UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WACHOVIA CORPORATION,

Plaintiff,

-against-

CITIGROUP, INC.

Defendant.

AFFIDAVIT OF ROBERT K. STEEL

Robert K. Steel, being first duly sworn, states as follows:

1. I am of sound mind and over 21 years of age. I generally have an understanding and in many cases first hand knowledge of the matters set forth in this Affidavit.

2. I am employed by Wachovia Corporation ("Wachovia"), and I serve as President and Chief Executive Officer of the company. I am also a member of the board of directors of Wachovia. In that capacity, I have been actively and personally involved in the various transactions that Wachovia has considered and negotiated as it has evaluated its strategic alternatives in response to events in the financial markets. In particular, I was involved in the negotiations that Wachovia has had with Citigroup Inc. ("Citigroup") relating to Citigroup's proposed purchase of Wachovia's banking subsidiaries and certain other assets. I have also been involved in the negotiations and discussions that Wachovia has had with representatives of the federal government and with Wells Fargo & Co. ("Wells"). The following chronology is based upon my best recollection and on information provided me by senior Wachovia participants in the events.

3. On September 25, 2008, the Federal Deposit Insurance Corporation (FDIC) seized the banking assets of Washington Mutual Inc. and placed it into receivership. On

that same day, the House of Representatives failed to pass the financial "bailout" package. These two events resulted in significant downward financial pressure in the market on the price of Wachovia stock.

4. On September 26, in response to these concerns, Wachovia and Citigroup entered into a Confidentiality Agreement and initiated intense substantive negotiations regarding a possible acquisition of Wachovia by Citigroup. On that same date, Wachovia and Wells Fargo likewise entered a Confidentiality Agreement.

5. On Saturday, September 27, I had a discussion with Chairman of Wells Fargo, Richard M. Kovacevich, in which Mr. Kovacevich indicated that Wells Fargo was interested in purchasing all of Wachovia in a stock-for-stock purchase. Mr. Kovacevich further indicated to me that the Wells Fargo proposed transaction would not require support from the FDIC and that a merger agreement could be executed before the market opened on Monday.

6. Both Wells Fargo and Citigroup conducted extensive due diligence investigations of Wachovia on September 27 and 28. Wachovia's outside counsel, Sullivan & Cromwell, prepared and transmitted a draft Agreement and Plan of Merger to the counsel for Wells Fargo, Wachtell, Lipton, Rosen & Katz. Mr. Kovacevich again indicated to me that Wells Fargo was interested in purchasing all of Wachovia in a stock-for-stock purchase without FDIC assistance. Representatives of Citigroup had indicated to me that their interest was to acquire only Wachovia's banking subsidiaries, with an FDIC guarantee and assistance.

7. At approximately 6:00 p.m. on Sunday, September 28, Mr. Kovacevich informed me that Wells Fargo was not prepared on such a compressed timetable to offer to acquire Wachovia without substantial government assistance.

8. Shortly after I spoke with Mr. Kovacevich, Sheila Bair, Chairman of the Federal Deposit Insurance Corporation ("FDIC") contacted me by telephone. She advised me that that the FDIC believed that no transaction with Citigroup or Wells Fargo could be effected without substantial government assistance. Chairman Bair confirmed that in the FDIC's view this situation posed a systemic risk to the banking system, and that the FDIC was prepared to exercise its powers under Chapter 13 of the Federal Deposit Insurance Act to effect an open bank assisted transaction. Subsequently, Chairman Bair directed Wachovia to commence negotiations with Citi.

9. Wachovia had a telephonic board meeting on the morning of September 29 at approximately 6:30 a.m. I participated in that Board meeting. The company's advisors and I informed the Board that Wachovia had two options: (1) to place Wachovia Corporation into bankruptcy and its banking subsidiaries into receivership; or (2) to negotiate the transaction with the FDIC and Citigroup. The Board voted in favor of proceeding with the transaction with the FDIC and Citigroup.

10. On behalf of Wachovia, Jane Sherburne, Wachovia's General Counsel, proceeded to sign the three-party Agreement-in-Principle with the FDIC and Citigroup, attached hereto as Exhibit A. That document, which by its terms is not binding on any of the parties thereto, set forth certain basic terms of a transaction. The

Agreement-in-Principle provided that there was no binding agreement between the parties unless and until the parties enter into definitive agreements that provided for all necessary terms and conditions of a transaction that were satisfactory to each party. Any definitive agreement would require the approval of Wachovia's Board and its shareholders to be effective.

11. Under the proposed terms in the Agreement-in-Principle, Citigroup would acquire Wachovia's banking subsidiaries but not Wachovia Securities, Evergreen Investments, certain insurance-related businesses and other businesses or Wachovia itself. Thus, the transaction proposed in the Agreement-in-Principle would require the separation of some business units that are functionally and operationally integrated. Under the terms of the Agreement-in-Principle, the FDIC committed to use taxpayer money to limit Citigroup's losses on a $312 billion loan portfolio to $42 billion if the transaction were consummated and the FDIC was to receive $12 billion of preferred stock in Citigroup.

12. Jane Sherburne also signed a Letter Agreement between Citigroup and Wachovia dated September 29, 2008, attached hereto as Exhibit B (the "Exclusivity Agreement"). Ms. Sherburne was given no opportunity to modify or negotiate these documents before signing.

13. Since the signing of the Agreement-in-Principle and Exclusivity Agreement, I have participated on behalf of Wachovia in the negotiations with Citigroup toward reaching definitive agreements that would be presented to Wachovia's Board and shareholders for approval. Those negotiations began immediately and

were conducted earnestly and in good faith by a team of Wachovia employees and outside advisors.

14. These negotiations proved extremely complicated and difficult.

15. Wachovia was under tremendous pressure from Citi and the regulators to conclude a transaction with Citigroup with definitive agreements by the following Monday, October 6, 2008. On multiple occasions I and our advisors attempted to persuade Citigroup to structure a whole – company transaction because of its substantially reduced completion risk, but Citigroup refused.

16. On October 2, 2008 at approximately 7:15p.m., I received an unexpected call from Chairman Bair. She asked if I had heard from Mr. Kovacevich I assured her I had not spoken to him since the initiation of the negotiations with Citi. She advised me that it was her understanding that he would be calling me to propose a merger transaction that would result in Wachovia's shareholders receiving $7.00 per share of Wells Fargo common stock and encouraged me to give serious consideration to that offer. As I was on an airplane and about to take off, I asked Chairman Bair to call Jane Sherburne. Chairman Bair shortly thereafter called Ms. Sherburne and provided details on the proposed transaction to her. Chairman Bair acknowledged that the Wells Fargo proposal sounded superior to the Citi proposal. Mr. Sherburne advised Ms. Bair that unless Wachovia had a signed and Board-approved merger agreement from Wells Fargo, it could not consider this proposal. Ms. Bair said she would so inform Mr. Kovacevich.

17. When my plane landed in North Carolina later that evening, I returned Chairman Bair's call to further understand Mr. Kovacevich's proposal. She described it to me as requiring no government support with no risk to the FDIC Fund.

18. At approximately 9:00p.m., I received a call from Mr. Kovacevich telling me that momentarily he would be sending me a signed, Board-approved, merger agreement for the acquisition of all of Wachovia. At approximately 9:04 p.m., I received an email from Mr. Kovacevich attaching an executed Agreement and Plan of Merger between Wachovia and Wells Fargo, which is attached hereto as Exhibit C (the "Merger Agreement"). That Agreement was for a stock-for-stock transaction that would result in Wachovia's shareholders receiving Wells Fargo stock worth approximately $7.00 per share of common stock.

19. Wachovia's board of directors met by telephone conference call at approximately 11:00 p.m. to review the Wells Fargo Proposal. I participated in the board meeting by telephone. At that meeting, Wachovia's financial advisors, Goldman Sachs and Perella Weinberg Partners, both advised the Board that they were prepared, subject to completion of remaining limited due diligence investigations and final financial analysis, to provide their opinions to the Board that the consideration to be received by Wachovia shareholders in the proposed Wells Fargo transaction would be fair from a financial point of view. The company's advisors and I told the Board that we believed that unless a definitive merger agreement was signed with either Citigroup or Wells Fargo by the end of the day Friday, October 3 that the FDIC was prepared to place Wachovia's banking subsidiaries into receivership. After extensive consideration and discussion by

the Board, the Board approved accepting the Wells Fargo Proposal subject to receipt of fairness opinions from Goldman Sachs and Perella Weinberg Partners. Goldman Sachs and Perella Weinberg Partners delivered their fairness opinions orally early in the morning of Friday, October 3. I executed the Agreement and Plan of Merger, and together with Jane Sherburne called Mr. Kovacevich to inform him of the approval of Wachovia's Board of the Wells Fargo proposal. Chairman Bair, Jane Sherburne and I then called Vikram Pandit, Chairman of Citigroup, to inform him that Wachovia had entered into the Wells Fargo Agreement and Plan of Merger.

20. Between the execution of the Exclusivity Agreement with Citigroup on September 29 and receiving the telephone call from Mr. Kovacevich on October 2, I had no contact with Wells Fargo other than at 9:00 a.m. on September 29 when he called me by telephone to congratulate Wachovia on its deal with Citi. I did not have any contact with Wells Fargo during that period nor did I direct anyone else to have such contact. Prior to Wachovia's execution of the Agreement-in-Principle and Exclusivity Agreement, Wells Fargo had conducted extensive due diligence on Wachovia and had access to the data room that Wachovia made available to potential acquirers. To the best of my knowledge, after Wachovia signed the Agreement-in-Principle and Exclusivity Agreement, with Citigroup Wells Fargo did not access the data room.

21. I have compared the Citigroup proposal to the proposal that Wachovia received from Wells Fargo. The Wells Fargo Proposal, in my opinion, is for superior to the Citigroup proposal for a number of reasons, among them the following:

- the price to shareholders is substantially greater;
- it is a whole company transaction - the Citigroup transaction separates the existing Wachovia franchise and destroys the potential future earnings power of wealth management, retail financial advisory and general banking together in a combined entity;
- all Wachovia preferred stock is assumed by Wells Fargo- the Citigroup proposal would have Wachovia cease paying preferred stock dividends and then launch an exchange offer based on 45% of liquidation preference;
- no government assistance is required for the Wells Fargo transaction;
- unlike the Citigroup proposal, the Wells Fargo transaction does not trigger any rights by Prudential Financial under the Wachovia Securities JV, pursuant to which Wachovia could be exposed to liabilities in excess of $5 billion;
- it does not force a division of Wachovia Securities by extracting the Investment Service Group—Branch Channel out of the branch banks from the rest of Wachovia Securities;
- the surviving company will continue to pay common stock dividends ($0.067 per quarterly share pro forma); whereas the Citigroup proposal would have Wachovia cease paying a common stock dividend;
- Wells Fargo is the only AAA-rated financial institution by the rating agencies, which provides a lower cost of funding for the surviving entity. Citigroup's proposal leaves the surviving Wachovia Corporation in a position where its debt would likely be below investment grade because Citigroup proposes to keep the deposit spread on Wachovia Securities' sweep deposits and thereby deprive Wachovia of a needed source of funding;
- The entire transaction structure is simpler, easier for shareholders to understand, more likely to close and more likely to receive shareholder approval that the Citigroup offer.

22. According to recent news coverage and releases, Citigroup has publicly announced that Well Fargo has interfered with its Exclusivity Agreement with Wachovia, provided the Exclusivity Agreement to the press in violation of a Confidentiality Agreement, and asserted that the Wells Fargo Transaction is improper, unenforceable and prohibited by the Exclusivity Agreement.

23. Citigroup's efforts to undermine and create uncertainty about the Wells Fargo Transaction severely damages Wachovia. The announcement of the Wells Fargo Proposal caused an increase of approximately $10 billion in the common and preferred stock of market capitalization of Wachovia. Unless the issues and threats raised by Citigroup are resolved promptly, Wachovia's shareholders, creditors, retirees and employees are at risk as are the interests of the public generally.

I do declare under penalty of perjury that the foregoing is true and correct.

Robert K. Steel

Sworn to before me this
5th day of October, 2008

Notary Public

JOHN A. PASTERICK
NOTARY PUBLIC, STATE OF NEW YORK
NO.01PA6082750
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES 11/04/2010

EXHIBIT A
TO STEEL AFFIDAVIT

Confidential

AGREEMENT-IN-PRINCIPLE

- Subject to the conditions below, Crimson agrees to buy the stock of Wednesday's bank subsidiaries and other assets to be mutually agreed (except as set forth below and except for an appropriate level of working capital of Wednesday to be agreed) for $2.160bn in cash and/or stock at Crimson's election and the assumption of approximately $53.2bn of Wednesday's senior and subordinated debt
    - Section 338(h)(10) election/asset deal for tax purposes
    - Wednesday continues as a public company owning the AG Edwards (to be defined) and Evergreen businesses and other selected assets, if needed, with an aggregate book value not to exceed $2.0bn. To the extent possible, a majority of the $2.0bn will be in the form of liquid assets
    - Liquidity rights and orderly sell down restrictions on Crimson stock to be agreed
    - Certain subsidiaries of acquired subsidiaries to be excluded

- FDIC provides the acquired bank subsidiaries of Wednesday with loss protection on the current marked value of a $312bn portfolio to be identified by Crimson prior to closing
    - Crimson absorbs the first $30bn of losses
    - Crimson also absorbs up to $4bn a year of losses for first three years
    - FDIC compensates Crimson for all losses above these amounts through the life of all assets in the portfolio
    - FDIC to receive face value of $12bn (fair value [approximately $7 - 9]bn) in preferred stock and approximately [$3-5]bn of value in warrants
    - FDIC non-cumulative perpetual preferred stock and warrants to be structured as Tier 1 Capital and GAAP equity of Crimson

- If the acquisition of Wednesday's bank subsidiaries is not consummated (and regardless of the reasons of any such deal failure, other than due solely to a willful breach by Crimson) Crimson will have an irrevocable option to purchase any or all of Wednesday's branches, deposits, and corresponding assets selected by Crimson in NJ, CA and FL for their fair market value exercisable at any time through 12 months following deal termination

- Wednesday will issue to FDIC a limited duration preferred stock
    - De minimis liquidation preference
    - Redeemable for its liquidation preference on the earlier of the closing of the deal or 12 months after deal failure
    - Voting rights representing 19.9% of the total voting rights

    - Record dates for any matters on which Wednesday's shareholders are entitled to vote to be set for a date following the issuance of such shares

- Fed to irrevocably agree to vote in favor of the deal and, unless otherwise agreed by Crimson, against any other inconsistent transaction

- Wednesday to continue to seek shareholder approval for up to 6 months following the first meeting of Wednesday at which shareholders vote against this transaction
  - Wednesday can change its recommendation of the deal to its shareholders only if required by its fiduciary duties
  - Wednesday cannot terminate the deal until such 6 month period expires

- Substantial presence to be maintained in Charlotte, NC

- Wednesday to continue to provide depository services on current terms to A G Edwards

- Transition services to be mutually agreed

- Wednesday to indemnify Crimson for:

  - Pre-closing tax liabilities (in excess of applicable reserves at banks)
  - All litigation and liabilities other than any such litigation or liability arising primarily from the ordinary course operations of the business of the acquired subsidiaries

- Crimson to indemnify Wednesday post-closing for liabilities and litigation arising primarily from the ordinary course operation of the business of the acquired subsidiaries

- Contemporaneous with signing, Crimson will need to raise $10bn in common stock

- Crimson to reduce its dividend by approximately $0.16 per share per quarter

- With respect to any deconsolidated entity owned, directly or indirectly, by an acquired consolidated subsidiary (each a "**Deconsolidated Entities**"), prior to closing, Wednesday shall take such steps as are necessary to (i) permit the acquisition of such Deconsolidated Entity to be treated as the acquisition of the assets of such Deconsolidated Entity for U.S. federal income tax purposes or (ii) cause such Deconsolidated Entity to transfer its assets to Crimson in a transaction treated as a taxable sale for U.S. federal income tax purposes, in each case, in form reasonably satisfactory to Crimson (each, an "**Asset Purchase Restructuring**"). Crimson shall reasonably cooperate with Wednesday in the implementation of each such Asset Purchase Restructuring; *provided*, that Crimson shall have no obligation to implement an Asset Purchase Restructuring to the extent so doing would reasonably be expected to adversely affect Crimson or any of its Affiliates after the Closing Date.

- Conditions:
  - Satisfactory due diligence prior to signing

- Satisfactory solvency opinion, delivered upon signing of definitive agreements, on Wednesday pro forma after giving effect to the transaction
- Board approvals
- Wednesday shareholder approval
- Regulatory approvals including confirmation from the Fed and the OCC that $270bn of the $312bn asset pool will have a zero risk-weighting for risk-based capital purposes and be excluded from average total assets for leverage capital purposes, and the outstanding amount of any other assets in the pool will have a risk-weighting equal to (A * B) / (A + $270bn), where A equals $42bn minus the amount of any assets written off (the "Remaining Assets") and B equals the normal risk-weighting on the Remaining Assets.
- No material adverse change
- Closing before year-end
- Other customary conditions

- Exclusivity for seven days from announcement

Each of the undersigned confirms its agreement-in-principle to the forgoing. Expect for the separate letter agreement with respect to exclusivity, none of the foregoing shall be legally binding on any of the parties. No such binding obligations shall arise except pursuant to duly executed definitive agreements in form and substance satisfactory to each party. This agreement-in-principle shall be governed by New York Laws.

Dated: September 29, 2008

Wachovia Corporation	Citigroup Inc.	Federal Deposit Insurance Corporation
By:_____	By: [signature]	By: _____
Name:	Name: GARY CRITTENDEN	Name:
Title:	Title: C.F.O.	Title:

EXHIBIT B
TO STEEL AFFIDAVIT

Citigroup Inc.

September 29, 2008

Wachovia Corporation

Ladies and Gentlemen:

Citigroup Inc. ("Citigroup") and Wachovia Corporation ("Wachovia") are party to that non-binding term sheet dated September 29, 2008 (the "**Term Sheet**") setting forth the terms and conditions of a proposed transaction between them (the "**Transaction**"). Citigroup and Wachovia will continue to proceed to negotiate definitive agreements (the "**Definitive Documentation**") relating to the Transaction in form and substance satisfactory to each of them with a view to executing such Definitive Documentation prior to October 6, 2008 (the "**Exclusivity Termination Date**").

In consideration of the foregoing and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Wachovia hereby agrees that, during the period commencing on the date hereof and ending on Exclusivity Termination Date, Wachovia shall not, and shall not permit any of its subsidiaries or any of its or their respective officers, directors, employees, investment bankers, attorneys, accountants, consultants or other agents or advisors ("**Representatives**") to, directly or indirectly, (i) solicit, initiate or take any action to facilitate or encourage the submission of any Acquisition Proposal, (ii) enter into or participate in any discussions or negotiations with, furnish any information relating to Wachovia or any of its subsidiaries, assets or businesses or afford access to the business, properties, assets, books or records of Wachovia or any of its subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or encourage any effort by, any third party that is seeking to make, or has made, an Acquisition Proposal, (iii) grant any waiver or release under any standstill or similar agreement with respect to any class of equity securities of Wachovia or (iv) enter into any agreement in principle, letter of intent, term sheet, merger agreement, acquisition agreement, option agreement or other similar instrument relating to an Acquisition Proposal. As of the date hereof, Wachovia will, and will cause its Representatives to, terminate any discussions or negotiations with respect to any Acquisition Proposal.

"**Acquisition Proposal**" means, other than the Transaction, any offer, proposal or inquiry relating to, or any third party indication of interest in, (i) any acquisition or purchase, direct or indirect, of 15% or more of the consolidated assets of Wachovia, or over 15% of any class of equity or voting securities of Wachovia or any of its subsidiaries whose assets, taken as a whole, constitute more than 15% of the consolidated assets of Wachovia, (ii) any tender offer (including a self-tender offer) or exchange offer that, if consummated, would result in such third party's beneficially owning 15% or more of any

class of equity or voting securities of Wachovia or any of its subsidiaries whose assets, taken as a whole, constitute more than 15% of the consolidated assets of Wachovia, (iii) a merger, consolidation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving Wachovia or any of its subsidiaries whose assets, individually or in the aggregate, constitute more than 15% of the consolidated assets of Wachovia or (iv) any other transaction the consummation of which could reasonably be expected to impede, interfere with, prevent or materially delay the Transaction or that could reasonably be expected to dilute materially the benefits to Citigroup of the Transaction.

The parties agree that in the event of any breach of this letter agreement, the parties would be irreparably harmed and could not be made whole by monetary damages. Each party accordingly agrees (i) not to assert by way of defense or otherwise that a remedy at law would be adequate and (ii) that the remedy of specific performance of this letter agreement is appropriate in any action in court, in addition to any other remedy to which such party may be entitled.

This agreement shall be governed by, and construed in accordance with, the laws of the State of New York. The parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of any state or federal court sitting in New York City, Borough of Manhattan, over any suit, action or proceeding arising out of or relating to this letter agreement. The parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. The parties hereby agree that a final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon you and may be enforced in any other courts to whose jurisdiction the parties are or may be subject by suit upon such judgment.

This letter agreement may be executed in counterparts, either one of which need not contain the signature of more than one party, but both such counterparts taken together will constitute one and the same agreement.

If the foregoing accurately summarizes our understanding, we request that you approve this letter agreement and evidence such approval by causing a copy of this letter agreement to be executed and returned to the undersigned.

Very truly yours,

CITIGROUP INC.

By: _____
Name: GARY L. CRITTENDEN
Title: CFO

Agreed and accepted:

WACHOVIA CORPORATION

By: _____
Name:
Title:

EXHIBIT C
TO STEEL AFFIDAVIT

AGREEMENT AND PLAN OF MERGER

by and between

Wells Fargo & Company

and

Wachovia Corporation

Dated as of October 2, 2008

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AGREEMENT AND PLAN OF MERGER, dated as of October 2, 2008 (this "Agreement"), by and between **Wachovia Corporation**, a North Carolina corporation ("Company"), and **Wells Fargo & Company**, a Delaware corporation ("Parent").

RECITALS

A. Promptly following the execution of this Agreement, Parent shall form a new wholly owned subsidiary ("Merger Sub") as a North Carolina corporation, and Parent shall cause Merger Sub to, and Merger Sub shall, sign a joinder agreement to this Agreement and be bound hereby.

B. The Boards of Directors of Company and Parent have determined that it is in the best interests of their respective companies and their shareholders to consummate the strategic business combination transaction provided for in this Agreement in which Merger Sub will, on the terms and subject to the conditions set forth in this Agreement, merge with and into, Company (the "Merger"), with Company as the surviving company in the Merger (sometimes referred to in such capacity as the "Surviving Company").

C. Simultaneous with the entry into this Agreement, Parent and Company are entering into a share exchange agreement in the form set forth in Exhibit A (the "Share Exchange Agreement").

D. The parties desire to make certain representations, warranties and agreements in connection with the Merger and also to prescribe certain conditions to the Merger.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained in this Agreement, the parties agree as follows:

ARTICLE I

THE MERGER

1.1 The Merger. (a) Subject to the terms and conditions of this Agreement, in accordance with the Business Corporation Act of the State of North Carolina (the "BCA"), at the Effective Time, Merger Sub shall merge with and into Company. Company shall be the Surviving Company in the Merger and shall continue its existence as a corporation under the laws of the State of North Carolina. As of the Effective Time, the separate corporate existence of Merger Sub shall cease.

(b) Parent may at any time change the method of effecting the combination (including by providing for the merger of Company with and into Parent or otherwise restructuring the transaction to qualify as a "reorganization" within the meaning to Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code")) if and to the extent requested by Parent, and Company and Merger Sub agree to enter into such amendments to this Agreement as Parent may reasonably request in order to give effect to such restructuring; provided, however, that no such change or amendment shall (i) alter or change the amount or kind of the Merger Consideration provided for in this Agreement

or (ii) materially impede or delay consummation of the transactions contemplated by this Agreement.

1.2 Effective Time. The Merger shall become effective as set forth in the articles of merger (the "Articles of Merger") that shall be filed with the Secretary of State of the State of North Carolina on the Closing Date. The term "Effective Time" shall be the date and time when the Merger becomes effective as set forth in the Articles of Merger.

1.3 Effects of the Merger. At and after the Effective Time, the Merger shall have the effects set forth in the BCA.

1.4 Conversion of Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, Company or the holder of any of the following securities:

(a) At the Effective Time, each share of common stock, par value $[0.01] per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of common stock, par value $3.33 1/3, of the Surviving Corporation.

(b) All shares of common stock, par value $3.33 1/3 per share, of Company issued and outstanding immediately prior to the Effective Time (together with the preferred share purchase rights attached thereto pursuant to the Company Rights Agreement, the "Company Common Stock") that are owned by Company or Parent (other than shares of Company Common Stock held in trust accounts, managed accounts, mutual funds and the like, or otherwise held in a fiduciary or agency capacity, that are beneficially owned by third parties (any such shares, "Trust Account Common Shares") and other than shares of Company Common Stock held, directly or indirectly, by Company or Parent in respect of a debt previously contracted (any such shares, "DPC Common Shares")) shall be cancelled and shall cease to exist and no stock of Parent or other consideration shall be delivered in exchange therefor.

(c) Subject to Section 1.4(e), each share of the Company Common Stock, except for shares of Company Common Stock owned by Company or Parent (other than Trust Account Common Shares and DPC Common Shares), shall be converted, in accordance with the procedures set forth in Article II, into the right to receive 0.1991 (the "Exchange Ratio") shares of common stock, par value $1 2/3 per share, of Parent ("Parent Common Stock") (the "Merger Consideration").

(d) All of the shares of Company Common Stock converted into the right to receive the Merger Consideration pursuant to this Article I shall no longer be outstanding and shall automatically be cancelled and shall cease to exist as of the Effective Time, and each certificate previously representing any such shares of Company Common Stock (each, a "Certificate") shall thereafter represent only the right to receive the Merger Consideration and/or cash in lieu of fractional shares into which the shares of Company Common Stock represented by such Certificate have been converted pursuant to this Section 1.4 and Section 2.3(f), as well as any dividends to which holders of Company Common Stock become entitled in accordance with Section 2.3(c).

(e) If, between the date of this Agreement and the Effective Time, the outstanding shares of Parent Common Stock shall have been increased, decreased, changed into or exchanged for a different number or kind of shares or securities as a result of a reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split, or other similar change in capitalization, an appropriate and proportionate adjustment shall be made to the Merger Consideration.

1.5 Stock Options.

(a) At the Effective Time, all outstanding and unexercised employee and director options to purchase shares of Company Common Stock (each, a "Company Stock Option") will cease to represent an option to purchase Company Common Stock and will be converted automatically into options to purchase Parent Common Stock, and Parent will assume each Company Stock Option subject to its terms; *provided, however*, that after the Effective Time.

(i) the number of shares of Parent Common Stock purchasable upon exercise of each Company Stock Option will equal the product of (i) the number of shares of Company Common Stock that were purchasable under the Company Stock Option immediately before the Effective Time and (ii) the Exchange Ratio, rounded down to the nearest whole share; and

(ii) the per share exercise price for each Company Stock Option will equal the quotient of (i) the per share exercise price of the Company Stock Option in effect immediately before the Effective Time and (ii) the Exchange Ratio, rounded up to the nearest cent.

(b) Notwithstanding the foregoing, (i) the exercise price and the number of shares of Parent Common Stock purchasable pursuant to the Company Stock Options shall be determined in a manner consistent with any applicable requirements of Section 409A of the Code and (ii) that in the case of any Company Stock Option to which Section 422 of the Code applies, the exercise price and the number of shares of Parent Common Stock purchasable pursuant to such option shall be determined in accordance with the foregoing, subject to such adjustments as are necessary in order to satisfy the requirements of Section 424(a) of the Code. Except as specifically provided above, following the Effective Time, each Company Stock Option shall continue to be governed by the same terms and conditions as were applicable under such Company Stock Option immediately prior to the Effective Time (after giving effect to any rights resulting from the transactions contemplated under this Agreement pursuant to the Company Stock Plans and the award agreements thereunder). As used in this Agreement, "Company Stock Plans" means the [1992 Master Stock Compensation Plan, 1996 Master Stock Compensation Plan, 1998 Stock Incentive Plan, 2001 Stock Incentive Plan, Stock Plan and the Amended and Restated 2003 Stock Incentive Plan].

1.6 Other Stock-Based Awards. At the Effective Time, each right of any kind, contingent or accrued, to receive shares of Company Common Stock or benefits measured by the value of a number of shares of Company Common Stock, and each award of any kind consisting of shares of Company Common Stock, granted under the Company Stock Plans (including restricted stock, restricted stock units, deferred stock units, phantom stock units and dividend equivalents), that is outstanding immediately prior to the Effective Time (other than Company Stock Options) (each, a "Company Stock Award") shall cease to represent a right or award

with respect to shares of Company Common Stock and shall be converted, at the Effective Time, into a right or award with respect to Parent Common Stock, and Parent will assume each Company Stock Award subject to its terms; *provided, however,* that after the Effective Time the number of shares of Parent Common Stock subject to the Company Stock Award will equal to the product of (a) the number of shares of Company Common Stock subject to the Company Stock Award immediately before the Effective Time and (b) the Exchange Ratio, rounded down to the nearest whole share. Except as specifically provided above, following the Effective Time, each Company Stock Award shall continue to be governed by the same terms and conditions as were applicable under such Company Stock Award immediately prior to the Effective Time (after giving effect to any rights resulting from the transactions contemplated under this Agreement pursuant to the Company Stock Plans and the award agreements thereunder).

1.7 Articles of Incorporation and By-Laws of the Surviving Company. At the Effective Time, the articles of incorporation of Company in effect immediately prior to the Effective Time, shall be the articles of incorporation of the Surviving Company until thereafter amended in accordance with applicable law. The by-laws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the by-laws of the Surviving Company until thereafter amended in accordance with applicable law and the terms of such by-laws.

1.8 Directors and Officers. Subject to applicable law, the directors of Merger Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Company and shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal. The officers of the Company immediately prior to the Closing Date shall be the initial officers of the Surviving Company and shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal.

1.9 Company Preferred Stock. Each share of each series of Company Preferred Stock outstanding immediately prior to the Effective Time shall automatically be converted into a share of Parent Preferred Stock having rights, privileges, powers and preferences substantially identical to those of the relevant series of Company Preferred Stock.

1.10 Effect on Parent Stock; Required Parent Action. Each share of Parent Stock outstanding immediately prior to the Effective Time will remain outstanding. Before the Effective Time, Parent will take all corporate action necessary to reserve for issuance a sufficient number of shares of Parent Common Stock for delivery upon exercise of Company Stock Options in accordance with Section 1.5 and for delivery under Company Stock Awards in accordance with Section 1.6. As soon as practicable after the Effective Time, Parent will file one or more appropriate registration statements (on Form S-3 or Form S-8 or any successor or other appropriate forms) with respect to the Parent Common Stock underlying the Company Stock Options pursuant to Section 1.5 and subject to the Company Stock Awards pursuant to Section 1.6.

ARTICLE II

DELIVERY OF MERGER CONSIDERATION

2.1 Exchange Agent. Prior to the Effective Time Parent shall appoint a bank or trust company Subsidiary of Parent or another bank or trust company reasonably acceptable to Company, or Parent's transfer agent, pursuant to an agreement (the "Exchange Agent Agreement") to act as exchange agent (the "Exchange Agent") hereunder.

2.2 Deposit of Merger Consideration. At or prior to the Effective Time, Parent shall (i) authorize the Exchange Agent to issue an aggregate number of shares of Parent Common Stock equal to the aggregate Merger Consideration, and (ii) deposit, or cause to be deposited with, the Exchange Agent, to the extent then determinable, any cash payable in lieu of fractional shares pursuant to Section 2.3(f) (the "Exchange Fund").

2.3 Delivery of Merger Consideration.

(a) As soon as reasonably practicable after the Effective Time, the Exchange Agent shall mail to each holder of record of Certificate(s) which immediately prior to the Effective Time represented outstanding shares of Company Common Stock whose shares were converted into the right to receive the Merger Consideration pursuant to Section 1.4 and any cash in lieu of fractional shares of Parent Common Stock to be issued or paid in consideration therefor (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to Certificate(s) shall pass, only upon delivery of Certificate(s) (or affidavits of loss in lieu of such Certificates)) to the Exchange Agent and shall be substantially in such form and have such other provisions as shall be prescribed by the Exchange Agent Agreement (the "Letter of Transmittal") and (ii) instructions for use in surrendering Certificate(s) in exchange for the Merger Consideration, any cash in lieu of fractional shares of Parent Common Stock to be issued or paid in consideration therefor and any dividends or distributions to which such holder is entitled pursuant to Section 2.3(c).

(b) Upon surrender to the Exchange Agent of its Certificate or Certificates, accompanied by a properly completed Letter of Transmittal, a holder of Company Common Stock will be entitled to receive promptly after the Effective Time the Merger Consideration and any cash in lieu of fractional shares of Parent Common Stock to be issued or paid in consideration therefor in respect of the shares of Company Common Stock represented by its Certificate or Certificates. Until so surrendered, each such Certificate shall represent after the Effective Time, for all purposes, only the right to receive, without interest, the Merger Consideration and any cash in lieu of fractional shares of Parent Common Stock to be issued or paid in consideration therefor upon surrender of such Certificate in accordance with, and any dividends or distributions to which such holder is entitled pursuant to, this Article II.

(c) No dividends or other distributions with respect to Parent Common Stock shall be paid to the holder of any unsurrendered Certificate with respect to the shares of Parent Common Stock represented thereby, in each case unless and until the surrender of such Certificate in accordance with this Article II. Subject to the effect of applicable abandoned property, escheat or similar laws, following surrender of any such Certificate in accordance with this Article II, the record holder thereof shall be entitled to

receive, without interest, (i) the amount of dividends or other distributions with a record date after the Effective Time theretofore payable with respect to the whole shares of Parent Common Stock represented by such Certificate and not paid and/or (ii) at the appropriate payment date, the amount of dividends or other distributions payable with respect to shares of Parent Common Stock represented by such Certificate with a record date after the Effective Time (but before such surrender date) and with a payment date subsequent to the issuance of the Parent Common Stock issuable with respect to such Certificate.

(d) In the event of a transfer of ownership of a Certificate representing Company Common Stock that is not registered in the stock transfer records of Company, the shares of Parent Common Stock and cash in lieu of fractional shares of Parent Common Stock comprising the Merger Consideration shall be issued or paid in exchange therefor to a person other than the person in whose name the Certificate so surrendered is registered if the Certificate formerly representing such Company Common Stock shall be properly endorsed or otherwise be in proper form for transfer and the person requesting such payment or issuance shall pay any transfer or other similar taxes required by reason of the payment or issuance to a person other than the registered holder of the Certificate or establish to the satisfaction of Parent that the tax has been paid or is not applicable. The Exchange Agent (or, subsequent to the earlier of (x) the one-year anniversary of the Effective Time and (y) the expiration or termination of the Exchange Agent Agreement, Parent) shall be entitled to deduct and withhold from any cash in lieu of fractional shares of Parent Common Stock otherwise payable pursuant to this Agreement to any holder of Company Common Stock such amounts as the Exchange Agent or Parent, as the case may be, is required to deduct and withhold under the Code, or any provision of state, local or foreign tax law, with respect to the making of such payment. To the extent the amounts are so withheld by the Exchange Agent or Parent, as the case may be, and timely paid over to the appropriate Governmental Entity, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of shares of Company Common Stock in respect of whom such deduction and withholding was made by the Exchange Agent or Parent, as the case may be.

(e) After the Effective Time, there shall be no transfers on the stock transfer books of Company of the shares of Company Common Stock that were issued and outstanding immediately prior to the Effective Time other than to settle transfers of Company Common Stock that occurred prior to the Effective Time. If, after the Effective Time, Certificates representing such shares are presented for transfer to the Exchange Agent, they shall be cancelled and exchanged for the Merger Consideration and any cash in lieu of fractional shares of Parent Common Stock to be issued or paid in consideration therefor in accordance with the procedures set forth in this Article II.

(f) Notwithstanding anything to the contrary contained in this Agreement, no fractional shares of Parent Common Stock shall be issued upon the surrender of Certificates for exchange, no dividend or distribution with respect to Parent Common Stock shall be payable on or with respect to any fractional share, and such fractional share interests shall not entitle the owner thereof to vote or to any other rights of a shareholder of Parent. In lieu of the issuance of any such fractional share, Parent shall pay to each former shareholder of Company who otherwise would be entitled to receive such fractional share an amount in cash (rounded to the nearest cent) determined by multiplying (i) the average, rounded to the nearest one ten thousandth, of the closing sale prices of Parent Common Stock on the New York Stock Exchange (the "NYSE") as reported by The Wall Street Journal for the five trading days immediately preceding the date of the Effective Time by (ii) the fraction of a share (after taking into account all shares

of Company Common Stock held by such holder at the Effective Time and rounded to the nearest thousandth when expressed in decimal form) of Parent Common Stock to which such holder would otherwise be entitled to receive pursuant to Section 1.4.

(g) Any portion of the Exchange Fund that remains unclaimed by the shareholders of Company as of the first anniversary of the Effective Time may be paid to Parent. In such event, any former shareholders of Company who have not theretofore complied with this Article II shall thereafter look only to Parent with respect to the Merger Consideration, any cash in lieu of any fractional shares and any unpaid dividends and distributions on the Parent Common Stock deliverable in respect of each share of Company Common Stock such shareholder holds as determined pursuant to this Agreement, in each case, without any interest thereon. Notwithstanding the foregoing, none of Parent, the Surviving Company, the Exchange Agent or any other person shall be liable to any former holder of shares of Company Common Stock for any amount delivered in good faith to a public official pursuant to applicable abandoned property, escheat or similar laws.

(h) In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if reasonably required by Parent or the Exchange Agent, the posting by such person of a bond in such amount as Parent may determine is reasonably necessary as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration deliverable in respect thereof pursuant to this Agreement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF COMPANY

Except as (i) Previously Disclosed or (ii) disclosed in any report, schedule, form or other document filed with, or furnished to, the SEC by Company prior to the date hereof (but excluding any risk factor disclosures contained under the heading "Risk Factors," any disclosure of risks included in any "forward-looking statements" disclaimer or any other statements that are similarly non-specific or predictive or forward-looking in nature), Company hereby represents and warrants to Parent as follows (solely as of the date hereof except in the case of the representations and warranties set forth in Sections 3.2(a), 3.2(b), 3.3(a), 3.3(b)(i), 3.7 and 3.8 (solely with respect to the last sentence thereof)):

3.1 Corporate Organization.

(a) Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of North Carolina. Company has the requisite corporate power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted, and is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary.

(b) True, complete and correct copies of the Restated Articles of Incorporation of Company (as amended, the "Company Articles"), and the Amended and

Restated Bylaws of Company (as amended, the "Company Bylaws"), as in effect as of the date of this Agreement, have previously been publicly filed by Company and are available to Parent.

(c) Each Subsidiary of Company (i) is duly incorporated or duly formed, as applicable to each such Subsidiary, and validly existing and in good standing under the laws of its jurisdiction of organization, (ii) has the requisite corporate (or similar) power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted and (iii) is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary. As used in this Agreement, the word "Subsidiary", when used with respect to either party, means any bank, corporation, partnership, limited liability company or other organization, whether incorporated or unincorporated, that is consolidated with such party for financial reporting purposes under U.S. generally accepted accounting principles ("GAAP").

3.2 Capitalization. (a) The authorized capital stock of Company consists of 3,000,000,000 shares of Company Common Stock of which, as of **[•]**, 2008 (the "Company Capitalization Date") no more than **[•]** shares were issued and outstanding, and 550,000,000 shares of preferred stock of which, as of the Company Capitalization Date, (i) 500,000,000 are designated as Dividend Equalization Preferred Shares, 97,000,000 shares of which were issued and outstanding, (ii) 10,000,000 are designated as Preferred Stock, no shares of which were issued and outstanding, and (iii) 40,000,000 are designated as Class A Preferred Stock, of which (A) 5,000,000 are designated as Series G, Class A Preferred Stock, no shares of which were issued and outstanding, (B) 5,000,000 are designated as Series H, Class A Preferred Stock, no shares of which were issued and outstanding, (C) 25,010 are designated as Series I, Class A Preferred Stock, no shares of which were issued and outstanding, (D) 2,300,000 are designated as Series J, Class A Preferred Stock, **[•]** shares of which were issued and outstanding, (E) 3,500,000 are designated as Series K, Class A Preferred Stock, **[•]** shares of which were issued and outstanding, and (F) 4,025,000 are designated as 7.50% Non-cumulative Perpetual Class A Preferred Stock, Series L, **[•]** shares of which were issued and outstanding (clauses (i), (ii) and (iii) collectively, "Company Preferred Stock"). As of the Company Capitalization Date, the Company held **[•]** shares of Company Common Stock in its treasury. As of the Company Capitalization Date, there were outstanding Company Stock Options to purchase an aggregate of **[•]** shares of Company Common Stock and outstanding Company Stock Awards in respect of **[•]** shares of Company Common Stock. As of the Company Capitalization Date, there were no more than **[•]** shares of Company Common Stock reserved for issuance under the Company Stock Plans, and there were no more than **[•]** shares of Company Common Stock reserved for issuance under the terms of its convertible Preferred Stock. All of the issued and outstanding shares of Company Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights, with no personal liability attaching to the ownership thereof. As of the date of this Agreement, no bonds, debentures, notes or other indebtedness having the right to vote on any matters on which shareholders of Company may vote ("Voting Debt") are issued or outstanding. As of the Company Capitalization Date, except pursuant to this Agreement as set forth in this Section 3.2 (including as contemplated in Section 3.2(b)), the Share Exchange Agreement and Company's dividend reinvestment plan, Company does not have and is not bound by any outstanding

subscriptions, options, warrants, calls, rights, commitments or agreements of any character ("Rights") calling for the purchase or issuance of, or the payment of any amount based on, any shares of Company Common Stock, Company Preferred Stock, Voting Debt or any other equity securities of Company or any securities representing the right to purchase or otherwise receive any shares of Company Common Stock, Company Preferred Stock, Voting Debt or other equity securities of Company. There are no contractual obligations of Company or any of its Subsidiaries (x) to repurchase, redeem or otherwise acquire any shares of capital stock of Company or any equity security of Company or its Subsidiaries or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of Company or its Subsidiaries or (y) pursuant to which Company or any of its Subsidiaries is or could be required to register shares of Company capital stock or other securities under the Securities Act of 1933, as amended (the "Securities Act").

(b) Other than awards under the Company Stock Plans that are outstanding as of the Company Capitalization Date, no other equity-based awards are outstanding as of the Company Capitalization Date. Since the Company Capitalization Date through the date hereof, Company has not (A) issued or repurchased any shares of Company Common Stock, Company Preferred Stock, Voting Debt or other equity securities of Company, other than the issuance of shares of Company Common Stock in connection with the exercise of Company Stock Options or settlement in accordance with their terms of the Company Stock Plans that were outstanding on the Company Capitalization Date or (B) issued or awarded any options, stock appreciation rights, restricted shares, restricted stock units, deferred equity units, awards based on the value of Company capital stock or any other equity-based awards. From June 30, 2008 through the date of this Agreement, neither the Company nor any of its Subsidiaries has (i) accelerated the vesting of or lapsing of restrictions with respect to any stock-based compensation awards or long term incentive compensation awards, (ii) with respect to executive officers of the Company or its Subsidiaries, entered into or amended any employment, severance, change of control or similar agreement (including any agreement providing for the reimbursement of excise taxes under Section 4999 of the Code) or (iii) adopted or amended any material Company Benefit Plan (as defined in Section 6.5(h)).

(c) All of the issued and outstanding shares of capital stock or other equity ownership interests of each Significant Subsidiary of Company (other than [South] Securities) are owned by Company, directly or indirectly, free and clear of any liens, pledges, charges, claims and security interests and similar encumbrances ("Liens"), and all of such shares or equity ownership interests are duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. No Significant Subsidiary of Company has or is bound by any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase or issuance of any shares of capital stock or any other equity security of such Subsidiary or any securities representing the right to purchase or otherwise receive any shares of capital stock or any other equity security of such Subsidiary.

3.3 Authority; No Violation. (a) Company has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly approved by the Board of Directors of Company. The Board of Directors of Company has determined that this Agreement is advisable and in the best interests

of Company and its shareholders and has directed that this Agreement be submitted to Company's shareholders for approval and adoption at a duly held meeting of such shareholders and has adopted a resolution to the foregoing effect. Except for receipt of the affirmative vote of the holders of a majority of the shares of Company Common Stock entitled to vote to adopt and approve the plan of merger contained in this Agreement, this Agreement and the transactions contemplated hereby have been authorized by all necessary respective corporate action. This Agreement has been duly and validly executed and delivered by Company and (assuming due authorization, execution and delivery by Parent and Merger Sub) constitutes the valid and binding obligation of Company, enforceable against Company in accordance with its terms (except as may be limited by bankruptcy, insolvency, fraudulent transfer, moratorium, reorganization or similar laws of general applicability relating to or affecting the rights of creditors generally and subject to general principles of equity (the "Bankruptcy and Equity Exception")).

(b) Neither the execution and delivery of this Agreement by Company nor the consummation by Company of the transactions contemplated hereby, nor compliance by Company with any of the terms or provisions of this Agreement, will (i) violate any provision of the Company Articles or Company Bylaws or (ii) assuming that the consents, approvals and filings referred to in Section 3.4 are duly obtained and/or made, (A) violate any law, judgment, order, injunction or decree applicable to Company, any of its Subsidiaries or any of their respective properties or assets or (B) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of Company or any of its Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, franchise, permit, agreement, by-law or other instrument or obligation to which Company or any of its Subsidiaries is a party or by which any of them or any of their respective properties or assets is bound except, with respect to clause (ii), any such violation, conflict, breach, default, termination, cancellation, acceleration or creation that would not reasonably be expected to cause a Material Adverse Effect.

3.4 Consents and Approvals. Except for (i) filings of applications and notices with, and receipt of consents, authorizations, approvals, exemptions or nonobjections from, the Securities and Exchange Commission (the "SEC"), NYSE, state securities authorities, the Financial Industry Regulatory Authority ("FINRA"), applicable securities, commodities and futures exchanges, and other industry self-regulatory organizations (each, an "SRO"), (ii) the filing of any other required applications, filings or notices with the Board of Governors of the Federal Reserve System (the "Federal Reserve"), any foreign, federal or state banking, other regulatory, self-regulatory or enforcement authorities or any courts, administrative agencies or commissions or other governmental authorities or instrumentalities (each a "Governmental Entity") and approval of or non-objection to such applications, filings and notices (taken together with the items listed in clause (i), the "Regulatory Approvals"), (iii) the filing with the SEC of a Proxy Statement in definitive form relating to the meeting of Company's shareholders to be held in connection with this Agreement and the transactions contemplated by this Agreement (the "Proxy Statement") and of a registration statement on Form S-4 (the "Form S-4") in which the Proxy Statement will be included as a prospectus, and declaration of effectiveness of the Form S-4 and the filing and effectiveness of the registration

statement contemplated by Section 6.1(a), (iv) the filing of the Articles of Merger with the Secretary of State of the State of North Carolina, (v) any notices to or filings with the Small Business Administration (the "SBA"), (vi) any notices or filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") and (vii) such filings and approvals as are required to be made or obtained under the securities or "Blue Sky" laws of various states in connection with the issuance of the shares of Parent Common Stock pursuant to this Agreement and approval of listing of such Parent Common Stock on the NYSE, no consents or approvals of or filings or registrations with any Governmental Entity are necessary in connection with the consummation by Company of the Merger and the other transactions contemplated by this Agreement. No consents or approvals of or filings or registrations with any Governmental Entity are necessary in connection with the execution and delivery by Company of this Agreement.

3.5 Reports; Regulatory Matters.

(a) Company and each of its Subsidiaries have timely filed all reports, registrations, statements and certifications, together with any amendments required to be made with respect thereto, that they were required to file since January 1, 2006 and prior to the date hereof with the Federal Reserve, SEC, the NYSE, any state consumer finance or mortgage banking regulatory authority or other Agency, any foreign regulatory authority and any SRO (collectively, "Regulatory Agencies") and with each other applicable Governmental Entity, and all other reports and statements required to be filed by them since January 1, 2006 and prior to the date hereof, including any report or statement required to be filed pursuant to the laws, rules or regulations of the United States, any state, any foreign entity, or any Regulatory Agency or other Governmental Entity, and have paid all fees and assessments due and payable in connection therewith.

(b) An accurate and complete copy of each (i) final registration statement, prospectus, report, schedule and definitive proxy statement filed with or furnished to the SEC by Company or any of its Subsidiaries pursuant to the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act") since January 1, 2006 and prior to the date of this Agreement (the "Company SEC Reports") and (ii) communication mailed by Company to its shareholders since January 1, 2006 and prior to the date of this Agreement is publicly available. No such Company SEC Report or communication, at the time filed, furnished or communicated (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of the relevant meetings, respectively), contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances in which they were made, not misleading, except that information as of a later date (but before the date of this Agreement) shall be deemed to modify information as of an earlier date. As of their respective dates, all Company SEC Reports complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto. As of the date of this Agreement, no executive officer of Company has failed in any respect to make the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act").

3.6 Financial Statements.

(a) The financial statements of Company and its Subsidiaries included (or incorporated by reference) in the Company SEC Reports (including the related notes,

where applicable) (i) have been prepared from, and are in accordance with, the books and records of Company and its Subsidiaries, (ii) fairly present in all material respects the consolidated results of operations, cash flows, changes in shareholders' equity and consolidated financial position of Company and its Subsidiaries for the respective fiscal periods or as of the respective dates therein set forth (subject in the case of unaudited statements to recurring year-end audit adjustments normal in nature and amount), (iii) complied as to form, as of their respective dates of filing with the SEC, in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, and (iv) have been prepared in accordance with GAAP consistently applied during the periods involved, except, in each case, as indicated in such statements or in the notes thereto. As of the date hereof, the books and records of Company and its Subsidiaries have been maintained in all material respects in accordance with GAAP and any other applicable legal and accounting requirements and reflect only actual transactions. As of the date hereof, KPMG LLP has not resigned or been dismissed as independent public accountants of Company as a result of or in connection with any disagreements with Company on a matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure.

(b) The records, systems, controls, data and information of Company and its Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of Company or its Subsidiaries or accountants (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a material adverse effect on Company's system of internal accounting controls.

3.7 Broker's Fees. Neither Company nor any of its Subsidiaries nor any of their respective officers, directors, employees or agents has utilized any broker, finder or financial advisor or incurred any liability for any broker's fees, commissions or finder's fees in connection with the Merger or any other transactions contemplated by this Agreement, other than to Goldman, Sachs & Co. and Perella Weinberg Partners pursuant to letter agreements, true, complete and correct copies of which have been previously delivered to Parent.

3.8 Material Adverse Effect. As used in this Agreement, the term "Material Adverse Effect" means, with respect to Parent or Company, as the case may be, a material adverse effect on (i) the financial condition, results of operations or business of such party and its Subsidiaries taken as a whole (*provided, however,* that, with respect to this clause (i), a "Material Adverse Effect" shall not be deemed to include effects arising out of, relating to or resulting from (A) changes in GAAP or regulatory accounting requirements, (B) changes in laws, rules or regulations of general applicability to companies in the industries in which such party and its Subsidiaries operate, (C) changes in global, national or regional political conditions or general economic or market conditions (including changes in prevailing interest rates, credit availability and liquidity, currency exchange rates, and price levels or trading volumes in the United States or foreign securities markets) affecting other companies in the industries in which such party and its Subsidiaries operate, (D) changes in the credit markets, any downgrades in the credit markets, or adverse credit events resulting in deterioration in the credit markets generally or in respect of the customers of the Company and including changes to any previously correctly applied asset marks resulting therefrom, (E) failure to meet earnings projections, including any underlying causes thereof, (F) the impact of the Merger on

relationships with customers or employees, (G) the public disclosure of this Agreement or the transactions contemplated hereby or the consummation of the transactions contemplated hereby solely to the extent the Company demonstrates such effect to have so resulted from such disclosure or consummation, (H) any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism or (I) actions or omissions taken with the prior written consent of the other Party or expressly required by this Agreement or (ii) the ability of such party to timely consummate the transactions contemplated by this Agreement. As of any date following the date hereof, notwithstanding anything in this Agreement to the contrary and notwithstanding anything that may be Previously Disclosed, neither the Company nor any of its Significant Subsidiaries has filed for bankruptcy or filed for reorganization under the U.S. federal bankruptcy laws or similar state or federal law, become insolvent or become subject to conservatorship or receivership.

3.9 Compliance with Applicable Law. Company and each of its Subsidiaries hold all licenses, franchises, permits and authorizations necessary for the lawful conduct of their respective businesses under and pursuant to each, and have complied with and are not in default in any respect under any, law applicable to Company or any of its Subsidiaries, except for the failure to hold or to have complied with or to not be in default which would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

3.10 Rights Agreement; State Takeover Laws. The Board of Directors of Company has approved this Agreement and the transactions contemplated hereby as required to render inapplicable to this Agreement and such transactions (i) the rights issued pursuant to that certain Shareholder Protection Rights Agreement, dated as of December 19, 2000, as amended, between Company and **[•]**, as Rights Agent (the "Company Rights Agreement") and (ii) the restrictions on "business combinations" set forth in any "moratorium," "control share," "fair price," "takeover" or "interested shareholder" law (any such laws, "Takeover Statutes").

3.11 Approvals. As of the date of this Agreement, Company knows of no reason why all regulatory approvals from any Governmental Entity required for the consummation of the transactions contemplated by this Agreement should not be obtained on a timely basis.

3.12 Opinion. The Board of Directors of Company has received the opinions of Goldman Sachs & Co. and Perella Weinberg Partners, to the effect that, as of the date hereof, and based upon and subject to the factors and assumptions set forth therein, the Merger Consideration is fair from a financial point of view to the holders of Company Common Stock.

3.13 Company Information. The information relating to Company and its Subsidiaries that is provided by Company or its representatives for inclusion in the Proxy Statement and Form S-4, or in any application, notification or other document filed with any other Regulatory Agency or other Governmental Entity in connection with the transactions contemplated by this Agreement, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading. The portions of the Proxy Statement relating to Company and its Subsidiaries and other portions within the reasonable control of Company and its

Subsidiaries will comply in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT

Except as disclosed in any report, schedule, form or other document filed with, or furnished to, the SEC by Parent prior to the date hereof (but excluding any risk factor disclosures contained under the heading "Risk Factors," any disclosure of risks included in any "forward-looking statements" disclaimer or any other statements that are similarly non-specific or predictive or forward-looking in nature), Parent hereby represents and warrants to Company as follows (solely as of the date hereof except in the case of the representations and warranties set forth in Sections 4.2, 4.3(a), 4.3(b)(i) and 4.7):

4.1 Corporate Organization. Parent is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Upon its joinder to this Agreement, Merger Sub will be a corporation duly incorporated, validly existing and in good standing under the laws of the State of North Carolina. Parent has and Merger Sub will have the requisite corporate power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted, and is and will be duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary. Parent is duly registered as a bank holding company under the BHC Act and is a financial holding company pursuant to Section 4(1) of the BHC Act and meets the applicable requirements for qualification as such. True, complete and correct copies of the Amended and Restated Certificate of Incorporation, as amended (the "Parent Certificate"), and Bylaws of Parent (the "Parent Bylaws"), as in effect as of the date of this Agreement, have previously been filed by Parent and are publicly available to Company.

4.2 Capitalization. The authorized capital stock of Parent consists of 6,000,000,000 shares of Parent Common Stock of which, as of June 30, 2008 (the "Parent Capitalization Date"), 3,472,762,050 shares were issued and 3,311,960,699 shares were outstanding, 4,000,000 shares of preference stock (the "Parent Preference Stock") of which, as of the Parent Capitalization Date, no shares were outstanding, and 20,000,000 shares of preferred stock (the "Parent Preferred Stock", and together with the Parent Common Stock and Parent Preference Stock, the "Parent Stock"), of which, as of the Parent Capitalization Date, (i) 75,000 shares are designated as "1999 ESOP Cumulative Convertible Preferred Stock", 1,235 shares of which were issued and outstanding, (ii) 170,000 shares are designated as "2000 ESOP Cumulative Convertible Preferred Stock", 8,929 shares of which were issued and outstanding, (iii) 192,000 shares are designated as "2001 ESOP Cumulative Convertible Preferred Stock", 16,243 shares of which were issued and outstanding, (iv) 238,000 shares are designated as "2002 ESOP Cumulative Convertible Preferred Stock", 25,179 shares of which were issued and outstanding, (v) 260,200 shares are designated as "2003 ESOP Cumulative Convertible Preferred Stock", 36,168 shares of which were issued and outstanding, (vi) 321,000 shares are designated as "2004 ESOP Cumulative Convertible Preferred Stock", 54,360 shares of which were issued and outstanding, (vii) 363,000 shares are designated as "2005 ESOP Cumulative Convertible Preferred Stock", 71,714 shares of which were issued and outstanding,

(viii) 414,000 shares are designated as "2006 ESOP Cumulative Convertible Preferred Stock", 93,766 shares of which were issued and outstanding, (ix) 484,000 shares are designated as "2007 ESOP Cumulative Convertible Preferred Stock", 124,024 shares of which were issued and outstanding, (x) 520,500 shares are designated as "2008 ESOP Cumulative Convertible Preferred Stock", 291,703 shares of which were issued and outstanding. All of the issued and outstanding shares of Parent Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights with no personal liability attaching to the ownership thereof. As of the date of this Agreement, no Voting Debt of Parent is issued and outstanding. As of the Parent Capitalization Date, Parent held 160,801,351 shares of Parent Common Stock in its treasury. As of the Parent Capitalization Date, there were no more than 1,000,000,000 shares of Parent Common Stock reserved for issuance under the Parent's equity compensation plans. As of the Parent Capitalization Date, except pursuant to this Agreement, Parent's dividend reinvestment plan and stock repurchase plans entered into by Parent from time to time, Parent does not have and is not bound by any Rights calling for the purchase or issuance of any shares of Parent Common Stock, Parent Preferred Stock, Voting Debt of Parent or any other equity securities of Parent or any securities representing the right to purchase or otherwise receive any shares of Parent Common Stock, Parent Preferred Stock, Voting Debt of Parent or other equity securities of Parent. The shares of Parent Common Stock to be issued pursuant to the Merger will be duly authorized and validly issued and, at the Effective Time, all such shares will be fully paid, nonassessable and free of preemptive rights, with no personal liability attaching to the ownership thereof.

4.3 Authority; No Violation. (a) Parent has and Merger Sub will have full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly approved by the Board of Directors of Parent, and will be so approved in the case of Merger Sub, and no other corporate proceedings on the part of Parent or Merger Sub are necessary to approve this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Parent and (assuming due authorization, execution and delivery by Company) constitutes the valid and binding obligation of Parent, enforceable against Parent in accordance with its terms (subject to the Bankruptcy and Equity Exception).

(b) Neither the execution and delivery of this Agreement by Parent, nor the consummation by Parent of the transactions contemplated hereby, nor compliance with any of the terms or provisions of this Agreement, will (i) violate any provision of the Parent Certificate or the Parent Bylaws, or (ii) assuming that the consents, approvals and filings referred to in Section 4.4 are duly obtained and/or made, (A) violate any law, judgment, order, injunction or decree applicable to Parent, any of its Subsidiaries or any of their respective properties or assets or (B) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of Parent or any of its Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which Parent or any of its Subsidiaries is a party or by which

any of them or any of their respective properties or assets is bound except, with respect to clause (ii), any such violation, conflict, breach, default, termination, cancellation, acceleration or creation that would not reasonably be expected to cause a Material Adverse Effect.

4.4 Consents and Approvals. Except for (i) the Regulatory Approvals, (ii) the filing with the SEC of the Proxy Statement and the filing and declaration of effectiveness of the Form S-4 and the filing and effectiveness of the registration statements contemplated by Section 6.1(a), (iii) the filing of the Articles of Merger, (iv) any consents, authorizations, approvals, filings or exemptions in connection with compliance with the rules and regulations of any applicable SRO, and the rules of the NYSE, (v) any notices or filings under the HSR Act, and (vi) such filings and approvals as are required to be made or obtained under the securities or "Blue Sky" laws of various states in connection with the issuance of the shares of Parent Common Stock pursuant to this Agreement and approval of listing of such Parent Common Stock on the NYSE, no consents or approvals of or filings or registrations with any Governmental Entity are necessary in connection with the consummation by Parent or Merger Sub of the Merger and the other transactions contemplated by this Agreement. No consents or approvals of or filings or registrations with any Governmental Entity are necessary in connection with the execution and delivery by Parent or Merger Sub of this Agreement.

4.5 Reports; Regulatory Matters.

(a) Parent and each of its Subsidiaries have timely filed all reports, registration statements, proxy statements and other materials, together with any amendments required to be made with respect thereto, that they were required to file since January 1, 2006 and prior to the date hereof with the Regulatory Agencies and each other applicable Governmental Entity, and all other reports and statements required to be filed by them since January 1, 2006 and prior to the date of this Agreement, including any report or statement required to be filed pursuant to the laws, rules or regulations of the United States, any state, any foreign entity, or any Regulatory Agency or other Governmental Entity, and have paid all fees and assessments due and payable in connection therewith.

(b) An accurate and complete copy of each (i) final registration statement, prospectus, report, schedule and definitive proxy statement filed with or furnished to the SEC by Parent pursuant to the Securities Act or the Exchange Act since January 1, 2006 and prior to the date of this Agreement (the "Parent SEC Reports") and (ii) communication mailed by Parent to its shareholders since January 1, 2006 and prior to the date of this Agreement is publicly available. No such Parent SEC Report or communication, at the time filed, furnished or communicated (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of the relevant meetings, respectively), contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances in which they were made, not misleading, except that information as of a later date (but before the date of this Agreement) shall be deemed to modify information as of an earlier date. As of their respective dates, all Parent SEC Reports complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto. As of the date of this Agreement, no executive officer of Parent has failed in any respect to make the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act.

4.6 Financial Statements.

(a) The financial statements of Parent and its Subsidiaries included (or incorporated by reference) in the Parent SEC Reports (including the related notes, where applicable) (i) have been prepared from, and are in accordance with, the books and records of Parent and its Subsidiaries; (ii) fairly present in all material respects the consolidated results of operations, cash flows, changes in shareholders' equity and consolidated financial position of Parent and its Subsidiaries for the respective fiscal periods or as of the respective dates therein set forth (subject in the case of unaudited statements to recurring year-end audit adjustments normal in nature and amount); (iii) complied as to form, as of their respective dates of filing with the SEC, in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto; and (iv) have been prepared in accordance with GAAP consistently applied during the periods involved, except, in each case, as indicated in such statements or in the notes thereto. As of the date hereof, the books and records of Parent and its Subsidiaries have been maintained in all material respects in accordance with GAAP and any other applicable legal and accounting requirements and reflect only actual transactions. As of the date hereof, KPMG LLP has not resigned or been dismissed as independent public accountants of Parent as a result of or in connection with any disagreements with Parent on a matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure.

(b) The records, systems, controls, data and information of Parent and its Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of Parent or its Subsidiaries or accountants (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a material adverse effect on Parent's system of internal accounting controls.

4.7 Broker's Fees. Neither Parent nor any of its Subsidiaries nor any of their respective officers or directors has employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with the Merger or related transactions contemplated by this Agreement, other than as previously disclosed to Company.

4.8 Compliance with Applicable Law. Parent and each of its Subsidiaries hold all licenses, franchises, permits and authorizations necessary for the lawful conduct of their respective businesses under and pursuant to each, and have complied with and are not in default in any respect under any, law applicable to Parent or any of its Subsidiaries, except for the failure to hold or to have complied with which would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

4.9 Approvals. As of the date of this Agreement, Parent knows of no reason why all regulatory approvals from any Governmental Entity required for the consummation of the transactions contemplated by this Agreement should not be obtained on a timely basis.

4.10 Parent Information. The information relating to Parent and its Subsidiaries that is provided by Parent or its representatives for inclusion in the Proxy Statement and the Form S-4, or in any application, notification or other

document filed with any other Regulatory Agency or other Governmental Entity in connection with the transactions contemplated by this Agreement, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading. The portions of the Proxy Statement relating to Parent and its Subsidiaries and other portions within the reasonable control of Parent and its Subsidiaries will comply in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder. The Form S-4 will comply in all material respects with the provisions of the Securities Act and the rules and regulations thereunder.

ARTICLE V

COVENANTS RELATING TO CONDUCT OF BUSINESS

5.1 Conduct of Businesses Prior to the Effective Time. Except as Previously Disclosed, as expressly contemplated by or permitted by this Agreement or with the prior written consent of the other party, during the period from the date of this Agreement to the Effective Time, each of Company and Parent shall, and shall cause each of its respective Subsidiaries to, (a) conduct its business in the ordinary course in all material respects, (b) use commercially reasonable efforts to maintain and preserve intact its business organization and advantageous business relationships, and (c) take no action that is intended to or would reasonably be expected to adversely affect or materially delay the ability of Company, Parent or Merger Sub to obtain any necessary approvals of any Regulatory Agency or other Governmental Entity required for the transactions contemplated hereby or to perform its covenants and agreements under this Agreement or to consummate the transactions contemplated hereby or thereby.

5.2 Company Forbearances. During the period from the date of this Agreement to the Effective Time, except as Previously Disclosed, as expressly contemplated or permitted by this Agreement or as required by applicable law, Company shall not, and shall not permit any of its Subsidiaries to, without the prior written consent of Parent:

(a) Other than pursuant to Rights outstanding on the date of this Agreement, pursuant to the Company Rights Agreement, or pursuant to the Share Exchange Agreement, (i) issue, sell or otherwise permit to become outstanding, or dispose of or encumber or pledge, or authorize or propose the creation of, any additional shares of its stock or (ii) permit any additional shares of its stock to become subject to new grants, except issuances under dividend reinvestment plans or issuances of employee or director stock options or other stock-based employee Rights, in either case, in the ordinary course of business consistent with past practice not to exceed [ ] shares and which awards will not vest upon completion of or in connection with the transactions contemplated hereby.

(b) (i) Make, declare, pay or set aside for payment any dividend on or in respect of, or declare or make any distribution on any shares of its stock (other than (A) dividends from its wholly owned Subsidiaries to it or another of its wholly owned Subsidiaries, (B) regular quarterly dividends on its common stock at a rate no greater than the rate paid by it during the fiscal quarter immediately preceding the date hereof, (C) required dividends on its preferred stock or on the preferred stock of its Subsidiaries, (D) required dividends on the common stock of any Subsidiary that is a real estate investment

trust or (E) the distribution of rights pursuant to the Company Rights Agreement (other than in connection with the transactions contemplated hereby)) or (ii) directly or indirectly adjust, split, combine, redeem, reclassify, purchase or otherwise acquire, any shares of its stock (other than repurchases of common shares in the ordinary course of business to satisfy obligations under dividend reinvestment or employee benefit plans).

(c) Sell, transfer, mortgage, encumber or otherwise dispose of or discontinue any of its assets, deposits, business or properties, except for sales, transfers, mortgages, encumbrances or other dispositions or discontinuances in the ordinary course of business and in a transaction that, together with other such transactions, is not material to it and its Subsidiaries, taken as a whole.

(d) Acquire (other than by way of foreclosures or acquisitions of control in a fiduciary or similar capacity or in satisfaction of debts previously contracted in good faith, in each case in the ordinary course of business) all or any portion of the assets, business, deposits or properties of any other entity except in the ordinary course of business and in a transaction that, together with other such transactions, is not material to it and its Subsidiaries, taken as a whole, and does not present a material risk that the Closing Date will be materially delayed or that the Company Requisite Regulatory Approvals will be more difficult to obtain.

(e) Amend the Company Articles or the Company Bylaws or similar governing documents of any of its Significant Subsidiaries.

(f) Implement or adopt any change in its accounting principles, practices or methods, other than as may be required by GAAP or applicable regulatory accounting requirements.

(g) Except as required under applicable law or the terms of any Company Benefit Plan existing as of the date hereof, (i) increase in any manner the compensation or benefits of any of the current or former directors, officers, employees, consultants, independent contractors or other service providers of Company or its Subsidiaries (collectively, "Employees"), except for any increases in base salary in the ordinary course of business consistent with past practice (other than with respect to Employees who are directors or officers of the Company or any of its Subsidiaries), (ii) pay any amounts to Employees or increase any amounts or rights of any Employees not required by any current plan or agreement, (iii) become a party to, establish, amend, commence participation in, terminate or commit itself to the adoption of any stock option plan or other stock-based compensation plan, compensation, severance, pension, retirement, profit-sharing, welfare benefit, or other employee benefit plan or agreement or employment agreement with or for the benefit of any Employee (or newly hired employees), (iv) accelerate the vesting of or lapsing of restrictions with respect to any stock-based compensation or other long-term incentive compensation under any Company Benefit Plans, (v) cause the funding of any rabbi trust or similar arrangement or take any action to fund or in any other way secure the payment of compensation or benefits under any Company Benefit Plan, or (vi) materially change any actuarial or other assumptions used to calculate funding obligations with respect to any Company Benefit Plan or change the manner in which contributions to such plans are made or the basis on which such contributions are determined, except as may be required by GAAP or applicable law.

(h) Notwithstanding anything herein to the contrary, take, or omit to take, any action that is reasonably likely to result in any of the conditions to the Merger

set forth in Article VII not being satisfied, except as may be required by applicable law, regulation or policies imposed by any Governmental Authority.

(i) Incur or guarantee any indebtedness for borrowed money other than in the ordinary course of business.

(j) Agree to take, make any commitment to take, or adopt any resolutions of its Board of Directors in support of, any of the actions prohibited by this Section 5.2.

5.3 Parent Forbearances. Except as expressly permitted by this Agreement or with the prior written consent of Company, during the period from the date of this Agreement to the Effective Time, Parent shall not, and shall not permit any of its Subsidiaries to:

(a) Amend the Parent Certificate or Parent Bylaws or similar governing documents of any of its Significant Subsidiaries in a manner that would adversely affect Company, the shareholders of Company or the transactions contemplated by this Agreement.

(b) Notwithstanding anything herein to the contrary, take, or omit to take, any action that is reasonably likely to result in any of the conditions to the Merger set forth in Article VII not being satisfied, except as may be required by applicable law, regulation or policies imposed by any Governmental Authority; provided, that nothing in this Section 5.3(b) shall preclude Parent from exercising its rights under the Share Exchange Agreement and under the Series M Preferred Stock of the Company issued thereunder.

(c) Agree to take, make any commitment to take, or adopt any resolutions of its Board of Directors in support of, any of the actions prohibited by this Section 5.3.

ARTICLE VI

ADDITIONAL AGREEMENTS

6.1 Regulatory Matters. (a) Parent and Company shall promptly prepare and file with the SEC the Form S-4, in which the Proxy Statement will be included as a prospectus. Each of Parent and Company shall use its reasonable best efforts to have the Form S-4 declared effective under the Securities Act as promptly as practicable after such filing, and Company shall thereafter mail or deliver the Proxy Statement to its shareholders. Parent shall also use its reasonable best efforts to obtain all necessary state securities law or "Blue Sky" permits and approvals required to carry out the transactions contemplated by this Agreement, and Company shall furnish all information concerning Company and the holders of Company Common Stock as may be reasonably requested in connection with any such action.

(b) The parties shall cooperate with each other and use their respective reasonable best efforts to promptly prepare and file all necessary documentation, to effect all applications, notices, petitions and filings, to obtain as promptly as practicable all

permits, consents, approvals and authorizations of all third parties and Governmental Entities that are necessary or advisable to consummate the transactions contemplated by this Agreement (including the Merger), and to comply with the terms and conditions of all such permits, consents, approvals and authorizations of all such third parties or Governmental Entities. Company and Parent shall have the right to review in advance, and, to the extent practicable, each will consult the other on, in each case subject to applicable laws relating to the confidentiality of information, all the information relating to Company or Parent, as the case may be, and any of their respective Subsidiaries, that appear in any filing made with, or written materials submitted to, any third party or any Governmental Entity in connection with the transactions contemplated by this Agreement. In exercising the foregoing right, each of the parties shall act reasonably and as promptly as practicable. The parties shall consult with each other with respect to the obtaining of all permits, consents, approvals and authorizations of all third parties and Governmental Entities necessary or advisable to consummate the transactions contemplated by this Agreement and each party will keep the other apprised of the status of matters relating to completion of the transactions contemplated by this Agreement.

(c) Each of Parent and Company shall, upon request, furnish to the other all information concerning itself, its Subsidiaries, directors, officers and shareholders and such other matters as may be reasonably necessary or advisable in connection with the Proxy Statement, the Form S-4 or any other statement, filing, notice or application made by or on behalf of Parent, Company or any of their respective Subsidiaries to any Governmental Entity in connection with the Merger and the other transactions contemplated by this Agreement.

(d) Parent agrees to execute and deliver, or cause to be executed and delivered, by or on behalf of the Surviving Company, at or prior to the Effective Time, one or more supplemental indentures, guarantees, and other instruments required for the due assumption of Company's outstanding debt, guarantees, securities, and (to the extent informed such requirement by Company) other agreements to the extent required by the terms of such debt, guarantees, securities, and other agreements.

(e) Each of Parent and Company shall promptly advise the other upon receiving any communication from any Governmental Entity the consent or approval of which is required for consummation of the transactions contemplated by this Agreement that causes such party to believe that there is a reasonable likelihood that any Parent Requisite Regulatory Approval or Company Requisite Regulatory Approval, respectively, will not be obtained or that the receipt of any such approval may be materially delayed.

6.2 Access to Information. (a) Upon reasonable notice and subject to applicable laws relating to the confidentiality of information, each of Company and Parent shall, and shall cause each of its Subsidiaries to, afford to the officers, employees, accountants, counsel, advisors, agents and other representatives of the other party, reasonable access, during normal business hours during the period prior to the Effective Time, to all its properties, books, contracts, commitments and records, and, during such period, such party shall, and shall cause its Subsidiaries to, make available to the other party (i) a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of federal securities laws or federal or state banking or insurance laws (other than reports or documents that such party is not permitted to disclose under applicable law) and (ii) all other information concerning its business, properties and personnel as the other party may reasonably request. Neither

Company nor Parent, nor any of their Subsidiaries, shall be required to provide access to or to disclose information where such access or disclosure would jeopardize the attorney-client privilege of such party or its Subsidiaries or contravene any law, rule, regulation, order, judgment, decree, fiduciary duty or binding agreement entered into prior to the date of this Agreement. The parties shall make appropriate substitute disclosure arrangements under circumstances in which the restrictions of the preceding sentence apply.

(b) All information and materials provided pursuant to this Agreement shall be subject to the provisions of the Confidentiality Agreement entered into between the parties as of September 26, 2008 (the "Confidentiality Agreement").

(c) No investigation by a party hereto or its representatives shall affect the representations and warranties of the other party set forth in this Agreement.

6.3 Shareholder Approval. As of the date of this Agreement, the Board of Directors of Company has adopted resolutions approving the Merger, on substantially the terms and conditions set forth in this Agreement, and directing that the Merger, on such terms and conditions, be submitted to Company's shareholders for their consideration. The Board of Directors of Company will submit to its shareholders the plan of merger contained in this Agreement and any other matters required to be approved or adopted by its shareholders in order to carry out the intentions of this Agreement. In furtherance of that obligation, Company will take, in accordance with applicable law and the Company Articles and Company Bylaws, all action necessary to convene a meeting of its shareholders, as promptly as practicable, to consider and vote upon approval of the plan of merger as well as any other such matters. The record date for any such meeting of Company shareholders shall be determined in prior consultation with and subject to the prior approval of Parent, and shall in any case be no fewer than 3 business days after the Share Exchange Closing. The Board of Directors of Company will use all reasonable best efforts to obtain from its shareholders a vote approving and adopting the plan of merger contained in this Agreement. However, if the Board of Directors of Company, after consultation with (and based on the advice of) counsel, determines in good faith that, because of a conflict of interest or other special circumstances (it being agreed that such special circumstances will include, for purposes of this Agreement, the receipt by Company of an Acquisition Proposal that the Board of Directors of Company concludes in good faith constitutes a Superior Proposal), it would violate its fiduciary duties under applicable law to continue to recommend the plan of merger set forth in this Agreement, then in submitting the plan of merger to Company's shareholders, the Board of Directors of Company may submit the plan of merger to its shareholders without recommendation (although the resolutions adopting this Agreement as of the date hereof may not be rescinded or amended), in which event the Board of Directors of Company may communicate the basis for its lack of a recommendation to the shareholders in the Proxy Statement or an appropriate amendment or supplement thereto to the extent required by law; *provided* that it may not take any actions under this sentence until after giving Parent at least five business days to respond to any such Acquisition Proposal or other circumstances giving rise to such particular proposed action (and after giving Parent notice of the latest material terms, conditions and identity of the third party in any such Acquisition Proposal or describe in reasonable detail such other circumstances) and then taking into account any amendment or modification to this

Agreement proposed by Parent (it being agreed that paragraph six of the Confidentiality Agreement will not preclude such a response or proposal).

6.4 NYSE Listing. Parent shall cause the shares of capital stock of Parent to be issued in exchange for capital stock of the Company that is currently listed on the NYSE upon consummation of the Merger to have been authorized for listing on the NYSE, subject to official notice of issuance, prior to the Effective Time.

6.5 Employee Matters. (a) Following the Closing Date, Parent shall maintain or cause to be maintained employee benefit plans and compensation opportunities for the benefit of employees (as a group) who are actively employed by Company and its Subsidiaries on the Closing Date ("Covered Employees") that provide employee benefits and compensation opportunities which, in the aggregate, are substantially comparable to the employee benefits and compensation opportunities that are generally made available to similarly situated employees of Parent or its Subsidiaries (other than Company and its Subsidiaries), as applicable; *provided*, that (i) in no event shall any Covered Employee be eligible to participate in any closed or frozen plan of Parent or its Subsidiaries; and (ii) until such time as Parent shall cause Covered Employees to participate in the benefit plans and compensation opportunities that are made available to similarly situated employees of Parent or its Subsidiaries (other than Company and its Subsidiaries), a Covered Employee's continued participation in employee benefit plans and compensation opportunities of Company and its Subsidiaries shall be deemed to satisfy the foregoing provisions of this sentence (it being understood that participation in the Parent plans may commence at different times with respect to each Parent plan).

(b) To the extent that a Covered Employee becomes eligible to participate in an employee benefit plan maintained by Parent or any of its Subsidiaries (other than Company or its Subsidiaries), Parent shall cause such employee benefit plan to (i) recognize the service of such Covered Employee with Company or its Subsidiaries (or their predecessor entities) for purposes of eligibility, participation, vesting and benefit accrual under such employee benefit plan of Parent or any of its Subsidiaries, to the same extent such service was recognized immediately prior to the Effective Time under a comparable Company Benefit Plan in which such Covered Employee was eligible to participate immediately prior to the Effective Time; *provided* that such recognition of service (A) shall not operate to duplicate any benefits of a Covered Employee with respect to the same period of service, (B) shall not apply for purposes of any plan, program or arrangement under which similarly-situated employees of Parent and its Subsidiaries do not receive credit for prior service and (C) shall not apply with respect to the Wells Fargo Cash Balance Plan; and (ii) with respect to any health, dental, vision plan or other welfare of Parent or any of its Subsidiaries (other than Company and its Subsidiaries) in which any Covered Employee is eligible to participate for the plan year in which such Covered Employee is first eligible to participate, use its reasonable best efforts to (A) cause any pre-existing condition limitations or eligibility waiting periods under such Parent or Subsidiary plan to be waived with respect to such Covered Employee to the extent such limitation would have been waived or satisfied under the Company Benefit Plan in which such Covered Employee participated immediately prior to the Effective Time, and (B) recognize any health, dental or vision expenses incurred by such Covered Employee in the year that includes the Closing Date (or, if later, the year in which such Covered Employee is first eligible to participate) for purposes of any applicable deductible and annual out-of-pocket expense requirements under any such health, dental or vision plan of Parent or any of its Subsidiaries.

(c) From and after the Effective Time, Parent shall, or shall cause its Subsidiaries to, honor, in accordance with the terms thereof as in effect as of the date hereof or as may be amended or terminated after the date hereof with the prior written consent of Parent, each employment agreement and change in control agreement to which Company or any of its Subsidiaries is a party and the obligations of Company and its Subsidiaries as of the Effective Time under each deferred compensation plan or agreement to which they are a party.

(d) Nothing in this Section 6.5 shall be construed to limit the right of Parent or any of its Subsidiaries (including, following the Closing Date, Company and its Subsidiaries) to amend or terminate any Company Benefit Plan or other employee benefit plan, to the extent such amendment or termination is permitted by the terms of the applicable plan, nor shall anything in this Section 6.5 be construed to require the Parent or any of its Subsidiaries (including, following the Closing Date, Company and its Subsidiaries) to retain the employment of any particular Covered Employee for any fixed period of time following the Closing Date.

(e) Without limiting the generality of Section 9.9, the provisions of this Section 6.5 are solely for the benefit of the parties to this Agreement, and no current or former employee, director or independent contractor or any other individual associated therewith shall be regarded for any purpose as a third-party beneficiary of the Agreement, and nothing herein shall be construed as an amendment to any Company Benefit Plan or other employee benefit plan for any purpose.

(f) For purposes of this Agreement, "Company Benefit Plans" means each "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), whether or not subject to ERISA, and each employment, consulting, bonus, incentive or deferred compensation, vacation, stock option or other equity-based, severance, termination, retention, change of control, profit-sharing, fringe benefit or other similar plan, program, agreement or commitment, whether written or unwritten, for the benefit of any employee, former employee, director or former director of Company or any of its Subsidiaries entered into, maintained or contributed to by Company or any of its Subsidiaries or to which Company or any of its Subsidiaries is obligated to contribute, or with respect to which Company or any of its Subsidiaries has any liability, direct or indirect, contingent or otherwise (including any liability arising out of an indemnification, guarantee, hold harmless or similar agreement) or otherwise providing benefits to any current, former or future employee, officer or director of Company or any of its Subsidiaries or to any beneficiary or dependant thereof.

6.6 Indemnification; Directors' and Officers' Insurance.

(a) From and after the Effective Time, Parent shall indemnify and hold harmless, to the fullest extent permitted under applicable law (and Parent shall also advance expenses as incurred to the fullest extent permitted under applicable law provided the Person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such Person is not entitled to indemnification), each present and former director, officer and employee of Company and its Subsidiaries (in each case, when acting in such capacity) (collectively, the "Indemnified Parties") against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to matters existing or occurring at or prior to the Effective Time,

including the transactions contemplated by this Agreement and the Share Exchange Agreement.

(b) For a period of six years following the Effective Time, Parent will provide director's and officer's liability insurance that serves to reimburse the present and former officers and directors of Company or any of its Subsidiaries (determined as of the Effective Time) (providing only for the Side A coverage for Indemnified Parties where the existing policies also include Side B coverage for the Company) with respect to claims against such directors and officers arising from facts or events occurring before the Effective Time (including the transactions contemplated by this Agreement) which insurance will contain at least the same coverage and amounts, and contain terms and conditions no less advantageous to the Indemnified Party as that coverage currently provided by Company.

(c) Any Indemnified Party wishing to claim indemnification under Section 6.6(a), upon learning of any claim, action, suit, proceeding or investigation described above, will promptly notify Parent; *provided* that failure so to notify will not affect the obligations of Parent under Section 6.6(a) unless and to the extent that Parent is actually and materially prejudiced as a consequence.

(d) If Parent or any of its successors or assigns consolidates with or merges into any other entity and is not the continuing or surviving entity of such consolidation or merger or transfers all or substantially all of its assets to any other entity, then and in each case, Parent will cause proper provision to be made so that the successors and assigns of Parent will assume the obligations set forth in this Section 6.6.

(e) The provisions of this Section 6.6 are intended to be for the benefit of, and will be enforceable by, each Indemnified Party and his or her heirs and representatives.

6.7 Exemption from Liability Under Section 16(b). Prior to the Effective Time, Parent and Company shall each take all such steps as may be necessary or appropriate to cause any disposition of shares of Company Common Stock or conversion of any derivative securities in respect of such shares of Company Common Stock in connection with the consummation of the transactions contemplated by this Agreement to be exempt under Rule 16b-3 promulgated under the Exchange Act, including any such actions specified in the applicable SEC No-Action Letter dated January 12, 1999.

6.8 No Solicitation.

(a) Company agrees that it will not, and will cause its Subsidiaries and its and its Subsidiaries' officers, directors, agents, advisors and affiliates not to, initiate, solicit, encourage or knowingly facilitate inquiries or proposals with respect to, or engage in any negotiations concerning, or provide any confidential or nonpublic information or data to, or have any discussions with, any person relating to, any Acquisition Proposal, or waive any provision of or amend the terms of the Company Rights Agreement, in respect of an Acquisition Proposal; *provided* that, in the event Company receives an unsolicited Acquisition Proposal and the Board of Directors of Company concludes in good faith that there is a reasonable likelihood that such Acquisition Proposal constitutes or is reasonably likely to result in a Superior Proposal, Company may, and may permit its Subsidiaries and its and its Subsidiaries' Representatives to, furnish or cause to be furnished nonpublic

information and participate in such negotiations or discussions to the extent that the Board of Directors of Company concludes in good faith (and based on the advice of counsel) that failure to take such actions would more likely than not result in a violation of its fiduciary duties under applicable law; *provided* that prior to providing any nonpublic information permitted to be provided pursuant to the foregoing proviso, it shall have entered into a confidentiality agreement with such third party on terms no less favorable to it than the Confidentiality Agreement as entered into on September 26, 2008, and it shall simultaneously provide Parent with any such nonpublic information to the extent it has not previously provided such information to Parent. Company will immediately cease and cause to be terminated any activities, discussions or negotiations conducted before the date of this Agreement with any persons other than Parent with respect to any Acquisition Proposal and will use its reasonable best efforts to enforce any confidentiality or similar agreement relating to an Acquisition Proposal. Company will promptly (within two business days) advise Parent following receipt of any Acquisition Proposal and the substance thereof (including the identity of the person making such Acquisition Proposal), and will keep Parent apprised of any related developments, discussions and negotiations (including the terms and conditions of the Acquisition Proposal) on a current basis.

(b) Nothing contained in this Agreement shall prevent Company or its Board of Directors from complying with Rule 14d-9 and Rule 14e-2 under the Exchange Act with respect to an Acquisition Proposal; *provided* that such Rules will in no way eliminate or modify the effect that any action pursuant to such Rules would otherwise have under this Agreement.

As used in this Agreement, "Acquisition Proposal" means a tender or exchange offer, proposal for a merger, consolidation or other business combination involving Company or any of its Significant Subsidiaries or any proposal or offer to acquire in any manner more than 15% of the voting power in, or more than 15% of the fair market value of the business, assets or deposits of, Company or any of its Significant Subsidiaries, other than the transactions contemplated by this Agreement.

As used in this Agreement, "Superior Proposal" means a written Acquisition Proposal that the Board of Directors of Company concludes in good faith to be more favorable from a financial point of view to its shareholders than the Merger and the other transactions contemplated hereby, (i) after receiving the advice of its financial advisors (who shall be a nationally recognized investment banking firm), (ii) after taking into account the likelihood of consummation of such transaction on the terms set forth therein and (iii) after taking into account all legal (with the advice of outside counsel), financial (including the financing terms of any such proposal), regulatory and other aspects of such proposal and any other relevant factors permitted under applicable law; *provided* that for purposes of the definition of "Superior Proposal," the references to "more than 15%" in the definition of Acquisition Proposal shall be deemed to be references to "100%".

ARTICLE VII

CONDITIONS PRECEDENT

7.1 Conditions to Each Party's Obligation To Effect the Merger. The respective obligations of the parties to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of the following conditions:

(a) Shareholder Approval. This Agreement, on substantially the terms and conditions set forth in this Agreement, shall have been approved and adopted by the requisite affirmative vote of the shareholders of Company entitled to vote thereon.

(b) NYSE Listing. The shares of capital stock of Parent to be issued in exchange for capital stock of the Company that is currently listed on the NYSE upon consummation of the Merger shall have been authorized for listing on the NYSE, subject to official notice of issuance.

(c) Form S-4. The Form S-4 shall have become effective under the Securities Act and no stop order suspending the effectiveness of the Form S-4 shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the SEC.

(d) No Injunctions or Restraints; Illegality. No order, injunction or decree issued by any court or agency of competent jurisdiction or other law preventing or making illegal the consummation of the Merger or any of the other transactions contemplated by this Agreement shall be in effect.

7.2 Conditions to Obligations of Parent. The obligation of Parent and Merger Sub to effect the Merger is also subject to the satisfaction, or waiver by Parent, at or prior to the Effective Time, of the following conditions:

(a) Representations and Warranties. The representations and warranties of Company set forth in (i) Section 3.2(a) shall be true and correct except to a *de minimis* extent (relative to Section 3.2(a) taken as a whole), (ii) Sections 3.2(b), 3.3(a), 3.3(b)(i) and 3.7 shall be true and correct in all material respects, and (iii) the last sentence of Section 3.8 shall be true and correct in all respects, in each case as of the date of this Agreement and as of the Effective Time as though made on and as of the Effective Time (except that representations and warranties that by their terms speak specifically as of the date of this Agreement or another date shall be true and correct as of such date); and Parent shall have received a certificate signed on behalf of Company by the Chief Executive Officer or the Chief Financial Officer of Company to the foregoing effect.

(b) Performance of Obligations of Company. Company shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Effective Time; and Parent shall have received a certificate signed on behalf of Company by the Chief Executive Officer or the Chief Financial Officer of Company to such effect.

(c) Regulatory Approvals. All regulatory approvals from the Federal Reserve and under the HSR Act and any other regulatory approvals set forth in Section 4.4 the failure of which to obtain would reasonably be expected to have a Material Adverse Effect on Parent or the Company, in each case required to consummate the transactions contemplated by this Agreement, including the Merger, shall have been obtained and shall remain in full force and effect and all statutory waiting periods in respect thereof shall have expired (all such approvals and the expiration of all such waiting periods being referred as the "Parent Requisite Regulatory Approvals").

7.3 Conditions to Obligations of Company. The obligation of Company to effect the Merger is also subject to the satisfaction or waiver by Company at or prior to the Effective Time of the following conditions:

(a) Representations and Warranties. The representations and warranties of Parent set forth in Sections 4.2, 4.3(a), 4.3(b)(i) and 4.7 shall be true and correct in all material respects as of the date of this Agreement and as of the Effective Time as though made on and as of the Effective Time (except that representations and warranties that by their terms speak specifically as of the date of this Agreement or another date shall be true and correct as of such date); and Company shall have received a certificate signed on behalf of Parent by the Chief Executive Officer or the Chief Financial Officer of Parent to the foregoing effect.

(b) Performance of Obligations of Parent. Parent shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Effective Time, and Company shall have received a certificate signed on behalf of Parent by the Chief Executive Officer or the Chief Financial Officer of Parent to such effect.

(c) Regulatory Approvals. All regulatory approvals from the Federal Reserve and under the HSR Act and any other regulatory approvals set forth in Section 3.4 the failure of which to obtain would reasonably be expected to have a Material Adverse Effect on Parent or the Company, in each case required to consummate the transactions contemplated by this Agreement, including the Merger, shall have been obtained and shall remain in full force and effect and all statutory waiting periods in respect thereof shall have expired (all such approvals and the expiration of all such waiting periods being referred as the "Company Requisite Regulatory Approvals").

ARTICLE VIII

TERMINATION AND AMENDMENT

8.1 Termination. This Agreement may be terminated at any time prior to the Effective Time, whether before or after approval of the matters presented in connection with the Merger by the shareholders of Company:

(a) by mutual consent of Company and Parent in a written instrument authorized by the Boards of Directors of Company and Parent;

(b) by either Company or Parent, if any Governmental Entity that must grant a Parent Requisite Regulatory Approval or a Company Requisite Regulatory Approval has denied approval of the Merger and such denial has become final and nonappealable or any Governmental Entity of competent jurisdiction shall have issued a final and nonappealable order, injunction or decree permanently enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement;

(c) by either Company or Parent, if the Merger shall not have been consummated on or before the first anniversary of the date of this Agreement unless the failure of the Closing to occur by such date shall be due to the failure of the party seeking to terminate this Agreement to perform or observe the covenants and agreements of such party set forth in this Agreement;

(d) by either Company or Parent (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein), if there shall have been a breach of any of the covenants or agreements or any of the representations or warranties set forth in this Agreement on the part of

Company, in the case of a termination by Parent, or Parent or Merger Sub, in the case of a termination by Company, which breach, either individually or in the aggregate, would result in, if occurring or continuing on the Closing Date, the failure of the conditions set forth in Section 7.2 or 7.3, as the case may be, and which is not cured within 60 days following written notice to the party committing such breach or by its nature or timing cannot be cured within such time period;

(e) by Parent, if the Board of Directors of Company submits this Agreement (or the plan of merger contained herein) to its shareholders without a recommendation for approval, the Board of Directors of Company otherwise withdraws or materially and adversely modifies (or discloses its intention to withdraw or materially and adversely modify) its recommendation referred to in Section 6.3, or the Board of Directors of Company recommends to its shareholders an Acquisition Proposal other than the Merger;

(f) by Parent, if a Governmental Entity of competent jurisdiction shall have issued an order, injunction or decree, which order, injunction or decree remains in effect and has become final and nonappealable, that preliminarily or permanently enjoins or prohibits or makes illegal the issuance of shares of the Series M Preferred Stock of the Company to Parent pursuant to the Share Exchange Agreement or prevents Parent from voting such shares in favor of approving and adopting this Agreement at the meeting of Company shareholders held for that purpose; or

(g) by either Company or Parent, if the approval of the Company's shareholders required by Section 7.1(a) shall not have been obtained at a duly held meeting of Company shareholders convened for the purpose of approving and adopting this Agreement.

The party desiring to terminate this Agreement pursuant to clause (b), (c), (d), (e), (f) or (g) of this Section 8.1 shall give written notice of such termination to the other party in accordance with Section 9.3, specifying the provision or provisions hereof pursuant to which such termination is effected.

8.2 Effect of Termination. In the event of termination of this Agreement by either Company or Parent as provided in Section 8.1, this Agreement shall forthwith become void and have no effect, and none of Company, Parent, any of their respective Subsidiaries or any of the officers or directors of any of them shall have any liability of any nature whatsoever under this Agreement, or in connection with the transactions contemplated by this Agreement, except that (i) Sections 6.2(b), 8.2, 8.3, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9 and 9.10 shall survive any termination of this Agreement, and (ii) neither Company nor Parent shall be relieved or released from any liabilities or damages arising out of its knowing breach of any provision of this Agreement.

8.3 Fees and Expenses. Except with respect to costs and expenses of printing and mailing the Proxy Statement and all filing and other fees paid to the SEC in connection with the Merger, which shall be borne equally by Company and Parent, and all filing and other fees in connection with any filing under the HSR Act, which shall be borne by Parent, all fees and expenses incurred in connection with the Merger, this Agreement, and the transactions contemplated by this Agreement shall be paid by the party incurring such fees or expenses, whether or not the Merger is consummated.

8.4 Amendment. This Agreement may be amended by the parties, by action taken or authorized by their respective Boards of Directors, at any time before or after approval of the matters presented in connection with Merger by the shareholders of Company; *provided, however*, that after any approval of the transactions contemplated by this Agreement by the shareholders of Company, there may not be, without further approval of such shareholders, any amendment of this Agreement that requires further approval under applicable law. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties.

8.5 Extension; Waiver. At any time prior to the Effective Time, the parties, by action taken or authorized by their respective Board of Directors, may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other party, (b) waive any inaccuracies in the representations and warranties contained in this Agreement or (c) waive compliance with any of the agreements or conditions contained in this Agreement. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party, but such extension or waiver or failure to insist on strict compliance with an obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

ARTICLE IX

GENERAL PROVISIONS

9.1 Closing. On the terms and subject to the conditions set forth in this Agreement, the closing of the Merger (the "Closing") shall take place at 10:00 a.m., New York City time, at the offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, New York, on a date no later than three business days after the satisfaction or waiver (subject to applicable law) of the latest to occur of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied or waived at the Closing), unless extended by mutual agreement of the parties (the "Closing Date").

9.2 Nonsurvival of Representations, Warranties and Agreements. None of the representations, warranties, covenants and agreements set forth in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time, except for Section 6.6 and for those other covenants and agreements contained in this Agreement that by their terms apply or are to be performed in whole or in part after the Effective Time.

9.3 Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed given if delivered personally, sent via facsimile (with confirmation), mailed by registered or certified mail (return receipt requested) or delivered by an express courier (with confirmation) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Company, to:

Wachovia Corporation
One Wachovia Center
Charlotte, NC 28288
Attention: General Counsel
Facsimile: (704) 374-3425

with a copy to:

Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
Attention: H. Rodgin Cohen
Mitchell S. Eitel
Facsimile: (212) 558-3588

(b) if to Parent, to:

Wells Fargo & Company
Wells Fargo Center
MAC #N9305-173
Sixth and Marquette
Minneapolis, Minnesota 55479
Attention: Corporate Secretary
Facsimile: (612) 667-6082

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Edward D. Herlihy
Lawrence S. Makow
Facsimile: (212)403-2000

9.4 Interpretation. When a reference is made in this Agreement to Articles, Sections, Exhibits or Schedules, such reference shall be to an Article or Section of or Exhibit or Schedule to this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." All schedules and exhibits hereto shall be deemed part of this Agreement and included in any reference to this Agreement. If any term, provision, covenant or restriction contained in this Agreement is held by a court or a federal or state regulatory agency of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions and covenants and restrictions contained in this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated. If for any reason such court or regulatory agency determines that any provision, covenant or restriction is invalid, void or

unenforceable, it is the express intention of the parties that such provision, covenant or restriction be enforced to the maximum extent permitted.

9.5 Counterparts. This Agreement may be executed in two or more counterparts (including by facsimile or other electronic means), all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to the other party, it being understood that each party need not sign the same counterpart.

9.6 Entire Agreement. This Agreement (including the documents and the instruments referred to in this Agreement), together with the Confidentiality Agreement, constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter of this Agreement, other than the Confidentiality Agreement.

9.7 Governing Law; Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the State of New York applicable to contracts made and performed entirely within such state, without regard to any applicable conflicts of law principles. The parties hereto agree that any suit, action or proceeding brought by either party to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in any federal or state court located in the State of New York. Each of the parties hereto submits to the jurisdiction of any such court in any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of, or in connection with, this Agreement or the transactions contemplated hereby and hereby irrevocably waives the benefit of jurisdiction derived from present or future domicile or otherwise in such action or proceeding. Each party hereto irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

9.8 Publicity. Neither Company nor Parent shall, and neither Company nor Parent shall permit any of its Subsidiaries to, issue or cause the publication of any press release or other public announcement with respect to, or otherwise make any public statement concerning, the transactions contemplated by this Agreement without the prior consent (which shall not be unreasonably withheld or delayed) of Parent, in the case of a proposed announcement or statement by Company, or Company, in the case of a proposed announcement or statement by Parent; *provided, however*, that either party may, without the prior consent of the other party (but after prior consultation with the other party to the extent practicable under the circumstances) issue or cause the publication of any press release or other public announcement to the extent required by law or by the rules and regulations of the NYSE.

9.9 Assignment; Third Party Beneficiaries. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned by either of the parties (whether by operation of law or otherwise) without the prior written consent of the other party. Any purported assignment in contravention hereof shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by each of the parties and their respective successors and assigns. Except as otherwise specifically

provided in Section 6.6, this Agreement (including the documents and instruments referred to in this Agreement) is not intended to and does not confer upon any person other than the parties hereto any rights or remedies under this Agreement.

9.10 Specific Performance. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that the parties shall be entitled to seek specific performance of the terms hereof, this being in addition to any other remedies to which they are entitled at law or equity.

9.11 Disclosure Schedule. Before entry into this Agreement, Company delivered to Parent a schedule (a "Disclosure Schedule") that sets forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more representations or warranties contained in Article III, or to one or more covenants contained herein; *provided, however,* that notwithstanding anything in this Agreement to the contrary, (i) no such item is required to be set forth as an exception to a representation or warranty if its absence would not result in the related representation or warranty being deemed untrue or incorrect and (ii) the mere inclusion of an item as an exception to a representation or warranty shall not be deemed an admission that such item represents a material exception or material fact, event or circumstance or that such item has had or would be reasonably likely to have a Material Adverse Effect. For purposes of this Agreement, "Previously Disclosed" means information set forth by Company in the applicable paragraph of its Disclosure Schedule, or any other paragraph of its Disclosure Schedule (so long as it is reasonably clear from the context that the disclosure in such other paragraph of its Disclosure Schedule is also applicable to the section of this Agreement in question).