UPB of the covered 1-4 single family residential loans was contractually delinquent. 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 $350.2 million at June 30, 2010, including ACI loans of $135.7 million and non-ACI loans of $214.5 million. At June 30, 2010, 8.8% of covered home equity loans were 60 days or more contractually delinquent. Of the ACI home equity portfolio, 15.5% was 60 days or more contractually delinquent while 3.3% 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 June 30, 2010, non-ACI commercial and other loans had an aggregate UPB of $42.5 million. Substantially all of these loans were rated "pass" or "good" at June 30, 2010 and December 31, 2009 and the portfolio segment has limited delinquency history. At June 30, 2010, 21 loans totaling $13.0 million were rated special mention and 40 loans totaling $5.4 million were rated substandard.

Impaired Loans and Non-Performing Assets

Non-performing assets consist of (i) nonaccrual 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 loan pools 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 June 30, 2010 and December 31, 2009, substantially all of the nonaccrual loans and OREO are Covered Assets. One commercial loan originated since the Acquisition with a balance of approximately $74,000 was on nonaccrual status at June 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.

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

	At June 30, 2010	At December 31, 2009
Nonaccrual loans		
Real estate loans:		
1-4 single family residential	$ 15,823	$ 14,495
Home equity loans and lines of credit	5,560	2,726
Multi-family	377	—
Commercial real estate	—	—
Construction	—	—
Land	—	—
Total real estate loans	21,760	17,221
Other loans:		
Commercial	1,576	150
Consumer	—	—
Total other loans	1,576	150
Total nonaccrual loans	23,336	17,371
Accruing loans 90 days or more past due	—	—
Total non-performing loans	23,336	17,371
OREO	163,222	120,110
Total non-performing assets	186,558	137,481
Acquired credit impaired loans on accrual status	147,771	567,253
Total impaired loans and non-performing assets	$ 334,329	$ 704,734
Non-performing loans to total loans	0.55%	0.38%
Non-performing assets to total assets	1.66%	1.24%
Allowance for loan losses to total loans	0.97%	0.49%
Allowance for loan losses to non-performing loans	177.92%	130.22%

At June 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 because, to date, these pools are performing substantially as expected at the time of the 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 low 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.

Except for ACI loans accounted for in pools, loans are placed on nonaccrual status when (i) management has determined that full payment of all contractual principal and interest, or in the case of ACI loans not accounted for in pools, all expected cash flows, 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 $0.2 million for the six months ending June 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 $31,122 and $76,969 for the periods ending June 30, 2010 and 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.

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 in a troubled debt restructuring, short sale, or foreclosure. In 2009, we began loan modifications under the U.S. Treasury Department's Home Affordable Modification Program, or 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 June 30, 2010, 7,805 borrowers had been counseled regarding their participation in HAMP; 5,563 of those borrowers were initially determined to be potentially eligible for loan modifications under the program. As of June 30, 2010, 1,321 borrowers who did not elect to participate in the program had been sent termination letters and 1,243 borrowers had been denied due to ineligibility. At June 30, 2010, there were 1,388 permanent loan modifications and 403 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 periods ending June 30, 2010 and December 31, 2009 *(dollars in thousands):*

	At June 30, 2010	At December 31, 2009
Balance at beginning of period	$ 120,110	$ 177,679
Transfers from the loan portfolio	164,463	115,192
Sales	(124,720)	(177,408)
Impairment loss recognized	(5,901)	(21,055)
Income from resolution of Covered Assets, net	9,270	25,702
Balance at end of period	$ 163,222	$ 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 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 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 with committed credit facilities greater than $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.

The allowance for non-covered and non-ACI consumer loans is based on an analysis of historical losses over the most recent four quarters. Since the non-covered portfolio is not yet seasoned enough to exhibit a loss trend, we also consider the OTS Charge-Off Rates and management's assessment of portfolio risk characteristics in calculating reserves for this portfolio. We provide a 100% reserve for home equity and consumer loans more than 120 days past due and for overdrafts aged more than 30 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 periods ended June 30, 2010 and December 31, 2009, we recorded a provision for non-ACI loans of $11.7 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. At June 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, $19.6 million of the allowance 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 the pooled home equity ACI loans during the period ending June 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, homogenous commercial loans not individually reviewed 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 six months ended June 30, 2010, our analysis indicated a decrease in expected cash flows from certain commercial and commercial real estate loans evaluated individually for impairment, resulting in a provision for loan losses of $22.9 million related to these ACI loans.

An increase in the FDIC indemnification asset of $19.0 million was reflected in non-interest income for the period ending June 30, 2010 related to the provision for loan losses on Covered Loans (including ACI and non-ACI loans).

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)*:

	Six Months Ended June 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	12,688(1)	20,021
Provision for losses on Covered non-ACI Loans	11,734	1,266
Provision for losses on non-Covered Loans	1,669	1,334
Total provision for loan losses	26,091	22,621
Charge-offs:		
1-4 single family residential	—	—
Home equity loans and lines of credit	—	—
Multi-family	(26)	—
Commercial real estate	(189)	—
Construction	(3,500)	—
Land	(2,586)	—
Commercial	(891)	—
Consumer	—	—
Total charge-offs	(7,192)	—
Total recoveries	—	—
Net charge-offs	(7,192)	—
Allowance for loan losses, end of period	$ 41,520	$ 22,621
Increase in the indemnification asset related to the provision for loan losses on Covered Loans	$ 18,991	$ 14,433
Ratio of net charge-offs to average loans receivable outstanding during the period(2)	0.33%	0.00%

(1) Comprised of $19.6 million reversal and provisions of $9.4 million and $22.9 million as discussed above.

(2) Annualized.

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

	At June 30, 2010					At December 31, 2009				
	Covered		Non-Covered	Total	%(1)	Covered		Non-Covered	Total	%(1)
	ACI	Non-ACI				ACI	Non-ACI			
1-4 single family residential	$ 348	$ 400	$ 104	$ 852	73.7%	$ 20,021	$ 119	$ 65	$ 20,205	75.4%
Home equity loans and lines of credit	9,421	9,205	4	18,630	8.2%	—	11	4	15	7.9%
Multi-family	714	286	116	1,116	2.2%	—	60	11	71	1.7%
Commercial real estate	8,102	424	539	9,065	9.1%	—	465	303	768	9.0%
Construction	—	1	—	1	0.2%	—	5	—	5	1.0%
Land	4,399	35	36	4,470	1.2%	—	2	—	2	0.9%
Commercial	2,562	1,449	2,113	6,124	5.2%	—	604	905	1,509	3.9%
Consumer	—	—	91	91	0.2%	—	—	46	46	0.2%
Unallocated	—	1,171	—	1,171	—	—	—	—	—	—
Total allowance for loan losses	$ 25,546	$ 12,971	$ 3,003	$ 41,520	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. As of the most recent impairment testing date, the estimated fair value of the reporting unit exceeded its carrying amount; therefore, no impairment was indicated. Since the most recent impairment testing date, the Company has continued to be well-capitalized and operates profitably, and no indicators of potential impairment have arisen.

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 June 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)*:

	Six Months Ended June 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	$ 382,117	—%	$ 303,871	—%
Interest bearing	233,580	0.79%	183,416	0.79%
Savings and money market	2,728,210	1.34%	2,153,445	1.94%
Time deposits	4,261,996	1.79%	5,523,623	0.93%
Total deposits	$ 7,605,903	1.51%	$ 8,164,355	1.15%

Excluding the impact of accretion from fair value adjustments due to acquisition accounting, the average rate paid on deposits for the periods ended June 30, 2010 and December 31, 2009 was 2.00% and 2.86%, respectively.

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

	At June 30, 2010	At December 31, 2009
Three months or less	$ 375,290	$ 415,049
Over three through six months	310,928	394,805
Over six through twelve months	525,470	684,966
Over twelve months	488,974	411,347
Total	$ 1,700,662	$ 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	Rate
For the six months ended June 30, 2010	$ 1,606	0.04%	$ 17,459	$ 12,512	0.77%
For the period from May 22, 2009 to December 31, 2009	$ 2,972	0.00%	$ 2,972	$ 2,091	0.02%

The Company also utilizes advances from the FHLB 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 June 30, 2010 totaled $2.2 billion, with $1.1 billion, $565.0 million, $505.0 million and $0.4 million maturing in 2012, 2103, 2014 and 2015 and thereafter, respectively. Outstanding FHLB advances decreased from $4.6 billion at Acquisition to $2.1 billion at December 31, 2009 and $2.3 billion at June 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 option ARM portfolio. $187 million of these loans were sold in fiscal 2008, as compared to $3.1 billion 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	Fiscal Years Ended September 30, 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	608
Impairment of OREO	38,742	22,749	—
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 2.7% (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.

During the fiscal year ending September 30, 2008, the Failed Bank expensed professional fees of $4.3 million related to unsuccessful capital raising efforts.

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 0.0%, 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 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 outstanding borrowings of $295.3 million.

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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 $5.1 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	2,885,207	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%	0.20%	0.07%
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.

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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	$ 24,079
Provision for loan losses	919,139	856,374	31,500	10,400	3,800
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 $28.4 million decline in income taxes receivable, a $26.0 million decline in mortgage servicing rights arising from impairment charges, and a $18.4 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		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%	$ 177,218	$ 124,564	3.00%
For the fiscal year ended September 30, 2007:	$ 143,072	4.60%	$ 844,596	$ 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 Issued Accounting Pronouncements

In July 2010, the FASB issued revised accounting 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 roll-forward 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 Bank 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 or results of operations.

In April 2010, the FASB issued new accounting guidance clarifying that modifications of loans acquired with deteriorated credit quality and accounted for within a pool should not result in the removal of those loans from the pool, even if the modifications would otherwise be considered troubled debt restructurings. Loans may be removed from the pool as a result of sale, foreclosure, or certain other events. This guidance will be effective for the Company for the quarter ending September 30,

2010. We do not anticipate that adoption of this guidance will have a material impact on our financial position or results of operations.

Effective January 1, 2010, we adopted revised accounting guidance that modified the accounting for transfers of financial assets and removed the concept of a Qualifying Special Purpose Entity. The adoption of this guidance did not have a material impact on the Company's financial statements.

Effective January 1, 2010, we adopted new accounting guidance related to the determination of whether an entity is a variable interest entity, or VIE, and identification of the primary beneficiary of a VIE. The adoption of this guidance did not have a material impact on the Company's financial statements.

Liquidity and Capital Resources

To date, stockholders' 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. Stockholders' 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. Stockholders' equity increased $110.6 million, or 10.1%, to $1.2 billion at June 30, 2010, primarily due to the retention of earnings.

Through June 30, 2010, BankUnited has not declared or paid any dividends to its parent, nor has BankUnited, Inc. declared or paid any dividends to its stockholder. BankUnited must get approval by the OTS to pay dividends to its parent. An application was filed with the OTS in August 2010 requesting approval to pay a quarterly dividend from BankUnited to BankUnited, Inc. Approval of the OTS was obtained via letter dated August 31, 2010 and the dividend was paid in September 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 June 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 capital to adjusted total assets 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 June 30, 2010, the Company's liquid assets divided by total assets was 10.96%.

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. On September 17, 2010, we declared a quarterly dividend of $14.0 million. 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 June 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 June 30, 2010, the impact on projected net interest income in a plus 200 basis point scenario is 1.2% in the first twelve months and 6.8% 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 June 30, 2010 *(dollars in thousands)*:

	Covered	Non-Covered	Total
Commitments to fund loans	$ —	$ 93,591	$ 93,591
Unfunded commitments under lines of credit	190,678	119,185	309,863
Commercial and standby letters of credit	2,288	6,827	9,115
Total	$ 192,966	$ 219,603	$ 412,569

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. Currently, all of our 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 June 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 included in other liabilities at June 30, 2010 was $48.1 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	4,490,470	3,566,134	859,231	65,105	—
Other long-term liabilities reflected on the balance sheet	—	—	—	—	—
Total	$ 6,769,245	$ 4,047,648	$ 2,128,707	$ 584,982	$ 7,908

BUSINESS

Summary

BankUnited, Inc. is a savings and loan holding company with two wholly-owned subsidiaries: BankUnited, which is 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 June 30, 2010. We are building 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 six months ended June 30, 2010, the Company was one of the most profitable and well-capitalized bank holding companies in the United States, having earned 2.0% on its average assets and 19.3% on its average common stockholders' equity, and achieved a 40.0% efficiency ratio. BankUnited's tier 1 leverage ratio was 9.8% and its tier 1 risk-based capital ratio was 41.9% at June 30, 2010. The Company's tangible common equity ratio was 10.3% at June 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, for the five- and ten-year periods prior to its sale to Capital One, North Fork generated a total annualized return of 11.2% and 20.5%, respectively, outperforming the S&P 500 by 9.2% and 11.4%, respectively. North Fork distinguished itself as one of the most profitable and 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, which represented a multiple of 4.0 times tangible equity.

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 for 76.5% of their $11.4 billion in UPB as of the Acquisition date, which represented the fair market value for those assets. The discount was one of the most favorable achieved relative to other FDIC-assisted transactions. 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. As part of the Purchase and Assumption Agreement, we issued the FDIC a warrant which allows the FDIC to participate in the upside, along with our stockholders, in a liquidity event such as this offering.

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 June 30, 2010, the Covered Assets consisted of assets with a book value of $4.4 billion. The total UPB (or, for investment securities, unamortized cost basis) of the Covered Assets at June 30, 2010 was $9.4 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 June 30, 2010 was $2.9 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 $863.3 million from the FDIC in reimbursements under the Loss Sharing Agreements for claims filed for losses incurred as of June 30, 2010.

Our Competitive Strengths

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

- ***Best-in-class management team.*** 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 six months ended June 30, 2010, the Company earned 2.0% on its average assets and 19.3% on its average common stockholders' equity, both of which were among the leading ratios in the U.S. banking industry.

- ***Limited credit risk exposure for Covered Assets.*** At June 30, 2010, the Covered Assets under the Loss Sharing Agreements were being carried at a book value of $4.4 billion and the total UPB (or, for investment securities, unamortized cost basis) of the Covered Assets was $9.4 billion. If the value of the Bank's Covered Assets were to deteriorate more than estimated, 95% of the incremental credit losses 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 June 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 10.3% tangible common equity ratio and the Bank had a 9.8% tier 1 leverage ratio and a 41.9% tier 1 risk-based ratio. On September 17, 2010, we declared a quarterly dividend of $14.0 million. 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 2000 to 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 June 30, 2010, 30 banks with $29.5 billion in assets have failed since 2008 in Florida. Given our competitive strengths, including a best-in-class 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 some of these selected markets.

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.

We are building 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 June 30, 2010 from $2.1 billion to $3.6 billion and lowered our cost of deposits (excluding the impact of accretion from fair value adjustments due to acquisition accounting) from 3.5% to 1.7%. In addition, since the Acquisition to June 30, 2010, we have generated $320.0 million of new 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 June 30, 2010, we have hired 27 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 six months ended June 30, 2010, the Company's efficiency ratio was 40.0%, 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 $863.3 million from the FDIC in reimbursements under the Loss Sharing Agreements for claims filed for losses incurred as of June 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. Since the Acquisition, as of June 30, 2010, we have originated and purchased $255.4 million in loans. This includes $128.2 million in commercial loans, $54.0 million in commercial real estate loans and $73.2 million in residential and consumer loans. In addition, we have undrawn commitments of $126.2 million, primarily on commercial loans.

Commercial loans. At June 30, 2010, $128.2 million, or 50.2%, 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 June 30, 2010, $54.0 million, or 21.1%, 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 June 30, 2010, $68.7 million, or 26.9%, of our new bank loan portfolio consisted of both purchased and originated residential real estate 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 June 30, 2010, $4.5 million, or 1.8%, 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 $165 million, at June 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 June 30, 2010, the balance of our interest bearing deposits was $7.0 billion, representing 94% of our total deposits, and the balance of our non-interest bearing deposits was $432.9 million, representing 6% 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 June 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 June 30, 2010, 7,805 borrowers have been counseled regarding their participation in HAMP, resulting in 1,388 permanent loan modifications and 403 active trial modifications.

Employees

At June 30, 2010, we employed 1,110 full-time employees and 22 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. We provide banking services at 78 branch locations in 13 Florida counties. Of the 78 branch properties, we lease 75 locations and own 3 locations.

We also dedicate approximately 1,200 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 description below summarizes certain elements of the statutory and regulatory framework and is not intended to summarize all laws and regulations applicable to us. The description is qualified in its entirety by reference to the full text of the statutes, regulations and policies that are described.

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.

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.

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 June 30, 2010, the Bank's tier 1 capital to adjusted total assets leverage ratio was equal to 9.8%.

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 Federal Reserve. In 2008, the Federal Reserve 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 June 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 June 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 October 1, 2010.

Name	Age	Position
John A. Kanas	63	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	39	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.	72	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 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, we expect our Board to consist of nine directors, seven of whom we expect to qualify as independent directors under the corporate governance standards of the exchange on which we list our common stock and the independence requirements of Rule 10A-3 of the Securities Exchange Act of 1934, or the Exchange Act.

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 (Chairman), , and .

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 make recommendations regarding the appointment of the Chief Audit Executive and oversee the internal audit and loan review functions. At the time of this offering, the members of the committee will be (Chairman), , and , each of whom qualifies as an "independent" director as defined under New York Stock Exchange, or NYSE, rules and Rule 10A-3 of the Exchange Act.

Compensation Committee. The compensation committee reviews and recommends policies relating to compensation and benefits of our officers and directors. 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 (Chairman), , and .

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 (Chairman), , and , 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.

Code of Business Conduct and Ethics

We have adopted a code of business conduct and ethics that applies to all of our employees, officers and directors, including those officers responsible for financial reporting. The code of business conduct and ethics will be available on our website at www.bankunited.com. We expect that any amendments to the code, or any waivers of its 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, 2009 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
- John N. DiGiacomo, former Chief Financial Officer and former Chief Administrative Officer

Messrs. Kanas, Pauls and DiGiacomo are named executive officers based on their roles as our Chief Executive Officer, Chief Financial Officer and former 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 DiGiacomo 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. DiGiacomo, who resigned his employment with us effective as of August 1, 2009 for health reasons, was replaced by Mr. Pauls and as a result, Mr. Pauls' compensation components are similar to those provided to Mr. DiGiacomo 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.

- *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.

Equity-Based Compensation

Profits Interest Units

Pursuant to the LLC Agreement and related award agreements, Messrs. Kanas, Pauls, Bohlsen, Singh and DiGiacomo 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. When Mr. DiGiacomo resigned, he forfeited, for no consideration, all of the PIUs that had previously been granted to him and, unless otherwise indicated, the description of the PIUs held by our named executive officers does not include Mr. DiGiacomo or the PIUs previously held by Mr. DiGiacomo. Mr. Pauls, who was not employed by us at the time of our inception, received a portion of the PIUs that were forfeited by Mr. DiGiacomo when Mr. Pauls commenced employment with us in September 2009. The remaining portion of Mr. DiGiacomo's forfeited PIUs was reallocated to Messrs. Kanas, Bohlsen and Singh.

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—2009 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 restricted and unrestricted) 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. In addition, our Stock Option Plan will be replaced by an Omnibus Equity Incentive Plan, which will be more suitable for a public company.

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 a number of shares of common stock equal to   the number of shares of common stock (including shares issuable upon the liquidation of the LLC and the corresponding conversion of PIUs to stock and options) in connection with this offering.

In exchange for the foregoing, post-offering, Mr. Kanas has agreed to not to sell any equity securities of the company other than pursuant to the exercise of "piggyback registration rights" as described below under "Description of Our Capital Stock—Registration Rights" for a period of eighteen months following this offering and each of Messrs. Pauls, Bohlsen and Singh has agreed to not to sell any equity securities of the Company (other than pursuant to the exercise of "piggyback registration rights" as described below under "Description of Our Capital Stock—Registration Rights") for a period of twelve months following the offering.

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 $ per share, the midpoint of the price range set forth on the cover of this prospectus, and after deducting estimated underwriting discounts and commissions):

- shares of our common stock held by the LLC will be distributed to the existing owners of common units of the LLC, including 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:
    - shares of our common stock held by the LLC;
    - fully vested and exercisable options under a specified equity plan of ours to acquire shares of our common stock, which options will have an exercise price per share equal to 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.
- in respect of the unvested Time-based PIUs held by our named executive officers, our named executive officers will receive:
    - shares of our common stock held by the LLC that will be restricted shares of common stock issued under a specified equity plan of ours, which 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 a specified equity plan of ours to acquire shares of our common stock, which options will (i) have an exercise price per share equal to , (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. 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, in respect of the vested IRR-based PIUs and vested Time-based PIUs, our named executive officers would receive:

- shares of our common stock held by the LLC;
- fully vested and exercisable options under a specified equity plan of ours to acquire shares of our common stock, which options will have an exercise price per share equal to 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:

- shares of our common stock held by the LLC that will be restricted shares of common stock issued under a specified equity plan of ours, which 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 a specified equity plan of ours to acquire shares of our common stock, which options will (i) have an exercise price per share equal to , (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 initial public offering price per share in this offering, is $1.00 less than the assumed initial public offering price, after deducting estimated underwriting discounts and commissions, in respect of the vested IRR-based PIUs and vested Time-based PIUs, our named executive officers would receive:

- shares of our common stock held by the LLC;
- fully vested and exercisable options under a specified equity plan of ours to acquire shares of our common stock, which options will have an exercise price per share equal to ; 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:

- shares of our common stock held by the LLC that will be restricted shares of common stock issued under a specified equity plan of ours, which 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 a specified equity plan of ours to acquire shares of our common stock, which options will (i) have an exercise price per share equal to , (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, Mr. Singh invested $1,000,000 and Mr. DiGiacomo invested $500,000. Upon Mr. DiGiacomo's resignation, Mr. Pauls, who replaced Mr. DiGiacomo and was required to maintain an investment in our Company, agreed to buy out Mr. DiGiacomo's investment of $500,000 and invest an additional amount equal to $500,000. 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 will adopt a policy that we expect our named executive officers (other than Mr. DiGiacomo) will agree to 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 Chairman and CEO, he will not sell equity if, after giving effect to such sale, his retained equity (including vested and unvested equity) 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) 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, 2009, 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, 2009. We refer to these officers as our "named executive officers."

Name and Principal Position	Year	Salary ($)	Bonus ($)(6)	Stock Awards ($)(7)	Option Awards ($)	Non-Equity Incentive Plan Compensation ($)	Change In Pension Value and Nonqualified Deferred Compensation Earnings ($)(8)	All Other Compensation ($)(9)	Total ($)
John A. Kanas, Chairman, President and Chief Executive Officer(1)	2009								
Douglas J. Pauls, Chief Financial Officer(2)	2009								
John Bohlsen, Vice Chairman Chief Lending Officer(3)	2009								
Rajinder P. Singh, Chief Operating Officer(4)	2009								
John N. DiGiacomo, Former Chief Administrative Officer and former Chief Financial Officer(5)	2009								

(1) Mr. Kanas receives an annual base salary of $ pursuant to the terms of his amended and restated employment agreement with BankUnited and an annual base salary of $ pursuant to the terms of his employment agreement with the LLC and BankUnited, Inc. Mr. Kanas' employment commenced on May 21, 2009, and accordingly the amount in the salary column represents a pro-rata portion of his aggregate annual base salary.

(2) Mr. Pauls receives an annual base salary of $ pursuant to the terms of his amended and restated employment agreement with BankUnited and an annual base salary of $ pursuant to the terms of his employment agreement with the LLC and BankUnited, Inc. Mr. Pauls' employment commenced on August 4, 2009, and accordingly the amount in the salary column represents a pro-rata portion of his aggregate annual base salary.

(3) Mr. Bohlsen receives an annual base salary of $ pursuant to the terms of his amended and restated employment agreement with BankUnited and an annual base salary of $ pursuant to the terms of his employment agreement with the LLC and BankUnited, Inc. Mr. Bohlsen's employment commenced on

May 21, 2009, and accordingly the amount in the salary column represents a pro-rata portion of his aggregate annual base salary.

(4) Mr. Singh receives an annual base salary of $ pursuant to the terms of his amended and restated employment agreement with BankUnited and an annual base salary of $ pursuant to the terms of his employment agreement with the LLC and BankUnited, Inc. Mr. Singh's employment commenced on May 21, 2009, and accordingly the amount in the salary column represents a pro-rata portion of his aggregate annual base salary.

(5) Pursuant to the employment agreement the LLC, BankUnited, Inc. and BankUnited entered into with Mr. DiGiacomo, he was entitled to receive an annual base salary of $. Mr. DiGiacomo resigned effective August 1, 2009, and the amount in the salary column represents a pro-rata portion of his annual base salary.

(6) None of our named executive officers received discretionary bonuses in 2009.

(7) Represents the value of PIUs granted to the applicable named executive officer in accordance with FASB ASC Topic 718.

(8) 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 2009, interest above 4.91% is considered above market.

(9) $ and $ represent contributions made by us on Mr. Kanas' behalf to our 401(k) plan and Nonqualified Deferred Compensation Plan, respectively. $ represents a contribution made by us on Mr. Pauls' behalf to our Nonqualified Deferred Compensation Plan, $ for an automobile allowance and $ for relocation expenses. $ represents a contribution made by us on Mr. Bohlsen's behalf to our Nonqualified Deferred Compensation Plan. $ represents a contribution made by us on Mr. Singh's behalf to our Nonqualified Deferred Compensation Plan. $ represents amount paid to Mr. DiGiacomo pursuant to the terms of his separation agreement upon his resignation.

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 2009:

2009 Grants of Plan-Based Awards

		Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards						
Name	Grant Date	Threshold ($)	Target ($)	Maximum ($)	Threshold (#)	Target (#)	Maximum (#)	All Other Stock Awards: Number of Shares of Stock or Units (#)(1)	All Other Option Awards: Number of Securities Underlying Options (#)	Closing Price on Date of Grant ($/Sh)	Grant Date Fair Value of Stock Option Awards
Mr. Kanas											
Mr. Pauls											
Mr. Bohlsen											
Mr. Singh											
Mr. DiGiacomo											

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.

If a named executive officer's employment with us terminates due to his death or disability, 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 (other than Mr. DiGiacomo, whose employment had previously terminated) 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 $, 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 $ 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 $, 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 $ 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 $, 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 $, 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 $, 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 $, 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.

John DiGiacomo

Mr. DiGiacomo resigned his employment with us effective August 1, 2009, pursuant to the terms of a separation agreement. Under the separation agreement, Mr. DiGiacomo received $ in exchange for his executing a release of claims in our favor and continued medical coverage until the earlier of the date he becomes eligible to receive comparable coverage through a subsequent employer and August 31, 2010. Pursuant to the separation agreement, Mr. DiGiacomo sold his investment interest in the LLC to Mr. Pauls, his successor, for $500,000. Mr. DiGiacomo forfeited all of the PIUs granted to him upon his termination.

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."

Outstanding Equity Awards at Fiscal Year-End

The following table shows grants of equity awards outstanding on December 31, 2009 for each of our named executive officers:

Outstanding Equity Awards at 2009 Fiscal Year-End

	Option Awards					Stock Awards			
Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price ($)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)(1)	Market Value of Shares or Units of Stock That Have Not Vested ($)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested ($)
Mr. Kanas									
Mr. Pauls									
Mr. Bohlsen									
Mr. Singh									

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 2009 plan year, we contributed an amount equal to 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 2009.

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					
Mr. Pauls					
Mr. Bohlsen					
Mr. Singh					

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. Mr. DiGiacomo resigned his employment with us and received the payment and benefits provided in his separation agreement, as described above. 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 $ 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, 2009.

Mr. Kanas

	Cash Severance(1)	Continued Benefits(2)	Value of Accelerated Equity(3)	Excise Tax Gross-Up(4)	Total
Death/Disability					
For Cause/Without Good Reason					
Without Cause/For Good Reason					
Change in Control					

Mr. Pauls

	Cash Severance(1)	Continued Benefits(2)	Value of Accelerated Equity(3)	Excise Tax Gross-Up(4)	Total
Death/Disability					
For Cause/Without Good Reason					
Without Cause/For Good Reason					
Change in Control					

Mr. Bohlsen

	Cash Severance(1)	Continued Benefits(2)	Value of Accelerated Equity(3)	Excise Tax Gross-Up(4)	Total
Death/Disability					
For Cause/Without Good Reason					
Without Cause/For Good Reason					
Change in Control					

Mr. Singh

	Cash Severance(1)	Continued Benefits(2)	Value of Accelerated Equity(3)	Excise Tax Gross-Up(4)	Total
Death/Disability					
For Cause/Without Good Reason					
Without Cause/For Good Reason					
Change in Control					

(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 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."

(4) Assuming a termination of employment or a change in control occurred as of December 31, 2009, 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 2009.

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							
Steven J. Saiontz(1)							

(1) Mr. Saiontz served on our Board from May 21, 2009 until July 20, 2010 when he resigned from our Board for personal reasons.

In general, the members of our Board are either investors or agents of investors in our Company and, other than Mr. Saiontz, they do not receive any compensation from us for service on our Board. Mr. Saiontz is entitled to receive an annual retainer fee equal to $ and the amount earned by him in 2009 was prorated for his partial year of service.

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	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							
Ambassador Sue M. Cobb							
Eugene F. DeMark							
Richard S. LeFrak							
Wilbur L. Ross, Jr.							
Pierre Olivier Sarkozy							
Lance N. West							

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., Blackstone, Carlyle, Centerbridge and WL Ross, who we collectively refer to as 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 (and committees) 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. In connection with this offering, we intend to supplement this written policy in order to comply with all applicable requirements of the SEC and the NYSE concerning related party transactions.

PRINCIPAL AND SELLING STOCKHOLDERS

The following table sets forth information about the beneficial ownership of our common stock at September 30, 2010 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 9,297,185 shares of common stock outstanding on September 30, 2010, and 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 September 30, 2010. 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 (*).

With respect to this section only, we have assumed a 1-to-10 ratio of outstanding units of the LLC to shares of our common stock, which ratio will be different depending on the actual initial public offering price per share in this offering, after deducting underwriting discounts and commissions (see "Reorganization" and "Compensation Discussion and Analysis—Executive Officer Compensation—Equity-Based Compensation"), and have not given effect to the common stock split contemplated in connection with this offering or the Reorganization (including any PIUs) until additional information regarding these transactions becomes known.

	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	235,000.0	2.5%			
John Bohlsen	100,000.0	1.1%			
Douglas J. Pauls	10,000.0	*			
Rajinder P. Singh	10,000.0	*			
Chinh E. Chu(1)	2,180,989.0	23.5%			
Ambassador Sue M. Cobb(2)	17,950.2	*			
Eugene F. DeMark	2,365.0	*			
Richard S. LeFrak	—	—			
Wilbur L. Ross, Jr.(3).	2,180,989.0	23.5%			
Pierre Olivier Sarkozy	—	—			
Lance N. West(4)	1,711,538.5	18.4%			

Name of beneficial owner	Shares Beneficially Owned Before the Offering		Shares being offered	Shares Beneficially Owned After the Offering	
	Number	%		Number	%
All executive officers and directors as a group (11 persons)	6,448,831.7	69.4%			
5% Stockholders:					
Investment funds affiliated with WL Ross & Co. LLC(3)	2,180,989.0	23.5%			
Investment funds affiliated with The Carlyle Group:					
DBD Cayman, Ltd.(5)	1,202,967.1	12.9%			
TCG Holdings, L.L.C.(6)	978,021.9	10.5%			
Investment funds affiliated with Centerbridge Partners, L.P. (4)	1,711,538.5	18.4%			
Investment funds affiliated with The Blackstone Group(1)	2,180,989.0	23.5%			
Other Selling Stockholders:					
LF Moby LLC(7)	205,384.6	2.2%			
Cobb Family Twenty-Second Century Fund I(2)	6,282.6	*			
Cobb Family Foundation(2)	2,692.5	*			

(1) Includes 1,657,966.0 shares of common stock held by Blackstone Capital Partners V L.P., 518,442.9 shares of common stock held by Blackstone Capital Partners V-AC, L.P., 2,896.7 shares of common stock held by Blackstone Family Investment Partnership V, L.P. and 1,683.3 shares of common stock held by Blackstone Participation Partnership V, L.P. (collectively, the "Blackstone Funds"). Blackstone Management Associates V L.L.C. is the general partner of each of such entities. 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 each of the Blackstone Funds. 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.

(2) Includes 6,282.6 shares of common stock held by the Cobb Family Twenty-Second Century Fund I and 2,692.5 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.

(3) Includes 1,977,443.1 shares of common stock held by WLR Recovery Fund IV, L.P., 7,941.5 shares of common stock held by WLR IV Parallel ESC, L.P., and 195,604.4 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.

(4) Includes 1,459,614.8 shares of common stock held by Centerbridge Capital Partners, L.P., 53,916.9 shares of common stock held by Centerbridge Capital Partners Strategic, L.P., 2,402.3 shares of common stock Centerbridge Capital Partners SBS, L.P., 92,912.1 shares of common stock held by CB BU Investors, LLC., 53,791.2 shares of common stock held by CB BU Investors II, LLC and 48,901.1 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.

(5) Includes 978,022.0 shares of common stock held of record by Carlyle Financial Services BU, L.P., 217,388.7 shares of common stock held of record by Carlyle Strategic Partners II, L.P., and 7,556.4 shares of common stock held of record by CSP II Co-Investment, L.P. (collectively, the "DBD Cayman Shares"). DBD Cayman, Ltd. ("DBD Cayman") 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 is controlled by its Class A 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 Shares requires their approval. William E. Conway, Jr., Daniel A. D'Aniello and David M. Rubenstein each disclaim beneficial ownership of the DBD Cayman Shares 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 The Carlyle Group, 1001 Pennsylvania Avenue NW, Suite 220 South, Washington, D.C. 20004.

(6) Includes 920,496.5 shares of common stock held of record by Carlyle Partners V, L.P., 36,714.9 shares of common stock held of record by CP V Coinvestment A, L.P., 2,290.7 shares of common stock held of record by CP V Coinvestment B, L.P., and 18,519.8 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 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 The Carlyle Group, 1001 Pennsylvania Avenue NW, Suite 220 South, Washington, D.C. 20004.

(7) Includes 205,384.6 shares of common stock held by LF Moby LLC. LF Moby LLC is owned 23.81% by RL Capital Realty Associates LLC and 56.666% by S-R Capital Reality Associates LLC. Richard LeFrak is a member of our Board and Mr. LeFrak is the 100% beneficial owner of RL Capital Realty Associates LLC and the 34.66% beneficial owner of S-R Capital Reality Associates LLC. 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.

DESCRIPTION OF OUR CAPITAL STOCK

The following descriptions are summaries of the material terms of our amended and restated certificate of incorporation and by-laws. 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 shares of common stock, $0.01 par value per share, and shares of preferred stock, $0.01 par value per share.

At , 2010, there were outstanding:

- shares of our common stock held by approximately stockholders;
- zero shares of our preferred stock; and
- shares issuable upon exercise of outstanding stock options.

Upon completion of this offering, there will be outstanding shares of common stock (assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover of this prospectus) 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

The 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, certain Sponsors will be provided with demand registration rights, which will be exercisable beginning 180 days after the date of this prospectus. Blackstone will have the right to make demands, Carlyle will have the right to make demands, Centerbridge will have the right to make demands and WL Ross will have the right to make demands. However, we are not required to file and cause to become effective more than two registration statements in any 12-month period. 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 Sponsors holding at least 60% of the registrable securities as of immediately prior to the consummation of this offering can require us to file a shelf registration statement for an offering to be made on a continuous basis pursuant to Rule 415 of the Securities Act, provided that we are not obligated to file more than one shelf demand registration in any 12-month 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 the Sponsors (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 10 business days after the delivery of such notice, subject to other provisions under the registration rights agreement.

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 of this prospectus 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 the 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 common stock holding more than 25.0% of the total voting power of the outstanding shares of our common 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 Certificate of Incorporation and By-Laws

Our amended and restated certificate of incorporation and amended and restated by-laws may not be amended without the affirmative vote of at least % of the total voting power of the outstanding shares of our common stock.

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 the DGCL, our amended and restated certificate of incorporation and amended and restated by-laws will provide that stockholder 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

We intend to apply to list our common stock on the NYSE under the symbol "BKU."

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is .

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 shares of common stock issued and outstanding assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover of this prospectus. All of the shares of our common stock sold in this offering (or shares if the underwriters exercise their over-allotment option in full) will be freely tradable without restriction or further registration under the Securities Act of 1933, or the Securities Act, unless such shares are purchased by "affiliates" as that term is defined in Rule 144 under the Securities Act. Upon completion of this offering, approximately % of our outstanding common stock (or % if the underwriters' over-allotment option is exercised in full) will be held by "affiliates" as that terms is defined in Rule 144. These shares will be "restricted securities" as that phrase is defined in Rule 144. Subject to certain contractual restrictions, including the lock-up agreements described below, holders of restricted shares will be entitled to sell those shares in the public market if they qualify for an exemption from registration under Rule 144 or any other applicable exemption under the Securities Act. Subject to the lock-up agreements described below and the provisions of Rules 144 and 701, additional shares will be available for sale as set forth below.

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 shares of common stock reserved for issuance under our incentive 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

We, our executive officers and 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.

The 180-day restricted period described in the preceding paragraph will be automatically extended if (1) during the last 17 days of the 180-day restricted period we issue an earnings release or announce material news or a material event relating to us occurs or (2) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period following the last day of the 180-day restricted period, in which case the restrictions described in the preceding paragraph will continue to apply until the expiration of the 180-day period beginning on the issuance of the earnings release or the announcement of the material news or material event, unless Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated provides a written waiver of such extension. Morgan Stanley & Co. Incorporated and Merrill Lynch, Pierce, Fenner & Smith Incorporated have no present intent or arrangement to release any of the securities subject to these lock-up agreements. The release of any lock-up is considered on a case by case basis. Factors in deciding whether to release shares may include the length of time before the lock-up expires, the number of shares involved, the reason for the requested release, market conditions, the trading price of our common stock, historical trading volumes of our common stock, whether the person seeking the release is an officer, director or affiliate of us, and restrictions that might be imposed on the publication of research reports pursuant to the rules of the Financial Industry Regulatory Authority, Inc.

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, the holders of shares of our common stock 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 stockholders and holders of shares of common stock will have rights, subject to some conditions, to require us to register their shares for resale. A demand for registration may not be made until 180 days after the date of this prospectus. If these shares are registered, they will be freely tradable without restriction under the Securities Act. For additional information, see "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.	
Total	

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 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.

		Total	
	Per Share	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 $.

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.

We intend to apply to list our common stock on the NYSE under the trading 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.

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 underwriter has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Member State it has not made and will not make an offer of shares to the public in that Member State, except that it may, with effect from and including such date, make an offer of shares to the public in that Member State:

(a) at any time to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;

(b) at any time to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000; and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;

(c) to fewer than 100 natural or legal persons (other than qualified investors, as defined in the Prospectus Directive) subject to obtaining the prior consent of the representatives for any such offer; or

(d) at any time in any other circumstances which do not require the publication by us of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of the above, the expression an "offer of shares to the public" in relation to any shares in any Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe the shares, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in that Member State.

United Kingdom

Each underwriter has represented and agreed that 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 Financial Services and Markets Act 2000) in connection with the issue or sale of the shares in circumstances in which Section 21(1) of such Act does not apply to us and it has complied and will comply with all applicable provisions of such Act with respect to anything done by it in relation to any 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 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.

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

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BANKUNITED, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS—UNAUDITED

As of June 30, 2010 and December 31, 2009

(Dollars in thousands, except per share data)

	June 30, 2010	December 31, 2009
ASSETS		
Cash and due from banks	$ 56,871	$ 60,593
Due from Federal Reserve Bank	105,604	290,192
Federal funds sold	4,433	5,430
Cash and cash equivalents	166,908	356,215
Investment securities available for sale, at fair value	3,245,453	2,243,143
Federal Home Loan Bank stock	243,334	243,334
Loans held in portfolio, net of discounts, premiums and deferred costs	4,265,660	4,611,519
Allowance for loan losses	(41,520)	(22,621)
Loans held in portfolio, net	4,224,140	4,588,898
Federal Deposit Insurance Corporation indemnification asset, net	2,854,175	3,279,165
Bank owned life insurance	134,696	132,330
Other real estate owned	163,222	120,110
Deferred tax asset, net	4,156	22,533
Income tax receivable	22,898	—
Goodwill and other intangible assets, net	60,832	60,981
Other assets	92,823	83,252
Total assets	$ 11,212,637	$ 11,129,961
LIABILITIES AND STOCKHOLDER'S EQUITY		
Liabilities:		
Demand deposits:		
Non-interest bearing	$ 432,927	$ 332,941
Interest bearing	261,375	222,052
Savings and money market	2,873,592	2,592,642
Time deposits	3,900,487	4,519,140
Total deposits	7,468,381	7,666,775
Securities sold under agreements to repurchase	1,606	2,972
Advances from Federal Home Loan Bank	2,264,813	2,079,051
Due to FDIC	114,203	114,007
Income taxes payable	—	82,701
Advance payments by borrowers for taxes and insurance	46,440	31,237
Other liabilities	112,338	58,958
Total liabilities	10,007,781	10,035,701
Commitments and contingencies		
Stockholder's equity:		
Common Stock, par value $0.01 per share:		
Authorized, 11,000,000 shares; 9,294,681 and 9,276,731 shares issued and outstanding	93	93
Paid-in capital	949,657	947,657
Non-vested stock options	742	210
Retained earnings	230,929	119,046
Accumulated other comprehensive income, net of tax	23,435	27,254
Total stockholder's equity	1,204,856	1,094,260
Total liabilities and stockholder's equity	$ 11,212,637	$ 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

For the Six Months Ended June 30, 2010 and the Period from April 28, 2009 (date of inception) through June 30, 2009

(In thousands, except per share data)

	June 30, 2010	June 30, 2009
Interest income:		
Interest and fees on loans	$ 211,670	$ 53,145
Interest and dividends on investment securities available for sale	61,127	5,776
Interest and dividends on other interest-earning assets	788	385
Total interest income	273,585	59,306
Interest expense:		
Interest on deposits	56,914	12,736
Interest on borrowings	27,995	5,466
Total interest expense	84,909	18,202
Net interest income before provision for loan losses	188,676	41,104
Provision for loan losses	26,091	—
Net interest income after provision for loan losses	162,585	41,104
Non-interest income:		
Accretion of discount on FDIC indemnification asset	91,160	27,070
Income from resolution of covered assets, net	98,127	32,293
Gain on extinguishment of debt	—	31,303
Net loss on indemnification asset resulting from net recoveries	(46,818)	(19,789)
FDIC reimbursement of foreclosure expense	11,178	—
Service charges	5,225	1,386
Other non-interest income	10,500	1,407
Total non-interest income	169,372	73,670
Non-interest expense:		
Employee compensation and benefits	63,504	10,636
Occupancy and equipment	13,426	2,567
Impairment of other real estate owned	5,901	—
Professional fees	4,684	922
Foreclosure expense	18,374	—
Deposit insurance expense	6,951	6,070
Other real estate owned related expense	8,886	36
Telecommunications and data processing	5,736	946
Other non-interest expense	15,840	1,245
Loss on FDIC receivable	—	69,444
Acquisition related costs	—	39,160
Total non-interest expense	143,302	131,026
Income (loss) before income taxes	188,655	(16,252)
Provision (benefit) for income taxes	76,772	(5,919)
Net income (loss)	$ 111,883	$ (10,333)
Earnings (loss) per common share:		
Basic and diluted	$ 12.04	$ (1.12)
Weighted average number of common shares outstanding:		
Basic and diluted	9,294,183	9,250,000

The accompanying notes are an integral part of these condensed consolidated financial statements.

BANKUNITED, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS—UNAUDITED

For the Six Months Ended June 30, 2010 and the Period from April 28, 2009 (date of inception) through June 30, 2009

(In thousands)

	June 30, 2010	June 30, 2009
Cash flows from operating activities:		
Net income (loss)	$ 111,883	$ (10,333)
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Accretion of fair values of assets acquired	(188,414)	(42,834)
Amortization of fees, discounts and premiums, net	(18,423)	(1,556)
Accretion of fair values of liabilities assumed	(28,974)	(22,082)
Provision for loan losses	26,091	—
Accretion of FDIC indemnification asset	(91,160)	(27,070)
Income from resolution of covered assets	(98,127)	(32,293)
Net loss on indemnification asset resulting from net recoveries	46,818	19,789
Increase in bank owned life insurance cash surrender value	(2,366)	(578)
Loss on sale of investment securities available for sale, net	2,810	—
Compensation expense on non-vested stock options	532	—
Expense on equity awards classified as liabilities	13,843	1,838
Depreciation and amortization	1,131	1
Impairment of other real estate owned	5,901	—
Deferred income tax provision (benefit)	20,729	(41,690)
Gain on extinguishment of debt	—	(31,303)
Loss on FDIC receivable	—	69,444
Other:		
Increase in other assets	(24,859)	(9,428)
Decrease (increase) in other liabilities	(88,784)	16,724
Increase in due to FDIC	196	(18,301)
Net cash used in operating activities	(311,173)	(129,672)
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	(1,331,411)	(786)
Proceeds from repayments of investment securities available for sale	362,754	32,187
Proceeds from sale of investment securities available for sale	16,789	726
Net decrease in loans held in portfolio	456,481	128,459
Decrease in FDIC indemnification asset for claims filed	469,332	2,794
Purchase of office properties and equipment	(10,504)	—
Disposal of office properties and equipment	1,526	—
Proceeds from sale of other real estate owned	124,720	39,748
Net cash provided by investing activities	89,687	3,637,655
Cash flows from financing activities:		
Net (decrease) increase in deposits	(183,658)	7,103
Additions to Federal Home Loan Bank advances	605,000	—
Repayments of Federal Home Loan Bank advances	(405,000)	(2,795,110)
Net (decrease) increase in other borrowings	(1,366)	321
Increase in advances from borrowers for taxes and insurance	15,203	5,201
Capital contribution	2,000	945,000
Net cash provided by (used in) financing activities	32,179	(1,837,485)
Net (decrease) increase in cash and cash equivalents	(189,307)	1,670,498
Cash and cash equivalents at beginning of period	356,215	—
Cash and cash equivalents at end of period	$ 166,908	$ 1,670,498
Supplemental disclosure of cash flow activity:		
Interest paid on deposits and borrowings	$ 87,631	$ 56,742
Income taxes paid	$ 161,638	$ —
Supplemental schedule of non-cash investing and financing activities:		
Transfers from loans to real estate owned	$ 164,463	$ 19,568

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

For the Six Months Ended June 30, 2010 and the Period from April 28, 2009 (date of inception) through June 30, 2009

(In thousands)

	Common Stock	Paid-in Capital	Non-vested Stock Options	Retained Earnings (Accumulated Deficit)	Accumulated Other Comprehensive Income (Loss), net of tax	Total Stockholder's Equity
Balance at December 31, 2009	$ 93	$ 947,657	$ 210	$ 119,046	$ 27,254	$ 1,094,260
Additional capital contribution	—	2,000	—	—	—	2,000
Net income	—	—	—	111,883	—	111,883
Other comprehensive income, net of tax						
Unrealized gains on investment securities available for sale arising during the period, net of taxes of $14,983	—	—	—	—	23,858	23,858
Unrealized losses on cash flow hedges, net of tax benefit of $18,455	—	—	—	—	(29,386)	(29,386)
Less reclassification adjustment for:						
Realized losses on cash flow hedges, net of tax benefit of $1,070	—	—	—	—	1,709	1,709
Total comprehensive income, net of tax	—	—	—	111,883	(3,819)	108,064
Non-vested stock options	—	—	532	—	—	532
Balance at June 30, 2010	$ 93	$ 949,657	$ 742	$ 230,929	$ 23,435	$ 1,204,856
Balance at April 28, 2009 (date of inception)	$ —	$ —	$ —	$ —	$ —	$ —
Initial capital contribution	93	924,907	—	—	—	925,000
Additional capital contribution	—	20,000	—	—	—	20,000
Net loss	—	—	—	(10,333)	—	(10,333)
Other comprehensive income, net of tax						
Unrealized gains on investment securities available for sale arising during the period, net of taxes of $4,485	—	—	—	—	8,330	8,330
Total comprehensive income (loss), net of tax	—	—	—	(10,333)	8,330	(2,003)
Balance at June 30, 2009	$ 93	$ 944,907	$ —	$ (10,333)	$ 8,330	$ 942,997

The accompanying notes are an integral part of these condensed consolidated financial statements.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED

June 30, 2010

Note 1 Presentation of Interim Financial Statements

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 audited consolidated financial statements and the notes thereto in the Company's Consolidated Financial Statements as of and for the period ended December 31, 2009 included in the Company's registration statement. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America 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. The accompanying condensed consolidated financial statements reflect all adjustments that, in the opinion of management, are necessary to reflect a fair statement of the Company's consolidated financial condition at June 30, 2010 and the consolidated results of operations, stockholder's equity and comprehensive income and cash flows for the six months ended June 30, 2010 and the period ended June 30, 2009. The results for the six months ended June 30, 2010 are not necessarily indicative of the results that may be expected for the year ended December 31, 2010.

Accounting Estimates and Assumptions

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 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

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

June 30, 2010

Note 1 Presentation of Interim Financial Statements (Continued)

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.

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 did not have a material impact on 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. This guidance was effective 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 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 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 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 did not have a material impact on the Company's financial position, results of operations, or cash flows.

The condensed consolidated financial statements include the accounts of the Company and its consolidated subsidiaries. All significant intercompany transactions have been eliminated.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

June 30, 2010

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, partially offset by 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 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 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 described above.

For further information related to the FDIC indemnification assets see Note 7 below.

Note 3 Investment Securities Available for Sale

Investment securities available for sale at June 30, 2010 and December 31, 2009, are summarized as follows (in thousands):

	June 30, 2010							
	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. Government agencies and sponsored enterprises mortgage-backed securities	$ —	$ —	$ —	$ —	$ 1,408,963	$ 17,245	$ (1,763)	$ 1,424,445
Other collateralized mortgage obligations	1,733	83	—	1,816	787,631	8,837	(4,050)	792,418
Mortgage pass-through certificates	188,719	59,483	(1,171)	247,031	131,030	986	(138)	131,878
Mutual funds and preferred stocks	16,577	56	(351)	16,282	105,314	1,059	(1,934)	104,439
State and Municipal obligations	—	—	—	—	23,447	174	(12)	23,609
Other debt securities	3,501	3,147	—	6,648	—	—	—	—
Nonmortgage asset backed securities	—	—	—	—	497,383	544	(1,040)	496,887
Total	$ 210,530	$ 62,769	$ (1,522)	$ 271,777	$ 2,953,768	$ 28,845	$ (8,937)	$ 2,973,676

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

June 30, 2010

Note 3 Investment Securities Available for Sale (Continued)

	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 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 June 30, 2010, by contractual maturity, and adjusted for anticipated prepayments, are shown below (in thousands):

	Amortized Cost	Fair Value
Due in one year or less	$ 711,295	$ 718,355
Due after one year through five years	1,612,274	1,662,205
Due after five years through ten years	490,700	505,491
Due after ten years	228,138	238,681
Mutual funds and preferred stock	121,891	120,721
Total	$ 3,164,298	$ 3,245,453

Based on BankUnited's proprietary model and assumptions, the weighted average life of the mortgage-backed securities portfolio as of June 30, 2010 was 3.69 years. The model results are based on assumptions that may differ from the eventual outcome.

The Company monitors its investment securities available for sale for other-than-temporary impairment, or 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

Note 3 Investment Securities Available for Sale (Continued)

aggregate fair value and the aggregate amount by which cost exceeds fair value of investments that are in a loss position at June 30, 2010 (in thousands):

	Fair Value	Unrealized Losses
Available for sale securities:		
U.S. Government agencies and sponsored enterprises mortgage-backed securities	$ 286,868	$ (1,763)
Other collateralized mortgage obligations	321,471	(4,050)
Mortgage pass-through certificates	12,861	(1,309)
Mutual funds and preferred stocks	89,641	(2,285)
State and municipal obligations	2,063	(12)
Nonmortgage asset backed securities	358,888	(1,040)
Total	$ 1,071,792	$ (10,459)

For securities included in the table above, the Company has concluded it is more likely than not that it will not be inclined or required to sell prior to recovery of the amortized cost basis. There are no securities with unrealized losses of twelve months or more as of June 30, 2010. Management has completed an assessment of each security for credit impairment and concluded that no OTTI exists.

During the six months ended June 30, 2010, the Company exchanged certain equity securities for other equity securities. This exchange resulted in a gross realized loss of $2.8 million, which is included in other non-interest income in the condensed consolidated statement of income.

As part of the Company's liquidity management strategy, the Company pledges securities to secure borrowings from the Federal Home Loan Bank ("FHLB"). The Company also pledges securities to collateralize public deposits and securities sold under agreements to repurchase. The carrying value of pledged securities totaled $632.4 million at June 30, 2010.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

June 30, 2010

Note 4 Loans

At June 30, 2010 and December 31, 2009, loans receivable consisted of the following (amounts in thousands):

	June 30, 2010				
	Covered				
	Acquired Credit Impaired	Non-ACI	Other Loans (Not Covered)	Total	Percent of Total
Real Estate Loans:					
1-4 single family residential	$ 2,948,629	$ 154,849	$ 68,658	$ 3,172,136	73.71%
Home equity loans and lines of credit	135,664	214,540	2,573	352,777	8.20%
Multi-family	76,358	10,455	9,287	96,100	2.23%
Commercial real estate	315,676	33,911	43,128	392,715	9.12%
Construction	10,010	—	—	10,010	0.23%
Land	48,345	173	1,594	50,112	1.16%
Total real estate loans	3,534,682	413,928	125,240	4,073,850	94.66%
Other Loans:					
Commercial	51,713	42,461	128,217	222,391	5.17%
Consumer	5,559	—	1,983	7,542	0.18%
Total commercial and consumer loans	57,272	42,461	130,200	229,933	5.34%
Total loans held in portfolio	3,591,954	456,389	255,440	4,303,783	100.00%
Unearned discount, premiums and deferred costs, net	—	(36,798)	(1,325)	(38,123)	
Loans held in portfolio, net of discount, premiums and deferred costs	3,591,954	419,591	254,115	4,265,660	
Allowance for loan losses	(25,546)	(12,971)	(3,003)	(41,520)	
Total loans held in portfolio, net	$ 3,566,408	$ 406,620	$ 251,112	$ 4,224,140	

Note 4 Loans (Continued)

	December 31, 2009				
	Covered				
	Acquired Credit Impaired	Non-ACI	Other Loans (Not Covered)	Total	Percent of Total
Real Estate Loans:					
1-4 single family residential	$ 3,277,423	$ 187,121	$ 43,184	$ 3,507,728	75.41%
Home equity loans and lines of credit	150,257	215,591	2,198	368,046	7.91%
Multi-family	71,321	4,971	700	76,992	1.66%
Commercial real estate	356,169	37,281	24,386	417,836	8.98%
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	70,468	4,459,867	95.88%
Other Loans:					
Commercial	81,765	48,635	51,565	181,965	3.91%
Consumer	7,065	—	2,568	9,633	0.21%
Total commercial and consumer loans	88,830	48,635	54,133	191,598	4.12%
Total loans held in portfolio	4,032,715	494,149	124,601	4,651,465	100.00%
Unearned discount, premiums and deferred costs, net	—	(39,986)	40	(39,946)	
Loans held in portfolio, net of discount, premiums 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)	
Total loans held in portfolio, 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) non-ACI loans. Loans originated by the Company after May 21, 2009 are excluded from the loss sharing agreement and are classified as "not covered".

At June 30, 2010, the majority of all outstanding loans were to customers domiciled in Florida (77.6%), California (7.6%), Illinois (5.8%), New Jersey (5.8%), and Arizona (4.1%). No other state represented borrowers with more than 3.8% of loans outstanding. A significant portion of loans in the Company's portfolio are covered by the FDIC subject to the loss sharing agreement.

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 June 30, 2010, the Company had pledged real estate loans with unpaid principal balances of approximately $5.6 billion ($2.6 billion in lendable collateral) for advances from the FHLB.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

June 30, 2010

Note 4 Loans (Continued)

The following table presents total 1-4 single family residential loans categorized between fixed rate mortgages and adjustable rate mortgages ("ARMs") as of June 30, 2010 and December 31, 2009 (amounts in thousands):

	June 30, 2010				
	Covered				
	Acquired Credit Impaired	Non-ACI	Other loans (Not covered)	Total	Percent of Total
1-4 single family residential loans:					
Fixed rate loans	$ 582,711	$ 28,852	$ 55,627	$ 667,190	21%
ARM Loans	2,365,918	125,997	13,031	2,504,946	79%
Total(1)	$ 2,948,629	$ 154,849	$ 68,658	$ 3,172,136	100%

	December 31, 2009				
	Covered				
	Acquired Credit Impaired	Non-ACI	Other loans (Not covered)	Total	Percent of Total
1-4 single family residential loans:					
Fixed rate loans	$ 461,821	$ 79,617	$ 42,651	$ 584,089	17%
ARM Loans	2,815,602	107,504	533	2,923,639	83%
Total(1)	$ 3,277,423	$ 187,121	$ 43,184	$ 3,507,728	100%

(1) Excluding deferred costs, unearned discounts, premiums and allowance for loan losses.

The accretable yield on ACI loans represents the amount by which the undiscounted expected cash flows exceed the carrying value. Changes in accretable yield for ACI loans for the six months ended June 30, 2010 and the period ended June 30, 2009 were as follows (in thousands):

	June 30, 2010	June 30, 2009
Balance at beginning of period	$ 1,734,233	$ 2,004,337
Reclassifications from non-accretable yield, net	107,158	—
Accretion during the period	(190,088)	(42,836)
Balance at end of period	$ 1,651,303	$ 1,961,501

As of June 30, 2010, our analysis evidenced a significant improvement in expected cash flows related to two ACI residential pools for which we had established an allowance of $20.0 million at December 31, 2009 and a decrease in expected cash flows due to credit assumptions related to the ACI home equity pool. As a result, $19.6 million of the allowance established at December 31, 2009 related to the two ACI residential pools was reversed and a provision for loan losses of $9.4 million was recorded related to home equity loan pools during the six months ended June 30, 2010. In addition, for the six months ended June 30, 2010, our analysis indicated a decrease in expected cash flows from

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

June 30, 2010

Note 4 Loans (Continued)

certain commercial and commercial real estate loans evaluated individually for credit impairment, resulting in a provision for loan losses of $22.9 million related to these ACI loans. In aggregate, the provision for losses for ACI loans was $12.7 million for the six months ended June 30, 2010.

For the six months ended June 30, 2010, we recorded a provision for non-ACI loans of $11.7 million.

An increase in the indemnification asset of $19.0 million was reflected in non-interest income for the six months ended June 30, 2010 related to the provision for loan losses on covered loans (including ACI and non-ACI loans).

For the six months ended June 30, 2010, we recorded a provision for loan losses of $1.7 million for loans we originated or purchased subsequent to the Acquisition.

For the period ended June 30, 2009, no provision for loan losses was recorded.

The following table summarizes changes in the allowance for loan losses for the six months ended June 30, 2010 (in thousands):

Balance at December 31, 2009	$ 22,621
Provision for losses on ACI loans	12,688
Provision for losses on non-ACI loans	11,734
Provision for losses on non-covered loans	1,669
Charge-offs	(7,192)
Recoveries	—
Balance at June 30, 2010	$ 41,520

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 levels of subjectivity.

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 six months ended June 30, 2010 and the period ended December 31, 2009 (in thousands):

	June 30, 2010			
	Impaired loans in accrual status(1)	Loans in non-accrual status	Specific allowance allocated to impaired loans	Average recorded investment in impaired loans
1-4 single family residential	$ 1,062	$ 15,823	$ 1,659	$ 13,483
Home equity loans and lines of credit	102,000	5,560	9,421	5,024
Commercial-Covered	44,709	1,879	15,777	1,033
Commercial-Non-Covered	—	74	—	—
Total	$ 147,771	$ 23,336	$ 26,857	$ 19,540

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

June 30, 2010

Note 4 Loans (Continued)

	December 31, 2009			
	Impaired loans in accrual status(1)	Non-ACI 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

(1) Included in impaired loans in accrual status are ACI loans (1-4 single family residential and home equity loans and lines of credit) 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 $931.7 million and $1.2 billion at June 30, 2010 and December 31, 2009, respectively.

Note 5 Other Real Estate Owned

An analysis of other real estate owned for the six months ended June 30, 2010 and period ended June 30, 2009 follows (in thousands):

	June 30, 2010	June 30, 2009
Balance at beginning of period	$ 120,110	$ 177,679
Transfers from loan portfolio, net	164,463	19,568
Sales	(124,720)	(39,748)
Impairment	(5,901)	—
Revenue from resolution of covered assets	9,270	6,094
Balance at end of period	$ 163,222	$ 163,593

Note 6 Regulatory Capital

BankUnited's regulatory capital levels as of June 30, 2010 and December 31, 2009 were as follows (amounts in thousands):

	June 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)	9.76%	$ 1,083,735	8.00%	$ 888,307	8.00%	$ 888,307
Tier 1 risk-based capital ratio	41.91%	1,083,735	6.00%	155,152	4.00%	103,435
Total risk based capital ratio	42.47%	1,098,397	10.00%	258,629	8.00%	206,903

	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 capital to assets leverage ratio at no less than eight percent throughout the first three years of operation.

Note 7 FDIC Indemnification Asset

Changes in FDIC indemnification assets for the six months ended June 30, 2010 and period ended June 30, 2009 were as follows (in thousands):

	June 30, 2010	June 30, 2009
Balance at beginning of period	$ 3,279,165	$ 3,442,890
Accretion	91,160	27,070
Reduction for claims filed	(469,332)	—
Loss on indemnification asset resulting from net recoveries	(46,818)	(19,789)
Other reductions	—	(2,794)
Balance at end of period	$ 2,854,175	$ 3,447,377

The Company recognizes additional covered losses or recoveries on FDIC indemnified assets through charges or credits, respectively, in the condensed consolidated statement of income. The following table summarizes the pre-tax components of the gains and losses associated with the

Note 7 FDIC Indemnification Asset (Continued)

resolution of covered FDIC indemnified assets, plus the provision for loan losses on non-covered loans for the six months ended June 30, 2010 and period ended June 30, 2009 (in thousands):

	June 30, 2010		
	Transaction Income (Loss)	FDIC Indemnification Income (Loss)	Net Impact to Pre-Tax Earnings
Provision on covered loans	$ (24,422)	$ 18,991	$ (5,431)
Provision on loans not covered	(1,669)	—	(1,669)
Total	(26,091)	18,991	(7,100)
Income from resolution of covered assets, net	98,127	(70,608)	27,519
Net loss due to impairment of OREO	(5,901)	4,799	(1,102)
Total	$ 66,135	$ (46,818)	$ 19,317

For the period ended June 30, 2009, income from resolution of covered assets, net totaled $32.3 million, mitigated by the FDIC indemnification loss of $19.8 million, resulting in a net impact to pre-tax earnings of $12.5 million. There were no provisions on covered loans, sale of loans, or impairment of OREO during the period ended June 30, 2009.

In connection with the loss sharing agreement 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. During the six months ended June 30, 2010, the Company recognized $29.0 million of expenses subject to reimbursement under the loss sharing agreements and $11.2 million of reimbursement income associated with such expenses. The Company estimates that an additional $12.8 million in expenses, based on a reimbursement level of 80%, will be filed as reimbursement claims with the FDIC in the future.

Note 8 Derivatives 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 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.

During the six months ended June 30, 2010, 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.

Note 8 Derivatives and Hedging Activities (Continued)

The following tables set forth certain information concerning the Company's derivative financial instruments, which are included in other assets (liabilities) in the accompanying condensed consolidated balance sheet, and related hedged items at June 30, 2010 and December 31, 2009 (amounts in thousands):

	June 30, 2010						
	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	5.3	$ 225,000	$ —	$ (13,581)
Purchased interest rate forward-starting swaps:							
FHLB Advances	Variability of interest rates	3.42% - 3.76%	3-Month Libor	5.0 - 7.0	405,000	—	(34,539)
Total					$ 630,000	$ —	$ (48,120)

	December 31, 2009						
	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:							
FHLB Advances	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)

Interest expense for the six months ended June 30, 2010 includes $279,000 of losses due to hedge ineffectiveness arising from differences between the critical terms of the interest rate swap and the hedged debt obligation. There were no losses for the period ended June 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 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 $4.4 million in the six months ended June 30, 2010. There was no impact to earnings for the period ended June 30, 2009.

Note 9 Due to BUFH for Equity Awards Classified as Liabilities

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

Note 9 Due to BUFH for Equity Awards Classified as Liabilities (Continued)

such, the related liability and expenses 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 shall have the rights with respect to profits of the Company and distributions of profits from the Company. The holders of PIU shall not be required to make any capital contribution to the Company in exchange for their PIU. Furthermore, the holders of PIU shall be entitled to receive priority distribution catch-up payments in respect of Time-based PIU that have become vested Time-based PIU 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 June 30, 2010, the estimated fair value of the IRR-based PIU was $53.2 million. Included in compensation expense is approximately $10.6 million and $1.5 million associated with the Time-based PIU for the six months ended June 30, 2010 and the period ended June 30, 2009, respectively.

The following table summarizes information about Time-based and IRR-based PIU at June 30, 2010:

	Outstanding	
	Number of units awarded	Fair value
Time-based PIU	51,637.11	$ 1,029.85
IRR-based PIU	51,637.11	$ 1,029.85
Total awards	103,274.22	
Total fair value	$ 106,356,955	
Cumulative expense through June 30, 2010	$ 19,431,284	
Unrecognized compensation expense	$ 86,925,671	

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. At June 30, 2010, the warrant has a remaining contractual term of 8.89 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 condensed consolidated balance sheet. Included in other liabilities is approximately $6.4 million related to the fair value of this instrument as of June 30, 2010. The Company has recognized expense of $3.2 million and $0.3 million related to the increase in fair value of this instrument for the six months ended June 30, 2010 and the period ended June 30, 2009, respectively.

See Note 12, Subsequent Events, for additional discussion of the IRR-based PIU and the warrant issued to the FDIC.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

June 30, 2010

Note 10 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.

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 financial instruments 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 agency securities, preferred stock of U.S. Government agencies and mutual funds included). 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

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

June 30, 2010

Note 10 Fair Value Measurements (Continued)

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:

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, resulting in Level 3 measurement.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

June 30, 2010

Note 10 Fair Value Measurements (Continued)

The following table presents the financial instruments measured at fair value on a recurring basis as of June 30, 2010 and December 31, 2009, on the condensed consolidated balance sheet utilizing the hierarchy discussed above (in thousands):

	June 30, 2010			
	Level 1	Level 2	Level 3	Total
Investment Securities Available for Sale:				
U.S. Government agencies and sponsored enterprises mortgage-backed securities	$ —	$ 1,424,445	$ —	$ 1,424,445
Other collateralized mortgage obligations	—	—	794,234	794,234
Mortgage pass-through certificates	—	—	378,909	378,909
Mutual funds and preferred stocks	26,324	94,397	—	120,721
State and Municipal obligations	—	23,359	250	23,609
Other debt securities	—	2,560	4,088	6,648
Nonmortgage asset backed securities	—	364,549	132,338	496,887
Total assets at fair value	$ 26,324	$ 1,909,310	$ 1,309,819	$ 3,245,453
Equity awards classified as liabilities	$ —	$ —	$ 25,804	$ 25,804
Derivative liabilities	—	48,120	—	48,120
Total liabilities at fair value	$ —	$ 48,120	$ 25,804	$ 73,924

	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 agencies and sponsored enterprises 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 June 30, 2010. Level 3 financial instruments typically include unobservable components, but may also include some observable components that may be validated to

Note 10 Fair Value Measurements (Continued)

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):

	June 30, 2010					
	Other Collateralized Mortgages Obligations	Mortgages 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)
Total net gains (losses) for the period included in:						
Net income (loss)	—	—	—	—	—	(13,843)
Other comprehensive income (loss), gross	8,509	12,504	—	793	(294)	—
Reclassifications	(30,000)				30,000	
Purchases, sales or settlements, net	308,886	1,733	—	17	102,632	—
Balance at June 30, 2010	$ 794,234	$ 378,909	$ 250	$ 4,088	$ 132,338	$ (25,804)

Financial Instruments 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 June 30, 2010 and December 31, 2009, the Company had $163.2 million and $120.1 million, respectively, of other real estate owned and did not have any collateral dependent impaired loans. Impairment write-downs on real estate owned for the six months ended June 30, 2010 amounted to $5.9 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. These fair value adjustments use significant assumptions that are unobservable in the market. As a result, the estimated fair value is considered Level 3.

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NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

June 30, 2010

Note 10 Fair Value Measurements (Continued)

The following table presents the carrying value and fair value of financial instruments as of June 30, 2010 and December 31, 2009 (in thousands):

	June 30, 2010		December 31, 2009	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Financial Instruments:				
Assets:				
Cash and cash equivalents	$ 166,908	$ 166,908	$ 356,215	$ 356,215
Investments in securities available for sale	3,245,453	3,245,453	2,243,143	2,243,143
FHLB stock	243,334	243,334	243,334	243,334
Loans held in portfolio				
Covered	3,973,028	4,916,798	4,465,591	5,138,549
Not covered	251,112	234,624	123,307	128,778
FDIC Indemnification asset	2,854,175	2,854,175	3,279,165	3,279,165
Bank owned life insurance	134,696	134,696	132,330	132,330
Income tax receivable	22,898	22,898	—	—
Accrued interest receivable	13,115	13,115	9,591	9,591
Derivative assets	—	—	1,517	1,517
Liabilities:				
Deposits	$ 7,468,381	$ 7,520,614	$ 7,666,775	$ 7,690,422
Securities sold under agreements to repurchase	1,606	1,606	2,972	2,972
FHLB advances	2,264,813	2,408,221	2,079,051	2,114,431
Due to FDIC	114,203	114,203	114,006	114,006
Accrued interest payable	9,840	9,840	12,561	12,561
Accrued income taxes	—	—	82,701	82,701
Advance payments by borrowers for taxes and insurance	46,440	46,440	31,237	31,237
Other liabilities	28,574	28,574	30,421	30,421
Equity awards classified as liabilities	25,804	25,804	11,961	11,961
Derivative liabilities	48,120	48,120	4,016	4,016

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. Our financial instruments for which fair value approximates the carrying amount at June 30, 2010 and December 31, 2009, include cash and cash equivalents, FHLB stock and other earning assets, FDIC indemnification asset, accrued interest receivable, escrow advances, bank owned life insurance, demand deposits, savings and money market accounts, securities sold under agreements to repurchase, due to FDIC, accrued interest payable, accrued income taxes, advance payments by borrowers for taxes and insurance and other liabilities.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

June 30, 2010

Note 10 Fair Value Measurements (Continued)

Investment securities available for sale:

Fair value measurement is based upon quoted market prices, when available (Level 1). If quoted market prices are not available, fair values are measured utilizing independent valuation techniques of identical or similar investment securities (Level 2). Any investment securities not valued based upon the methods above are considered Level 3.

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 discount rate does not include a factor for credit losses as that has been included in the estimated cash flows.

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.

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 is 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.

Note 11 Earnings (Loss) per Share

Basic earnings (loss) 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 (loss) 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. Non-vested stock options are potentially dilutive securities, but are not included in the calculation of diluted earnings (loss) 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

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED (Continued)

June 30, 2010

Note 11 Earnings (Loss) per Share (Continued)

and is not included in the calculation of earnings (loss) 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 June 30, 2010 and 2009, the weighted average number of shares used to compute basic and diluted income (loss) per common unit is the same.

Note 12 Subsequent Events

Subsequent events have been evaluated through the date that the condensed 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 June 30, 2010:

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 the fourth quarter of 2010.

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 $6.4 million at June 30, 2010, and the guaranteed minimum value of the warrant in the fourth quarter of 2010.

Dividends declared:

In September 2010, BankUnited declared a dividend of $30 million to the Company, which was paid in October 2010. The Company 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:

In October 2010, BU Financial Corporation changed its name to BankUnited, Inc.

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
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	2,243,143
Federal Home Loan Bank stock	243,334
Loans held in portfolio, net of discounts, premiums and deferred costs	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	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
Advances from Federal Home Loan Bank	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, 11,000,000 shares; 9,276,731 shares issued and outstanding	93
Paid-in capital	947,657
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 foreclosure expense	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	$ 12.85
Weighted average number of common shares outstanding: Basic and diluted	9,266,491

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	93	924,907	—	—	—	925,000
Additional capital contribution	—	22,750	—	—	—	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	$ 93	$ 947,657	$ 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.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

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 share agreement 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 reach final resolution of covered ACI loans either through a sale of the loan or by working with the customer and obtaining partial or full pre-payment. In the event of a sale, 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, the Company recognizes the difference between the amount of the payment and the carrying amount of the loan as income or loss from resolution of covered assets, net. 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 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.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 1 Summary of Significant Accounting Policies (Continued)

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. 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 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.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 1 Summary of Significant Accounting Policies (Continued)

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 the carrying value and excess carrying value over the 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.

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 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

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 1 Summary of Significant Accounting Policies (Continued)

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 and evaluated for impairment whenever events or changes in circumstances indicate the carrying amount of the asset may not be recoverable.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 1 Summary of Significant Accounting Policies (Continued)

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.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

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 share agreement is 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.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

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
Advances from FHLB	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:					
1-4 single family residential	$ 9,187,500	$ 4,068,253	$ 13,255,753	$ 212,847	$ 13,468,600
Home equity loans and lines of credit	211,363	61,119	272,482	220,434	492,916
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	531,879	7,058,604
Less 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 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 $19.7 million of expenses subject to reimbursement under the loss sharing agreement and $8.1 million of

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 2 Acquisition (Continued)

reimbursement income associated with such expenses. The Company estimates that an additional $7.7 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):

	Covered: Acquired Credit Impaired	Covered: Non-ACI	Other Loans (Not Covered)	Total	Percent of Total
Real Estate Loans:					
1-4 single family residential	$ 3,277,423	$ 187,121	$ 43,184	$ 3,507,728	75.4%
Home equity loans and lines of credit	150,257	215,591	2,198	368,046	7.9%
Multi-family	71,321	4,971	700	76,992	1.7%
Commercial real estate	356,169	37,281	24,386	417,836	9.0%
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	70,468	4,459,867	95.9%
Other Loans:					
Commercial	81,765	48,635	51,565	181,965	3.9%
Consumer	7,065	—	2,568	9,633	0.2%
Total commercial and consumer loans	88,830	48,635	54,133	191,598	4.1%
Total loans held in portfolio	4,032,715	494,149	124,601	4,651,465	100.0%
Unearned discount, premiums and deferred costs, net	—	(39,986)	40	(39,946)	
Loans held in portfolio, net of discount, premiums 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)	
Total loans held in portfolio, 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

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 5 Loans (Continued)

balance is discounted based on criteria established by the FHLB. As of December 31, 2009, the 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):

	Covered				
	Acquired Credit Impaired	Non-ACI	Other Loans (Not Covered)	Total	Percent of Total
1-4 family residential loans:					
Fixed rate loans	$ 461,821	$ 79,617	$ 42,651	$ 584,089	16.7%
ARM loans	2,815,602	107,504	533	2,923,639	83.3%
Total(1)	$ 3,277,423	$ 187,121	$ 43,184	$ 3,507,728	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.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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 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, 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 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

Note 10 Advances from the FHLB (Continued)

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	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)

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

Note 11 Derivative Financial Instruments and Hedging Activities (Continued)

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 share agreement.

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 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 231,250 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%

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	38,468	9.74	64.71	113.21
Vested	—	—	—	—
Canceled or forfeited	—	—	—	—
Nonvested options at December 31, 2009	38,468	9.74	$ 64.71	$ 113.21
Remaining options available for grant under the Plan	192,782			

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

Note 13 Stock-Based Compensation and Other Benefit Plans (Continued)

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 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.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

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.

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. Beginning four months after the IPO or change in control liquidity event and for each month thereafter, BUFH will determine whether the IRR hurdle above is 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 is met, the stock options will vest and the restrictions on the restricted stock will lapse. 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, BUFH and the Company will recognize compensation expense related to IRR-based PIU upon consummation of an IPO or change in control liquidity event unless it is less than probable that the IRR hurdle will be met. If and when it becomes probable in the future that the performance IRR hurdle will be met a catch up adjustment will be made 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

Note 15 Due to BUFH for Equity Awards Classified as Liabilities (Continued)

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.

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

Note 15 Due to BUFH for Equity Awards Classified as Liabilities (Continued)

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 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

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

Note 16 Income Taxes (Continued)

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 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

Note 16 Income Taxes (Continued)

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 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.

Note 17 Commitments and Contingencies (Continued)

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 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.

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

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

BANKUNITED, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

December 31, 2009

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.

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.

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.

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 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.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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.

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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%

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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

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		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	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,	September 30,	
	2009	2008	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,	September 30,	
	2009	2008	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		September 30, 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

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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

BANKUNITED, FSB AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

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 share 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.

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Through and including , 2010 (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.

Shares

BankUnited, Inc.

Common Stock

Prospectus

, 2010

Morgan Stanley **BofA Merrill Lynch**

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

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	$ 21,390
FINRA filing fee	30,500
NYSE listing fees and expenses	*
Transfer agent and registrar fees and expenses	*
Printing fees and expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Blue sky fees and expenses	*
Miscellaneous	*
Total	$ *

* To be furnished by amendment

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 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 through September 30, 2010, BankUnited, Inc. issued an aggregate of 9,297,185.08 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.

The information presented in the preceding paragraphs does not give effect to the stock split and 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 registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Miami Lakes, State of Florida, on October 28, 2010.

BANKUNITED, INC.

By: /s/ JOHN A. KANAS

Name: John A. Kanas
Title: *Chairman, President and Chief Executive Officer*

POWERS OF ATTORNEY

Each of the undersigned officers and directors of BankUnited, Inc. hereby constitutes and appoints each of John A. Kanas, Douglas J. Pauls and Rajinder P. Singh as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, in his or her name, place and stead and on his or her behalf, and in any and all capacities, to sign any and all amendments (including post-effective amendments) and exhibits to this Registration Statement, and any other registration statement for the same offering pursuant to Rule 462(b) under the Securities Act of 1933, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing which said attorney-in-fact and agent may deem necessary or advisable to be done or performed in connection with any or all of the above-described matters, as fully as each of the undersigned could do if personally present and acting, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this 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)	October 28, 2010
/s/ DOUGLAS J. PAULS Douglas J. Pauls	Chief Financial Officer (Principal Financial and Accounting Officer)	October 28, 2010
/s/ JOHN BOHLSEN John Bohlsen	Vice Chairman, Chief Lending Officer and Director	October 28, 2010
/s/ CHINH E. CHU Chinh E. Chu	Director	October 28, 2010
/s/ SUE M. COBB Ambassador Sue M. Cobb	Director	October 28, 2010

Signature	Title	Date
/s/ EUGENE F. DEMARK Eugene F. DeMark	Director	October 28, 2010
/s/ RICHARD S. LEFRAK Richard S. LeFrak	Director	October 28, 2010
/s/ WILBUR L. ROSS, JR. Wilbur L. Ross, Jr.	Director	October 28, 2010
/s/ PIERRE OLIVIER SARKOZY Pierre Olivier Sarkozy	Director	October 28, 2010
/s/ LANCE N. WEST Lance N. West	Director	October 28, 2010

Exhibit Index

Exhibit Number	Description
1.1	Form of Underwriting Agreement*
3.1	Amended and Restated Certificate of Incorporation*
3.2	Amended and Restated By-Laws*
4.1	Specimen common stock certificate*
5.1	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP*
10.1	Purchase and Assumption Agreement, dated as of May 21, 2009, among Federal Deposit Insurance Corporation, Receiver of BankUnited, FSB, Coral Cables, Florida, Federal Deposit Insurance Corporation and BankUnited
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*
10.3a	Employment Agreement, dated August 18, 2010, among BU Financial Holdings LLC, BankUnited, Inc. (formerly known as BU Financial Corporation) 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 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*
10.2b	Amended and Restated Employment Agreement, dated August 18, 2010, between BankUnited, a federally chartered thrift institution and John A. Kanas*
10.3b	Amended and Restated Employment Agreement, dated August 18, 2010, between BankUnited, a federally chartered thrift institution and John Bohlsen*
10.4b	Amended and Restated Employment Agreement, dated August 18, 2010, between BankUnited, a federally chartered thrift institution and Douglas Pauls*
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. (formerly known as BU Financial Corporation) 2010 Omnibus Equity Incentive Plan*
10.9	Form of Registration Rights Agreement*
10.10	Form of Director Nomination Agreement*
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
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 (included on signature page)

* To be filed by amendment.

Exhibit 10.1

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

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SCHEDULES

EXHIBITS

Exhibit 10.1

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 interest 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 liability 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

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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, insurance 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 Wall 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 withdraw, 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 Closing. 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 Information 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 submit 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 WITH 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 policy 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 <u>Retention or Repurchase of Assets Essential to Receiver</u>.

(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 receipt 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 <u>Continuation of Banking Business</u>. 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 <u>Reserved</u>.

4.3 <u>Agreement with Respect to Safe Deposit Business</u>. 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; <u>provided</u>, <u>that</u>, 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 <u>Reserved</u>.

4.5 <u>Reserved</u>.

4.6 <u>Agreement with Respect to Bank Premises</u>.

(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 premises 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 option 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 in 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 property 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 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 service 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 who 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 beneficiaries 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 Family 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 thereafter.

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 or 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 **Pro Forma Statement**. 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 contemplated 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 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 **Correction of Errors and Omissions; Other Liabilities**.

(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 accordance 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 **Payments**. 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 associated 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 **Interest**. 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 **Subsequent Adjustments**. 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, promptly 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 after 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 Assuming 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 balance. 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 condition (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, <u>other</u> <u>than</u> 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 their 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, officer, 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 written 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 which 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 with 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 or 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 Bank 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 waiver of such right, power or privilege under this Agreement.

13.11 **Severability**. 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

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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 23

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**
City, State] — In Receivership

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 terminated. 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]

AFFIDAVIT OF MAILING

1.2 **State of**

1.3 COUNTY OF

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 calculations 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 Assuming 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 payment, (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 respect 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 such 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 **<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 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 shall 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 **<u>Duties of the Assuming Bank</u>**. **(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 **<u>Shared-Loss Asset Records and Reports</u>**. 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 **<u>Related Loans</u>.**

(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 **<u>Legal Action; Utilization of Special Receivership Powers</u>**. 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 **<u>Third Party Servicer</u>**. 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 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 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 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. 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 (10^{th}) 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 respect 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 **Assuming Bank's Liquidation of Remaining Single Family Shared-Loss Loans**. 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 within 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 **Calculation of Sale Gain or Loss**. 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 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 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 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 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 instrument 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-Loss 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 resolve 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
<u>Foreclosure Loss calculation</u>	
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
<u>Cash Recoveries</u>:	
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
<u>Foreclosure Loss calculation</u>	
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
<u>Cash Recoveries</u>:	
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

Exhibit 2c

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				
Short-Sale Loss calculation				
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

Short-Sale Loss calculation

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**	

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(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 the 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 flow 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 Credit 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 Obligor 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) above.

(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 maintain 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 Loss 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 Assessment 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, that, 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.

"**<u>Shared-Loss MTM Assets</u>**" means those securities and other assets listed on Exhibit 4.15(C).

"**<u>Shared-Loss Payment Trigger</u>**" 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.

"**<u>Shared-Loss Ouarter</u>**" has the meaning provided in Section 2.1(a)(i) of this Commercial Shared-Loss Agreement.

"**<u>Shares</u>**" 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.

"**<u>Stated Threshold</u>**" means total losses under the shared loss agreements in the amount of $4 Billion ($4,000,000,000.00).

"**<u>Subsidiary ORE</u>**" means all assets owned by ORE Subsidiaries that would constitute Additional ORE if such assets were on the books of the Assuming Bank.

"**<u>Termination Date</u>**" means the eighth (8th) anniversary of the Commencement Date.

"**<u>Third Party Servicer</u>**" 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 <u>Shared-Loss Arrangement.</u>

(a) <u>Quarterly Certificates</u>. (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"):

(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 <u>first Recovery Quarter only</u>, 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, <u>and</u> (b) had <u>not</u> 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 <u>and</u> (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) <u>Payments With Respect to Shared-Loss Assets</u>.

(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 fifteen (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, that 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 any 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 calculated 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 actually 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) 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 Assuming 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) days’ 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 the 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 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 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 the 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 **Information**. 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 **Tax Ruling**. 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 **Agreement with Respect to Administration**. 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 **Duties of the Assuming Bank with Respect to Shared-Loss Assets**. (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 Assets 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 extent 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") 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 otherwise 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 Agreement 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."

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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

Exhibit 10.6

BANKUNITED

NONQUALIFIED DEFERRED COMPENSATION PLAN

ARTICLE I

INTRODUCTION

1.1 Purpose. BankUnited (the Employer) establishes this BankUnited Nonqualified Deferred Compensation Plan (the Plan) to attract and retain key employees by providing the opportunity to defer compensation and receive employer contributions that cannot be made to the Qualified Plan due to the limitations in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended (the Code).

1.2 Legal status. The Plan is a deferred compensation plan for a select group of management or highly-compensated employees within the meaning of Sections 201(2), 301(a)(3), and 401(a)(1) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The Employer intends the Plan to be unfunded for purposes of ERISA and the Code and to satisfy the requirements of Code Section 409A. Plan provisions will be interpreted consistent with this intent.

1.3 Effective date. The Plan is effective October 1, 2009.

ARTICLE II

DEFINITIONS

2.1 Key terms and construction. When used in the Plan, the following terms will have the meanings set forth below. Several other terms are not defined here but, for convenience, are defined as they are introduced into the text. References to specific Code provisions include any final regulations, Revenue Rulings, and guidance of general applicability thereunder.

Beneficiary means the individual, trust, or other entity designated by a Participant to receive Plan benefits in the event of the Participant's death.

Cause means acts that constitute theft, fraud or the embezzlement of funds, gross negligence or deliberate misconduct in the performance of the Participant's job responsibilities, acts or omissions involving moral turpitude, breach of a material provision of any agreement between the Employer and the Participant, or violation of any material written policy of the Employer.

Change in Control means a change in the ownership or effective control of the Employer, or in the ownership of a substantial portion of its assets, within the meaning of Treas. Reg. 1.409A-3(i)(5). For purposes of clarification, an initial public offering of the Employer's securities will not be a Change in Control.

Compensation means the Participant's cash compensation from the Employer.

Disability means a medically determinable physical or mental impairment that can be expected to result in death or to last for a continuous period of not less than 12 months and that either renders a Participant unable to engage in any substantial gainful activity or is the reason the Participant is receiving income-replacement benefits for a period of at least 3 months under an accident and health plan of the Employer.

Eligible Compensation means the Participant's Compensation to the extent it exceeds the limitation in Code Section 401(a)(17), reduced by the amount specified in Appendix A of this Plan. Thus, a Participant's Eligible Compensation in a year will be that portion of each paycheck that exceeds the sum of (i) a portion of that year's Code Section 401(a)(17) limit determined by dividing the limitation by the number of paychecks in the year and (ii) a portion of the amount specified in Appendix A determined by dividing such amount by the number of paychecks in the year.

Participant means an employee of the Employer who defers Eligible Compensation or receives Employer contributions under the Plan. A Participant will remain a Participant as long as he or she has an account balance in the Plan.

Plan Year means the calendar year.

Qualified Plan means the Employer's tax-qualified Code Section 401(k) plan, currently known as the "BankUnited 401(k) Plan."

Separation from Service occurs (or a Participant Separates from Service) when the Participant ceases to be employed by the Employer and all entities considered a single employer with the Employer under Code Sections 414(b) and (c) as a result of death, retirement, or other termination of employment For this purpose, an 80% or greater threshold will be used in determining a controlled group of corporations within the meaning of Code Section 414(b) and the trades and businesses that are under common control within the meaning of Code Section 414(c).

Whether a Separation from Service occurs will be determined in accordance with the rules under Code Section 409A. In general, a Participant's employment will be deemed terminated on the date as of which, in the Employer's and Participant's reasonable expectation, the Participant's level of bona fide services for the Employer decreases to 20% or less of his or her average level of bona fide services over the immediately preceding 36-month period (or the full period of services if the Participant has been providing services to the Employer for fewer than 36 months) and a Participant's employment will be deemed not to have terminated as long as the Participant's level of bona fide services exceeds the 20% threshold.

A Participant's employment will be treated as continuing while he or she is on military leave, sick leave, disability leave, or other bona fide leave of absence if the period of the leave does not exceed six months or, if longer, as long as the Participant has a statutory or contractual right to reemployment with the Employer. If the period of leave exceeds six months, and the Participant does not have a statutory or contractual right to reemployment, the Participant's employment will be deemed to terminate on the first day immediately following the six-month period.

Unforeseeable Emergency, means a Participant's severe financial hardship resulting from (i) an illness or accident of the Participant or his or her spouse or "dependent," as defined in Code Section 152(a), and the related extraordinary and unforeseeable medical expenses, (ii) loss of the Participant's property due to casualty, including the need to rebuild a home following damage not otherwise covered by insurance, or (iii) other similar and unforeseeable circumstances due to events beyond the control of the Participant, such as the imminent foreclosure of or eviction from the Participant's primary residence or extraordinary funeral expenses of a spouse or "dependent," as defined above. The Administrator will determine whether an event is an Unforeseeable Emergency, based on the relevant facts and circumstances of each case.

ARTICLE III

ADMINISTRATION

3.1 Plan administrator. The Compensation Committee of the Employer's Board of Directors will administer the Plan (Administrator). The Administrator may appoint one or more delegates to discharge any or all of the Administrator's responsibilities under the Plan. The Administrator and delegates will have all the discretionary authority, rights, and duties that are necessary or appropriate for the proper administration of the Plan and may rely upon financial, legal, accounting, and other advisors, as they see fit. The decisions of the Administrator and delegates, including interpretations of the Plan and determinations of amounts due under the Plan, are final and binding on all parties.

ARTICLE IV

ELIGIBILILTY

4.1 Plan participation. The Administrator, in its sole discretion, will select the Plan's Participants from among the Employer's executives.

ARTICLE V

ACCOUNTS

5.1 Establishment of accounts. The Administrator will establish a bookkeeping account for each Participant to which the contributions described in Article VI will be credited. The Administrator also may establish sub-accounts for Participants, as the Administrator deems appropriate. The accounts and sub-accounts will be adjusted to reflect interest and distributions.

5.2 Investment credits. For Plan Years 2009 and 2010, the Administrator will credit Participants' accounts daily with interest at an annual rate of 6%. For each subsequent Plan Year, the Administrator will set and inform Participants of the crediting rate before the start of the Plan Year.

ARTICLE VI

CONTRIBUTIONS

6.1 Elective deferrals. Before the first day of each Plan Year or, in a Participant's first year of participation, within 30 days after the date he or she first becomes a Participant, the Participant may elect to reduce Compensation or Eligible Compensation, as appropriate, by a percent (in whole numbers) not to exceed the Maximum Deferral. For Plan Year 2009, the Maximum Deferral is 100 percent of Compensation, less any amounts required to be withheld by law. For subsequent Plan Years, the Maximum Deferral is 50 percent of Eligible Compensation. Such amounts will be withheld ratably from each of the Participant's paychecks. Provided that, in the case of a newly eligible Participant, an election will apply only to Compensation or Eligible Compensation for services performed after the election.

6.2 Employer contributions. In addition to a Participant's elective deferrals, the Employer will make contributions to the accounts or sub-accounts of Participants, as follows. For the 2009 Plan Year, each Participant will receive 4.5 percent of Eligible Compensation. For subsequent Plan Years, the Participant will receive 100 percent of the first 1 percent, plus 70 percent of the next 5 percent, of the Eligible Compensation the Participant defers under Section 6.1.

6.3 Contribution timing. Elective deferrals will be credited to a Participant's account or sub-account on or as soon as practicable after the date the Eligible Compensation would have been paid but for the deferral. Employer contributions will be credited to a Participant's account or sub-account as soon as practicable after the end of the applicable Plan Year.

6.4 Election forms and changes. To be valid, Participant elections must be made on forms provided by the Administrator and received by the Administrator on or before the specified deadline. An election may not be changed after the deadline. Provided, however, that a Participant's elective deferrals will cease automatically upon the Administrator's approval of a distribution for the Participant's Unforeseeable Emergency and the Participant may not resume elective deferrals until the next Plan Year.

ARTICLE VII

VESTING

7.1 Vesting. A Participant's elective deferrals and interest thereon are at all times 100 percent vested. A Participant's Employer contributions and interest thereon will become 100 percent vested upon the earlier of a Change in Control or the Participant's, death, Disability, attainment of "Normal Retirement Age," or completion of 2 "Years of Service," as such quoted terms are defined in the Qualified Plan.

7.2 Forfeitures of Employer contributions. A Participant who Separates from Service will forfeit all unvested Employer contributions and interest thereon. Notwithstanding Section 7.1, a Participant whose employment is terminated for Cause will forfeit all Employer contributions and interest thereon, without regard to whether such amounts are vested or unvested.

ARTICLE VIII

BENEFIT PAYMENTS

8.1 Distribution timing.

(a) Elective deferrals. Coincident with each election to defer Eligible Compensation for a Plan Year, a Participant may elect a specific date on which that Plan Year's elective deferrals and interest thereon will be paid or commence to be paid. Such date must be no earlier than January 1 of the third Plan Year following the Plan Year in which the Eligible Compensation would have been paid but for the deferral. Coincident with a Participant's first election to defer Eligible Compensation, the Participant may elect to receive his, or her elective deferrals and interest, thereon in the event of a Change in Control. The Participant's elective deferrals and interest thereon will be paid or commence to be paid on the earliest of (i) the Participant's Separation from Service, including by reason of death, (ii) the Participant's Disability, (iii) the specific payment date elected by the Participant, if the Participant has elected to receive elective deferrals on a specific date, or (iv) a Change in Control, if the Participant has elected to receive elective deferrals upon a Change in Control.

(b) Employer contributions. Within 30 days after the date an executive first becomes a Participant, he or she may elect to receive Employer contributions and interest thereon in the event of a Change in Control. The Participant's Employer contributions and interest thereon will be paid or commence to be paid on the earliest of (i) the Participant's Separation from Service, including by reason of death, (ii) the Participant's Disability, or (iii) a Change in Control, if the Participant has elected to receive Employer contributions upon a Change in Control.

8.2 Form of distribution. A Participant may not elect the form of payment when payment is made because of the Participant's death or Disability or a Change in Control. In these events, the Participant will automatically receive his or her elective deferrals, Employer contributions, and interest thereon in a single lump sum. For other events, the following rules apply:

Coincident with each election to defer Eligible Compensation for a Plan Year, the Participant may elect the form in which that Plan Year's elective deferrals and interest thereon will be paid if payment is made because of the occurrence of a specific date. Coincident with a Participant's first election to defer Eligible Compensation, the Participant may elect the form in which elective deferrals and interest thereon will be paid if payment is made because of a Separation from Service other than death. Within 30 days after the date an executive first becomes a Participant, he or she may elect the form in which Employer contributions and interest thereon will be paid if payment is made because of a Separation from Service other than death. A Participant may choose a single lump sum or 5, 10, or 15 annual installments, determined by dividing the applicable account or sub-account balance by the number of remaining installments. If a Participant fails to elect a form of payment for a particular event, and benefits are paid because of that event, or if a Participant's entire account balance is less than $50,000 as of the date of the event, then the Participant will receive his or her benefits in a single lump sum.

8.3 Changes to time and form of distribution. A Participant may elect to change the time and form of a distribution, provided the election satisfies both of the following conditions:

- The election is not effective until 12 months after it is made. If an election is made later than 12 months before a scheduled lump sum payment or the commencement of installments, the election will be null and void and the Participant's benefit will be paid in accordance with his or her most recent valid election.
- The election defers payment for at least 5 years from the date the payment otherwise would have been made or, if earlier, until the Participant's Disability or death.

For purposes of this Section 8.3, installments are deemed to be a single payment, commencing on the date of the first installment.

8.4 Unforeseeable Emergency. Notwithstanding Sections 8.1, 8.2, and 8.3, in the event of a Participant's Unforeseeable Emergency, the Participant may request, and the Administrator may approve, a distribution from the vested balance in his or her account. The distribution will be limited to the amount that the Administrator determines is reasonably necessary to satisfy the emergency need and may include amounts necessary to pay any federal, state, and local taxes or penalties reasonably expected to result from the distribution. A distribution will not be made to the extent that the emergency is or may be relieved through reimbursement from insurance or otherwise, or by liquidation of the Participant's assets, provided the liquidation of assets would not cause severe financial hardship.

8.5 Beneficiaries. A Participant may designate the Beneficiary or Beneficiaries who will receive benefits payable upon his or her death and change or revoke the designation without the consent of any Beneficiary. The last designation received by the Administrator will be controlling. A designation, change, or revocation will not be effective unless it is received by the Administrator in writing prior to the Participant's death. If the Participant fails to furnish an effective designation, or the Participant's Beneficiaries predecease him or her, the Participant's estate will be deemed to be his or her Beneficiary.

8.6 Tax withholding and consequences. Each Participant's payments will be reduced by the federal, state, and local taxes, which the Employer is required to withhold. The Employer does not represent or guarantee that any particular tax consequences will result from participation in the Plan and has no obligation to Participants for any adverse tax consequences.

ARTICLE IX

SOURCE OF PAYMENTS

9.1 Benefits and expenses. Plan benefits and expenses will be paid directly from the Employer's general assets. The Employer is not required to set aside, earmark, or escrow any funds or other assets to satisfy its obligations under the Plan. Participants and Beneficiaries have no interest in any specific assets of the Employer, other than the unsecured right to receive benefits pursuant to the terms of the Plan. In this regard, Participants acknowledge that the accounts and sub-accounts referred to in the Plan are merely bookkeeping entries used to track their benefits.

ARTICLE X

CLAIMS PROCEDURE

10.1 Filing of claim. In general, the payment of Plan benefits is automatic and no claims have to be filed. However, a Participant or Beneficiary (Claimant) may file a written claim for benefits with the Administrator. The claim must be filed no later than 60 days after the latest date under the terms of the Plan for or payment of the benefit in dispute.

10.2 Denial of claim. If the claim is denied in whole or in part, the Claimant will be given a written notification containing specific reasons for the denial. The written notification will refer to the pertinent Plan provisions on which the denial of benefits is based. It also will contain, a description of any additional materials or information necessary for the Claimant to perfect a claim and an explanation of why such material or information is necessary. Further, the notification will provide appropriate information as to the steps to be taken if the Claimant wishes to submit his or her claim for review. This written notification will be given to a Claimant within 60 days after receipt of his or her claim by the Administrator.

10.3 Right of review. If a claim is denied in whole or in part, the Claimant or his or her duly authorized representative will be permitted to review pertinent documents and to submit to the Administrator issues and comments in writing. In addition, the Claimant or his or her duly authorized representative may make a written request for a full and fair review of his or her claim and its denial by the Administrator, provided the written request is received by the Administrator within 60 days after the Claimant receives written notification of the denial.

10.4 Decision on review. The Administrator will render a decision within 60 days after receipt of the request for review. However, where special circumstances require an extension of time for making the decision, it may be postponed on written notice to the Claimant (prior to the expiration of the initial 60-day period) for an additional 60 days, but in no event will the Administrator render the decision more than 120 days after the receipt of the request for review. The decision will be furnished to the Claimant in writing and in a manner calculated to be understood by the Claimant and will set forth the specific reason(s) for the decision and the specific Plan provision(s) on which the decision is based.

10.5 Time of payment. In the event a claim is upheld, the Participant's or Beneficiary's benefit will be paid no later than the last day of the calendar year in which the decision to uphold the claim is made.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 Plan amendment and termination. The Employer reserves the right to amend, discontinue, or terminate the Plan at any time by action of the Compensation Committee of its Board of Directors (Board). However, no amendment, discontinuance, or termination will diminish the benefits of a Participant that are earned and vested prior to the date the Board

approves the amendment, discontinuance, or termination. The Employer may not accelerate the timing of benefit payments, except to the extent Code Section 409A permits.

11.2 Non-alienation of benefit. The interest of a Participant or Beneficiary in his or her Plan benefits is not subject to the claims of the Participant's or Beneficiary's creditors and may not be voluntarily or involuntarily sold, transferred, pledged, alienated, assigned, anticipated, or encumbered. Any attempt by a Participant or Beneficiary to do so will be null and void.

11.3 No employment rights. The Plan does not constitute a contract of employment and participation in the Plan does not give a Participant the right to continue employment with the Employer or limit the Employer's right to discharge any employee with or without Cause.

11.4 Indemnification. To the extent the law allows, the Employer will indemnify and hold harmless the Administrator, any of the Administrator's delegates, and any employee who may act on behalf of the Employer in the administration of the Plan from and against any liability, loss, cost, or expense (including reasonable attorneys' fees) incurred at any time as a result of or in connection with any claims, demands, actions, or causes of action of any Participant, any person claiming through any Participant, or any other person, party, or authority claiming to have an interest in the Plan or standing to act for any person or groups having an interest in the Plan, for or on account of any of the acts or omissions (or alleged acts or omissions) of the Administrator, any delegate, or any employee, except to the extent resulting from that person's willful misconduct.

11.5 Successors. The Plan is binding on the Employer and its successors and assigns and on each Participant and Beneficiary.

11.6 Severability. In case any provision of the Plan is held illegal or invalid for any reason, the illegality or invalidity will not affect the remaining provisions of the Plan, which will be construed and enforced as if the illegal or invalid provision had never been set forth.

11.7 Controlling law. To the extent not superseded by the laws of the United States, the laws of Florida are controlling in all matters relating to the Plan, without regard to that state's choice of laws provisions.

IN WITNESS WHEREOF, BU Financial Corporation has duly executed this Plan as of 09/25/09.

BU FINANCIAL CORPORATION

By: /s/ Rajinder P. Singh

Title: ____________________

BANKUNITED

NONQUALIFIED DEFERRED COMPENSATION PLAN

Effective October 1, 2009

APPENDIX A

Eligible Compensation for certain Participants shall be reduced each year by the amount specified below:

Participant Name	Offset Amount
John A. Kanas	$ 250,000
John Bohlsen	$ 250,000

Exhibit 10.7
AS ADOPTED

BU FINANCIAL CORPORATION
2009 STOCK OPTION PLAN

1. PURPOSE

The BU Financial Corporation 2009 Stock Option Plan (the "**Plan**") has been established to advance the interests of BU Financial Corporation (the "**Company**") and its Affiliates by providing for the grant of Stock Options to Participants.

2. DEFINED TERMS

The following terms, when used in the Plan, shall have the meanings and be subject to the provisions set forth below:

"Affiliate": Any Person that, with respect to a specified Person, directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person.

"Award Agreement": A written agreement between the Company and the Participant evidencing a Stock Option, which may, but need not, be executed or acknowledged by a Participant.

"Board": The Board of Directors of the Company.

"Cause": The term "Cause" shall mean (A) the conviction, guilty plea or plea of "no contest" by the Participant to any felony or a crime involving moral turpitude or the Participant's commission of any other act or omission involving dishonesty or fraud, (B) the substantial and repeated failure of the Participant to perform duties of the office held by the Participant, (C) the Participant's gross negligence, willful misconduct or breach of fiduciary duty with respect to the Company or any of its Subsidiaries or Affiliates, and/or (D) any breach by the Participant of any Restrictive Covenants.

"Change of Control": The term "Change of Control" shall mean (A) the sale or disposition, in one or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any "person" or "group" (as such terms are defined in Sections 13(d)(3) and 14(d)(2) of the Exchange Act), other than any person or group holding an interest in BU Financial Holdings LLC as of May 21, 2009 and/or their respective Affiliates (together, the "**Investors**") or (B) the date upon which any "person" or "group", other than the Investors, is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the total voting power of the voting Interests (as defined in the LLC Agreement) in BU Financial Holdings LLC or the Voting Stock of the Company (or any successor thereto), including by way of merger, consolidation or otherwise.

"Code": The U.S. Internal Revenue Code of 1986, as from time to time amended and in effect, or any successor statute as from time to time in effect.

"Committee": The Board or, if one or more has been appointed, a committee of the Board. The Committee may delegate ministerial tasks to such persons as it deems appropriate.

"Common Stock": Common shares of the Company, par value $0.01 per share.

"Company": The term "Company" shall have the meaning set forth in Section 1 hereof.

"Disability": A finding by the Board that the Participant has been unable to perform his or her job functions by reason of a physical or mental impairment for a period of 90 consecutive days or any 90 days within a period of 180 consecutive days.

"Employee": Any individual who is employed by the Company or an Affiliate.

"Employment": A Participant's employment or other service relationship with the Company and its Affiliates. Unless the Committee provides otherwise, a Participant who receives a Stock Option in his or her capacity as an Employee shall be deemed to cease Employment when the employee-employer relationship with the Company and its Affiliates ceases. A Participant who receives a Stock Option in any other capacity shall be deemed to continue Employment so long as the Participant is providing services in such capacity. If a Participant's relationship is with an Affiliate and that entity ceases to be an Affiliate, the Participant shall be deemed to cease Employment when the entity ceases to be an Affiliate unless the Participant transfers Employment to the Company or its remaining Affiliates.

"Exchange Act": The Securities Exchange Act of 1934, as from time to time amended and in effect, or any successor statute as from time to time in effect.

"Fair Market Value": "Fair Market Value" as defined in the Shareholders Agreement.

"LLC Agreement": The Amended and Restated Limited Liability Company Agreement, dated May 21, 2009, by and among BU Financial Holdings LLC and its members, as it may be amended, supplemented or modified from time to time.

"Participant": An individual who is granted a Stock Option under the Plan.

"Person": 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.

"Plan": The term "Plan" has the meaning set forth in Section 1 hereof.

"Public Offering": A public offering and sale of equity securities for cash pursuant to an effective registration statement under the Securities Act of 1933 and the rules promulgated thereunder, as amended from time to time (the "**Securities Act**").

"Restrictive Covenants": Any non-competition, non-solicitation, confidentiality or other restrictive covenants, in each case to the extent applicable to the Participant under any written agreement between the Participant and the Company or any of its Subsidiaries.

"Shareholders Agreement": The Shareholders' Agreement to be entered into by and among the Company, BU Financial Holdings LLC and such other stockholders of the Company as may be party thereto from time to time, which agreement shall contain the terms and conditions of as set forth on Exhibit A to the Participant's Award Agreement and such other customary and other terms and conditions as may be determined by the Company and BU Financial Holdings LLC prior to the execution thereof.

"Stock Option": An option entitling the recipient to acquire shares of Common Stock upon payment of the applicable exercise price.

"Subsidiary": Any subsidiary of the Company.

"Voting Stock": All classes of capital stock or shares then outstanding and normally entitled to vote in elections of directors.

3. ADMINISTRATION

The Committee has discretionary authority, subject only to the express provisions of the Plan and the Award Agreements, to interpret the Plan; to determine eligibility for and grant Stock Options; to determine, modify and/or waive the terms and conditions of any Stock Option; to prescribe forms, rules and procedures; and to otherwise do all things necessary to carry out the purposes of the Plan. Except as otherwise provided by the express terms of an Award Agreement, all determinations of the Committee made under the Plan shall be conclusive and shall bind all parties.

4. LIMITS ON STOCK OPTIONS UNDER THE PLAN

(a) **Number of Shares**. A maximum of 231,250 shares of Common Stock (which reflects the Common Stock split on November 12, 2009) may be delivered in satisfaction of Stock Options under the Plan. The issuance of shares of Common Stock, the payment of cash upon the exercise of a Stock Option, the withholding of shares of Common Stock in satisfaction of the exercise price of Stock Options or the withholding of shares of Common Stock in satisfaction of tax withholding requirements shall reduce the total number of shares of Common Stock available under the Plan, as applicable. Shares of Common Stock issued under stock options of an acquired company that are converted, replaced or adjusted in connection with the acquisition shall not reduce the number of shares of Common Stock available for Stock Options under the Plan.

(b) **Type of Shares**. Shares of Common Stock delivered under the Plan may be authorized but unissued Common Stock or previously issued Common Stock acquired by the Company or any of its Affiliates and may include fractional shares of Common Stock.

5. ELIGIBILITY AND PARTICIPATION

The Board, or the Committee if expressly so permitted by the Board, shall select Participants from among those key Employees of the Company or its Affiliates who, in the opinion of the Board or the Committee, as applicable, are in a position to make a significant contribution to the success of the Company and its Affiliates.

6. RULES APPLICABLE TO STOCK OPTIONS

(a) **General.**

(1) **Stock Option Provisions**. The Committee shall determine the terms of all Stock Options, subject to the limitations provided herein, and shall furnish to each Participant an Award Agreement setting forth the terms applicable to the Participant's Stock Option. By entering into an Award Agreement, the Participant agrees to the terms of the Stock Option and of the Plan, to the extent not inconsistent with the express terms of the Award Agreement. Notwithstanding any provision of this Plan to the contrary, awards of an acquired company that are converted, replaced or adjusted in connection with the acquisition may contain terms and conditions that are inconsistent with the terms and conditions specified herein, as determined by the Committee.

(2) **Non-Qualified Stock Options**. All Stock Options granted pursuant to the Plan are intended to be non-qualified stock options, and are not intended to be treated as "Incentive Stock Options" that comply with Section 422 of the Code.

(3) **Transferability**. Except as the Committee otherwise expressly provides, Stock Options may not be transferred other than by will or by the laws of descent and distribution, and during a Participant's lifetime, except as the Committee otherwise expressly provides, may be exercised only by the Participant

(4) **Vesting**. The Committee may determine the time or times at which a Stock Option shall vest or become exercisable and the terms on which a Stock Option requiring exercise shall remain exercisable; provided, however, that each Stock Option shall expire on the tenth (10th) anniversary of the date of grant of such Stock Option, unless it is earlier exercised or forfeited as provided herein. Notwithstanding anything set forth herein to the contrary, the Committee may at any time accelerate the vesting or exercisability of a Stock Option, regardless of any adverse or potentially adverse tax consequences resulting from such acceleration.

(5) **Termination of Employment**. Unless the Committee expressly provides otherwise in an Award Agreement, immediately upon the cessation of a Participant's Employment all Stock Options (whether vested or unvested) shall cease to be exercisable and shall terminate, except that:

(A) subject to subsections (B) and (C) below, all Stock Options held by the Participant or the Participant's "permitted transferees" (as determined by reference to the Shareholders Agreement, and, in each case, the applicable Award Agreement), if any, immediately prior to the termination of the Participant's Employment for any reason other than Cause, death or Disability, to the extent then exercisable, shall remain exercisable for the shorter of (i) the ninety (90) day period following such termination and (ii) the period ending on the last date on which such Stock Option could have been exercised without regard to this Section 6(a)(5), and shall thereupon terminate;

(B) all Stock Options held by a Participant or the Participant's permitted transferees, if any, immediately prior to the termination of the Participant's employment as a result of the Participant's death or Disability, to the extent then exercisable, shall remain exercisable for

the shorter of (i) the twelve (12) month period following such termination and (ii) the period ending on the latest date on which such Stock Options could have been exercised without regard to this Section 6(a)(5), and shall thereupon terminate; and

(C) all Stock Options (whether vested or unvested) held by a Participant or the Participant's permitted transferees, if any, immediately prior to the cessation of the Participant's Employment shall immediately terminate upon such cessation if such cessation of Employment was for Cause.

(6) Taxes. The Committee shall make such provision for the withholding of taxes as it deems necessary. The Committee may, but need not, hold back shares of Common Stock from the exercise of a Stock Option or permit a Participant to tender previously owned shares of Common Stock in satisfaction of tax withholding requirements (but not in excess of the applicable minimum statutory withholding rate).

(7) Rights Limited. Nothing in the Plan shall be construed as giving any person the right to continued Employment with the Company or its Affiliates, continued participation in the Plan, or any rights as a stockholder except as to shares of Common Stock actually issued under the Plan.

(8) Shareholders Agreement. All shares of Common Stock issued upon the exercise of Stock Options issued under the Plan shall be subject to the Shareholders Agreement.

(b) Exercise.

(1) Time And Manner Of Exercise. Unless the Committee expressly provides otherwise, a Stock Option permitting exercise by the holder shall not be deemed to have been exercised until the Committee receives a notice of exercise (in a form acceptable to the Committee) signed by the appropriate person and accompanied by any payment required under the Stock Option. If the Stock Option is exercised by any person other than the Participant, the Committee may require satisfactory evidence that the person exercising the Stock Option has the right to do so.

(2) Exercise Price. Except as otherwise permitted pursuant to Section 7(b)(1) hereof, the exercise price of a Stock Option shall not be less than the Fair Market Value of the Common Stock subject to the Stock Option, determined as of the date of grant.

(3) Payment Of Exercise Price. Where the exercise of a Stock Option is to be accompanied by payment, the Committee may determine the required or permitted forms of payment; provided, that all such payments shall be (a) by cash or check acceptable to the Committee, (b) by means of withholding of shares of Common Stock with an aggregate Fair Market Value equal to (A) the aggregate exercise price and (B) the minimum statutory withholding taxes with respect to such exercise or (c) by any other method approved by the Committee.

7. EFFECT OF CERTAIN TRANSACTIONS

(a) Change Of Control. Except as otherwise provided in an Award Agreement, in the event of a Change of Control in which there is an acquiring or surviving entity, the Committee may, unless the Committee determines that doing so is inappropriate or unfeasible, provide for the continuation or assumption of some or all of the outstanding Stock Options, or for the grant of new Stock Options in substitution therefor, by the acquiror or survivor or an Affiliate of the acquiror or survivor, in each case on such terms and subject to such conditions as preserve the intrinsic value of the Stock Option in the Committee's good faith determination. In the event of a Change of Control (whether or not there is an acquiring or surviving entity) in which there is no assumption or substitution as to some or all of the outstanding Stock Options, the Committee shall preserve the intrinsic value of the Stock Options, provide for treating as satisfied any time-based vesting condition on any such Stock Option or for the accelerated delivery of shares of Common Stock issuable under each such Stock Option, or cancel any Stock Option and, in connection therewith, pay an amount (in cash or, in the discretion of the Committee, in the form of consideration paid to shareholders of the Company in connection with such Change of Control) which shall equal the excess, if any, of the Fair Market Value of the shares of Common Stock subject to such Stock Options over the aggregate exercise price of such Stock Options, in each case on a basis that gives the holder of the Stock Option a reasonable opportunity, as determined by the Committee, following exercise or cancellation of the Stock Option or the issuance of the shares of Common Stock, as the case may be, to participate as a stockholder in the Change of Control. Except as otherwise provided in an Award Agreement, each Stock Option (unless assumed pursuant to the first sentence of this Section 7(a)), shall terminate upon consummation of the Change of Control.

(b) Changes In, Distributions With Respect To And Redemptions Of Common Stock.

(1) Basic Adjustment Provisions. In the event of any stock dividend or other similar distribution (whether in the form of stock or other securities or other property), stock split or combination of shares (including a reverse stock split), recapitalization, conversion, reorganization, consolidation, split-up, spin-off, combination, merger, exchange of stock, redemption or repurchase of all or part of the shares of any class of stock or any change in the capital structure of the Company or an Affiliate or other transaction or event (other than those described in Section 7(a)), the Committee shall, as appropriate in order to prevent enlargement or dilution of benefits intended to be made available under the Plan, make adjustments to the maximum number of shares of Common Stock that may be delivered under the Plan under Section 4(a) and shall also make appropriate adjustments to the number and kind of shares of stock, securities or other property (including cash) subject to Stock Options then outstanding or subsequently granted, any exercise prices relating to Stock Options and any other provision of Stock Options affected by such change.

(2) <u>Certain Other Adjustments</u>. The Committee shall also make adjustments of the type described in Section 7(b)(1) above to take into account distributions to stockholders other than those provided for in Section 7(a) and 7(b)(1), or any other event, if the Committee determines that adjustments are appropriate to avoid distortion in the operation of the Plan and to preserve the value of Stock Options made hereunder.

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(3) <u>Continuing Application of Plan Terms</u>. References in the Plan to shares of Common Stock shall be construed to include any stock or securities resulting from an adjustment pursuant to this Section 7.

8. LEGAL CONDITIONS ON DELIVERY OF COMMON STOCK

The Company shall, prior to delivering shares of Common Stock pursuant to the Plan or removing any restriction from shares of Common Stock previously delivered under the Plan, ensure that (a) all legal matters in connection with the issuance and delivery of such shares have been addressed and resolved, and (b) if the outstanding Common Stock is at the time of delivery listed on any stock exchange or national market system, the shares to be delivered have been listed or authorized to be listed on such exchange or system upon official notice of issuance. The Company and its Affiliates shall be obligated to deliver any shares of Common Stock pursuant to the Plan or to remove any restriction from shares of Common Stock previously delivered under the Plan upon satisfaction or waiver of the conditions set forth in the preceding sentence and all other conditions of the Award Agreement. If the sale of Common Stock has not been registered under the Securities Act, the Company may require, as a condition to exercise of the Stock Option, such representations or agreements as counsel for the Company may in good faith recommend to avoid violation of the Securities Act. The Company may require that certificates evidencing Common Stock issued under the Plan bear an appropriate legend reflecting any restriction on transfer applicable to such Common Stock, and the Company may hold the certificates pending lapse of the applicable restrictions.

9. AMENDMENT AND TERMINATION

The Committee, in it sole and absolute discretion, may at any time or times amend or alter the Plan or any outstanding Stock Option and may at any time terminate or discontinue the Plan as to any future grants of Stock Options; <u>provided</u>, that the Committee may not, without the Participant's consent, amend or terminate the terms of a Stock Option or the Plan so as to affect adversely the Participants' or a Participant's rights under a Stock Option or the Plan. Any amendments to the Plan shall be conditioned upon stockholder approval only to the extent, if any, such approval is required by applicable law (including the Code), as determined by the Committee.

10. ESTABLISHMENT OF SUB-PLANS

The Board may from time to time establish one or more sub-plans under the Plan for purposes of satisfying applicable blue sky, securities or tax laws of various jurisdictions. The Board shall establish such sub-plans by adopting supplements to the Plan setting forth (i) such limitations on the Committee's discretion under the Plan as the Board deems necessary or desirable and (ii) such additional terms and conditions not otherwise inconsistent with the Plan as the Board shall deem necessary or desirable. All supplements adopted by the Board shall be deemed to be part of the Plan, but each supplement shall apply only to Participants within the affected jurisdiction and the Company shall not be required to provide copies of any supplement to Participants in any jurisdiction that is not affected.

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11. SECTION 409A

It is intended that the terms of this Plan be exempt from or comply with Section 409A of the Code. If it is determined that the terms of this Plan have been structured in a manner that would result in adverse tax treatment under Section 409A of the Code, the parties agree to cooperate in taking all reasonable measures to restructure the arrangement to minimize or avoid such adverse tax treatment without materially impairing the economic rights of the Participants.

12. GOVERNING LAW/JURISDICTION

The Plan shall be governed by and construed and enforced in accordance with the laws of the State of Delaware applicable to contracts made and to be performed therein. Any suit, action or proceeding with respect to the Plan or a Stock Option, or any judgment entered by any court in respect of any thereof, shall be brought in any court of competent jurisdiction in the State of New York or the State of Delaware. By accepting a Stock Option under the Plan, each Participant hereby submits to the exclusive jurisdiction of such courts for the purpose of any such suit, action, proceeding or judgment and hereby irrevocably waives (i) any objections which the Participant may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any court of competent jurisdiction in the State of Delaware or the State of New York, (ii) any claim that any such suit, action or proceeding brought in any such court has been brought in any inconvenient forum and (iii) any right to a jury trial.

Exhibit 10.11

EXECUTION COPY

THIS TRANSACTION FEE AGREEMENT is dated May 21, 2009 (this "Agreement") and is among BU Financial Holdings LLC, a Delaware limited liability company (the "Company"), Blackstone Management Partners L.L.C. ("Blackstone"), Carlyle Investment Management L.L.C. ("Carlyle"), Centerbridge Advisors, LLC ("Centerbridge") and WL Ross & Co. LLC ("WL Ross"). Each of Blackstone, Carlyle, Centerbridge and WL Ross are referred to herein as a "Key Party" and collectively as the "Key Parties".

BACKGROUND

1. BankUnited, an indirect wholly-owned subsidiary of the Company ("NewBank"), entered into a Purchase and Assumption Agreement (as amended, restated, supplemented or otherwise modified, the "P&A Agreement") dated as of May 21, 2009, by and among NewBank, the Federal Deposit Insurance Corporation (the "FDIC"), as receiver of BankUnited, FSB (the "Failed Bank"), and the FDIC acting in its corporate capacity, pursuant to which NewBank will acquire certain assets and assume certain liabilities of the Failed Bank.

2. The Key Parties have spent significant time and resources in connection with the transactions referred to above and certain other related transactions (collectively, the "Transactions"). The Key Parties have conducted financial and structural analysis, due diligence investigations, and negotiations in connection with the Transactions. Certain investment fund affiliates of the Key Parties (the "Key Investors") will become beneficial owners of the Company. The Company believes that having the Key Investors as beneficial owners of the Company will be of substantial benefit to the Company and its subsidiaries.

3. The Company believes that the benefits it derives from the Key Parties' efforts as described above, and the Key Investors' investments, warrant payment of the fees described in this Agreement.

AGREEMENT

The parties agree as follows:

SECTION 1. **Transaction Fees .** In consideration of the Key Parties conducting the financial and structural analysis, due diligence investigations, and negotiations described above, the Company will pay to each Key Party, at the Effective Time (as defined herein), the following transaction fee:

(a) to Blackstone a fee of $5,284,360.19;

(b) to Carlyle a fee of $5,284,360.19;

(c) to Centerbridge a fee of $4,146,919.43; and

(d) to WL Ross a fee of $5,284,360.19.

Signature Page to Transaction Fee Agreement

SECTION 2. **Indemnification.** The Company will indemnify and hold harmless each of the Key Parties, their affiliates and their respective partners (both general and limited), members (both managing and otherwise), officers, directors, employees, agents and representatives (each such person being an "Indemnified Party") from and against any and all losses, claims, damages and liabilities, whether joint or several (the "Liabilities"), related to, arising out of or in connection with this Agreement, whether or not pending or threatened, whether or not an Indemnified Party is a party, whether or not resulting in any liability and whether or not such action, claim, suit, investigation or proceeding is initiated or brought by the Company. The Company will reimburse any Indemnified Party for all reasonable costs and expenses (including reasonable attorneys' fees and expenses) as they are incurred in connection with investigating, preparing, pursuing, defending or assisting in the defense of any action, claim, suit, investigation or proceeding for which the Indemnified Party would be entitled to indemnification under the terms of the previous sentence, or any action or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto. The Company will not be liable under the foregoing indemnification provision with respect to any particular loss, claim, damage, liability, cost or expense of an Indemnified Party that is determined by a court, in a final judgment from which no further appeal may be taken, to have resulted primarily from the gross negligence or willful misconduct of such Indemnified Party. If an Indemnified Party is reimbursed hereunder for any expenses, such reimbursement of expenses will be refunded to the extent it is finally judicially determined that the Liabilities in question resulted primarily from the gross negligence or willful misconduct of such Indemnified Party.

SECTION 3. **Effective Time.** This Agreement will become effective (the "Effective Time") as of the date hereof At the Effective Time, the Company will make the payments to the Key Parties pursuant to Section **1** by wire transfer of same-day funds to the bank account designated by the payee in writing.

SECTION 4. **Term.** This Agreement will remain in effect as of and from the Effective Time until payment in full of the transaction fee described in Section 1 in accordance with Section 3. The provisions of Sections 2, 5 and 6 will survive the termination of this Agreement.

SECTION 5. **Permissible Activities.** Subject to applicable law, nothing herein will in any way preclude the Key Parties or their affiliates (other than the Company or its subsidiaries and their respective employees) or their partners (both general and limited), members (both managing and otherwise), officers, directors, employees, agents or representatives from engaging in any business activities or from performing services for its or their own account or for the account of others, including for companies that may be in competition with the business conducted by the Company, other than as set forth in that certain Amended and Restated Limited Liability Company Agreement of BU Financial Holdings LLC dated as of May 21, 2009 by and among the Company and the other parties signatories thereto (including, without limitation, Sections 3.7(c) and (d) thereof); provided, that this section shall not be construed to authorize the breach of any commitment or of any rebuttal of control agreement made by a Key Investor with the Office of Thrift Supervision or Federal Deposit Insurance Corporation.

SECTION 6. **Miscellaneous**

(a) No amendment or waiver of any provision of this Agreement, or consent to any departure by any party hereto from any such provision, will be effective unless it is in writing and signed by the parties hereto. Any amendment, waiver or consent will be effective only in the specific instance and for the specific purpose for which given. The waiver by any party of any breach of this Agreement will not operate as or be construed to be a waiver by such party of any subsequent breach.

(b) Any notices or other communications required or permitted hereunder will be sufficiently given if delivered personally or sent by facsimile with confirmed receipt, or by overnight courier, addressed as follows or to such other address of which the parties may have given written notice:

if to Blackstone:

Blackstone Management Partners L.L.C.
345 Park Avenue
31st Floor
New York, New York 10154
Attention: Chinh E Chu
Facsimile: (212) 583-3722

with a copy (which will not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: William R Dougherty
Facsimile: (212) 455-2502

if to Carlyle:

c/o The Carlyle Group
520 Madison Avenue
New York, New York 10022
Attention: John C. Redett
Facsimile: (212) 813-4789

with a copy (which will not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Maripat Alpuche
Facsimile: (212) 455-2502

if to Centerbridge:

Centerbridge Advisors, LLC
375 Park Avenue
New York, New York 10152
Attention: Lance West
Facsimile: (212) 672-4562

with a copy (which will not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Wilson S. Neely
Caroline B. Gottschalk
Facsimile: (212) 455-2502

if to WL Ross:

WL Ross & Co. LLC
1166 Avenue of the Americas
New York, New York 10035
Attention: Michael J. Gibbons (CFO)

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 the Company:

BU Financial Holdings LLC
32 Adelaide Ave
East Moriches, New York 11940
Attention: John Kanas
Facsimile: (631) 874-3549

Unless otherwise specified herein, such notices or other communications will be deemed received (i) on the date delivered, if delivered personally or sent by facsimile with confirmed receipt, and (ii) one business day after being sent by overnight courier.

(c) This Agreement will constitute the entire agreement between the parties with respect to the subject matter hereof, and will supersede all previous oral and written (and all contemporaneous oral) negotiations, commitments, agreements and understandings relating hereto.

(d) This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of New York. The parties hereby irrevocably submit to the personal jurisdiction of the courts of the State of New York located in the Borough of Manhattan, and the Federal courts of the United States of America located in the State of New York, Borough of Manhattan, in respect of the interpretation and enforcement of the provisions of this Agreement, and in respect of the transactions contemplated hereby, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in any such court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and, to the extent permitted by law, over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in herein or in such other manner as may be permitted by law shall be valid and sufficient service thereof.

(e) Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each such party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury in respect of any litigation directly or indirectly arising out of, under or relating to this Agreement. Each party certifies and acknowledges that (i) no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver, (ii) each party understands and has considered the implications of this waiver, (iii) each party makes this waiver voluntarily and (iv) each party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications expressed above.

(f) The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted transferees and their respective successors, each of which permitted transferees will agree, in writing in form and substance satisfactory to the Key Parties, to become a party hereto and be bound to the same extent as its transferor hereby. Subject to the next sentence, no person other than the parties hereto and their successors and permitted assigns is intended to be a beneficiary of this Agreement. The parties acknowledge and agree that the Key Investors and their and the Key Parties' affiliates and partners (both general and limited), members (both managing and otherwise), officers, directors, employees, agents and representatives are intended to be third-party beneficiaries under Section 2 of this Agreement.

(g) This Agreement may be executed by one or more parties to this Agreement on any number of separate counterparts (including by facsimile), and all of said counterparts taken together will be deemed to constitute one and the same instrument.

(h) Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition

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or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction.

IN WITNESS WHEREOF, the undersigned have executed, or have caused to executed, this Transaction Fee Agreement on the date first written above.

BU FINANCIAL HOLDINGS LLC

By: /s/ John A. Kanas
Name: John A. Kanas
Title:

Signature Page to Transaction Fee Agreement

IN WITNESS WHEREOF, the undersigned have executed, or have caused to executed, this Transaction Fee Agreement on the date first written above.

BLACKSTONE MANAGEMENT PARTNERS L.L.C.

By: /s/ Chinh E. Chu
Name: Chinh E. Chu
Title: Senior Managing Director

Signature Page to Transaction Fee Agreement

IN WITNESS WHEREOF, the undersigned have executed, or have caused to executed, this Transaction Fee Agreement on the date first written above.

CARLYLE INVESTMENT MANAGEMENT L.L.C.

By: /s/ Daniel A. D'Anrello
Name: Daniel A. D'Anrello
Title: Managing Director

Signature Page to Transaction Fee Agreement

IN WITNESS WHEREOF, the undersigned have executed, or have caused to executed, this Transaction Fee Agreement on the date first written above.

CENTERBRIDGE ADVISORS, LLC

By: Centerbridge Partners, L.P., its sole member

By: Centerbridge Partners Holdings, LLC, its general partner

By: /s/ Lance West
Name: Lance West
Title: Senior Managing Director

Signature Page to Transaction Fee Agreement

IN WITNESS WHEREOF, the undersigned have executed, or have caused to executed, this Transaction Fee Agreement on the date first written above.

WL ROSS & CO. LLC

By: /s/ Wilbur L. Ross, Jr.
Name:
Title:

Signature Page to Transaction Fee Agreement

Exhibit 21.1

List of Subsidiaries

The following is a list of the subsidiaries of BankUnited, Inc. as of October 21, 2010, including the name of each subsidiary and its jurisdiction of incorporation:

1.	BankUnited	USA
2.	BankUnited Investment Services, Inc.	Florida
3.	Bay Holdings, Inc.	Florida
4.	BU Delaware, Inc.	Delaware
5.	BU REIT, Inc.	Florida
6.	CRE Properties, Inc.	Florida
7.	Pinnacle Public Finance, Inc.	Delaware
8.	T&D Properties of South Florida, Inc.	Florida
9.	United Capital Business Lending, Inc.	Delaware

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

The Board of Directors
BankUnited, Inc.:

We consent to the use of our report dated October 25, 2010, 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

October 28, 2010
Miami, Florida
Certified Public Accountants

Exhibit 23.2

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
Fort Lauderdale, Florida
October 28, 2010