

CAPITAL MAINTENANCE AND LIQUIDITY AGREEMENT

THIS CAPITAL MAINTENANCE AND LIQUIDITY AGREEMENT (Agreement) dated as of _____, _____, has been entered into by and among the **FEDERAL DEPOSIT INSURANCE CORPORATION**, a Federal banking agency existing under the laws of the United States having its principal office in Washington, D.C. (the FDIC), **CAPITALSOURCE INC.**, a corporation duly organized and existing under the laws of the State of Delaware (the Parent Company), **CAPITALSOURCE TRS INC.**, a corporation duly organized and existing under the laws of the State of Delaware (Second Tier Holding Company), **CAPITALSOURCE FINANCE LLC** a limited liability company duly organized and existing under the laws of the State of Delaware (CapitalSource Finance), and **CAPITALSOURCE BANK** (In-Organization), Salt Lake City, Utah (the Applicant).

WITNESSETH:

WHEREAS, the Board of Directors of the FDIC is charged by Section 5 of the Federal Deposit Insurance Act (the Act) (12 U.S.C. § 1815) with the responsibility of acting upon applications for Federal deposit insurance for all depository institutions including, but not limited to, state nonmember banks.

WHEREAS, the Applicant is a proposed state nonmember industrial bank being formed as a wholly-owned subsidiary of the Second Tier Holding Company, which is a wholly-owned subsidiary of the Parent Company.

WHEREAS, the Parent Company is a commercial finance company, and the Parent Company's purpose in forming the Applicant is to purchase commercial loans held or originated by the Parent Company or its subsidiaries, in accordance with applicable affiliate transaction limitations, and to diversify funding sources. CapitalSource Finance is a wholly-owned subsidiary of the Parent Company.

WHEREAS, the Applicant submitted an application for Federal deposit insurance (the Application) to the FDIC in accordance with Section 5 of the Act on June 10, 2005, and the Application was deemed substantially complete on June 29, 2005.

WHEREAS, the FDIC is required to consider, among other things, the seven factors described in Section 6 of the Act (12 U.S.C. § 1816) (the Statutory Factors) and will generally grant an application for Federal deposit insurance if it finds favorably upon each factor. As a part of the approval process, the FDIC also considers the financial resources of a parent holding company in evaluating the adequacy of an applicant's capital.

WHEREAS, the Applicant, the Second Tier Holding Company, and the Parent Company have expressed their willingness to submit to such conditions as the FDIC may determine are necessary to make a favorable finding on the Statutory Factors.

WHEREAS, the FDIC is unable to make a favorable finding on the Statutory Factors if the Parent Company, the Second Tier Holding Company, CapitalSource Finance, and the Applicant do not enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the FDIC, the Parent Company, the Second Tier Holding Company, CapitalSource Finance, and the Applicant agree as follows:

1. **Approval by FDIC.** Upon approval of the Application by the FDIC, this Agreement shall become fully effective and binding upon the parties hereto.

2. **Capital.** The capital levels of the Applicant will at all times meet or exceed the levels required for the Applicant to be considered “well capitalized” under section 325.103(b) of the FDIC Rules and Regulations (12 CFR § 325.103(b)) or any successor laws or regulations. In addition, Applicant’s Total Risk-Based Capital Ratio as defined in section 325.2(y) of the FDIC Rules and Regulations or in any successor laws or regulations will be maintained at not less than fifteen (15) percent and the Applicant will maintain an adequate allowance for loan and lease losses. (The capital requirements contained in this paragraph and in the following paragraph (2.(A)) will be referred to collectively as the Minimum Capital Ratios.)
 - (A) **Maintenance of Required Minimum Capital Ratios.** If, at any time, the Applicant’s capital ratios fall below the Minimum Capital Ratios, the Parent Company or Second Tier Holding Company will immediately contribute sufficient additional capital to the Applicant or take such other action to enable it to meet the Minimum Capital Ratios.

 - (B) **Maintenance of Revised Capital Ratios.** If the FDIC considers it necessary, pursuant to its regulatory authority, for the Applicant to maintain capital ratios that are greater than the Minimum Capital Ratios (the Revised Capital Ratios), it will provide written notification of its determination to the Applicant, Second Tier Holding Company, and Parent Company. Within 30 days after the FDIC issues the notification to the Applicant, Second Tier Holding Company, and Parent Company, if Applicant has not met the Revised Capital Ratios, the Parent Company or Second Tier Holding Company will immediately contribute sufficient additional capital to the Applicant to enable it to meet the Revised Capital Ratios specified by the FDIC.

 - (C) **Capital Contributions.** All capital contributions to the Applicant by the Parent Company or Second Tier Holding Company will be in the form of cash, or if appropriate and approved by the FDIC, other assets acceptable to the FDIC. Any and all such capital contributions will be credited to the Applicant’s surplus account.

3. Liquidity. The Parent Company and the Second Tier Holding Company will maintain the Bank's liquidity at such levels that the FDIC deems appropriate. In particular, the Parent Company, the Second Tier Holding Company, and CapitalSource Finance will provide the Applicant with financial assistance, as specified below, to permit the Applicant to meet its short- and long-term liquidity demands.

(A) Short-Term Liquidity.

- i. The Parent Company and CapitalSource Finance will enter into a Revolving Line of Credit Agreement with Applicant to provide \$100,000,000 in unsecured financing to Applicant to fund loans and pay operating expenses. Parent Company, CapitalSource Finance, and Applicant will execute and submit the \$100,000,000 unsecured Revolving Line of Credit to the FDIC prior to the Applicant's effective date of Federal deposit insurance.
- ii. Applicant will enter into unsecured Federal Funds Purchased Agreement(s) with one or more third-party institutions that provides Applicant with access to a minimum of \$60,000,000 in short-term financing. Applicant will submit Letters of Approval from the third-party institutions providing the unsecured Federal Funds Purchased Agreements to the FDIC prior to the Applicant's effective date of Federal deposit insurance. Applicant will submit executed Federal Funds Purchased Agreements to the FDIC within (45) days of the Applicant's effective date of Federal deposit insurance.
- iii. The Applicant may draw on the \$100,000,000 unsecured Revolving Line of Credit provided by the Parent Company and CapitalSource Finance at any time the Applicant or FDIC considers it necessary.
- iv. Any and all agreements related to the \$100,000,000 unsecured Revolving Line of Credit Agreement will only be made with the prior written approval of the FDIC and upon such terms and conditions as the FDIC, in its sole discretion, finds acceptable.
- v. The \$100,000,000 unsecured Revolving Line of Credit Agreement is subject to the restrictions of Section 23B of the Federal Reserve Act and cannot contain terms and conditions that are less favorable to Applicant than a comparable transaction with an unaffiliated third party.

(B) Long-Term Liquidity. If the Applicant identifies liquidity requirements that it cannot satisfy, then at the written request of the Applicant or the FDIC, the Parent Company, directly or through CapitalSource Finance, within 10 days of receiving the request, will provide the Applicant with financial support, including cash, in such amount and for such duration as may be necessary for the Applicant to meet its ongoing liquidity obligations.

4. Authority of Parent Company, Second Tier Holding Company, and Applicant. The Boards of Directors of the Parent Company, the Second Tier Holding Company, CapitalSource Finance, and the Applicant have each approved a resolution (the

Resolution) authorizing the Parent Company, the Second Tier Holding Company, CapitalSource Finance, and the Applicant, respectively, to enter into this Agreement. A certified copy of the Resolution for each party is attached hereto as Exhibit A and incorporated herein by reference.

5. Miscellaneous.

- (A) Legally Binding, Enforceable Agreement. The parties agree that this Agreement is binding and enforceable by the FDIC pursuant to Section 8 of the FDI Act (12 U.S.C. § 1818) against the Applicant, the Second Tier Holding Company, CapitalSource Finance, and the Parent Company, their successors and assignees.
- (B) Capital Maintenance Commitment. The parties agree that the obligations of the Parent Company and the Second Tier Holding Company that are contained in this Agreement are commitments to maintain the capital of the Applicant and, if a petition of bankruptcy is filed by or against the Parent Company or the Second Tier Holding Company, the obligations of the Parent Company and the Second Tier Holding Company contained in this Agreement will be paid as an administrative expense of the debtor pursuant to section 507(a)(1) of the Bankruptcy Code (11 U.S.C. § 507(a)(1)).
- (C) Conservatorship or Receivership of the Applicant. In the event of an appointment of a conservator or receiver for the Applicant, the obligations of the Applicant, the Second Tier Holding Company, CapitalSource Finance, and Parent Company hereunder with respect to the Agreement shall survive said appointment and be enforceable by FDIC.
- (D) Governing Laws. This Agreement and the rights and obligations hereunder shall be governed by and shall be construed in accordance with the Federal law of the United States, and, in the absence of controlling Federal law, in accordance with the laws of the State of Delaware.
- (E) No Waiver. No failure or delay on the part of the Applicant or the FDIC in the exercise of any right or remedy shall operate as a waiver or termination thereof, nor shall any partial exercise of any right or remedy preclude other or further exercise of any other right or remedy.
- (F) Fees and Expenses. The Parent Company and Second Tier Holding Company shall pay any attorneys' fees and other reasonable expenses incurred by the Applicant in exercising its rights or seeking any remedies hereunder.
- (G) Severability. In the event any one or more of the provisions contained herein should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith to replace the invalid, illegal or unenforceable provisions with valid

provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

- (H) No Oral Change. This Agreement may not be modified, amended, changed, discharged or terminated orally, but may be done so only with the written consent of the FDIC.
- (I) Enforcement by Applicant. The Applicant may, in its discretion, enforce this Agreement against the Parent Company, the Second Tier Holding Company, and CapitalSource Finance.
- (J) Modification. This Agreement reflects the complete and full agreement of the parties and may not be modified, released, renewed or extended in any manner except by a writing signed by all the parties and with the written approval of such modification by the FDIC.
- (K) Addresses for and Receipt of Notice. Any notice hereunder shall be in writing and shall be delivered by hand or sent by United States express mail or commercial express mail, postage prepaid, and addressed as follows:

If to the Parent Company:

CapitalSource Inc.
Attention: Treasurer
4445 Willard Avenue, 12th Floor
Chevy Chase, MD 20815

If to the Second Tier Holding Company:

CapitalSource TRS Inc.
Attention: Treasurer
4445 Willard Avenue, 12th Floor
Chevy Chase, MD 20815

If to CapitalSource Finance:

CapitalSource Finance LLC
Attention: Treasurer
4445 Willard Avenue, 12th Floor
Chevy Chase, MD 20815

If to the Applicant:

CapitalSource Bank
Attention: President
2180 South 1300 East
Salt Lake City, UT 84106

with a copy to:

CapitalSource Bank
Attention: General Counsel
4445 Willard Avenue, 12th Floor
Chevy Chase, MD 20815

If to the FDIC:

Associate Director, Supervision and Applications Branch
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

- (L) Complete Agreement. The parties agree that this Agreement is the complete and exclusive statement of the agreement between the parties, and supersedes all prior written or oral communications, representations and agreements relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year indicated above.

FEDERAL DEPOSIT INSURANCE CORPORATION

By: _____

Title: _____

CAPITALSOURCE INC.

By: _____

Title: _____

CAPITALSOURCE TRS INC.

By: _____

Title: _____

CAPITALSOURCE FINANCE LLC

By: _____

Title: _____

CAPITALSOURCE BANK (In-Organization)

By: _____

Title: _____

PARENT COMPANY AGREEMENT

THIS PARENT COMPANY AGREEMENT (Agreement), dated as of _____, _____, by and among the **FEDERAL DEPOSIT INSURANCE CORPORATION**, a Federal banking agency existing under the laws of the United States having its principal office in Washington, D.C. (FDIC), **CapitalSource Inc.**, a corporation duly organized and existing under the laws of the State of Delaware (Parent Company), and **CapitalSource Bank**, a second-tier subsidiary of Parent Company and a proposed Industrial Bank to be chartered by the State of Utah and located in Salt Lake City, Utah (Bank).

WITNESSETH:

WHEREAS,

1. The FDIC is authorized by Sections 5 and 6 of the Federal Deposit Insurance Act (FDI Act) to act on all applications for deposit insurance by depository institutions and to insure the deposits of all banks and savings associations entitled to the benefits of Federal deposit insurance. 12 U.S.C. § 1811(a); §1815(a); §1816;
2. On June 10, 2005, the Bank submitted to the FDIC an application for Federal deposit insurance for a proposed Utah-chartered Industrial Bank;
3. Parent Company and the Bank desire that the FDIC approve the pending application for Federal deposit insurance and have expressed their willingness to enter into this Agreement and to submit to such conditions as the FDIC may deem necessary to approve such application;
4. To better evaluate the potential risks to the Bank and to the Deposit Insurance Fund, the FDIC deems this Agreement necessary and may not make a favorable finding on the pending application for deposit insurance if Parent Company and the Bank do not enter into this Agreement;
5. On July 28, 2006, the FDIC imposed a six-month moratorium on all deposit insurance applications and notices with respect to all industrial banks;
6. On January 31, 2007, the FDIC extended for one year the moratorium on deposit insurance applications and notices submitted with respect to industrial banks that would be controlled by commercial companies (moratorium); and
7. Bank's deposit insurance application would be subject to the moratorium if Parent Company is a commercial company.

In consideration of the premises and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the FDIC, Parent Company, and the Bank agree as follows:

A. If Parent Company makes the commitments contained in this Agreement, the FDIC will act on Bank's deposit insurance application during the moratorium;

B. That Parent Company shall submit to the FDIC an initial listing of all of its subsidiaries and update the list annually;

C. That Parent Company consents to examination by the FDIC of Parent Company and each of its subsidiaries to monitor compliance with the provisions of the Federal Deposit Insurance Act or any other federal law that the FDIC has specific jurisdiction to enforce against such company or subsidiary and those governing transactions and relationships between any depository institution subsidiary and its affiliates;

D. That deposit insurance shall not become effective until Parent Company ceases to engage in activities that are not financial activities, and that commencing on the effective date of deposit insurance, Parent Company shall engage, directly or indirectly, only in financial activities. (For purposes of this agreement, the term "financial activity" means (1) banking, managing or controlling banks or savings associations; (2) any activity permissible for financial holding companies under 12 U.S.C. § 1843(k), any specific activity that is listed as permissible for bank holding companies under 12 U.S.C. § 1843(c) and activities that the Federal Reserve Board has permitted for bank holding companies under 12 C.F.R. § 225.28 and 225.86, and (3) any activity permissible for a all savings and loan association holding companies under 12 U.S.C. § 1467a(c));

E. That Parent Company shall submit to the FDIC an annual report regarding its operations and activities, in the form and manner prescribed by the FDIC, and such other reports as may be requested by the FDIC to keep the FDIC informed as to financial condition, systems for monitoring and controlling financial and operating risks, and transactions with the Bank; and compliance by Parent Company or its subsidiaries with applicable provisions of the Federal Deposit Insurance Act or any other Federal laws that the FDIC has specific jurisdiction to enforce against such company or subsidiary;

F. That Parent Company shall maintain such records as the FDIC may deem necessary to assess the risks to the Bank or to the Deposit Insurance Fund;

G. That Parent Company shall cause an independent annual audit of the Bank to be performed during the first three years after the Bank becomes a subsidiary of the company;

H. That Parent Company will limit its representation, direct and indirect, on the board of directors of the Bank to no more than 25% of the members of such board of directors, in the aggregate; and

I. That Parent Company will maintain the Bank's capital at such levels as the FDIC deems appropriate as reflected in the terms of a Capital Maintenance and Liquidity Agreement entered into by the FDIC, the Parent Company, CapitalSource Finance LLC, and the Bank, and such other parties as the FDIC deems appropriate.

Miscellaneous Provisions.

Definitions. The term "Board of Directors" includes, for a corporation, the board of directors, and for a limited liability company, the board of managers or the managing members, as appropriate. The term "subsidiary" means any company that is directly or indirectly controlled by another company, and "control" has the meaning given it in 12 U.S.C. § 1817(j)(8) and includes the presumption of control at 12 C.F.R. § 303.82(b)(2). Other terms used in this Agreement that are not otherwise defined herein have the meanings given them in Section 3 of the FDI Act, 12 U.S.C. § 1813.

Enforceability as a Written Agreement. In addition to any other remedies provided by law, this Agreement is binding and enforceable by the FDIC as a written agreement pursuant to Section 8 of the FDI Act (12 U.S.C. § 1818).

Authority of Parent Company and Bank. The Board of Directors of the Parent Company and the Bank each have approved a resolution (Resolution) authorizing Parent Company and the Bank to enter into this Agreement. A certified copy of each Resolution for each party is attached hereto as Exhibit A and incorporated herein by reference.

Governing Laws. This Agreement and the rights and obligations hereunder shall be governed by and shall be construed in accordance with the Federal law of the United States, and, in the absence of controlling Federal law, in accordance with the laws of the State of Delaware.

No Waiver. No failure to exercise, and no delay in the exercise of, any right or remedy on the part of any of the parties to this Agreement shall operate as a waiver or termination of the Agreement. Further, any exercise or partial exercise of any right or remedy relating to this Agreement will not preclude further exercise of such right or remedy or any other right or remedy.

No Oral Change. This Agreement may not be modified, amended, changed, discharged, terminated, released, renewed or extended in any manner except by a writing signed by all of the parties.

Addresses. Any correspondence or submission required by the Agreement shall be provided in writing and shall be delivered by hand or sent by United States express mail or commercial express mail, postage prepaid, and addressed as follows:

If to the Parent Company:

CapitalSource Inc.
Attention: Treasurer
4445 Willard Avenue, 12th Floor
Chevy Chase, MD 20815

If to the Bank:

CapitalSource Bank
Attention: President
2180 South 1300 East
Salt Lake City, UT 84106

with a copy to:
CapitalSource Bank
Attention: General Counsel
4445 Willard Avenue, 12th Floor
Chevy Chase, MD 20815

If to the FDIC:

Associate Director, Division of Supervision and Consumer Protection
Supervision and Applications Branch
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

No Assignment. This agreement may not be assigned or transferred, in whole or in part, without the prior written consent of the FDIC.

Joint and Several Liability. The obligations, liabilities, agreements and commitments of the parties contained herein are joint and several, and the FDIC may pursue any right or remedy that it may have against one or more of the other parties without releasing or discharging any other party.

Complete Agreement. The parties agree that this Agreement is the complete and exclusive statement of the agreement between the parties concerning the commitments set forth in paragraphs (A) through (I) of the Agreement, and supersedes all prior written

or oral communications, representations and agreements relating to the subject matter of these paragraphs.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year indicated above.

FEDERAL DEPOSIT INSURANCE CORPORATION

By: _____

Title: _____

CAPITALSOURCE INC.

By: _____

Title: _____

CAPITALSOURCE BANK (In-Organization)

By: _____

Title: _____

PASSIVITY AGREEMENT

THIS PASSIVITY AGREEMENT (“this Agreement”), dated as of _____, 2007, among the **FEDERAL DEPOSIT INSURANCE CORPORATION**, a Federal banking agency duly organized and existing under the laws of the United States having its principal office in Washington, D.C. (“the FDIC”); **FARALLON CAPITAL MANAGEMENT, LLC** (“FCM”), a limited liability company duly organized and existing under the laws of Delaware, having its principal office in San Francisco, California, acting in its own capacity, acting in its capacity as the manager of Farallon CS Institutional Finance, LLC (“FIF”), as the general partner of Farallon CS Institutional Finance II, L.P. (“FIF II”), and acting in its capacity as the manager of Farallon Capital Offshore Investors, Inc. (“FCOI”); and **FARALLON PARTNERS, LLC** (“FP”), a limited liability company duly organized and existing under the laws of Delaware, having its principal office in San Francisco, California, acting in its own capacity and acting in its capacity as the general partner of the entities set forth on Exhibit A (FCM, FIF, FIF II, FCOI, FP, and the entities set forth on exhibit A collectively, “the Investor”).

WITNESSETH:

I. WHEREAS,

- A. The Board of Directors of the FDIC is charged by section 5 of the Federal Deposit Insurance Act (12 U.S.C. § 1815) with the responsibility of acting upon applications for Federal deposit insurance for all depository institutions including, but not limited to, state nonmember banks; and by the Change in Bank Control Act (12 U.S.C. § 1817(j)) with the responsibility of acting on proposed acquisitions of control of any insured nonmember bank.
- B. CapitalSource Bank (the “Bank”) is a proposed state nonmember bank being formed as an indirect subsidiary of CapitalSource Inc., Chevy Chase, Maryland (the “Parent Company”).
- C. Investor holds, exclusively for investment purposes, at least ten but less than twenty-five percent of a class of voting shares of Parent Company.
- D. In order to assure the FDIC that Investor will not exercise control of the Bank through the Parent Company, Investor has entered into this Agreement with the FDIC.

II. In consideration of the premises and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- A. If Investor makes, and complies with, the passivity commitments contained in this Agreement, the FDIC will not determine that Investor controls the Bank indirectly through the Parent Company.

- B. Investor commits that it will not directly or indirectly:
1. Other than having a representative on the Board of Directors of the Parent Company or any of its subsidiaries other than the Bank, direct, or attempt to direct the management or policies of the Parent Company or any of its subsidiaries;
 2. Have more than one representative of Investor serve on the Board of Directors of the Parent Company or any of its subsidiaries, except that Investor will not have any representative serve on the Board of Directors of the Bank;
 3. Have or seek to have any employee or representative serve as an officer, agent, or employee of the Parent Company or any of its subsidiaries;
 4. Take any action that would cause the Parent Company or any of its subsidiaries to become a subsidiary of Investor or any of Investor's subsidiaries;
 5. Acquire or retain shares, directly or indirectly, that would cause the combined interests of Investor and its officers, directors, and affiliates to equal or exceed 25 percent of any class of voting shares of the Parent Company or any of its subsidiaries;
 6. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of the Parent Company or any of its subsidiaries;
 7. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of the Parent Company or any of its subsidiaries;
 8. Other than having a representative on the Board of Directors of the Parent Company or any of its subsidiaries other than the Bank, attempt to influence the dividend policies; loan, credit, or investment decisions or policies; pricing of services; personnel decisions; operational activities, including the location of any offices or branches or their hours of operation, etc.; or any similar activities or decisions of the Parent Company or any of its subsidiaries;
 9. Dispose or threaten to dispose of shares of the Parent Company in any manner as a condition of specific action or nonaction by the Parent Company; or
 10. Enter into any other banking or nonbanking transactions with the Parent Company or any of its subsidiaries, except (i) that Investor may establish and maintain deposit accounts with the Bank, in an aggregate amount less than or equal to the greater of 5% of the Bank's total deposits or \$500,000, provided that such accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with the Bank; (ii) that Investor, may acquire, directly or indirectly, additional capital stock of the Parent Company as

long as the combined interests of Investor and its officers, directors, affiliates, and any persons acting in concert with Investor, are less than 25 percent of any class of voting shares of the Parent Company or any of its subsidiaries; (iii) that the Parent Company may register the Investor's sale of Parent Company's shares with the Securities and Exchange Commission; and (iv) that Investor may perform or conduct any banking or nonbanking transactions specified in an agreement entered into with the Parent Company or any of its subsidiaries on or before January 11, 2007, so long as such agreement is not amended, extended, or renewed after January 11, 2007.

- B. Before deviating from any of the foregoing undertakings, Investor will either file a change in bank control notice pursuant to the Change in Bank Control Act or obtain a written opinion from the FDIC that such a notice is not required.
- C. Investor affirmatively acknowledges that in the event that any of the foregoing undertakings are not strictly adhered to, Investor's conduct may be viewed as a violation of the Change in Bank Control Act, 12 U.S.C. § 1817(j). Investor further acknowledges that, in addition to any other remedies provided by law, this Agreement is a "written agreement" enforceable under section 8 of the Federal Deposit Insurance Act (12 U.S.C. § 1818) and that violation of the Agreement may subject Investor to administrative action.

III. Miscellaneous Provisions.

Definitions. The term "Board of Directors" includes, for a corporation, the board of directors, and for a limited liability company, the board of managers or the managing members, as appropriate. The term "subsidiary" means any company that is directly or indirectly controlled by another company, and "control" has the meaning given it in 12 U.S.C. § 1817(j)(8) and includes the presumption of control at 12 C.F.R. § 303.82(b)(2). Other terms used in this Agreement that are not otherwise defined herein have the meanings given them in section 3 of the FDI Act, 12 U.S.C. § 1813.

Authority of Investor. The Board of Directors of the Investor has approved a resolution (Resolution) authorizing Investor to enter into this Agreement. A certified copy of the Resolution is attached hereto as Exhibit B and incorporated herein by reference.

Governing Laws. This Agreement and the rights and obligations hereunder shall be governed by and shall be construed in accordance with the Federal law of the United States, and, in the absence of controlling Federal law, in accordance with the laws of the State of Delaware.

No Waiver. No failure to exercise, and no delay in the exercise of, any right or remedy on the part of either party to this Agreement shall operate as a waiver or termination of the Agreement. Further, any exercise or partial exercise of any right or remedy relating to this Agreement will not preclude any further exercise of such right or remedy or any other right or remedy.

No Oral Change. This Agreement may not be modified, amended, changed, discharged, terminated, released, renewed or extended in any manner except by a writing signed by each party.

Addresses. Any notice, request or other communication pursuant to the Agreement shall be provided in writing and shall be delivered by hand or sent by United States express mail or commercial express mail, postage prepaid, and addressed as follows:

If to the Investor:

c/o Farallon Capital Management, LLC
One Maritime Plaza, Suite 2100
San Francisco, California 94111
Attn: Mark Wehrly

If to the FDIC:

Associate Director, Division of Supervision and Consumer Protection
Supervision and Applications Branch
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

No Assignment. This agreement may not be assigned or transferred, in whole or in part, without the prior written consent of the FDIC.

Complete Agreement. The parties agree that this Agreement is the complete and exclusive statement of the agreement between the parties concerning the commitments set forth herein, and supersedes all prior written or oral communications, representations and agreements relating to the subject matter of these paragraphs.

Severability. In the event any one or more of the provisions contained herein should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year indicated above.

FEDERAL DEPOSIT INSURANCE CORPORATION

By: _____

Title: _____

INVESTOR

By: **FARALLON CAPITAL MANAGEMENT, LLC**

In its own capacity; in its capacity as the manager of FIF, the general partner of FIF II; and in its capacity as the manager of FCOI

By: _____

Title: _____

By: **FARALLON PARTNERS, LLC**

In its own capacity and in its capacity as the general partner of the entities set forth on Exhibit A

By: _____

Title: _____

Exhibit A

Farallon Capital Partners, L.P.
Farallon Capital Institutional Partners, L.P.
Farallon Capital Institutional Partners II, L.P.
Farallon Capital Institutional Partners III, L.P.
Farallon Capital Offshore Investors II, L.P.
Tinicum Partners, L.P.
RR Capital Partners, L.P.

Exhibit B

PASSIVITY AGREEMENT

THIS PASSIVITY AGREEMENT (“this Agreement”), dated as of _____, 2007, by and between the **FEDERAL DEPOSIT INSURANCE CORPORATION**, a Federal banking agency duly organized and existing under the laws of the United States having its principal office in Washington, D.C. (“the FDIC”), and **MADISON DEARBORN PARTNERS, LLC**, a limited liability company duly organized and existing under the laws of the state of Delaware, having its principal office in Chicago, Illinois, acting in its own capacity and acting in its capacity as the general partner of Madison Dearborn Partners III, L.P., acting in its capacity as the general partner of Madison Dearborn Capital Partners III, L.P. (“the Investor”).

WITNESSETH:

I. WHEREAS,

- A. The Board of Directors of the FDIC is charged by section 5 of the Federal Deposit Insurance Act (12 U.S.C. § 1815) with the responsibility of acting upon applications for Federal deposit insurance for all depository institutions including, but not limited to, state nonmember banks; and by the Change in Bank Control Act (12 U.S.C. § 1817(j)) with the responsibility of acting on proposed acquisitions of control of any insured nonmember bank.
- B. CapitalSource Bank (the “Bank”) is a proposed state nonmember bank being formed as an indirect subsidiary of CapitalSource Inc., Chevy Chase, Maryland (the “Parent Company”).
- C. Investor holds, exclusively for investment purposes, at least ten but less than twenty-five percent of a class of voting shares of Parent Company.
- D. In order to assure the FDIC that Investor will not exercise control of the Bank through the Parent Company, Investor has entered into this Agreement with the FDIC.

II. In consideration of the premises and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- A. If Investor makes, and complies with, the passivity commitments contained in this Agreement, the FDIC will not determine that Investor controls the Bank indirectly through the Parent Company.
- B. Investor commits that it will not directly or indirectly:
 - 1. Other than having a representative on the Board of Directors of the Parent Company or any of its subsidiaries other than the Bank, direct, or attempt to direct the management or policies of the Parent Company or any of its subsidiaries;

2. Have more than one representative of Investor serve on the Board of Directors of the Parent Company or any of its subsidiaries, except that Investor will not have any representative serve on the Board of Directors of the Bank;
3. Have or seek to have any employee or representative serve as an officer, agent, or employee of the Parent Company or any of its subsidiaries;
4. Take any action that would cause the Parent Company or any of its subsidiaries to become a subsidiary of Investor or any of Investor's subsidiaries;
5. Acquire or retain shares, directly or indirectly, that would cause the combined interests of Investor and its officers, directors, and affiliates to equal or exceed 25 percent of any class of voting shares of the Parent Company or any of its subsidiaries;
6. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of the Parent Company or any of its subsidiaries;
7. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of the Parent Company or any of its subsidiaries;
8. Other than having a representative on the Board of Directors of the Parent Company or any of its subsidiaries other than the Bank, attempt to influence the dividend policies; loan, credit, or investment decisions or policies; pricing of services; personnel decisions; operational activities, including the location of any offices or branches or their hours of operation, etc.; or any similar activities or decisions of the Parent Company or any of its subsidiaries;
9. Dispose or threaten to dispose of shares of the Parent Company in any manner as a condition of specific action or nonaction by the Parent Company; or
10. Enter into any other banking or nonbanking transactions with the Parent Company or any of its subsidiaries, except (i) that Investor may establish and maintain deposit accounts with the Bank, in an aggregate amount less than or equal to the greater of 5% of the Bank's total deposits or \$500,000, provided that such accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with the Bank; (ii) that Investor may acquire, directly or indirectly, additional capital stock of the Parent Company as long as the combined interests of Investor and its officers, directors, affiliates, and any persons acting in concert with Investor, are less than 25 percent of any class of voting shares of the Parent Company or any of its subsidiaries; (iii) that the Parent Company may register the Investor's sale of Parent Company's shares with the Securities and Exchange Commission; and (iv) that Investor may perform or conduct any banking or nonbanking transactions specified in an agreement

entered into with the Parent Company or any of its subsidiaries on or before January 11, 2007, so long as such agreement is not amended, extended, or renewed after January 11, 2007.

- B. Before deviating from any of the foregoing undertakings, Investor will either file a change in bank control notice pursuant to the Change in Bank Control Act or obtain a written opinion from the FDIC that such a notice is not required.
- C. Investor affirmatively acknowledges that in the event that any of the foregoing undertakings are not strictly adhered to, Investor's conduct may be viewed as a violation of the Change in Bank Control Act, 12 U.S.C. § 1817(j). Investor further acknowledges that, in addition to any other remedies provided by law, this Agreement is a "written agreement" enforceable under section 8 of the Federal Deposit Insurance Act (12 U.S.C. § 1818) and that violation of the Agreement may subject Investor to administrative action.

III. Miscellaneous Provisions.

Definitions. The term "Board of Directors" includes, for a corporation, the board of directors, and for a limited liability company, the board of managers or the managing members, as appropriate. The term "subsidiary" means any company that is directly or indirectly controlled by another company, and "control" has the meaning given it in 12 U.S.C. § 1817(j)(8) and includes the presumption of control at 12 C.F.R. § 303.82(b)(2). Other terms used in this Agreement that are not otherwise defined herein have the meanings given them in section 3 of the FDI Act, 12 U.S.C. § 1813.

Authority of Investor. The Board of Directors of Madison Dearborn Partners, LLC, the general partner of the general partner of the Investor has approved a resolution (Resolution) authorizing Investor to enter into this Agreement. A certified copy of the Resolution is attached hereto as Exhibit A and incorporated herein by reference.

Governing Laws. This Agreement and the rights and obligations hereunder shall be governed by and shall be construed in accordance with the Federal law of the United States, and, in the absence of controlling Federal law, in accordance with the laws of the State of Delaware.

No Waiver. No failure to exercise, and no delay in the exercise of, any right or remedy on the part of either party to this Agreement shall operate as a waiver or termination of the Agreement. Further, any exercise or partial exercise of any right or remedy relating to this Agreement will not preclude any further exercise of such right or remedy or any other right or remedy.

No Oral Change. This Agreement may not be modified, amended, changed, discharged, terminated, released, renewed or extended in any manner except by a writing signed by each party.

Addresses. Any notice, request or other communication pursuant to the Agreement shall be provided in writing and shall be delivered by hand or sent by United States express mail or commercial express mail, postage prepaid, and addressed as follows:

If to the Investor:

Madison Dearborn Partners, LLC
Three First National Plaza
Suite 3800
Chicago, Illinois 60602

If to the FDIC:

Associate Director, Division of Supervision and Consumer Protection
Supervision and Applications Branch
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

No Assignment. This agreement may not be assigned or transferred, in whole or in part, without the prior written consent of the FDIC.

Complete Agreement. The parties agree that this Agreement is the complete and exclusive statement of the agreement between the parties concerning the commitments set forth herein, and supersedes all prior written or oral communications, representations and agreements relating to the subject matter of these paragraphs.

Severability. In the event any one or more of the provisions contained herein should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year indicated above.

FEDERAL DEPOSIT INSURANCE CORPORATION

By: _____

Title: _____

MADISON DEARBORN CAPITAL PARTNERS III, L.P.

By: Madison Dearborn Partners III, L.P.

Its: General Partner

By: Madison Dearborn Partners, LLC

Its: General Partner

MADISON DEARBORN PARTNERS, LLC

Acting in its own capacity

By: _____

Title: _____