

**UNITED STATES OF AMERICA**  
**Before the**  
**OFFICE OF THRIFT SUPERVISION**

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In the Matter of )	Order No.: SE-09-027
)	
)	
<b>SOUTHBank, a Federal Savings Bank</b> )	Effective Date: May 21, 2009
<b>Huntsville, Alabama</b> )	
)	
OTS Docket No. 08854 )	
_____ )	

**ORDER TO CEASE AND DESIST**

**WHEREAS**, SOUTHBank, a Federal Savings Bank, Huntsville, Alabama, OTS Docket No. 08854 (Association), by and through its Board of Directors (Board) has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist (Stipulation); and

**WHEREAS**, the Association, by executing the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist (Order) by the Office of Thrift Supervision (OTS) pursuant to 12 U.S.C. § 1818(b); and

**WHEREAS**, pursuant to delegated authority, the OTS Regional Director for the Southeast Region (Regional Director), is authorized to issue Orders to Cease and Desist where a savings association has consented to the issuance of an order.

**NOW, THEREFORE, IT IS ORDERED that:**

**Order to Cease and Desist.**

1. The Association and its directors, officers, employees, and agents shall cease and desist from any action (alone or with another or others) for or toward causing, bringing about,

participating in, counseling or the aiding and abetting of any violation of applicable law, regulation, unsafe and unsound practice, and noncompliance with regulatory guidance including, but not limited to, the following:

- a. Operating the Association without an inadequate and effective business plan;
- b. Operating the association with an inadequate level of capital protection for the volume, type, and quality of assets held by the Association;
- c. Operating the Association with an excessive level of speculative construction loans and adversely classified and delinquent loans relative to the Association's capital and allowance for loan and lease losses (ALLL) levels;
- d. Operating the Association with inadequate earnings to fund growth, support dividend payments and augment capital;
- e. Operating the Association without an adequate level of experienced and qualified managers and failing to establish and implement an appropriate management succession plan;
- f. Operating the Association without an effective loan review system that includes policies, procedures, and controls to ensure the accurate and timely identification and resolution of asset quality problems;
- g. Failing to comply with Generally Accepted Accounting Principles (GAAP) and Statements of Financial Accounting Standards (SFAS);
- h. Failing to ensure the Association maintains adequate liquidity relative to the Association's asset and liability mix;
- i. 12 C.F.R. § 560.101 (Real Estate Lending Standards and Guidelines);
- j. 12 C.F.R. Part 470, Appendix A – Interagency Guidelines Establishing Standards for Safety and Soundness;

k. 2 C.F.R. § 560.160 (Asset Classification); and

l. Chief Executive Officer (CEO) Memorandum #103 -- Interagency Uniform Retail Credit Classification and Account Management Policy and CEO Memorandum #128 Revised Uniform Retail Credit and Account Management Policy.

**Business Plan.**

2. Within one hundred twenty (120) days, the Board shall prepare and submit to the Regional Director for review and comment a comprehensive strategic business plan that covers the second half of calendar year 2009, all of calendar years 2010 and 2011, and the first half of calendar year 2012 (Business Plan). At a minimum, the Business Plan shall include:

a. a detailed and specific discussion of the Board's plans and strategies to strengthen and improve the Association's operations, earnings, liquidity and capital position;

b. a discussion of the Association's current financial position and resources and specific Board strategies for ensuring that the Association has the financial and personnel resources necessary to implement and adhere to the Business Plan, adequately support the Association's risk profile, maintain compliance with applicable regulatory capital requirements, and maintain appropriate levels of liquidity;

c. a detailed discussion of the Association's current capital position and future capital needs necessary to implement the strategies and business operations set forth in the Business Plan; listing and discussing the Board's specific plans and strategies for improving and/or maintaining capital sufficient to (i) meet the Association's capital needs under the Business Plan, (ii) adequately support the risk profile of the Association, (iii) comply with applicable regulatory capital requirements, and (iv) ensure that adequate liquidity is maintained;

d. a detailed discussion of the effect of recent asset quality trends and current and projected real estate market conditions;

e. a discussion of the requirements and restrictions imposed by this Order;

f. quarterly pro forma financial projections (balance sheet, capital forecasts, and income statement) and a detailed annual budget for each period covered by the Business Plan; and

g. identification of all relevant assumptions made in formulating the Business Plan, as well as documentation supporting such assumptions.

3. The Board shall make any changes to the Business Plan required by the Regional Director within twenty (20) days after being notified of such changes and provide a copy of the revised Business Plan to the Regional Director for review. Upon receipt of non-objection to the revised Business Plan from the Regional Director, the Board shall adopt the revised Business Plan and the revised Business Plan shall be incorporated herein by reference and become a part of this Order. Any violation of the revised Business Plan shall be a violation of this Order. A copy of the revised Business Plan and the Board meeting minutes reflecting the Board's adoption thereof shall be provided to the Regional Director within ten (10) days after the Board meeting.

4. The Board shall ensure that the Association adheres to and implements the revised Business Plan. Any material modifications to the revised Business Plan shall be submitted to the Regional Director for review and written non-objection at least forty-five (45) days prior to implementation. A modification shall be considered material under this section of the Order if the Association plans to: (a) engage in any activity that is inconsistent with the revised Business Plan; or (b) exceed the level of any activity contemplated in the revised Business Plan or fail to meet target amounts established in the revised Business Plan by more than 10%, unless the

activity involves assets risk-weighted 50% or less, in which case a variance of more than 25% shall be deemed to be a material modification.

5. The Board shall require the Association's Senior Executive Officers<sup>1</sup> (Management) to prepare and submit to the Board quarterly variance reports on the Association's compliance with the revised Business Plan within thirty (30) days after the close of each calendar quarter (Quarterly Business Plan Variance Reports) beginning with the calendar quarter ending September 30, 2009. The Quarterly Business Plan Variance Reports shall: (a) identify material variances in the Association's actual performance during the preceding quarter as compared to the projections set forth in the revised Business Plan; (b) contain an analysis and explanation of the identified variances; and (c) detail the specific measures to be taken to address such variances, including adjustments to the underlying assumptions.

6. The Board shall review the Quarterly Business Plan Variance Reports and conduct a thorough review and assessment of the Association's compliance with the revised Business Plan and take corrective actions if necessary to ensure adherence to the revised Business Plan. The Board's review of the Quarterly Business Plan Variance Reports and assessment of the Association's compliance with the revised Business Plan shall be fully documented in the appropriate Board meeting minutes. A copy of the Quarterly Business Plan Variance Report, any supporting documents, reports, or other information reviewed by the Board, and the Board meeting minutes detailing the Board's review and corrective actions, if any, shall be provided to the Regional Director within ten (10) days after the Board meeting.

**Staffing Review.**

7. Within sixty (60) days, the Board shall complete a written assessment of the Association's current staff levels and need for additional staff members (Staffing Review). The

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<sup>1</sup> The term Senior Executive Officer is defined at 12 C.F.R. § 563.555.

primary purpose of the Staffing Review shall be to ensure a sufficient level of qualified and trained personnel to meet the Association's needs. The Staffing Review will, at a minimum, address, consider, and include:

- a. identification of the type and number of Management officials needed to manage and supervise the affairs of the Association taking into consideration the Association's business operations, lending, asset quality, and financial position;
- b. establishment of policies and procedures ensuring that responsibility for any vacant positions is immediately assigned to another employee until the vacant position is filled;
- c. development of an appropriate management succession plan;
- d. an evaluation of overall staffing needs and qualifications, particularly in the area of problem loan workouts; and
- e. an evaluation of each member of Management to determine whether the individual possesses the ability, experience, and other qualifications required to perform competently present and anticipated duties, including the ability to adhere to applicable laws and regulations and the Association's established policies and procedures, restore and maintain the Association to a safe and sound condition, and comply with the requirements of this Order.

8. Within seventy-five (75) days, the Board shall provide a copy of the Staffing Review to the Regional Director.

9. Effective immediately, the Board shall evaluate and document in the Association's records the costs of Association personnel using private airline service, including any aircraft owned by Insiders, compared to the costs of general commercial airline travel and limit any reimbursement of expenses to the lesser cost option.

**Generally Accepted Accounting Principles.**

10. Within sixty (60) days, the Board will ensure that (a) reserves established by the Association in accordance with SFAS No. 114 are excluded from the ALLL total in calculating risk based capital levels; and (b) any unrecognized losses are recognized and reflected on the Association's December 31, 2008 quarter end thrift financial report (TFR).

11. Within sixty (60) days, the Board shall develop a comprehensive policy to ensure that assets are evaluated for other than temporary impairment in accordance with GAAP (OTTI Policy). The OTTI Policy shall require quarterly written analyses to be conducted and applied to all non-agency debt securities with market impairments of five (5) percent or more and all agency debt securities with market impairments of seven and one-half (7.5) percent or more.

12. Within sixty (60) days, the Board shall develop a comprehensive policy establishing accounting procedures that comply with GAAP for stale and/or unreconciled general ledger account balances.

**Lending.**

13. Within sixty (60) days, the Board shall submit to the Regional Director for review and comment a written plan to reduce the Association's level and amount of speculative construction loans (Loan Reduction Plan). At a minimum, the Loan Reduction Plan shall include:

a. reduced limits on the total level of speculative construction loans expressed as a percentage of total risk based capital;

b. sub-limits on speculative construction loans based upon geographic location and considering local market conditions; and

c. an established timeframe for reducing the level of speculative construction loans that contains specific benchmark target dates and levels.

14. Within sixty (60) days, Management shall submit to the Board for review a written report that calculates the ratio of original appraised values to actual sales prices for all speculative construction loans (Construction Loan Report) for each quarter in calendar year 2008, for the entire 2008 calendar year, and for the first quarter of calendar year 2009. The Construction Loan Report shall include a ratio for the entire speculative construction lending portfolio and for each designated geographic area. Thereafter, within forty five (45) days after the end of each calendar quarter, beginning with the calendar quarter ending June 30, 2009, a Construction Loan Report shall be submitted to the Board for each calendar quarter.

15. Within ninety (90) days, the Association shall (a) obtain updated market valuations of all loans originated by Corinthian Mortgage Corporation (CMC) and immediately take any write downs on such loans; and (b) charge off or establish full reserves for all second mortgage loans in the CMC portfolio that are greater than ninety (90) days delinquent and where the Association will not be foreclosing on the collateral properties within one hundred twenty (120) days.

**Loan Review and Classification.**

16. Within seventy-five (75) days, the Board shall submit to the Regional Director for review and comment, revised policies and procedures for conducting internal asset reviews and identifying and classifying problem assets (Loan Review and Classification Program). The Loan Review and Classification Program shall comply with the requirements and standards set forth in: (a) 12 C.F.R. § 560.160; (b) Section II.G of the Safety and Soundness Standards set forth in 12 C.F.R. Part 570 – Appendix A; (c) CEO Memorandum No. 140 (CEO 140); and (d) Sections 260 and 261 of the OTS Examination Handbook.

17. The Loan Review and Classification Program shall ensure identification of the risks in the Association's loan portfolio and appropriate classification and reporting of the Association's

problem assets. At a minimum, the Loan Review and Classification Program shall include policies, procedures, systems, and processes that will ensure:

a. identification and ongoing monitoring of assets classified as “loss”, “doubtful”, “substandard”, or designated as “special mention” (collectively referred to as Criticized Assets) based on an assessment of all pertinent factors;

b. review by the Board of the Association’s loss mitigation strategies to ensure that restructured loans are accounted for properly with particular emphasis on Trouble Debt Restructuring (TDR) accounting and nonaccrual issues, which review shall include consultation with the Association’s independent auditor and require all restructured and/or modified loans that meet the definition of a TDR to be classified as substandard;

c. prompt charge-off of loans, or portions of loans, that available information indicates are uncollectible, consistent with SFAS No. 114;

d. identification of any asset, and/or category of assets, that present excessive risks of nonpayment, or may otherwise be in violation of any applicable law or regulation, as well as a developed corrective action plan for each such asset or category of assets;

e. periodic collateral value updates for all loans in active foreclosure based upon the anticipated completion date of the foreclosure process and acquisition of the title to collateral properties and utilizing the collateral value updates to establish current fair value estimates and loss reserves; and

f. timely and accurate reporting by the Association on its TFRs.

18. The Board shall make any changes to the Loan Review and Classification Program required by the Regional Director within twenty (20) days after being notified of such changes and provide a copy of the revised Loan Review and Classification Program to the Regional

Director for review. Upon receipt of non-objection to the revised Loan Review and Classification Program from the Regional Director, the Board shall adopt the revised Loan Review and Classification Program and ensure that the Association adheres to and implements the revised Loan Review and Classification Program and the revised Loan Review and Classification Program shall be incorporated herein by reference and become part of this Order.

**Allowance for Loan and Lease Losses.**

19. Within forty-five (45) days, the Board shall revise the Association's policies, procedures, and methodology to ensure the timely establishment and maintenance of adequate ALLL levels in accordance with applicable laws, regulations, and regulatory guidance (ALLL Policy). The ALLL Policy shall, at a minimum: (a) address the deficiencies and weaknesses discussed, and adopt the recommendations contained, in the 2008 Examination; and (b) conform to the regulatory requirements and guidance contained in 12 C.F.R. § 560.160(b); Section 261 of the OTS Examination Handbook; the December 13, 2006 Interagency Policy Statement on ALLL (CEO Memorandum # 250); GAAP; and SFAS issuances.

20. Not less than ten (10) days prior to the end of each calendar quarter, beginning with the quarter ending June 30, 2009, Management shall analyze the adequacy of the Association's ALLL and prepare a written report containing Management's analysis of the Association's ALLL for the Board's review (Quarterly ALLL Report). The Board's review of the Quarterly ALLL Report shall be fully documented in the appropriate Board meeting minutes and shall include specific details regarding any corrective actions adopted by the Board. The Board shall document the factors considered and conclusions reached by the Board in determining the adequacy of the Association's ALLL in the appropriate Board meeting minutes. In assessing,

establishing, and maintaining an appropriate level of ALLL, the Board shall, at a minimum, consider the following:

- a. the results of all internal loan reviews and classifications;
- b. the historical loan loss rates of the Association covering an expanded segmentation of the Association's loan portfolio, updated quarterly with heavier weighting assigned to rates of the most recent quarters;
- c. an estimate of the potential loss exposure on each significant<sup>2</sup> credit;
- d. concentrations of credit; and
- e. current and prospective markets and economic conditions.

A copy of the Quarterly ALLL Report, any supporting documents, reports, or other information reviewed by the Board, and the Board meeting minutes detailing the Board's review shall be provided to the Regional Director within ten (10) days after the Board meeting. Any deficiency in the ALLL shall be remedied in the quarter in which it is discovered and before the Association files its TFR with the OTS.

21. Within sixty (60) days, the Board shall obtain and review a written report from a party who is independent of the Association's credit approval and ALLL establishment and maintenance process containing a detailed review and validation of the Association's ALLL methodology (ALLL Review). Thereafter, an ALLL Review shall be conducted within forty-five (45) days after June 30 and December 31 of each calendar year, beginning with December 31, 2009. Each ALLL Review shall consider the ALLL methodology and application to the Association in order to confirm its effectiveness. A copy of each ALLL Review, any supporting documents, reports, or other information reviewed by the Board, and the Board meeting minutes

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<sup>2</sup> A credit shall be considered significant for the purposes of assessing, establishing, and maintaining an appropriate level of ALLL if it is/was \$500,000 or greater at origination.

detailing the Board's review and corrective actions, if any, shall be provided to the Regional Director within ten (10) days after the Board meeting.

**Liquidity.**

22. Within sixty (60) days, the Board shall revise the Association's liquidity plan to ensure that the Association maintains adequate short-term and long-term liquidity to withstand any anticipated or extraordinary demand against its funding base (Liquidity Plan). The Liquidity Plan shall be revised to include triggers and benchmarks that would require greater liquidity beyond the ratios currently established. The Board shall adopt the Liquidity Plan and ensure that Management implements and adheres to the Liquidity Plan.

23. Effective immediately, the Board shall require Management to review the Association's liquidity on a weekly basis and assesses the Association's compliance with its liquidity policies and procedures and, when implemented, the Liquidity Plan required by Paragraph 22 of this Order (Weekly Liquidity Review). Management's Weekly Liquidity Review shall evaluate and consider:

- a. a maturity schedule of certificates of deposit, including large uninsured deposits;
- b. the volatility of demand deposits including escrow deposits;
- c. the amount and type of loan commitments and standby letters of credit;
- d. an analysis of the continuing availability and volatility of present funding sources;
- e. an analysis of the impact of decreased cash flow from the Association's loan portfolio resulting from delinquent and non-performing loans; and
- f. an analysis of the impact of decreased cash flow from the sale of loans or loan participations.

Management shall provide the Board with copies of each Weekly Liquidity Review. The Board's review of Management's Weekly Liquidity Reviews, including any corrective actions, shall be fully detailed in the Board meeting minutes.

**Violations of Law.**

24. Within sixty (60) days, the Board shall ensure that all violations of law, rule, and/or regulation cited in the 2008 Examination are corrected. Within ninety (90) days, the Board shall prepare, adopt, and thereafter ensure that the Association adheres to specific procedures to prevent future violations.

25. Within thirty (30) days following receipt of any internal audit report, independent external audit report, or other report prepared by the Association's employees, agents, or independent contractors, which cites or discusses any weakness, deficiency, or violation of law, rule, or regulation, the Board shall ensure that such weakness, deficiency, or violation is corrected and prepare, adopt, and thereafter ensure the Association adheres to procedures to prevent future weaknesses, deficiencies, and violations.

**Growth.**

26. Effective immediately, the Association is subject to and shall comply with the requirements and provisions of OTS Regulatory Bulletin (RB) 3b. Without the prior written approval of the Regional Director, the Association shall not increase its total assets during any quarter, beginning with the quarter ending December 31, 2008, in excess of an amount equal to net interest credited on deposit liabilities during the quarter. The growth restrictions imposed by this Paragraph shall remain in effect until the OTS review and approval of the Association's Business Plan under Paragraph 2 of this Order.

**Management Changes.**

27. Effective immediately, the Association shall comply with the prior notification requirements for changes in directors and Senior Executive Officers set forth in 12 C.F.R. Part 563, Subpart H, 12 C.F.R. §§ 563.550 through 563.590.

**Employment Contracts and Compensation Arrangements.**

28. Effective immediately, the Association shall not enter into, renew, extend, or revise any contractual arrangement relating to compensation or benefits for any Senior Executive Officer or director of the Association, unless it first provides the OTS with not less than thirty (30) days prior written notice of the proposed transaction. The notice to the OTS shall include a copy of the proposed employment contract or compensation arrangement, or a detailed, written description of the compensation arrangement to be offered to such officer or director, including all benefits and perquisites. The Board shall ensure that any contract, agreement or arrangement submitted to the OTS fully complies with the requirements of 12 C.F.R. Part 359, 12 C.F.R. §§ 563.39 and 563.161(b), and 12 C.F.R. Part 570 – Appendix A.

**Severance and Indemnification Payments.**

29. Effective immediately, the Association shall not make any golden parachute payment<sup>3</sup> or prohibited indemnification payment<sup>4</sup> unless, with respect to each such payment, the Association has complied with the requirements of 12 C.F.R. Part 359 and, as to indemnification payments, 12 C.F.R. § 545.121.

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<sup>3</sup> The term “golden parachute payment” is defined at 12 C.F.R. § 359.1(f).

<sup>4</sup> The term “prohibited indemnification payment” is defined at 12 C.F.R. § 359.1(l).

**Third Party Contracts.**

30. Effective immediately, the Association shall not enter into any arrangement or contract with a third party service provider that is significant<sup>5</sup> to the overall operation or financial condition of the Association or outside the Association's normal course of business unless, with respect to each such contract, the Association has: (a) provided the OTS with a minimum of thirty (30) days prior written notice of such arrangement or contract; (b) determined that the arrangement or contract complies with the standards and guidelines set forth in Thrift Bulletin 82a (TB 82a); and (c) received written notice of non-objection from the Regional Director.

31. Effective immediately, the Association shall provide the OTS with written notice of all arrangements or contracts with third party service providers consistent with the requirements of 12 U.S.C. § 1464(d)(7)(D)(ii). Such notice shall be provided to the Regional Director not later than thirty (30) days after the earlier of: (a) the date on which the Association enters into the contract; or (b) the date on which the performance of the service is initiated. The Board shall review all arrangements or contracts with third party service providers covered by this Paragraph to ensure compliance with the standards and guidelines set forth in TB 82a.

**Brokered Deposits.**

32. Effective immediately, the Association is prohibited from increasing the dollar amount of brokered deposits at the Association without receiving the prior written non-objection of the Regional Director. The Association's written request for such non-objection should be submitted to the Regional Director at least forty-five (45) days prior to the anticipated date of acceptance of additional brokered deposits.

33. Within forty-five (45) days after the end of each calendar quarter, beginning with the

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<sup>5</sup> A contract shall be considered significant to the overall operation or financial condition of the Association where the annual contract amount equals or exceeds two (2) percent of the Association's total capital.

calendar quarter ending June 30, 2009, Management shall submit to the Board for review a written report detailing the level of brokered deposits for each month within the quarter (Brokered Deposit Report). The Board shall review the Brokered Deposit Report to ensure the Association's compliance with this Agreement. A copy of the Board meeting minutes detailing the Board's review, including any corrective actions, and a copy of the Brokered Deposit Report shall be provided to the Regional Director within ten (10) days after the Board meeting.

**Dividends.**

34. Effective immediately, the Association shall pay no dividends or make any other capital distributions, as that term is defined in 12 C.F.R. § 563.141, without receiving the prior written approval of the Regional Director. The Association's written request for written approval should be submitted to the Regional Director at least thirty (30) days prior to the anticipated date of the proposed dividend payment or distribution of capital.

**Affiliate and Insider Transactions.**

35. Effective immediately, the Association shall not engage in any transaction with an Affiliate<sup>6</sup> unless, with respect to each such transaction, the Association has complied with the notice requirements set forth in 12 C.F.R. § 563.41(c)(4), which notice also shall include the information set forth in 12 C.F.R. § 563.41(c)(3). The Board shall ensure that any transaction with an Affiliate complies with the requirements of 12 C.F.R. § 563.41, 12 C.F.R. Part 223 (Regulation W), and the guidance contained in Section 310 of the OTS Examination Handbook. The Board shall ensure that documentation demonstrating such compliance is maintained in the Association's files and records.

36. Effective immediately, the Association shall not make any loans to or enter into any

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<sup>6</sup> 12 C.F.R. § 223.2

contracts or agreements with any Insiders<sup>7</sup> except in compliance with applicable laws, rules, and regulations including, but not limited to, 12 C.F.R. Part 215 and 12 C.F.R. § 564.43, and Section 310 of the OTS Examination Handbook. The Board shall ensure that the Association complies with the requirements of this Paragraph and that documentation demonstrating such compliance is maintained in the Association's files and records.

37. Within sixty (60) days, the Association shall conduct a comprehensive review of all services conducted on behalf of or provided to or for the benefit of an Affiliate and prepare a written report detailing the market rates and terms of any services provided by the Association. The Association shall immediately seek reimbursement from any Affiliate for any unpaid or underpaid services provided.

**Board Compliance Committee.**

38. Within thirty (30) days, the Board shall appoint a committee (Regulatory Compliance Committee) comprising three or more non-employee directors to monitor and coordinate the Association's compliance with the provisions of this Order and the completion of all corrective action required in the 2008 Examination.

39. Within thirty (30) days after the end of each calendar quarter, beginning with the quarter ending March 31, 2009, the Regulatory Compliance Committee shall submit a written progress report to the Board detailing the actions taken to comply with each provision of this Order, the corrective actions required by the 2008 Examination, and the results of all such actions. The Board shall review the Regulatory Compliance Committee's progress report and adopt a resolution: (a) certifying that each director has reviewed the progress report; (b) detailing the Association's compliance with the provisions of this Order and the corrective actions contained in the 2008 Examination; (c) identifying each instance of noncompliance; and (d) setting forth in

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<sup>7</sup> 12 C.F.R. § 215.2(h)

detail additional corrective actions or steps adopted or required by the Board to address each instance of noncompliance.

40. Within forty-five (45) days after the end of each calendar quarter, the Board shall submit to the Regional Director: (a) a copy of the Regulatory Compliance Committee's quarterly progress report required by Paragraph 39 of this Order; and (b) a copy of the Board resolution required by Paragraph 39 of this Order, including the Board meeting minutes. Nothing contained herein shall diminish the responsibility of the entire Board to ensure the Association's compliance with the provisions of this Order.

**Effective Date, Incorporation of Stipulation.**

41. This Order is effective on the Effective Date as shown on the first page. The Stipulation is made a part hereof and is incorporated herein by this reference.

**Duration.**

42. This Order shall remain in effect until terminated, modified or suspended, by written notice of such action by OTS, acting by and through its authorized representatives.

**Time Calculations.**

43. Calculation of time limitations for compliance with the terms of this Order run from the Effective Date and shall be based on calendar days, unless otherwise noted.

44. The Regional Director or authorized designee may extend any of the deadlines set forth in the provisions of this Order upon written request by the Association that includes reasons in support for any such extension. Any OTS extension shall be made in writing.

**Submissions and Notices.**

45. All submissions, including progress reports, to OTS that are required by or contemplated by this Order shall be submitted within the specified timeframes.

46. Except as otherwise provided herein, all submissions, requests, communications, consents or other documents relating to this Order shall be in writing and sent by first class U.S mail (or by reputable overnight carrier, electronic facsimile transmission or hand delivery by messenger) addressed as follows:

- a. To the OTS:  
Regional Director  
Office of Thrift Supervision  
1475 Peachtree St., N.E.  
Atlanta, Georgia 30309  
404.897.1861 (Fax)
  
- c. To the Association:  
Board of Directors  
c/o Danny Wiginton, Chairman  
SOUTHBank, A FSB  
118 Jefferson St, N.  
Huntsville, Alabama 35801-4845  
256.519.3249 (Fax)

**No Violations Authorized.**

47. Nothing in this Order or the Stipulation shall be construed as allowing the Association, its Board, officers or employees to violate any law, rule, or regulation.

**IT IS SO ORDERED.**

**OFFICE OF THRIFT SUPERVISION**

By: \_\_\_\_\_ /s/  
Arthur W. Goodhand  
Acting Southeast Regional Director

Date: See Effective Date on page 1

**UNITED STATES OF AMERICA**  
**Before the**  
**OFFICE OF THRIFT SUPERVISION**

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In the Matter of )	Order No.: SE-09-027
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<b>SOUTHBank, a Federal Savings Bank</b> )	Effective Date: May 21, 2009
<b>Huntsville, Alabama</b> )	
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OTS Docket No. 08854 )	
_____ )	

**STIPULATION AND CONSENT TO ISSUANCE OF ORDER TO CEASE AND DESIST**

**WHEREAS**, the Office of Thrift Supervision (OTS), acting by and through its Regional Director for the Southeast Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed SOUTHBank, a Federal Savings Bank, Huntsville, Alabama, OTS Docket No. 08854 (Association), that the OTS is of the opinion that grounds exist to initiate an administrative proceeding against the Association pursuant to 12 U.S.C. § 1818(b);

**WHEREAS**, the Regional Director, pursuant to delegated authority, is authorized to issue Orders to Cease and Desist where a savings association has consented to the issuance of an order; and

**WHEREAS**, the Association desires to cooperate with the OTS to avoid the time and expense of such administrative cease and desist proceeding by entering into this Stipulation and Consent to the Issuance of Order to Cease and Desist (Stipulation) and, without admitting or denying that such grounds exist, but only admitting the statements and conclusions in Paragraph 1 below concerning Jurisdiction, hereby stipulates and agrees to the following terms:

**1. Jurisdiction.**

a. The Association is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, the Association is “an insured depository institution” as that term is defined in 12 U.S.C. § 1813(c).

b. Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the “appropriate Federal banking agency” with jurisdiction to maintain an administrative enforcement proceeding against a savings association. Therefore, the Association is subject to the authority of the OTS to initiate and maintain an administrative cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b).

**2. OTS Findings of Fact.**

a. Based on its September 22, 2008 examination of the Association (2008 Examination), the OTS finds that the Association has engaged in unsafe and unsound banking practices including, but not limited to, the following:

i. The Association has operated without an adequate and effective business plan.

ii. The Association has operated without an adequate level of experienced and qualified managers and staff and failed to establish and implement an appropriate management succession plan.

iii. The Association has failed to comply with Generally Accepted Accounting Principles and Statements of Financial Accounting Standards regarding reserves, other than temporary impairment analysis, and stale or unreconciled general ledger accounts.

iv. The Association significantly increased its level of speculative

construction loans and is currently operating with an excessive level of speculative construction loans relative to the Association's capital and allowance for loan and lease losses (ALLL) levels.

v. The Association has failed to maintain an effective loan review system with appropriate policies, procedures, and controls that ensure the Association identifies, monitors, and addresses asset quality problems in an accurate and timely manner.

vi. The Association's policies, procedures, methodologies, and practices for establishing and maintaining appropriate levels of ALLL are inadequate, in contravention of OTS and Interagency guidelines, and have failed to ensure that the Association establishes and maintains an adequate level of ALLL in relation to the volume, type, and quality of loans held.

vii. The Association's has failed to ensure adequate liquidity or proper funds management in light of the Association's asset and liability mix.

b. Further, the OTS finds that the Association has other deficiencies in its management and operations and has failed to comply with requirements of various laws, regulations and OTS guidelines, including:

i. The real estate lending standards and interagency guidelines for real estate lending policies at 12 C.F.R. § 560.101;

ii. The Interagency Guidelines Establishing Standards for Safety and Soundness set forth in Appendix A of 12 C.F.R. Part 570;

iii. The OTS regulations regarding asset classification, 12 C.F.R. § 560.160;  
and

iv. The Interagency Uniform Retail Credit Classification and Account Management Policy dated February 10, 1999 and contained in Chief Executive Officer Memorandum (CEO) # 103 (March 4, 1999) and the Revised Uniform Retail Credit and Account Management Policy contained in CEO # 128 (June 27, 2000).

**3. Consent.**

The Association consents to the issuance by the OTS of the accompanying Order to Cease and Desist (Order). The Association further agrees to comply with the terms of the Order upon the Effective Date of the Order and stipulates that the Order complies with all requirements of law.

**4. Finality.**

The Order is issued by the OTS under 12 U.S.C. § 1818(b) and upon the Effective Date it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

**5. Waivers.**

The Association waives the following:

- a. The right to be served with a written notice of the OTS's charges against it as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- b. The right to an administrative hearing of the OTS's charges as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- c. The right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and
- d. Any and all claims against the OTS, including its employees and agents, and any

other governmental entity for the award of fees, costs, or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, federal statutes or otherwise.

**6. OTS Authority Not Affected.**

Nothing in this Stipulation or accompanying Order shall inhibit, estop, bar or otherwise prevent the OTS from taking any other action affecting the Association if at any time the OTS deems it appropriate to do so to fulfill the responsibilities placed upon the OTS by law.

**7. Other Governmental Actions Not Affected.**

The Association acknowledges and agrees that its consent to the issuance of the Order is solely for the purpose of resolving the matters addressed herein, consistent with Paragraph 6 above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of the Association that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental entity other than the OTS.

**8. Miscellaneous.**

a. The laws of the United States of America shall govern the construction and validity of this Stipulation and of the Order;

b. If any provision of this Stipulation and/or the Order 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 or her sole discretion determines otherwise;

c. All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns;



/s/                    
Harry B. Brock, III, Director

                  /s/                    
G. Rick Hall, Director

                  /s/                    
William C. Hussey, Director

                  /s/                    
Alonzo H. Taylor, III, Director