

## SUPERVISORY AGREEMENT

This Supervisory Agreement (Agreement) is made and is effective this 6th day of November, 2006 (Effective Date), by and between NetBank, Alpharetta, Georgia, OTS No. 08475 (NetBank or Bank), a federally chartered stock savings association, and the Office of Thrift Supervision (OTS), a bureau of the United States Department of the Treasury, acting through its Southeast Regional Director or his designee (Regional Director).

WHEREAS, the OTS is the primary federal regulator of the Bank;

WHEREAS, based upon the Bank's January 9, 2006 Report of Examination (2006 Examination), and events that have occurred at the Bank since the completion of the 2006 Examination, the OTS is of the opinion that the Bank has engaged in acts and practices that: (i) have resulted in violations of certain of the laws or regulations to which the Bank is subject; and/or (ii) are considered to be unsafe and unsound;

WHEREAS, the OTS is of the opinion that grounds exist for the initiation of an administrative proceeding against the Bank;

WHEREAS, the Bank has undertaken certain corrective actions to address the regulatory violations and unsafe and unsound practices noted and discussed in the 2006 Examination;

WHEREAS, the OTS is of the view that it is appropriate to take additional measures intended to ensure that the Bank will: (i) comply with all applicable laws and regulations; and (ii) engage in safe and sound practices; and

WHEREAS, the Bank, acting through its Board of Directors (Board), without admitting or denying that such grounds exist except those as to jurisdiction, which are admitted, wishes to cooperate with the OTS and to evidence the intent to: (i) comply with all applicable laws and regulations; and (ii) engage in safe and sound practices.

NOW THEREFORE, in consideration of the above premises and the mutual undertakings set forth herein, the parties hereto agree as follows:

### Business Plan

1. Within thirty (30) calendar days after the Effective Date of this Agreement, the Board shall review and approve a written strategic business plan covering the quarter ending December 31, 2006, and calendar years 2007, 2008 and 2009 (Business Plan). The Business Plan shall be based upon a comprehensive review of the Bank's operations, including the risks and returns of each of its business lines, current capital levels, available resources, market conditions, and the results of the 2006 Examination. The Business Plan shall be delivered to the Regional Director for review and approval no later than five (5) calendar days after its approval by the Board. The Business Plan shall, at a minimum, address or include the following matters or items:

- a. The Business Plan must contain a thorough discussion of the Bank's existing and

future operations and lines of business for the time period covered by the Business Plan. The Business Plan shall include: (i) a detailed and specific discussion of the Board's plans and strategies to strengthen and improve the Bank's earnings and profitability; (ii) an analysis of the earnings, profitability and stability of all existing and projected business lines over the time period covered by the Business Plan; (iii) an analysis of the related risks and costs of all business lines; (iv) a discussion of the Bank's resources, infrastructure, personnel, and expertise supporting the Bank's ability to engage in all identified business lines; and (v) supporting documentation for all relevant assumptions and projections. The Business Plan also shall specifically identify and discuss all actions taken, or to be taken, to stabilize and improve the Bank's near-term financial condition, risk profile and results, including, but not limited to, steps or actions to (a) restructure, sell or eliminate unprofitable and/or underperforming business lines, and (b) reduce operating expenses.

b. The Business Plan will discuss the Bank's current capital position and its strategies for preserving and enhancing capital sufficient to: (i) meet the Bank's capital needs under the Business Plan; (ii) adequately support the risk profile of the Bank; (iii) maintain compliance with applicable regulatory capital requirements; and (iv) satisfy the requirements of the Bank's liquidity policy.

c. The Business Plan must discuss specific Board strategies for improving the Bank's core earnings and profitability, including how the business activities and operations identified in subparagraph (a) above will affect the Bank's overall earnings and profitability, and the stability and continuity of those business activities and operations.

d. The Business Plan must include an analysis and discussion of the Bank's use of wholesale funding sources, including brokered deposits, and incorporate a written plan to reduce any excessive reliance upon such funding sources, as well as written strategies for increasing core deposits.

e. The Business Plan must include monthly pro forma financial projections (balance sheet and income statement) for the quarter ending December 31, 2006, and quarterly pro forma financial statements for each calendar year covered by the Business Plan. Prior to the start of each calendar year, the annual budget for that year (including quarterly pro forma financial statements) shall be reviewed, revised as necessary, approved and adopted by the Board, and submitted to the Regional Director for approval no later than thirty (30) calendar days before the start of that calendar year. The relevant assumptions upon which the pro forma projections are based shall be included and described in detail, initially and with each annual budget submission.

2. The Board shall direct Management to implement and follow the Business Plan, as approved by the Board and OTS. The Board will require Management to prepare and provide to

it, at least monthly, written reports, including supporting documentation and other information, regarding the Bank's implementation of the approved Business Plan. Any new activity, operation or line of business shall require the prior review and approval of the Board. Any material modifications to the Business Plan shall be submitted to the Regional Director for approval thirty (30) calendar days prior to implementation, unless such time period is waived by the OTS. Management shall prepare quarterly variance reports on the Bank's compliance with the Business Plan within thirty (30) calendar days after the close of each calendar quarter. Such variance reports shall detail actual operating results versus projected results and shall include detailed explanations of any material deviations with a description of the specific corrective actions or measures that have been implemented or are proposed to address the material deviation. The Board shall review the variance reports on a quarterly basis, and shall discuss Management's and the Bank's compliance with the approved Business Plan. The Board's review of the variance reports and evaluation of Management and the Bank's compliance with the material elements of the Business Plan shall be thoroughly documented in the Board meeting minutes. A deviation shall be considered material under this Paragraph 2 when (i) the Bank engages in any significant activity that is inconsistent with the Business Plan or (ii) the Bank fails to meet target amounts established in the Business Plan by more than ten percent (10%).

3. The Board shall provide the Regional Director with a copy of Management's quarterly variance report and the Board meeting minutes detailing the Board's review of the variance reports, including the identification of any corrective actions adopted by the Board, and the Board's evaluation and assessment of Management and the Bank's compliance with the Business Plan within ten (10) calendar days after the date of the Board meeting at which the Board's review was conducted.

#### Financial Reporting

4. Effective immediately, the Board shall require Management to ensure that all financial statements and regulatory reports are accurately and timely prepared and filed in accordance with applicable law and regulations and generally accepted accounting principles. The Board shall require Management to submit the Bank's quarterly Thrift Financial Reports (TFRs) to a committee of the Board consisting of at least seventy-five (75) percent non-management directors (the Board's Monitoring Committee) for review and certification prior to filing such reports with the OTS. The Board's Monitoring Committee shall review the TFRs for accuracy and execute the required Officers and Directors Certification. The minutes of the Board's Monitoring Committee meeting(s) at which such quarterly TFR review(s) are conducted shall be provided to the full Board of Directors at the next regularly scheduled Board meeting.

#### Loan Repurchases

5. Effective immediately, the Board shall require Management to adopt and implement adequate procedures and systems to monitor and track loan repurchases. Management shall ensure that the procedures and systems provide for monitoring of repurchased loans by channel

and product type and identify the reason for the repurchase of each loan (e.g., first payment default). The Board will require Management to prepare and provide to it written quarterly reports, including supporting documentation and other information, regarding compliance with this Paragraph 5. Management shall prepare quarterly loan repurchase monitoring reports for the Board within thirty (30) calendar days after the close of each calendar quarter that detail the total loans repurchased from each channel by product type (Loan Monitoring Reports). The Board shall review the Loan Monitoring Reports on a quarterly basis and adopt actions to be taken, as appropriate, to reduce the Bank's loan repurchase exposure. The Board's review and any corrective actions adopted by the Board shall be fully detailed in the Board meeting minutes. A copy of the Loan Monitoring Report and the Board meeting minutes detailing the Board's review shall be provided to the Regional Director within ten (10) calendar days after the date of the Board meeting.

Anti-Money Laundering/Bank Secrecy Act Compliance.

6. Effective immediately, Management shall prepare and submit to the Board for review periodic written reports, including supporting documentation and other information, detailing the actions and steps taken to ensure that the Bank has appropriately addressed the findings and recommendations of the Bank's January 17, 2006 Bank Secrecy Act and Anti-Money Laundering Audit. The Board's review, and any corrective actions adopted by the Board, shall be fully documented in the Board meeting minutes.

Compliance.

7. Within sixty (60) calendar days after the Effective Date of this Agreement, Management shall prepare and submit to the Board for review and approval a written report that details the consumer compliance deficiencies and weaknesses identified in the Bank's 2006 Examination, specifies the corrective actions taken or to be taken to address each deficiency and weakness, and establishes timeframes for completion of each corrective action. Thereafter, Management shall prepare and submit to the Board periodic written reports, no less than on a quarterly basis, evidencing the completion of all corrective actions, and compliance with any other Board requirements adopted to enhance Board oversight. The Board's review of Management's periodic written reports and such other reports as required by the Board shall be fully documented in the Board meeting minutes.

Director Responsibility.

8. Notwithstanding the requirements of this Agreement that the Board submit various matters to the Regional Director for the purpose of receiving his approval, non-objection or notice of acceptability, such regulatory oversight does not derogate or supplant each individual Director's continuing fiduciary duty. The Board shall have the ultimate responsibility for overseeing the safe and sound operation of the Bank at all times, including compliance with the determinations of the Regional Director as required by this Agreement. However, the Board

may delegate to the Board's Monitoring Committee any duties set forth in Paragraphs 1 through 7 above requiring any reporting to the Board more frequently than on a quarterly basis.

Compliance with Agreement.

9. All policies, procedures, corrective actions, plans, programs, reviews and systems required by this Agreement (collectively, Policies and Procedures) shall conform to all applicable statutes, regulations, OTS policy and guidance. The Board shall submit copies of all Policies and Procedures required by this Agreement to the Regional Director within the timeframes specified or, in the event a timeframe is not specified, within thirty (30) calendar days after adoption by the Board. The Board shall revise such Policies and Procedures as required by the Regional Director within thirty (30) calendar days of receipt of written direction from the Regional Director. The Policies and Procedures, as modified consistent with the written direction of the Regional Director, shall be incorporated into this Agreement and any material deviation, as determined by the Regional Director in his sole discretion, from such Policies and Procedures shall be a violation of this Agreement.

10. The Board shall require Management to correct all deficiencies identified in the Bank's 2006 Examination, as directed therein, except where such direction is modified or changed by the terms of this Agreement. Further, the Board and Management of the Bank shall take immediate action to cause the Bank to comply with the terms of this Agreement and shall take all actions necessary or appropriate thereafter to cause the Bank to continue to carry out the provisions of this Agreement.

11. The Board shall, on a quarterly basis beginning with the calendar quarter ending December 31, 2006, adopt a board resolution (the Compliance Resolution) formally resolving that, following a diligent inquiry of relevant information (including a report from Management regarding the Bank's compliance with each numbered paragraph of this Agreement), to the best of its knowledge and belief, during the immediately preceding calendar quarter, the Bank has complied with each provision of this Agreement currently in effect, except as otherwise stated. The Compliance Resolution shall:

- a. specify in detail how, if at all, full compliance was found not to exist; and
- b. identify all notices of exemption or non-objection issued by the Regional Director that were outstanding as of the date of its adoption.

12. The minutes of each meeting of the Board shall set forth the following information with respect to the adoption of each Compliance Resolution:

- a. the identity of each Director voting in favor of its adoption; and
- b. the identity of each Director voting in opposition to its adoption or abstaining

from voting thereon, setting forth each such Director's reasoning for opposing or abstaining<sup>1</sup>.

13. Within forty-five (45) calendar days after the end of each calendar quarter, beginning with the calendar quarter ending December 31, 2006, the Board shall provide to the Regional Director a certified true copy of the Compliance Resolution[s] adopted at the Board meeting pursuant to Paragraph 10 of this Agreement. The Board, by virtue of the submission of a certified true copy of such Compliance Resolution to the Regional Director, shall be deemed to have attested to the accuracy of the statements set forth in each Compliance Resolution, except that in the event one or more Directors do not agree with the representations set forth in a Compliance Resolution, such disagreement shall be noted in the Board meeting minutes.

14. The Board shall promptly respond to any request from the OTS for documents to demonstrate compliance with this Agreement, including making Bank records and documents available for OTS examiner review upon request.

#### Definitions.

15. All technical words or terms used in this Agreement for which meanings are not specified or otherwise provided by the provisions of this Agreement shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, BSA, HOLA, Federal Deposit Insurance Act (FDIA), Chapter I of Title 31 of the Code of Federal Regulations, or any Memoranda or Bulletins issued by the OTS or the U. S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). Any such technical words or terms used in this Directive and undefined in said Code of Federal Regulations, HOLA, BSA, FDIA, or Memoranda or Bulletins of the OTS or FinCEN shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

#### Successor Statutes, Regulations, Guidance, Amendments.

16. Reference in this Agreement to provisions of statutes, regulations, and OTS and FinCEN Memoranda shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date and references to successor provisions as they become applicable.

#### Notices.

17. Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by the Agreement to be made

---

<sup>1</sup> The recordkeeping requirements in this Paragraph 12 are mandated by the OTS for the purposes of compliance with this Agreement and in no way are intended to imply that the Board's minutes do not include this information with respect to issues unrelated to this Agreement.

upon, given or furnished to, delivered to, or filed with:

- a. the OTS by the Bank, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid or sent via overnight delivery service or physically delivered, in each case addressed to the Regional Director, Office of Thrift Supervision, Department of the Treasury, 1475 Peachtree Street, N.E., Atlanta, Georgia, 30309, or telecopied to 404.897.1861 and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address; and
- b. the Bank by the OTS, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid or sent via overnight delivery service or physically delivered, in each case addressed to the Bank at 1015 Windward Ridge Parkway, Alpharetta, Georgia 30005 or telecopied to 770-343-6464 and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address.

Duration, Termination or Suspension of Agreement.

18. This Agreement shall:

- a. become effective upon its execution by the OTS, through its authorized representative whose signature appears below; and
- b. remain in effect until terminated, modified or suspended in writing by the OTS, acting through its Director or the Regional Director (including any authorized designee thereof).

19. The Regional Director in his sole discretion, may, by written notice, suspend any or all provisions of this Agreement.

Time Limits.

20. Time limitations for compliance with the terms of this Agreement run from the Effective Date, unless otherwise noted.

Effect of Headings.

21. The Section headings herein are for convenience only and shall not affect the construction hereof.

Separability Clause.

22. In case any provision in this Agreement is ruled to be invalid, illegal or unenforceable by

the decision of any Court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his sole discretion determines otherwise.

No Violations of Law, Rule, Regulation or Policy Statement Authorized; OTS Not Restricted.

23. Nothing in this Agreement shall be construed as:
- a. allowing the Bank to violate any law, rule, regulation, or policy statement to which it is subject; or
  - b. restricting the OTS from taking such action(s) as are appropriate in fulfilling the responsibilities placed upon it by law, including, without limitation, any type of supervisory, enforcement or resolution action that the OTS determines to be appropriate.

Successors in Interest/Benefit.

24. The terms and provisions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Agreement, express or implied, shall give to any person or entity, other than the parties hereto and the Federal Deposit Insurance Corporation and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Agreement.

Signature of Directors.

25. Each Director signing the Agreement attests, by such act, that she or he voted in favor of a Board resolution authorizing the execution of this Agreement by the Bank.

Integration Clause.

26. This Agreement represents the final written agreement of the parties with respect to the subject matter hereof and constitutes the sole agreement of the parties, as of the Effective Date, with respect to such subject matter. However, as noted herein, all Policies and Procedures required by this Agreement shall, upon modification consistent with the direction of the Regional Director, become part of this Agreement and any deviation from these policies shall be deemed a violation of this Agreement.

Enforceability of Agreement.

27. The Bank represents and warrants that this Agreement has been duly authorized, executed, and delivered, and constitutes, in accordance with its terms, a valid and binding obligation of the Bank. The Bank acknowledges that this Agreement, is a "written agreement" entered into with the OTS within the meaning of Section 8 of the FDIA, 12 U.S.C. §1818.

Counterparts.

28. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, the OTS, acting by and through the Regional Director and the Bank, in accordance with a duly adopted resolution of its Board, hereby execute this Agreement as of the Effective Date.

THE BANK

OFFICE OF THRIFT SUPERVISION

By:

By:

\_\_\_\_\_  
Steven F. Herbert, Director  
Chief Executive Officer

\_\_\_\_\_  
John E. Ryan  
Regional Director

\_\_\_\_\_  
Thomas H. Muller, Jr., Director

\_\_\_\_\_  
David W. Johnson, Jr., Director

\_\_\_\_\_  
Eula L. Adams, Director

\_\_\_\_\_  
~~Stuart M. Cable~~ /S/ Director

\_\_\_\_\_  
Stephen J. Heard, Director

\_\_\_\_\_  
Robin C. Kelton, Director

\_\_\_\_\_  
Joel A. Smith, III, Director