#2009-167

AGREEMENT BY AND BETWEEN
Modern Bank, National Association
New York, New York
and
The Comptroller of the Currency

Modern Bank, National Association, New York, New York ("Bank") and the Comptroller of the Currency of the United States of America ("Comptroller") wish to protect the interests of the depositors, other customers, and shareholders of the Bank, and, toward that end, wish the Bank to operate safely and soundly and in accordance with all applicable laws, rules and regulations.

The Comptroller, through his National Bank Examiner, has examined the Bank, and his findings are contained in the Report of Examination ("ROE") for the examination that commenced on September 22, 2008, with financial information through June 30, 2009. The Comptroller has found unsafe and unsound banking practices relating to management and board supervision, liquidity, sensitivity to market risk, earnings and capital at the Bank.

In consideration of the above premises, it is agreed, between the Bank, by and through its duly elected and acting Board of Directors ("Board"), and the Comptroller, through his authorized representative, that the Bank shall operate at all times in compliance with the articles of this Agreement.

ARTICLE I

JURISDICTION

(1) This Agreement shall be construed to be a "formal written agreement" within the meaning of 12 C.F.R. § 5.51(c)(6)(ii). See 12 U.S.C. § 1831i.

(2) This Agreement shall be construed to be a "written agreement between such depository institution and such agency" within the meaning of 12 U.S.C. § 1818(e)(1) and 12 U.S.C. § 1818(i)(2).

(3) This Agreement shall be construed to be a "written agreement" within the meaning of 12 U.S.C. § 1818(u)(1)(A).

(4) This Agreement shall cause the Bank to be designated as in "troubled condition," as set forth in 12 C.F.R. § 5.51(c)(6), unless otherwise informed in writing by the Comptroller. In addition, this Agreement shall cause the Bank not to be designated as an "eligible bank" for purposes of 12 C.F.R. § 5.3(g), unless otherwise informed in writing by the Comptroller.

(5) All reports or plans which the Bank or Board has agreed to submit to the Assistant Deputy Comptroller pursuant to this Agreement shall be forwarded to:

Melissa F. Scofield
Assistant Deputy Comptroller
New York Metro – East Field Office
343 Thornall Street
Suite 610
Edison, New Jersey 08837

ARTICLE II

COMPLIANCE COMMITTEE

(1) Within thirty (30) days of the date of this Agreement, the Board shall appoint a Compliance Committee of at least two (2) directors, and two (2) senior officers of the Bank who are not directors. Upon appointment, the names of the members of the Compliance Committee and, in the event of a change of the membership, the name of any new member shall be submitted in writing to the Assistant Deputy Comptroller. The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Agreement.

(2) The Compliance Committee shall meet at least quarterly.

(3) Within ninety (90) days of the date of this Agreement and quarterly thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

(a) a description of the action needed to achieve full compliance with each

Article of this Agreement;

(b) actions taken to comply with each Article of this Agreement; and

(c) the results and status of those actions.

(4) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Assistant Deputy Comptroller within ten (10) days of receiving such report.

ARTICLE III

STRATEGIC PLANNING

(1) Within ninety (90) days of the date of this Agreement, the Board shall develop, implement, and thereafter ensure Bank adherence to a written plan and process to improve the Bank’s performance and reduce current levels of exposure to risk for credit, liquidity, or interest rates. This process shall include, at a minimum, the following elements:

(a) an evaluation of all major strategic goals and initiatives to determine if they incorporate methods to improve the Bank’s financial condition, that they reflect appropriate market conditions, and address the long-term viability of the Bank;

(b) the development of goals and initiatives that will improve the Bank’s financial performance, and reduce or mitigate risk exposures;

(c) an evaluation of concentrations of credit risk to large borrowers and industry groups to determine if current market conditions and internal portfolio performance make growth or contraction of each concentration appropriate. Revise concentration guidelines accordingly;

(d) an evaluation of the impact of the Services Agreement with FB Modern

Real Estate LLC on the Bank's strategic direction, its capital and earnings levels, and its overall risk profile;

(e) an evaluation of the Bank's funding strategy to identify ways to reduce the funding dependency on large depositors and the CDARS network, to diversify all funding sources, and to reduce the high price sensitivity of all funding sources;

(f) realistic and comprehensive annual budgets, including projected balance sheets and year-end income statements, and key performance metrics and ratios. Budgets will include a description of the operating assumptions that form the basis for major projected income and expense components;

(g) a budget review process that includes a comparison of actual figures with budgetary projections, variance criteria for when interim re-forecasting of the budget would be required, action plans to address earnings performance in the event projections do not materialize, and the assignment of management responsibility to carry out the bank's strategic plan with specific time frames for performance and specific accountability measures;

(h) contingency plans that identify alternative methods should established strategic objectives not be achieved as described in paragraphs (a) through (g) above. The contingency plans must also include an option to sell, merge or liquidate the Bank with corresponding triggers, timeframes and a detailed process; and

(i) submission of periodic reports to the Board and our office that include financial performance relative to budget and status of specific action plans to address why strategic initiatives are not being achieved.

(2) The documents required in this Article shall be submitted to the Assistant Deputy Comptroller for review and prior determination of no supervisory objection. The strategic plan shall be implemented immediately upon receiving a determination of supervisory non-objection.

(3) The Board shall submit annual budgets, as described above, to the Assistant Deputy Comptroller for each year this Agreement remains in effect. Any new or revised budgets shall be submitted to the Assistant Deputy Comptroller within thirty (30) days of Board approval.

(4) Prior to making any changes that will cause, result or bring about a significant deviation or change (collectively, a significant deviation) to the Plan adopted pursuant to this Article, the Bank shall give the OCC at least sixty (60) days advance, written notice of its intent to make such changes, and must receive the OCC's prior written determination of no supervisory objection to such action prior to making such changes.

(5) For purposes of this Article, the term "significant deviation" shall mean, consistent with the description in PPM 5400-9, Appendix B:

(a) a material variance from the Bank's Business Plan submitted pursuant to the Operating Agreement (OA) or Formal Agreement, including the Bank's projected growth, strategy or philosophy, lines of business, funding sources, scope of activities, asset mix, deposit structure, or any other changes in personnel or operations that may have a material impact on the Bank's operations or financial performance; and/or

(b) failure to maintain projected capital levels contained in the Business Plan or Operating Budget submitted pursuant to the OA or Agreement.

(6) The Board shall forward comparisons of its balance sheet and profit and loss statement to the profit plan projections to the Assistant Deputy Comptroller on a quarterly basis.

ARTICLE IV

CAPITAL PLANNING

(1) Within ninety (90) days of the date of this Agreement, the Board shall develop, implement, and thereafter ensure Bank adherence to a three-year capital program. The program shall include:

(a) specific plans for the maintenance of adequate capital pursuant to the requirements under Part 3 and to remain well-capitalized pursuant to Part 6;

(b) projections for growth and capital requirements based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;

(c) projections of the sources and timing of additional capital to meet the Bank's current and future needs;

(d) the primary source(s) from which the Bank will strengthen its capital structure to meet the Bank's needs:

(e) contingency plans that identify alternative methods should the primary source(s) under (d) above not be available; and

(f) a dividend policy that permits the declaration of a dividend only:

(i) when the Bank is in compliance with its approved capital program;

(ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and with the prior written determination of no supervisory objection by the Assistant Deputy Comptroller. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Bank shall implement and adhere to the dividend policy.

(2) Upon completion, the Bank's capital program shall be submitted to the Assistant Deputy Comptroller for prior determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, the Bank shall implement and adhere to the capital program. The Board shall review and update the Bank's capital program on an annual basis or more frequently if necessary. Copies of the reviews and updates shall be submitted to the Assistant Deputy Comptroller.

ARTICLE V

MANAGEMENT

(1) The Board shall ensure that the Bank continues to have competent management in place in its senior management positions to carry out the Board's policies and the Business Plan, ensure compliance with applicable laws, rules and regulations, and manage the day-to-day operations of the Bank in a safe and sound manner.

(2) Unless otherwise advised in writing by the Assistant Deputy Comptroller, prior to the appointment of any individual to a director or senior management position, the Board shall submit to the OCC the following information:

(a) the information sought in the "Changes in Directors and Senior Executive Officers" booklet of the Comptroller's Corporate Manual, together with a legible fingerprint card for the proposed individual;

(b) a written statement of the Board's reasons for selecting the proposed individual; and

(c) if the position is in senior management, a written description of the proposed officer's duties and responsibilities.

(3) A written objection from the Assistant Deputy Comptroller shall have the effect of veto over the proposed appointment or employment of the individual. However, a written

non-objection to the appointment or employment of the individual shall not constitute an approval or endorsement of the individual.

(4) The requirement to submit information and the prior veto provisions of this Article are based on the authority of 12 U.S.C. § 1818(b).

ARTICLE VI

CONTINGENCY FUNDING PLAN

(1) The Board shall strengthen the Bank's Contingency Funding Plan and ALCO Policy by developing and incorporating:

(a) the maintenance of brokered deposits, including CDARS deposits, as measured by the Bank's ratio of total brokered deposits to total assets, at a level not to exceed forty (40) percent, without obtaining the prior written determination of no supervisory objection from the Assistant Deputy Comptroller. "Brokered deposit" shall have the meaning set forth in 12 C.F.R. § 337.6(a)(2). The limitation of this paragraph shall include the acquisition of Brokered Deposits through any transfer, purchase, or sale of assets, including Federal funds transactions;

(b) the Bank's identification of price and credit sensitive sources of funds, including large funding sources, and the order in which they may leave the Bank;

(c) the establishment of rollover risk limits regarding the volume of deposits and borrowings maturing within twelve month windows, as a prudent percentage of total assets and available sources of liquidity;

(d) the establishment of minimum asset liquidity guidelines commensurate with the level of brokered deposits and significant funds providers;

(e) the establishment of minimum total liquidity sources (unencumbered assets and available borrowings) that is capable of absorbing the potential inability to roll, renew, extend, or obtain brokered deposits under statutory Prompt Corrective Action restrictions; and

(f) evaluation of the Bank's funding strategy to identify ways to reduce the Bank's dependency on wholesale, brokered, and highly-price sensitive funding and to diversify funding sources, in general;

(2) Upon adoption, a copy of the enhanced CFP and ALCO policy shall be forwarded to the Assistant Deputy Comptroller for review.

ARTICLE VII

CONCENTRATIONS OF RISK

(1) Within ninety (90) days, the Board shall adopt a written plan to identify, monitor, measure, and control current and prospective concentrations of risk, including specific controls for exposures to large individual borrowers and depositors, loans outside of the Bank's marketplace, investments, types of deposits and loans, and borrowings. With respect to loans, the written plan shall comply with *OCC Bulletin 2006-46, Concentrations in Commercial Real Estate, Sound Risk Management Practices* (December 6, 2006).

(2) Within ninety (90) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to, a written asset and liability diversification program. The program shall include, but not necessarily be limited to, the following:

(a) a review of the Bank's current, and projected asset composition to identify significant borrowers, or borrowing groups, loans, geographical, industry, and property-type concentrations, loans outside of the Bank's marketing area, and investments;

(b) a review of the Bank’s liabilities to identify large funding concentrations or large funds providers, including large single or groups of depositors, brokered deposits and international deposits;

(c) a written analysis of any concentration of risk identified above in order to identify and assess the inherent credit, liquidity, and interest rate risk;

(d) policies, internal limits, and procedures to control and monitor concentrations of risk;

(e) a process for periodic review and adjustments of internal limits, policies, and procedures;

(f) Board and management reports that show compliance with established policy limits and meaningful trend analysis; and

(g) an action plan approved by the Board to reduce the risk of any concentration deemed imprudent in the above analysis.

(3) For purposes of this Article, a concentration of credit is as defined in the "Loan Portfolio Management” booklet of the Comptroller’s Handbook. In addition, a funding concentration is as defined in the “Liquidity” booklet of the Comptrollers Handbook.

(4) The Board shall ensure the formulation of Board-approved commercial real estate exposure limits and sub-limits covering non-owner occupied and owner occupied properties and addressing property type, related borrower groups, and geographic location.

(5) The Board shall forward a copy of this plan and program to the Assistant Deputy Comptroller immediately following completion.

(6) The Board shall ensure that future concentrations of risk are subject to the analysis required by sub-paragraph (c) of paragraph (2) in this Article and that the analysis demonstrates that the concentration will not subject the Bank to undue credit, liquidity, or interest rate risk.

(7) The Board shall forward a copy of any analysis performed on existing or potential concentrations of risk to the Assistant Deputy Comptroller immediately following the review.

ARTICLE VIII

ASSET/LIABILITY MANAGEMENT

(1) Within ninety (90) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written asset and liability management plan to reduce the Bank's level of interest rate risk (IRR), as measured by the Bank's market value of equity (MVE) model. The plan shall provide for a coordinated asset/liability management strategy and, at a minimum, address:

(a) reduction of the Bank's current IRR exposure, as measured by the percentage change in the Bank's MVE given a 200 basis point increase in interest rates, from the current level of fifty-six (56)% to the Bank's policy limit of (30)% by December 31, 2009;

(b) quarterly reporting to the Board and the Bank's Asset/ Liability Committee (ALCO) showing the actual level of IRR exposure compared to policy limits;

(c) establishment of the bank's strategic direction and tolerance for interest rate risk;

(d) prudent limits on the Bank's investment in long-term investments and loans that are funded by shorter-term deposits and borrowings;

(e) quarterly review of the Bank's adherence to the policy.

(2) Upon adoption, a copy of the written plan shall be forwarded to the Assistant Deputy Comptroller for review.

ARTICLE IX

CLOSING

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or prior written determination of no supervisory objection, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him/her by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement. Such time requirements may be extended in writing by the Assistant Deputy Comptroller for good cause upon written application by the Board.

(4) The provisions of this Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to the Agreement or excepted, waived, or terminated in writing by the Comptroller.

(5) This Agreement expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract. The Bank also expressly acknowledges that no officer or employee of the Office of the Comptroller of the Currency has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller's exercise of his supervisory responsibilities. The terms of this Agreement, including this paragraph, are not

subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller, has hereunto set her hand on behalf of the Comptroller.

/s/	10/27/09
Melissa F. Scofield Assistant Deputy Comptroller New York Metro – East	Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

/s/	10/27/09
Anthony Burke	Date
/s/	10/27/09
David House	Date
/s/	10/27/09
Jeffrey Lane	Date
/s/	10/27/09
Leonard Lieberman	Date
/s/	10/27/09
Jonathan Linen	Date
/s/	10/29/09
Joseph Melillo	Date
/s/	10/29/09
Joseph Montana, Jr.	Date
/s/	10/27/09
Stefan Reyniak	Date
/s/	10/27/09
Bippy Siegal	Date