

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

**PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): May 14, 2013

BANKFINANCIAL CORPORATION

(Exact Name of Registrant as Specified in Charter)

Commission File Number 0-51331

Maryland 75-3199276
**(State or Other Jurisdiction (I.R.S. Employer
of Incorporation) Identification No.)**

15W060 North Frontage Road, Burr Ridge, Illinois 60527
(Address of Principal Executive Offices)

Registrant's telephone number, including area code: (800) 894-6900

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

The extension of the terms of the employment period in BankFinancial Corporation's (the "Company") existing employment agreements with "Named Executive Officers" (as defined by Item 402(a)(3) of Securities and Exchange Commission Regulation S-K) F. Morgan Gasior, Paul A. Cloutier and James J. Brennan to March 31, 2016 were approved on May 14, 2013. Prior to the extensions, the employment periods would have expired on March 31, 2015. The employment agreements between the Company and these individuals were filed as Exhibits 10.1 through 10.3 to the Report on Form 8-K of the Company filed with the Securities and Exchange Commission on October 20, 2008. On the same date the extension of the terms of the employment period in BankFinancial, F.S.B.'s (the "Bank") existing amended and restated employment agreements with Messrs. Gasior, Cloutier, Brennan and Ms. Christa N. Calabrese to March 31, 2016 were also approved. Prior to the extensions, the employment periods would have expired on March 31, 2015. The foregoing amended and restated employment agreements were filed as Exhibits 10.1 through 10.3 and 10.5 to the Report on Form 8-K of the Company filed with the Securities and Exchange Commission on May 9, 2008.

Also on May 14, 2013, the Bank amended and restated the employment agreement with William J. Deutsch, Jr., President - National Commercial Leasing Division of the Bank. Mr. Deutsch, Jr. is also a Named Executive Officer. The amended and restated employment agreement amends and supersedes the prior employment agreement with Mr. Deutsch, which was filed as Exhibit 10.32 to the Company's Annual Report on Form 10-K/A of the Company filed with the Securities and Exchange Commission on May 2, 2011.

The amended and restated employment agreement for Mr. Deutsch reflects a change from a 24-month term to a 36-month term.

The forms of the "Extension of Term of Employment Period" that will be used to implement these actions are attached to this Current Report on Form 8-K as Exhibits 10.1 and 10.2.

A copy of the amended and restated employment agreement for William J. Deutsch, Jr. is filed as Exhibit 10.3 hereto and incorporated by reference herein. The foregoing summary of changes is qualified by the full text of the amended and restated employment agreements.

Item 9.01 Financial Statements and Exhibits.

- (a) Not Applicable.
- (b) Not Applicable.
- (c) Not Applicable.
- (d) Exhibits.

Exhibit No. Description

- 10.1 BankFinancial Corporation Form of Extension of Term of Employment Period
- 10.2 BankFinancial F.S.B. Form of Extension of Term of Employment Period
- 10.3 BankFinancial F.S.B. Employment Agreement with William J. Deutsch, Jr.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, hereunto duly authorized.

Dated: May 20, 2013

BANKFINANCIAL CORPORATION

By: /s/ F. Morgan Gasior

F. Morgan Gasior

Chairman of the Board and Chief Executive Officer

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
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|------|--|
| 10.1 | BankFinancial Corporation Form of Extension of Term of Employment Period |
| 10.2 | BankFinancial F.S.B. Form of Extension of Term of Employment Period |
| 10.3 | BankFinancial F.S.B. Employment Agreement with William J. Deutsch, Jr. |

FORM OF EXTENSION OF TERM
OF EMPLOYMENT PERIOD

MEMORANDUM

To: _____
From: Patricia Smith Lawler,
EVP/Human Resources Division
Re: Extension of Employment Period
Date: May ____, 2013

The Board of Directors of BankFinancial Corporation (the "Company") and its Human Resources Committee have completed their annual review of your Employment Agreement with the Company dated _____, as amended, and have determined to offer to amend your Employment Agreement (1) to extend the term of the "Employment Period" as referenced in Section 2(a) of your Employment Agreement to _____; and (2) to remove all references in your Employment Agreement to the term Office of Thrift Supervision (the "OTS") and replace them with references to the term Office of the Comptroller of the Currency (the "OCC").

If you are agreeable to amending your Employment Agreement as provided above, please sign and date this document in the space indicated below and return it to me by no later than _____.

If you do not sign and return this document to me by such date, the term of your Employment Period and the Anniversary Date applicable to your Employment Agreement will remain unchanged.

Name: _____
Signature: _____
Date: _____

FORM OF EXTENSION OF TERM
OF EMPLOYMENT PERIOD

MEMORANDUM

To: _____
From: Patricia Smith Lawler,
EVP/Human Resources Division
Re: Extension of Employment Period
Date: May ____, 2013

The Board of Directors of BankFinancial, F.S.B. (the "Bank") and its Human Resources Committee have completed their annual review of your Employment Agreement with the Bank dated _____, as amended, and have determined to offer to amend your Employment Agreement (1) to extend the term of the "Employment Period" as referenced in Section 2(a) of your Employment Agreement to _____; and (2) to remove all references in your Employment Agreement to the term Office of Thrift Supervision (the "OTS") and replace them with references to the term Office of the Comptroller of the Currency (the "OCC").

If you are agreeable to amending your Employment Agreement as provided above, please sign and date this document in the space indicated below and return it to me by no later than _____.

If you do not sign and return this document to me by such date, the term of your Employment Period and the Anniversary Date applicable to your Employment Agreement will remain unchanged.

Name: _____
Signature: _____
Date: _____

BANKFINANCIAL, F.S.B.
AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this “**Agreement**”) is made effective as of May 14, 2013 (the “**Effective Date**”), by and between **BankFinancial, F.S.B.** (the “**Bank**”), a federally chartered stock savings bank having its principal office at 15W060 North Frontage Road, Burr Ridge, Illinois, and **William J. Deutsch, Jr** (“**Executive**”).

WHEREAS, the Bank and the Executive have previously entered into an Employment Agreement dated May 6, 2008, and as subsequently amended (the “**Initial Agreement**”);

WHEREAS, the Board of Directors of the Bank (the “**Board**”) considers the continued availability of Executive's services to be important to the successful management and conduct of the Bank's business, and wishes to assure the continued availability of Executive's full-time services to the Bank as provided in this Agreement; and

WHEREAS, Executive is willing to continue to serve in the employ of the Bank on a full-time basis on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and upon the other terms and conditions hereinafter provided, the parties hereby agree as follows:

1. POSITION AND RESPONSIBILITIES.

(a) **Position.** During the period of employment established by **Section 2(a)** of this Agreement (the “**Employment Period**”), Executive agrees to serve, if appointed to serve, as the President - National Commercial Leasing Division of the Bank.

(b) **Duties and Responsibilities.** Executive shall have and exercise the duties, responsibilities, privileges, powers and authority commensurate with such position as the Board or the Chief Executive Officer, or any person designated by him, has assigned and may hereafter assign to Executive.

(c) **Faithful Performance.** Except for periods of paid time off taken in accordance with **Section 3(f)** hereof or following a Disability Determination made in accordance with **Section 4(b)** hereof, or for services performed for the Bank's Affiliates (as defined below) Executive shall devote substantially all of his business time, attention, skill and efforts during the Employment Period to the faithful performance of his duties hereunder, and shall not engage in any business or activity that interferes with the performance of such duties or conflicts with the business, affairs or interests of the Bank or BankFinancial Corporation (“**BFC**”); provided that, notwithstanding the foregoing, Executive may hold directorships, offices or other positions in one or more other organizations to the extent permitted by the Bank's Professional Responsibility Policy, as amended from time to time, or as otherwise approved by the Board or the Chairman and Chief Executive Officer.

(d) **Performance Standards.** During the Employment Period, Executive shall perform his duties in accordance with the policies and procedures of the Bank, as amended from time to time, such reasonable performance standards as the Board or the Chief Executive Officer of the Bank has established or may hereafter establish in the exercise of good faith business judgment, including those set forth in the Bank's Personnel Manual, as amended from time to time, and such Business Plans as the Board or the Chief Executive Officer of the Bank has established or may hereafter establish in the exercise of good faith business judgment.

2. TERM OF EMPLOYMENT.

(a) **Term.** The Employment Period shall commence on the Effective Date and shall thereafter continue for a period of thirty-six (36) months unless extended as provided herein. On or before each anniversary of the Effective Date during the Employment Period (each an “**Anniversary Date**”), the Board, subject to the review process set forth in **Section 2(b)** hereof, may extend the Employment Period for an additional one (1) year so that the remaining term of the Employment Period shall be thirty-six (36) months. All references herein to the Employment Period shall mean, for all purposes of this Agreement, Executive's Employment Period as initially established by, and as may subsequently be extended pursuant to, this **Section 2(a)**.

(b) **Annual Review.** The Board or the Board's Human Resources Committee (the “**Human Resources Committee**”) shall review this Agreement and the compensation arrangements provided for herein at least annually on, before or within a reasonable time (not to exceed forty-five (45) days) after each Anniversary Date. As part of each annual review, the Board or the Human Resources Committee shall determine whether or not to increase Executive's Base Salary as provided in **Section 3(a)** hereof and to extend the Employment Period for an additional one (1) year as provided in **Section 2(a)** hereof. The rationale and results of such review, and the justification for any such increase or extension, shall be documented in the minutes of the meeting at which the Board or the Human Resources Committee conducted such review, or in any written performance reviews referenced in such minutes. The Board, the Human Resources Committee or a person designated by either of them shall notify Executive in writing as soon as practicable, and not later than forty-five (45) days, after each applicable Anniversary Date, of the results of such review, including its decision whether or not to increase Executive's Base Salary and to extend the Employment Period. A decision

by or the failure of the Board or the Human Resources Committee to increase Executive's Base Salary and/or to extend the Employment Period shall not constitute a breach of this Agreement or a "Good Reason" under **Section 5(b)** hereof. All decisions and actions of the Human Resources Committee pursuant to this **Section 2(b)** shall be subject to ratification by the Board only to the extent, if any, that ratification may be required by applicable laws and regulations.

3. COMPENSATION AND OTHER BENEFITS.

(a) **Base Salary.** During the Employment Period, the Bank shall pay Executive the annual base salary that is reflected in the payroll records of the Bank on the Effective Date ("**Base Salary**"), subject to any discretionary increases that the Board may hereafter elect to make pursuant to this **Section 3(a)**. Executive's Base Salary shall be payable in accordance with the regular payroll practices of the Bank. The Board or the Human Resources Committee may increase Executive's Base Salary at any time, but shall not reduce Executive's Base Salary during the Employment Period without the Executive's express prior written consent. All references herein to Base Salary shall mean, for all purposes of this Agreement, Executive's Base Salary as initially established in, and as may subsequently be increased pursuant to, this **Section 3(a)**.

(b) **Bonuses; Incentive Compensation.** In addition to Executive's Base Salary, Executive shall be entitled to any cash or equity-based incentive compensation and bonuses to the extent earned pursuant to any plan or arrangement of the Bank or BFC in which Executive is eligible to participate during the Employment Period, or to such other extent as the Board or its Human Resources Committee may determine in its discretion to award to Executive.

(c) **Other Compensation.** The Bank may provide such additional compensation to Executive in such form and in such amounts as may be approved by the Board or the Human Resources Committee in its sole discretion.

(d) **Special Allowances.** The Bank shall provide Executive with either the use of an automobile or an automobile allowance and either the use of a cellular telephone or a cellular telephone allowance during the Employment Period in accordance with the standard policies and practices of the Bank and consistent with that provided to Executive as of the Effective Date; provided that the allowance for a given year must be paid to the Executive not later than 2.5 months after the end of such year.

(e) **Reimbursement of Expenses.** The Bank shall pay or reimburse Executive in accordance with the standard policies and practices of the Bank for all reasonable expenses incurred by Executive during the Employment Period in connection with his employment hereunder or the business of the Bank; provided that such payment or reimbursement must occur not later than 2.5 months after the end of the year in which such expense was incurred.

(f) **Paid Time Off.** Executive shall be entitled to receive not less than 176 hours of paid time off ("**PTO**") per calendar year during the Employment Period in accordance with the PTO policies of the Bank as then applicable to senior executive officers of the Bank. Executive shall also be entitled to take time off during all legal holidays approved by the Board for Bank employees generally. Executive shall receive his Base Salary and the other amounts and benefits provided for in **Section 3** hereof during all PTO periods and legal holidays. Except as permitted by the PTO policies of the Bank, Executive shall not be entitled to receive any additional compensation for his failure to take PTO or accumulate unused PTO from one year to the next.

(g) **Other Benefits.** The Bank shall provide Executive with all other benefits that are now or hereafter provided uniformly to non-probationary full-time employees of the Bank during the Employment Period, including, without limitation, benefits under any Section 125 Cafeteria Plan, any group medical, dental, vision, disability and life insurance plans that are now or hereafter maintained by the Bank (collectively, the "**Core Plans**"), and under any 401(k) plan ("**401(k) Plan**") and Employee Stock Ownership Plan ("**ESOP**") that is now or hereafter sponsored by the Bank, in each case subject to the Bank's policies concerning employee payments and contributions under such plans. The Bank shall not make any changes to any Core Plan that would materially and adversely affect Executive's rights or benefits under such plan unless such changes are made applicable to all non-probationary full-time employees of the Bank on a non-discriminatory basis. Nothing paid to Executive under any Core Plan or any 401(k) Plan or ESOP shall be deemed to be in lieu of any other compensation that Executive is entitled to receive under this Agreement.

(h) **Disability Insurance.** During the Employment Period, the Bank may provide Executive with a disability insurance policy with coverage sufficient to provide Executive with annual disability insurance payments in an amount up to sixty percent (60%) of Executive's Base Salary for a period at least equal to the then remaining term of the Employment Period (the "**Disability Policy**") in the event that Executive's employment is terminated by reason of a Disability Determination (as defined below). If a Disability Policy is so provided, Executive shall be responsible for the payment of all premiums on the Disability Policy and shall cooperate with the Bank in all respects as necessary or appropriate to enable the Bank to procure the Disability Policy, and the Bank shall provide Executive with an annual allowance in an amount sufficient, on an after-tax basis, to equal the annual premiums for the Disability Policy; provided that the allowance for a given year must be paid to the Executive not later than 2.5 months after the end of the year in which such premiums are paid.

(i) **Disability Insurance Adjustment.** If Executive receives disability benefits under the Disability Policy or any Core Plan or receives federal Social Security disability benefits (collectively, "**Disability Payments**"), the Bank's obligation under **Section 3(a)** and **6(b)** hereof to pay Executive his Base Salary shall be reduced, as of the date the Disability Payments are first

received by Executive, to an amount equal to the difference between Executive's Base Salary and the Disability Payments that Executive received during each applicable payroll period. The Executive shall make reasonable good faith efforts to notify the Bank of the receipt of Disability Payments.

(j) **Limit on Perquisites.** Notwithstanding the foregoing or anything to the contrary in this Agreement, the amounts payable to Executive pursuant to **Section 3(d)** of this Agreement in a given year shall not in the aggregate exceed ten percent (10%) of the cash compensation (defined as payments under **Sections 3(a), 3(b)** and **3 (c)**, including the value of annual incentive compensation or bonuses to the extent paid in equity awards under BFCs 2006 Equity Incentive Plan, as amended from time to time (the “**2006 EIP**”)) paid to Executive during such year.

4. **TERMINATION BY THE BANK.**

(a) **Termination For Cause.** The Board may terminate Executive's employment with the Bank “For Cause” at any time during the Employment Period, subject to the requirements set forth in this **Section 4(a)** and in **Section 7** of this Agreement. A termination “**For Cause**” shall mean the Bank's termination of Executive's full-time employment hereunder because of Executive's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule or regulation (other than traffic violations or similar offenses), or final cease-and-desist order, a repeated and material failure to achieve minimum objectives under a Business Plan established in accordance with **Section 1(d)** of this Agreement, a repeated and material failure of Executive to meet reasonable performance standards established in accordance with **Section 1(d)** of this Agreement, or a material breach of any provision of this Agreement. Notwithstanding the foregoing, Executive shall not be deemed to have been terminated For Cause unless and until (i) there shall have been delivered to Executive a written notice of the Board's intention to terminate Executive's employment For Cause, specifying the alleged grounds for such termination; (ii) if the alleged grounds for such termination are a material breach of this Agreement, a repeated and material failure to achieve minimum objectives under a Business Plan established in accordance with **Section 1(d)** of this Agreement, or a repeated and material failure of Executive to meet reasonable performance standards established in accordance with **Section 1(d)** of this Agreement, providing Executive with a reasonable opportunity to cure, if curable, any conduct or acts alleged to be such; (iii) following delivery of such written notice, Executive (together with any counsel selected by him) shall have been given a reasonable opportunity to present to the Board, at a meeting called and held for or including that purpose, Executive's position regarding any dispute that exists regarding the alleged grounds for termination For Cause; and (iv) the Board shall adopt a resolution by the affirmative vote of not less than a majority of its members, finding in good faith and on the basis of reasonable evidence that Executive was guilty of conduct justifying a termination For Cause. The Notice of Termination (as defined in **Section 7** below) issued in connection with the termination of Executive's employment For Cause shall be accompanied by a copy of such resolution. Should a dispute arise concerning the Executive's termination For Cause, any review of the For Cause termination in any judicial or arbitration proceeding will be limited to a determination of whether the Board acted in good faith and on the basis of reasonable evidence.

(b) **Termination for Disability.** Upon a determination (a “**Disability Determination**”) of Disability (as defined below), the Board, in its discretion, may terminate Executive's employment with the Bank at any time from and after the date of such Disability Determination. Following a Disability Determination, the Board may, in lieu of terminating Executive's employment by reason of the Disability Determination, appoint one or more other persons to serve as Acting President - National Commercial Leasing Division of the Bank to fulfill, on a temporary basis, the duties and responsibilities of Executive. Any such temporary appointment shall be without prejudice to the Board's right to thereafter terminate Executive's employment based on a Disability Determination made pursuant to this **Section 4(b)** or as otherwise provided herein. The term “**Disability**” shall mean that (i) the Executive is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or (ii) the Executive is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the Bank.

(c) **Termination Without Cause.** The Board, in its discretion, may terminate Executive's employment with the Bank “Without Cause” at any time, subject to the notification requirements set forth in **Section 7** hereof. A termination “**Without Cause**” shall mean the Board's termination of Executive's employment for any reason other than a termination For Cause or a termination based on a Disability Determination or death.

(d) **Termination under Code Section 409A.** Any termination described in this **Section 4** will only be deemed to have occurred if such termination constitutes a “separation from service” as defined under Section 409A of the Internal Revenue Code of 1986, as amended, or any successor thereto (the “**Code**”).

5. **TERMINATION BY EXECUTIVE OR BY REASON OF DEATH.**

(a) **Termination By Resignation.** Executive may, in his discretion, terminate his employment with the Bank “By Resignation” at any time during the Employment Period, subject to the notification requirements set forth in **Section 7** hereof. A termination “**By Resignation**” shall mean Executive’s termination of his employment for any reason other than a “Good Reason” as such term is defined in **Section 5(b)** hereof.

(b) **Termination For Good Reason.** Executive may terminate Executive’s employment with the Bank for “Good Reason,” subject to the requirements set forth in this **Section 5(b)** and the notification requirements set forth in **Section 7** hereof. A termination for “**Good Reason**” shall mean Executive’s resignation from the Bank’s employ during the Employment Period based upon any of the following reasons, but only if taken or occurring during the Employment Period without Executive’s consent: (i) a decision by the Board not to elect or re-elect or to appoint or re-appoint Executive to the office of President - National Commercial Leasing Division of the Bank, provided that, upon a change in control of the Bank or its parent company, a change of Executive’s title or office shall not constitute “Good Reason” unless accompanied by a material diminution of Executive’s duties and responsibilities; (ii) the Board’s relocation of Executive’s principal place of employment to a place that is located more than twenty-five (25) miles from Burr Ridge, Illinois; (iii) a reduction in Executive’s Base Salary; (iv) a liquidation or dissolution of the Bank; and (v) a material uncured breach of this Agreement by the Bank. Executive shall have the right to elect to terminate his employment for Good Reason only by giving the Chairman and Chief Executive Officer of the Bank a Notice of Termination (as defined below) within sixty (60) days after the act, omission or event giving rise to said right to elect. Notwithstanding the foregoing, Executive shall not have a right to elect to terminate his employment (1) based on the events set forth in this **Section 5(b)** solely on the basis of the Board’s appointment of an Acting President - National Commercial Leasing Division of the Bank following a Disability Determination made in accordance with **Section 4(b)** of this Agreement, or (2) if the Bank fully rescinds or cures, within ten (10) days after its receipt of Executive’s Notice of Termination, the act, omission or event giving rise to Executive’s right to elect to terminate his employment for Good Reason.

(c) **Termination Upon Death.** Executive’s employment with the Bank shall terminate immediately upon Executive’s death, without regard to the notification requirements set forth in **Section 7** hereof.

(d) **Termination under Code Section 409A.** Any termination described in this **Section 5** will only be deemed to have occurred if such termination constitutes a “separation from service” as defined under Code Section 409A.

6. **FINANCIAL CONSEQUENCES OF TERMINATION.**

(a) **Termination For Cause.** In the event that Executive’s employment is terminated For Cause during the Employment Period, the Bank shall pay Executive the unpaid balance of Executive’s Base Salary through the effective date of the termination of Executive’s employment (“**Earned Salary**”), but Executive shall receive no bonus or incentive compensation for the current year (all such amounts shall remain unearned and unvested), and shall receive no compensation or other benefits (including the compensation and benefits set forth in **Section 3(a)** through **Section 3(i)** and **Section 6** hereof) for any period after the effective date of the termination of Executive’s employment; *provided, however*, that any rights of Executive under any applicable state and federal laws, including ERISA and COBRA, and any rights of Executive that have vested, whether by application of any state or federal law, the provisions of any contract, employee benefits plan or otherwise, shall not be terminated or prejudiced by a termination For Cause. Upon Executive’s death, any payments due under this **Section 6(a)** shall be paid, as applicable, to Executive’s estate, trust or as otherwise required by law.

(b) **Termination for Disability.** In the event that Executive’s employment is terminated during the Employment Period based on a Disability Determination, the Bank shall: (i) pay Executive his Earned Salary (as defined above); (ii) pay Executive an amount equal to the cash incentive compensation, if any, that the Board determines in its sole and absolute discretion that Executive is to receive during the current year based on Executive’s demonstrable achievement of the objectives set forth in Executive’s incentive compensation program for the current year, prorated based on the number of days during such year that elapsed prior to the effective date of the termination of Executive’s employment (“**Prorated Incentive Compensation**”); (iii) make, for the benefit of Executive, the matching 401(k) plan contribution that Executive is entitled to receive for the current year, prorated based on the number of days during such year that elapsed prior to the effective date of the termination of Executive’s employment (“**Accrued Plan Contribution**”); (iv) subject to the disability insurance adjustment set forth in **Section 3(i)** hereof, pay Executive the Base Salary that Executive would have been paid pursuant to **Section 3(a)** hereof from the effective date of termination through the date the Employment Period would have expired if Executive’s employment had not been sooner terminated based on a Disability Determination; (v) provide Executive (and upon his death his surviving spouse and minor children, if any) with the same coverage under the Core Plans that Executive (and his surviving spouse and minor children, if any) would have been provided pursuant to **Section 3(g)** hereof from the effective date of termination through the date the Employment Period would have expired if Executive’s employment had not been sooner terminated based on a Disability Determination (subject to payment of the costs and contributions that such plans provide are the responsibility of the insured employee); and (vi) provide Executive (and his surviving spouse and minor children, if any) with the health insurance continuation benefits set forth in **Section (b)(i)**, beginning on the date of the expiration of the health insurance coverage provided under the Core Plans pursuant to **Section 6(b)(v)** (subject

to the payment of the costs specified therein). Amounts payable under **Subsections (ii) and (iv)** of this **Section 6(b)** shall be paid as provided in **Section 6(j)**.

(c) **Termination Without Cause.** In the event that Executive's employment is terminated Without Cause during the Employment Period, the Bank shall: (i) pay Executive his Earned Salary (as defined above); (ii) pay Executive his Prorated Incentive Compensation (as defined above); (iii) make, for the benefit of Executive, the Accrued Plan Contribution (as defined above); (iv) pay Executive the Base Salary that Executive would have been paid pursuant to **Section 3(a)** hereof from the effective date of termination through the date the Employment Period would have expired if Executive's employment had not been sooner terminated Without Cause; (v) provide Executive (and upon his death his surviving spouse and minor children, if any) with coverage under the Core Plans that Executive would have been provided pursuant to **Section 3(g)** from the effective date of the termination of Executive's employment through the date the Employment Period would have expired if Executive's employment had not been sooner terminated Without Cause (subject to the payment of the costs and contributions that such plans provide are the responsibility of the insured employee); and (vi) provide Executive (and his surviving spouse and minor children, if any) with the health insurance continuation benefits set forth in **Section 6(i)**, beginning on the expiration date of the health insurance coverage provided under the Core Plans pursuant to **Section 6(c)(v)** (subject to the payment of the costs specified therein). Amounts payable under **Subsections (ii) and (iv)** of this **Section 6(c)** shall be paid as provided in **Section 6(j)**.

(d) **Termination By Resignation.** In the event that Executive's full-time employment is terminated By Resignation during the Employment Period, the Bank shall pay Executive his Earned Salary (as defined above), but Executive shall receive no compensation or other benefits (including the compensation and benefits set forth in **Section 3(a)** through **Section 3(i)** hereof) for any period after the effective date of the termination of Executive's employment; *provided, however*, that any rights of Executive under any applicable state and federal laws, including ERISA and COBRA, and any rights of Executive that have vested, whether by application of any applicable state or federal law, the provisions of any contract, employee benefits plan or otherwise, shall not be terminated or prejudiced by a termination By Resignation.

(e) **Termination for Good Reason.** In the event that Executive's employment is terminated by Executive for Good Reason during the Employment Period, the Bank shall pay Executive the same amounts that Executive would have been paid pursuant to **Sections 6(c)(i), (ii), (iii) and (iv)**, and shall provide Executive (and upon his death his surviving spouse and minor children, if any) with the same coverages under the Core Plans coverage that Executive (and his spouse and minor children, if any) would have been provided pursuant to **Section 6(c)(v)** (subject to the payment of the costs and contributions that such plans provide are the responsibility of the insured employee) and the same health insurance continuation benefits that Executive (and his spouse and minor children, if any) would have been provided pursuant to **Section 6(c)(vi)** (subject to the payment of the costs specified therein) if Executive's employment had been terminated by the Bank Without Cause on the effective date of the termination of Executive's employment. Amounts payable under this **Section 6(e)** shall be paid as provided in **Section 6(j)**.

(f) **Termination Upon Death.** In the event Executive's employment with the Bank is terminated during the Employment Period by reason of Executive's death, the Bank shall pay Executive's estate or trust, as applicable, the same amounts Executive would have been paid pursuant to **Sections 6(b)(i), (ii), (iii) and (iv)**, and shall provide his surviving spouse and minor children, if any, with the same coverages under the Core Plans that they would have been provided pursuant to **Section 6(b)(v)** (subject to the payment of the costs and contributions that such plans provide are the responsibility of the insured employee) and the same health insurance continuation coverages they would have provided pursuant to **Section 6(b)(vi)** (subject to the payment of costs specified therein) if Executive's employment had been terminated by the Bank based on a Disability Determination on the date of Executive's death. Subject to the delivery (and non-revocation) of the executed general release as provided for in **Section 6(j)**, amounts payable under this **Section 6(f)** shall be paid in a single lump sum on the Bank's regular payroll date sixty (60) days after the date of Executive's death.

(g) **Capital Limitations.** Notwithstanding any other provisions of this Agreement and to the extent permitted under Code Section 409A: (i) in the event the Bank is not in compliance with its minimum capital requirements as established by applicable federal laws and regulations at the time any payment becomes due to Executive pursuant to **Section 6** hereof, the Bank shall be entitled to defer such payment until such time as the Bank is in compliance with such minimum capital requirements; and (ii) if the Bank is in compliance with such minimum capital requirements at the time any such payment becomes due, but the making of any such payment would cause the Bank's capital to fall below such minimum capital requirements, the Bank shall be entitled to reduce the amount of such payment as necessary to enable the Bank to remain in compliance with such minimum capital requirements, subject to the Bank's obligation to pay the amount of any such reductions (or any portion thereof) as soon as such amount can be paid without causing the Bank's capital to fall below such minimum capital requirements.

(h) **Section 280G Limitation.** Notwithstanding any other provisions of this Agreement, in no event shall the aggregate payments or benefits to be made or afforded to Executive pursuant to **Section 6** of this Agreement constitute an "excess parachute payment" under Section 280G of the Code. In order to avoid such a result, such aggregate payments or benefits will be reduced, if necessary, to a lesser amount, the value of which is one dollar (\$1.00) less than an amount equal to three (3) times Executive's "base amount" as determined in accordance with said Section 280G. The reduction shall be allocated among the components of such payments and benefits in the manner designated by Executive.

(i) **Post-Employment Health Insurance.** In the event of Executive's termination of employment pursuant to **Sections 4(b), 4(c), 5(b)** or **5(c)**, beginning on the expiration date of any health insurance coverage under the Core Plans provided pursuant to **Section 6** hereof and continuing through the earlier of (i) the date on which Executive becomes eligible for comparable coverage under another group health insurance plan with no pre-existing condition limitation or exclusion or (ii) the date on which Executive becomes entitled to benefits under Medicare (and the date on which the Executive's spouse becomes entitled to benefits under Medicare with respect to the right to continued coverage for such spouse), Executive (and any qualified dependents, including Executive's spouse) shall be entitled to group health insurance coverage. Such coverage shall be provided under the group health insurance plan in which the employees and senior executives of BFC and the Bank (including the employees and senior executives of any successors of BFC and the Bank) participate (as such plan is then in effect and as it may be modified, replaced or substituted at any time and from time to time during the period of coverage contemplated in this **Section 6(i)**), to the same extent as Executive was participating immediately prior to termination, at the Executive's cost, which cost shall be an amount equal to the cost of such benefits as if such benefits were being provided pursuant to COBRA. Executive shall promptly notify BFC if Executive becomes eligible for coverage under another group health plan with no pre-existing condition limitation or exclusion or Executive becomes entitled to full benefits under Medicare. Nothing contained in this section is intended to limit or otherwise modify benefits that the Executive may otherwise be entitled to under this Agreement with respect to the Core Plans.

(j) **General Release and Time of Payment.** In consideration of the Bank's agreements with respect to the monetary payments and other benefits provided for in **Section 6** of this Agreement (which payments and benefits exceed the nature and scope of that to which Executive would have been legally entitled to receive absent this Agreement), and as a condition precedent to Executive's receipt of such payments and other benefits, Executive (or in the event of Executive's death, Executive's executor, trustee, administrator or personal representative, as applicable), shall execute and deliver to the Bank a general release in favor of the Bank and its Affiliates (as defined below) releasing all claims, demands, causes of actions and liabilities arising out of this Agreement, Executive's employment or the termination thereof, including, but not limited to, claims, demands, causes of action and liabilities for wages, back pay, front pay, attorney's fees, other sums of money, insurance, benefits, or contracts; and all claims, demands, causes of actions and liabilities arising out of or under the statutory, common law or other rules, orders or regulations of the United States or any State or political subdivision thereof, whether now existed or hereinafter enacted or adopted, including the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act, and no further payments shall be due Executive until such time as all applicable waiting or rescission periods thereunder shall have expired or shall have been waived. Notwithstanding the foregoing or anything to the contrary herein, the general release shall not release, and shall expressly reserve, any unperformed obligations of the Bank under this Agreement. The general release shall be executed and delivered no later than twenty-two (22) days after the effective date of termination (or such longer period of time to the extent required by law) and, provided the general release is not revoked, the amounts payable under **Subsections 6(b)(ii)** and **(iv)**, **6(c)(ii)** and **(iv)**, and **6(e)** shall be paid in equal installments over the period beginning on the sixtieth (60th) day following the effective date of termination and continuing through the Bank's first regular payroll date after the date the Employment Period would have expired if Executive's employment had not been sooner terminated; *provided, however*, that any such installments that would have been paid in the sixty (60) day period following the effective date of termination but for the release requirement shall be paid on the date the first installment is paid and the remaining installments shall be paid over the balance of the period continuing through the Bank's first regular payroll date after the date the Employment Period would have expired if Executive's employment had not been sooner terminated. *Provided, however*, that to the extent any portion of the applicable payment amount under **Section 6(c)** or **(e)** exceeds the "safe harbor" amount described in Treasury Regulation Section 1.409A-1(b)(9)(iii)(A), the Executive shall receive such portion of the applicable payment that exceeds the "safe harbor" amount in a single lump sum payment on the first payroll date following the sixtieth (60th) day after the Executive's termination.

7. **NOTICE OF TERMINATION.**

Any termination or purported termination by the Bank or Executive of Executive's employment with the Bank shall be communicated by a Notice of Termination to the other party. A "**Notice of Termination**" shall mean a written notice that shall set forth the effective date of the termination of Executive's employment, identify the specific termination provision(s) in this Agreement relied upon, and set forth in reasonable detail the facts and circumstances claimed to provide a basis for the termination of Executive's employment under the provision so identified. The party issuing the Notice of Termination shall cause it to be delivered to the other party either in person, by United States mail or via a reputable commercial delivery service (i) not less than thirty (30) days prior to the effective date of termination in the case of a termination Without Cause or By Resignation or based on a Disability Determination; (ii) not less than thirty (30) days prior to the effective date of termination and as otherwise provided in **Section 4(a)** hereof in the case of a termination For Cause; and (iii) as provided in **Section 5(b)** hereof in the case of a termination for Good Reason. Notices to the Bank shall be addressed and delivered to the principal headquarters office of the Bank, Attention: Chief Executive Officer and General Counsel, with a copy concurrently so delivered to General Corporate Counsel to the Bank, Barack Ferrazzano Kirschbaum & Nagelberg LLP, 200 West Madison Street, Suite 3900, Chicago, Illinois 60606, to the attention of Donald L. Norman, Jr. Notices to the Executive shall be sent to the address set forth below the Executive's signature on this Agreement, or to such other address as Executive may hereafter designate in a written notice given to the Bank and its counsel.

8. NON-COMPETITION AND OTHER AGREEMENTS.

(a) **Non-Competition.** Executive shall not, during the Non-Competition Period (as hereinafter defined), directly or indirectly, and in any capacity, including as an individual for Executive's own account, or as an employee, agent, independent contractor, consultant, officer, director, stockholder, owner or member of any association, corporation (whether for profit or not for profit), partnership (whether general or limited), limited liability company, trust, firm, any federal, state or local government, agency, commission, board, district or body politic, any other registered or legal entity of any type (each a "Legal Entity"), or as an employee, agent, independent contractor or consultant of or for any person, compete with the Bank in any of the following lines of business: the business of originating or purchasing loans, leases and payment streams thereunder, accepting deposits, selling or providing insurance, securities, financial planning, and asset management products and services, accepting referrals of any of the foregoing, and other business contracts, relationships or activities of the Bank and any Affiliate (as defined below) of the Bank (collectively, "Banking Business") from a place that is located within five (5) miles of a place where the Bank or any Affiliate maintains a branch, office or other place of business, or has filed a regulatory notice or application to establish a branch, office or other place of business (collectively, the "Restricted Area"). The term "Non-Competition Period" shall mean: (i) the greater of (A) six (6) months after the effective date of the termination of Executive's employment, and (B) any period of time during which Executive is entitled to receive payments or benefits pursuant to Section 6(b), 6(c) or 6(e) of this Agreement on account of a termination based on a Disability Determination, Without Cause or for Good Reason, respectively; and (ii) six (6) months from the effective date of the termination of Executive's employment if such employment is terminated By Resignation or With Cause. The term "Affiliate" means, for all purposes of this Agreement, any Legal Entity that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the Bank. The following Legal Entities are Affiliates of the Bank as of the date of this Agreement: BFC; Financial Assurance Services, Inc.; SXNB Corporation (an Illinois corporation in dissolution); Success Bancshares, Inc. (a Delaware corporation in dissolution); and BF Asset Recovery Corporation.

(b) **Non-Solicitation.** Executive shall not, during the Non-Solicitation Period (as hereinafter defined), directly or indirectly, either as an individual for Executive's own account, or as an employee, agent, independent contractor or consultant of or for any person or Legal Entity, or as an officer, director, stockholder, owner or member of any Legal Entity: (i) call upon or solicit for the purpose of obtaining Banking Business from, or do any Banking Business with, any person or Legal Entity that was or is a customer of the Bank or any Affiliate at any time between the Effective Date of this Agreement and the last day of the Non-Solicitation Period, and with which Executive had dealings on behalf of the Bank (a "Protected Customer"); (ii) divert or take away from the Bank or an Affiliate any existing Banking Business between the Bank or an Affiliate and a Protected Customer; (iii) call upon or solicit for the purpose of obtaining Banking Business from, or do any Banking Business with, any person or Legal Entity from which the Bank or an Affiliate purchased loans or personal property leases (or any payment streams thereunder), or that referred or originated loans or personal property leases (or any payment streams thereunder) to, for or on behalf of the Bank or an Affiliate at any time between the Effective Date of this Agreement and the last day of the Non-Solicitation Period (a "Protected Referral Source"); (iv) divert or take away from the Bank or an Affiliate any existing Banking Business between the Bank or an Affiliate and a Protected Referral Source; (v) solicit or induce any Protected Customer or Protected Referral Source to terminate or not renew or continue any Banking Business with the Bank or any Affiliate, or to terminate or not renew or continue any contractual relationship with the Bank or any Affiliate; (vi) hire, or assist or cause any person or Legal Entity with which Executive is affiliated or associated in hiring, any person who was or is an employee of the Bank or any Affiliate between the Effective Date of this Agreement and the last day of the Non-Solicitation Period (a "Protected Employee"); (vii) solicit or induce any Protected Employee to terminate his employment with the Bank or any Affiliate; or (viii) attempt to do, or conspire with or aid and abet others in doing or attempting to do, any of the foregoing. The term "Non-Solicitation Period" shall mean, except as provided in Section 8(f) below, a period of eighteen (18) months commencing on the effective date of the termination of Executive's employment.

(c) **Confidentiality.** Executive recognizes and acknowledges that personal information and knowledge thereof regarding the customers of the Bank and its Affiliates are protected by state and federal law and the Privacy Principles of the Bank and its Affiliates, as amended from time to time (collectively, "Protected Customer Information"), and that customer lists, trade secrets, nonpublic financial information, and nonpublic past, present, planned or considered business activities of the Bank and its Affiliates and any plans for such business activities (collectively, "Proprietary Information") are valuable, special and unique assets of the Bank. Executive will not, during or after the Employment Period, disclose any Protected Customer Information or Proprietary Information or his knowledge thereof to any person or Legal Entity other than the Bank or any Affiliate, or use any Protected Customer Information or Proprietary Information to the detriment of the Bank, any Affiliate or any of their respective customers or employees, or for the benefit of himself, any person or any Legal Entity, for any reason or purpose whatsoever. Notwithstanding the foregoing, Executive may (i) disclose and use information that becomes publicly known through no wrongful act or omission of Executive, but only if the disclosure of such information is not restricted by any applicable state or federal laws or regulations and the information is not received from a person who was or is bound by an obligation not to disclose such information; (ii) disclose and use any financial, banking, business or economic principles, concepts or ideas that do not constitute Protected Customer Information or Proprietary Information; (iii) disclose any information regarding the business activities of the Bank or its Affiliates to a governmental authority pursuant to a formal written request made by such governmental authority; and

(iv) disclose any information required to be disclosed by Executive pursuant to an order or judicial process issued by a court of competent jurisdiction; *provided, however*, that to the extent not prohibited by applicable state or federal law, Executive shall provide the Bank or the applicable Affiliate with at least ten (10) days' prior written notice of his intention to disclose information pursuant to **subsection (iii) or (iv)** of this **Section 8(c)**.

(d) Cooperation in Legal Proceedings. During the Employment Period and for a period equal to three (3) years from the effective date of the termination of Executive's employment, Executive shall, upon reasonable notice, furnish such cooperation, information and assistance to the Bank as may reasonably be required by the Bank or any Affiliate of the Bank in connection with any pending or threatened judicial, administrative or arbitration proceeding or any investigation that is based on events or circumstances in which Executive had personal knowledge or involvement and in which the Bank or any of its Affiliates is or may become a party or target, except for proceedings instituted against Executive by the Bank or any governmental or regulatory authority, or proceedings instituted by Executive against the Bank to enforce the terms of this Agreement or any other duties or obligations of the Bank to Executive. The Bank, or if applicable, its Affiliate, shall reimburse Executive for all reasonable costs and expenses incurred by Executive in providing such cooperation, information and assistance. Unless Executive's appearance is compelled by a court order or other legal process, Executive shall not be obligated to devote more than two (2) days per calendar month in fulfilling his obligations under this **Section 8(d)**, and the Bank or its Affiliate shall make reasonable accommodations to avoid interfering with any duties that Executive may then have to any client or other employer. Notwithstanding anything to the contrary in this **Section 8(d)** or this Agreement, while Executive will be encouraged to voluntarily provide sworn testimony where appropriate, Executive shall have no duty to provide sworn testimony in any judicial, arbitration or discovery proceeding except as may be required by any rule of procedure, subpoena or judicial process applicable to or enforceable against Executive, and in no case shall Executive be required to provide any testimony that, in the judgment of Executive, might or could expose him to civil liability or compromise his privilege against self incrimination. Any testimony given by Executive in such a proceeding shall be truthful, but in no event shall the content of any testimony given by Executive in such a proceeding constitute a breach of this **Section 8(d)** or any other provision of this Agreement. Executive may condition his providing of assistance and testimony hereunder on his receipt of an undertaking from the Bank that it will indemnify him for such actions to the fullest extent permitted by applicable law.

(e) Remedies. Executive and the Bank stipulate that irreparable injury will result to the Bank and its Affiliates and their business and property in the event of Executive's violation of any provision of this **Section 8**, and agree that, in the event of any such violation by Executive, the Bank, and if applicable, its Affiliates, will be entitled, in addition to any other rights, remedies and money damages that may then be available, to injunctive relief to restrain the violation hereof by Executive, Executive's partners, agents, servants, employees and all persons acting for, under the direction or control of or in concert with Executive, and to such other equitable remedies as may then be available. Nothing herein will be construed as prohibiting the Bank or any Affiliate from pursuing any other remedies available to the Bank or such Affiliate for such breach or threatened breach, including the recovery of money damages from Executive.

(f) Adjustment of Non-Solicitation Period. The Non-Solicitation Period shall be reduced from eighteen (18) months to ninety (90) days, but only with respect to the restrictions set forth in **Subsection (b)(i)** and **Subsection (b)(iii)** of **Section 8** of this Agreement (and the prohibitions in **Subsection (b)(viii)** of **Section 8** against, aiding, abetting, inducing or conspiring with others to violate those restrictions), in the event that Executive resigns his employment within twelve (12) months after the Board fails to extend the Employment Period within ninety (90) days (before or after) an applicable Anniversary Date pursuant to **Section 2(a)** for an additional one (1) year and Executive provides the Board with notice of such failure at least thirty (30) days prior to the expiration of such ninety (90) day period, or in the event that the Bank terminates Executive's employment For Cause based on a repeated and material failure to achieve minimum objectives under a Business Plan established in accordance with **Section 1(d)** of this Agreement, or a repeated and material failure of Executive to meet reasonable performance standards established in accordance with **Section 1(d)** of this Agreement. The Non-Solicitation Period shall be reduced from eighteen (18) months to six (6) months, but only with respect to the restrictions set forth in **Subsection (b)(i)** and **Subsection (b)(iii)** of **Section 8** of this Agreement (and the prohibitions in **Subsection (b)(viii)** of **Section 8** against, aiding, abetting, inducing or conspiring with others to violate those restrictions), in the event that the Bank terminates this Agreement Without Cause or Executive terminates this Agreement for Good Reason, provided that, in either case, Executive executes and delivers to the Bank a writing, acceptable in form and substance to the Bank, that releases and waives any and all obligations that the Bank may have under **Section 6(c)** or **6(e)** of this Agreement to pay Executive any Base Salary after the expiration of such six-month period, or to provide Executive (or upon his death, his surviving spouse and minor children, if any) with coverage under the Core Plans after the expiration of such six-month Non-Solicitation Period.

9. SOURCE OF FUNDS.

All payments provided in this Agreement shall be timely paid in cash or check from the general funds of the Bank.

10. EFFECT ON PRIOR AGREEMENTS AND EXISTING PLANS.

This Agreement contains the entire understanding between the parties hereto with respect to Executive's employment with the Bank, and supersedes the Initial Agreement, any prior offer of employment, employment letter or other agreements or understandings between the Bank and Executive, whether oral or written, with respect thereto, except that this Agreement shall not affect or operate to reduce any benefit or compensation inuring to Executive of a kind provided for in any Core Plan or any separate plan or program established for the benefit of Bank employees generally, or any separate plan or program established after the date of this Agreement for the specific benefit of Executive. No provision of this Agreement shall be interpreted to mean that Executive is subject to receiving fewer benefits than those available to him without reference to this Agreement.

11. MODIFICATION AND WAIVER.

This Agreement may not be modified or amended except by an instrument in writing signed by the parties hereto and approved by the Board. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel against the enforcement of any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated therein, and each such waiver shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future as to any act other than that specifically waived. Notwithstanding the foregoing, in the event that any provision or the implementation of any provision of this Agreement is finally determined to violate any applicable law, regulation or other regulatory requirement that is binding on the Bank, or to constitute an unsafe and unsound banking practice, Executive and the Bank agree to amend such provision to the extent necessary to remove or eliminate such violation or unsafe and unsound banking practice, and such provision shall then be applicable in the amended form.

12. NO ATTACHMENT.

Except as required by law, no right to receive payments under this Agreement shall be subject to anticipation, commutation, alienation, sale, assignment, encumbrance, charge, pledge, or hypothecation, or to execution, attachment, levy, or similar process or assignment by operation of law, and any attempt, voluntary or involuntary, to effect any such action shall be null, void, and of no effect.

13. REQUIRED PROVISIONS.

In the event any of the foregoing provisions of this Agreement are in conflict with the provisions of this **Section 13**, this **Section 13** shall prevail.

(a) **Rights Not Prejudiced.** The Bank may terminate Executive's employment at any time, but any termination by the Bank, other than For Cause, shall not prejudice any right of Executive to compensation or other benefits under this Agreement. Executive shall not have the right to receive compensation or other benefits for any period after a termination For Cause as provided in **Section 6(a)** hereof.

(b) **Suspension; Temporary Removal.** If Executive is suspended and/or temporarily prohibited from participating in the conduct of the affairs of the Bank or an Affiliate by a notice served under Section 8(e)(3) or 8(g)(1) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1818(e)(3) or (g)(1), the Bank's obligations under this Agreement shall be suspended as of the date of service, unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the Bank may in its discretion: (i) pay Executive all or part of the compensation withheld while the contract obligations were suspended; and (ii) reinstate (in whole or in part) any of the obligations which were suspended.

(c) **Removal; Prohibition.** If Executive is removed and/or permanently prohibited from participating in the conduct of the affairs of the Bank or an Affiliate by an order issued under Section 8(e)(4) or 8(g)(1) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1818(e)(4) or (g)(1), all obligations of the Bank under this Agreement shall terminate as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

(d) **Bank in Default.** If the Bank is in default as defined in Section 3(x)(1) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(x)(1), all obligations of the Bank under this Agreement shall terminate as of the date of default, but this paragraph shall not affect any vested rights of the contracting parties.

(e) **Regulatory Termination.** All obligations under this Agreement shall be terminated, except to the extent determined that continuation of this Agreement is necessary for the continued operation of the institution: (i) by the Director of the OCC (or his designee) at the time the FDIC enters into an agreement to provide assistance to or on behalf of the Bank under the authority contained in Section 13(c) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1823(c); or (ii) by the Director of the OCC (or his designee) at the time the Director (or his designee) approves a supervisory merger to resolve problems related

to the operations of the Bank or when the Bank is determined by the Director to be in an unsafe or unsound condition. Any rights of the parties that have already vested, however, shall not be affected by such action.

(f) **Certain Payments.** Any payments made to Executive pursuant to this Agreement, or otherwise, are subject to and conditioned upon compliance with 12 U.S.C. Section 1828(k) and 12 C.F.R. Section 545.121 and any rules and regulations promulgated thereunder.

(g) **OCC Limitation.** Notwithstanding anything to the contrary in this Agreement, in no case shall the total Departure Compensation (defined below) paid to Executive upon the termination of his employment with the Bank, regardless of the reason, exceed three (3) times Executive's Average Annual Regulatory Compensation (defined below). The term "**Departure Compensation**" shall mean any payments and other things of value that the Bank makes or provides to Executive upon the termination of Executive's employment with the Bank, but shall not mean or include any Prorated Incentive Compensation (defined above) that the Board determines was earned by Executive prior to the Effective Date of termination, any Earned Salary (defined above) or any Accrued Plan Contributions (defined above). The term "**Average Annual Regulatory Compensation**" shall mean the average of Executive's annual Regulatory Compensation (defined below) based on the most recent three (3) tax years, or if Executive was employed by the Bank for less than three (3) full tax years, based on such lesser number of tax years or portions thereof as Executive was employed by the Bank. The term "**Regulatory Compensation**" shall mean, for the purposes of the foregoing definition as it relates to any tax year, any payment of money or provision of any other thing of value by the Bank to Executive in consideration of Executive's employment, including, without limitation, Base Salary, commissions, bonuses, pension and profit-sharing plans, severance payments, retirement, director or committee fees, fringe benefits, payment of expense items without accountability or business purpose or that do not meet Internal Revenue Service requirements for deductibility by the association. In the event that the total Departure Compensation that becomes due to Executive under this Agreement exceeds three (3) times Executive's Average Annual Regulatory Compensation, the aggregate payments or other things of value constituting Departure Compensation shall be reduced to a lesser amount, the value of which shall be one dollar (\$1.00) less than three (3) times Executive's Average Annual Regulatory Compensation. In such a case, the reduction shall be allocated among the components of such payments and other things of value in the manner designated by Executive.

14. **WITHHOLDING.**

All payments required to be made to Executive under this Agreement shall be subject to the withholding of such amounts, if any, relating to tax and other payroll deductions as the Bank reasonably determines should be withheld pursuant to any applicable state or federal law or regulation.

15. **SEVERABILITY.**

If, for any reason, any provision of this Agreement, or any part of any provision, is held invalid, such invalidity shall not affect any other provision of this Agreement or any part of such provision that is not held invalid, and each such other provision and part thereof shall to the full extent consistent with law continue in full force and effect. Without limiting the foregoing, if any provisions of **Section 8** of this Agreement are held to be unenforceable because of the scope, duration or area of applicability, the court making such determination shall have the power to modify such scope, duration or area of applicability, or all of them, and such provision shall then be applicable in the modified form.

16. **HEADINGS FOR REFERENCE ONLY.**

The headings of sections and paragraphs herein are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.

17. **GOVERNING LAW.**

The validity, interpretation, performance and enforcement of this Agreement shall be governed by the internal laws of the State of Illinois, without regard or reference to any principles of conflicts of law of the State of Illinois, except to the extent that such internal laws are preempted by the laws of the United States or the regulations of the OCC or any other agency of the United States.

18. **DISPUTE RESOLUTION.**

(a) **Arbitration.** Except for claims, cases or controversies based on or arising out of **Section 8** of this Agreement ("**Section 8 Claims**"), all claims, cases or controversies arising out of or in connection with either this Agreement, Executive's employment with the Bank or the termination or cessation of such employment (collectively, "**Employment Claims**"), whether asserted against the Bank, an Affiliate (as defined below), and/or an officer, director or employee of the Bank or an Affiliate, and whether based on this Agreement or existing or subsequently enacted or adopted statutory or common law doctrines, shall be finally settled by arbitration conducted by JAMS Endispute or a successor entity ("**JAMS**") in Chicago, Illinois, in accordance with the then applicable Employment Arbitration Rules and Procedures of JAMS, or in the event JAMS or a successor in interest of JAMS no longer provides arbitration services, by the American Arbitration Association or a successor entity (the "**AAA**") in accordance with its then applicable National Rules for the Resolution of Employment Disputes. The costs and fees imposed by

JAMS or the AAA for conducting such arbitration shall be borne equally by Executive and the Bank unless the arbitrator determines otherwise. The award rendered by the arbitrator(s) shall be final and binding upon Executive, the Bank and any other parties to such proceeding, and may be entered and enforced as a judgment in any court of competent jurisdiction. The Employment Claims subject to arbitration hereunder shall include, but shall not be limited to, those arising under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, as amended, including the amendments of the Civil Rights Act of 1991, the Older Workers Benefit Protection Act, the Americans with Disabilities Act, the law of contract, the law of tort, and other claims under federal, state or local statutes, ordinances and rules or the common law. Executive and the Bank acknowledge that by agreeing to arbitration they are relinquishing all rights they have to sue each other for Employment Claims that do not constitute Section 8 Claims and any rights that they may have to a jury trial on Employment Claims that do not constitute Section 8 Claims.

(b) **Section 8 Claims.** All Section 8 Claims shall be brought, commenced and maintained only in a state or federal court of competent jurisdiction situated in the County of Cook or the County of DuPage, State of Illinois. Executive and the Bank each hereby (i) consents to the exercise of jurisdiction over his or its person and property by any court of competent jurisdiction situated in the County of Cook or the County of DuPage, State of Illinois for the enforcement of any claim, case or controversy based on or arising under **Section 8** of this Agreement; (ii) waives any and all personal or other rights to object to such jurisdiction for such purposes; and (iii) waives any objection which it may have to the laying of venue of any such action, suit or proceeding in any such court.

19. **INDEMNIFICATION AND INSURANCE.**

(a) **Indemnification, Advancement and Insurance.** The Bank shall, subject to the conditions and findings set forth in 12 C.F.R. Section 545.121: (i) provide Executive (including his heirs, executors and administrators), at the Bank's expense, with insurance under a directors' and officers' liability insurance policy that reasonably and adequately insures Executive for his acts and omissions as a director, officer or employee of the Bank and its subsidiaries; (ii) indemnify Executive (and his heirs, executors and administrators) against all judgments entered and settlements made in any pending or threatened action and any appeal or other proceeding for review of such action, regardless of whether such action is a judicial or administrative proceeding, if such action was brought or threatened because Executive is or was a director, officer or employee of the Bank or any of its subsidiaries; (iii) indemnify Executive (and his heirs, executors and administrators) against all and reasonable costs and expenses, including reasonable attorney's fees, actually paid or incurred by Executive in defending or settling any such action, or in enforcing Executive's rights to indemnification under this **Section 19**; and (iv) to the extent that the Bank is not then authorized by applicable law to provide such indemnification, advance Executive his reasonable costs and expenses, including reasonable attorney's fees, arising from the settlement or defense of any such action, subject to the Bank's receipt of a written undertaking from Executive to repay all costs and expenses so advanced if Executive is later determined not to be entitled to indemnification. In the event that 12 C.F.R. Section 545.121 or the provisions of the Bank's bylaws or charter that relate to indemnification and the advancement of expenses are hereafter amended, such amendment shall apply to the Bank's obligations under this **Section 19**, but only to the extent that it increases the Bank's authority to indemnify or advance expenses to Executive beyond the authority that was provided, or reduces any limitations on such authority that were imposed, by 12 C.F.R. Section 545.121 and the provisions of the Bank's bylaws or charter on the Effective Date. Notwithstanding the foregoing and anything to the contrary in this Agreement, the Bank shall have no obligations under this **Section 19** or under any provision of its charter or bylaws to provide indemnification or advance expenses to Executive in connection with any pending or threatened action, and any appeal or other proceeding for review of such action, regardless of whether such action is a judicial or administrative proceeding, if such action was brought or threatened because Executive is or was a director, officer or employee of a person or Legal Entity that is not or was not an Affiliate of the Bank, or because of any duty or alleged duty arising out of a past or present employment, contractual or other legal relationship between Executive and a Legal Entity that is or was not an Affiliate of the Bank. Any payments made to Executive pursuant to this **Section 19** shall be subject to and conditioned upon compliance with the applicable provisions of 12 U.S.C. 1828(k), as amended, and 12 C.F.R. Section 545.121, as amended, and any rules or regulations promulgated in connection with therewith.

(b) **Procedures.** Any request for indemnity or the advancement of expenses shall be made in a written notice delivered by Executive to the General Counsel of the Bank. The notice shall describe with reasonable particularity the claim that has been made or threatened against Executive and the reasons why Executive believes that it is lawful and appropriate for the Bank to indemnify or advance expenses to him in connection with such claim. Following the delivery of such written notice, the Board shall, as soon as practicable and by no later than its next regularly scheduled Board meeting, adopt a resolution by the affirmative vote of not less than a majority of its members (i) determining in good faith and on the basis of reasonable evidence or other information whether or not Executive, in connection with such claim, was acting in good faith within the scope of his employment or authority as he perceived it under the circumstances and for a purpose he could reasonably have believed under the circumstances was in the best interests of the Bank, and (ii) determining whether or not the Bank will approve or deny Executive's request subject to any regulatory notification requirements; *provided, however*, that if the Board lacks sufficient evidence or other information at the time of such meeting to make the determination set forth in **Subsection (i)** of this **Section 19(b)**, the Board shall adopt a resolution at such meeting by the affirmative vote of not less than a majority of its members determining whether or not the Bank will advance Executive the reasonable costs of defending or settling such claim, subject to such undertakings by

Executive as may be required by applicable law. The Board shall provide Executive with a copy of each such resolution promptly after its adoption.

20. COSTS AND LEGAL FEES.

(a) **Payment to Executive.** Except as provided in **Section 18(a)** hereof, in the event any dispute or controversy arising under or in connection with any provision of this Agreement other than **Section 8** hereof is resolved on the merits in favor of Executive pursuant to an arbitration award or final judgment, order or decree of a court of competent jurisdiction (the time for appeal therefrom having expired and no appeal having been perfected), the Bank shall be obligated to pay Executive, within thirty (30) days after the date on which such judgment becomes final and not subject to further appeal, all reasonable costs and legal fees paid or incurred by Executive in connection with such dispute or controversy.

(b) **Payment to Bank.** Except as provided in **Section 18(a)** hereof, in the event any dispute or controversy arising under or in connection with **Section 8** of this Agreement is resolved on the merits in favor of the Bank pursuant to an arbitration award or final judgment, order or decree of a court of competent jurisdiction (the time for appeal therefrom having expired and no appeal having been perfected), Executive shall be obligated to pay the Bank, within thirty (30) days after the date on which such judgment becomes final and not subject to further appeal, all reasonable costs and legal fees paid or incurred by the Bank in connection with such dispute or controversy.

21. NO CONFLICTS.

Executive has heretofore advised the Bank and hereby represents that the execution and delivery of this Agreement and the performance of the obligations hereunder do not and will not conflict with, or result in any default, violation or breach of any contract or agreement to which Executive is a party, or of any legal duty of Executive.

22. SURVIVAL.

The rights and obligations of Executive and the Bank under **Sections 6, 8, 13, 17, 18, 19** and **20** of this Agreement shall survive the termination of Executive's employment and the termination or expiration of this Agreement. All other rights and obligations of Executive and the Bank shall survive the termination or expiration of this Agreement only to the extent that they expressly contemplate future performance and remain unperformed.

23. SUCCESSORS AND ASSIGNS.

(a) **Continuing Rights and Obligations.** This Agreement shall be binding upon, and inure to the benefit of, Executive and his heirs, executors, administrators and assigns, and the Bank and its successors and assigns. The Bank shall require any of its successors or assigns, whether resulting from a purchase, merger, consolidation, reorganization, conversion or a transfer of all or substantially all of its business or assets, to expressly and unconditionally to assume and agree to perform its obligations under this Agreement, in the same manner and to the same extent that it would be required to perform such obligations if no such succession or assignment had occurred.

(b) **Payments to Estate or Trust.** Any amounts due Executive hereunder shall be paid to Executive's estate in the event of Executive's death except as expressly provided herein; provided that, notwithstanding the foregoing, Executive may, in his discretion, provide for the payment of some or all of such amounts to a trust established by Executive. In the event that Executive desires that such amounts be paid to a trust, Executive shall notify the Bank of such intention in writing and comply with any requirements of applicable law.

IN WITNESS WHEREOF, BankFinancial, F.S.B. has caused this Agreement to be executed by its duly authorized officers and directors, and Executive has signed this Agreement as of this 14th day of May, 2013.

BANKFINANCIAL, F.S.B.

By:

Its:

EXECUTIVE

William J. Deutsch, Jr.