

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

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In the Matter of )	Order No.: SE-09-041
)	
)	
<b>PARTNERS BANK</b> )	Effective Date: August 21, 2009
)	
Naples, Florida )	
OTS Docket No. 17991 )	
_____ )	

**ORDER TO CEASE AND DESIST**

**WHEREAS**, Partners Bank, Naples, Florida, OTS Docket No. 17991 (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:**

**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 with an inadequate level of capital protection for the volume, type, and quality of assets held by the Association
- (b) operating the Association with an excessive level of construction loans, nonresidential real estate loans, and land loans;
- (c) operating the Association with an excessive level of adversely classified and delinquent loans relative to the Association's capital, earnings and allowance for loan and lease losses (ALLL) levels;
- (d) operating the Association with inadequate ALLL methodology and failing to establish and maintain adequate ALLL levels for the volume, type, and quality of loans and leases held;
- (e) 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 problem assets; and
- (f) engaging in violations of Sections 501(b) of the GLB Act and 216 of the FACT Act;
- (g) engaging in violations of 12 C.F.R. §203.4(a) (HMDA);
- (h) engaging in violations of 12 C.F.R. § 560.101 (Real Estate Lending Standards);
- (i) engaging in violations of 12 C.F.R. § 560.160 (Asset Classification);
- (j) engaging in violations of 12 C.F.R. § 572.3(a) (Requirement to Purchase Flood Insurance Where available);
- (k) operating in contravention of supervisory policy statements and other guidance, including, but not limited to, the Interagency Guidelines Establishing Standards for

Safety and Soundness at 12 C.F.R. Part 570 – Appendix A; Chief Executive Officer (CEO) Memorandum No. 252 - Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices (December 14, 2006), Interagency Guidelines for Real Estate Lending Policies at 12 C.F.R. § 560.101; and CEO Memorandum No. 250 - Interagency Policy Statement on the Allowance for Loan and Lease Losses.

**Capital.**

2. By September 30, 2009, the Association shall have and thereafter maintain a Tier 1 capital ratio equal to or greater than eight percent (8%) and a total risk-based capital ratio equal to or greater than 12 percent (12%).

3. By August 31, 2009, the Board shall prepare and submit for the Regional Director's review and comment a written plan to achieve and maintain the Association's capital at the levels prescribed in Paragraph 2 (Capital Plan). At a minimum, the Capital Plan shall:

- (a) consider and address the requirements and restrictions imposed by this Order;
- (b) consider and address different scenarios based on current asset quality trends and real estate market conditions;
- (c) require the Senior Executive Officers (Management)<sup>1</sup> to continually assesses the sufficiency of the Association's capital levels relative to the Association's risk profile, classified asset levels, allowance for loan and lease losses (ALLL), earnings, level of construction loans, and trends in all of the above-listed areas;
- (d) detail capital preservation and enhancement strategies with specific narrative goals;

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

- (e) consider and address the amount of additional capital that would be necessary to meet the capital requirements of Paragraph 2 of this Order under different forward-looking scenarios involving progressively more challenging economic environments;
- (f) detail the method by which the additional capital will be raised to maintain at least a Tier 1 capital ratio of eight percent (8%) and a total risk-based capital ratio of twelve percent (12%) under the different scenarios established pursuant to Paragraph 3.e of this Order;
- (g) identify the specific sources of additional capital;
- (h) detail timeframes by which the additional capital will be raised and specific target month-end capital levels; and
- (i) require Management to prepare and submit for Board review at each regular monthly Board meeting, a written report on the Association's compliance with the Capital Plan and the Association's current capital levels (Capital Status Report).

The Board shall address any comments on the Capital Plan by the Regional Director within twenty (20) days after receipt and provide a copy of the revised Capital Plan to the Regional Director for review.

4. Upon receipt of the Regional Director's non-objection, the Board shall adopt the Capital Plan and the Capital Plan shall be incorporated herein by reference and become part of this Order and any violation of the Capital Plan shall be a violation of this Order. The Board shall ensure that the Association adheres to and implements the Capital Plan. A copy of the Capital 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.

5. Beginning with the quarter ending September 30, 2009, the Board shall: (a) review the Association's capital levels and the Capital Status Report at the first regularly scheduled Board

meeting following each quarter end date; and (b) ensure that Management continually assesses the sufficiency of the Association's capital levels relative to the factors listed in Paragraph 3.c above. Management shall provide the Board with written updates on the status of its compliance with the Capital Plan. The Board's review of items (a) and (b) above at each Board meeting shall be fully detailed in the Board meeting minutes. A copy of the Capital Status 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.

6. After implementation of the Capital Plan, Management shall prepare monthly variance reports on the Association's compliance with the Capital Plan within thirty (30) days after the close of each calendar month starting with the month ending August 31, 2009 (Capital Variance Report). The Capital Variance Reports shall: (a) detail actual operating versus projected results; (b) include detailed explanations of any material deviations; and (c) include a description of the specific corrective actions or measures that have been implemented or are proposed to address each material deviation. A deviation shall be considered material under this Paragraph of the Order when the Association: (i) engages in any material activity, line of business, or operation that is inconsistent with the Capital Plan; (ii) exceeds the level of any activity or growth contemplated in the Capital Plan by more than 10 percent; or (iii) falls below or fails to meet the target amounts established in the Capital Plan by more than 10 percent.

7. The Board's review of the monthly Capital Variance Reports and evaluation of Management and the Association's compliance with the elements of the Capital Plan shall be thoroughly documented in the Board meeting minutes. A copy of the Capital Variance 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.

8. Within fifteen (15) days, the Board shall prepare and submit for Regional Director review and comment a written Contingency Plan. The Contingency Plan shall detail the actions to be taken, with specific time frames, to achieve one of the following results by the later of the date of receipt of all required regulatory approvals or sixty (60) days after the implementation of the Contingency Plan: (a) merger with, or acquisition by another federally insured depository institution or holding company thereof; or (b) voluntary liquidation by filing an appropriate application with OTS in conformity with federal laws and regulations. The Association shall implement the Contingency Plan immediately upon failure to comply with the capital levels required in Paragraph 2, failure to submit an acceptable Capital Plan under Paragraph 3, or within twenty (20) days of the date from any request by the Regional Director. The Board shall make any changes to the Contingency Plan required by the Regional Director within twenty (20) days after being notified of such changes and provide a copy of the revised Contingency Plan to the Regional Director for review.

9. Upon receipt of written non-objection to the Contingency Plan from the Regional Director, the Board shall adopt the Contingency Plan and the Contingency Plan shall be incorporated herein by reference and become part of this Order and any violation of the Contingency Plan shall be a violation of this Order. The Board shall ensure that the Association adheres to and implements the Contingency Plan. A copy of the Contingency 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.

10. The Association shall provide written status reports to the OTS detailing the Association's actions taken and progress in implementing the Contingency Plan by no later than the 1<sup>st</sup> and 15<sup>th</sup> of each calendar month following receipt of the Regional Director's written non-objection to the

Contingency Plan and until such time as the Association has a Tier 1 capital ratio of at least eight percent (8%) and a total risk-based capital ratio of at least twelve (12%) and is in compliance with its Capital Plan. The bimonthly status reports shall detail: any contacts with investment bankers, any parties doing due diligence, any offers relating to an acquisition or a merger, the execution of binding letters of intent or purchase agreements, capital infusions from the Association's parent holding company, or any other capital raising activities. The Association shall provide the OTS a notification of the termination of negotiations with any party considering the acquisition of five (5) percent or more of the stock of the Association or a subordinated debt offering within one (1) business day of the termination of the negotiations.

**Growth.**

11. Effective immediately, the Association shall not increase its total assets during any quarter, beginning with the quarter ending September 30, 2009, in excess of an amount equal to net interest credited on deposit liabilities during the quarter without the prior written approval of the Regional Director. The growth restrictions imposed by this Paragraph shall remain in effect until the OTS review and non-objection to the Association's Business Plan under Paragraph 12 of this Order.

**Business Plan.**

12. Within sixty (60) days, the Board shall prepare and submit to the Regional Director for review and comment a new comprehensive business plan that covers the fourth quarter of calendar year 2009, calendar years 2010, 2011, and 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 restructure the Association's operations, strengthen and improve the Association's earnings and net interest margin, and achieve positive core income on a consistent basis;

- (b) a discussion of the Association's current financial position and resources and specific Board's 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) quarterly pro forma financial projections (balance sheet, capital forecasts, and income statement) and a detailed budget for each period covered by the Business Plan; and
- (d) identification of all relevant assumptions made in formulating the Business Plan, as well as documentation supporting such assumptions.

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.

13. Upon receipt of written non-objection to the revised Business Plan from the Regional Director, the Board shall adopt the Business Plan and the Business Plan shall be incorporated herein by reference and become a part of this Order, and any violation of the Business Plan shall be a violation of this Order. A copy of the Business Plan adopted by the Board and the Board meeting minutes reflecting the Board's discussion and adoption of the Business Plan shall be provided to the Regional Director within ten (10) days after the Board meeting.

14. 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 ten percent (10%), unless the activity involves assets risk-weighted fifty percent (50%) or less, in which case a variance of more than twenty-five percent (25%) shall be deemed to be a material modification.

15. The Board shall require 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 December 31, 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.

16. 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. The Board will take corrective actions to ensure the Association's adherence to the revised Business Plan. The Board's review of the Quarterly Business Plan Variance Reports, assessment of the Association's compliance with the revised Business Plan, and any corrective actions taken by the Board 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.

**Problem Assets.**

17. Within thirty (30) days, the Board shall prepare and submit to the Regional Director for review and comment a detailed, written plan with specific strategies, targets and timeframes to reduce the Association's level of criticized assets<sup>2</sup> (Problem Asset Plan). For purposes of this Paragraph, "reduce" means to collect, sell, charge off, or improve the quality of an asset sufficient to warrant its removal from adverse criticism or classification. At a minimum, the Problem Asset Plan shall:

- (a) include an assessment of the experience level of the Association's current staff and identify any need for additional experienced personnel;
- (b) require Management to prepare and submit for Board review individual written asset resolution plans for each criticized asset and delinquent loan of Five Hundred Thousand Dollars (\$500,000) or greater (Asset Resolution Plans); and
- (c) require Management to prepare and submit for Board review a written monthly asset status report (Monthly Asset Report).

18. Within forty-five (45) days after being notified of any concerns of the Regional Director with the Problem Asset Plan, the Board shall revise the Problem Asset Plan to address those concerns and provide a copy of the revised Problem Asset Plan to the Regional Director. Upon receipt of the Regional Director's written non-objection to the Problem Asset Plan, the Board shall adopt the Problem Asset Plan and ensure that the Association adheres to and implements the Problem Asset Plan.

19. At a minimum, the Monthly Asset Report shall include:

- (a) a summary of and update on the current status of all Asset Resolution Plans for

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<sup>2</sup> The term "criticized assets" shall include all classified assets, assets designated special mention or watch, all nonperforming assets and all delinquent loans.

criticized assets and delinquent loans of Five Hundred Thousand (\$500,000) or greater;

- (b) a comparison of ALLL levels to the total level of classified assets;
- (c) a comparison of total classified assets to core and risk-based capital;
- (d) a comparison of total classified assets at the current quarter end with total classified assets for the preceding quarter;
- (e) a breakdown of classified assets by type (residential, acquisition and development, construction, land loans, etc.); and
- (f) a discussion of the actions taken during the previous month to reduce the Association's level of criticized assets and delinquent loans and recommendations regarding any additional actions or steps that will be taken by Management.

The Board's review of the Monthly Asset Reports, and any corrective actions adopted by the Board, shall be fully documented in the appropriate Board meeting minutes. A copy of each Monthly Asset Report and the Board meeting minutes detailing the Board's review shall be provided to the Regional Director within ten (10) days after the date of the Board meeting.

20. The Board shall review and assess the Association's compliance with the revised Problem Asset Plan within thirty (30) days after the close of each calendar quarter, beginning with the quarter ending September 30, 2009 (Quarterly Problem Asset Plan Reviews). The Board's review and assessment of the Association's compliance with the revised Problem Asset Plan shall be fully documented in the appropriate Board meeting minutes. A copy of the Quarterly Problem Asset Plan Review 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 date.

**Lending.**

21. Effective immediately, the Association shall not originate or purchase, or commit to

originate or purchase, any new construction loans,<sup>3</sup> land loans,<sup>4</sup> and/or nonresidential loans (except as discussed in Paragraph 22 of this Order) or extend additional funds to existing borrowers on or relating to any construction, land, nonresidential and/or commercial loans. The Association may request the Regional Director's non-objection to resume origination activity on construction, land, nonresidential and commercial loans after all deficiencies and weaknesses discussed in the March 23, 2009 Report of Examination (2009 Examination) and the requirements of this Order have been addressed. A list of all identified deficiencies and corrective measures, including process or policy changes, internal/external audit changes and the date such changes were made, shall be included with the Association's request to the Regional Director to resume nonresidential and commercial loan origination activity.

22. Within thirty (30) days, the Association shall provide the Regional Director with a schedule of all outstanding legally binding commitments as of June 30, 2009. The Association may fund legally binding commitments that were executed prior to June 30, 2009 that were included on the schedule of all outstanding legally binding commitments provided to the OTS by the Association.

23. The Association shall not modify, renew, or extend any existing construction, nonresidential, and/or land loans without prior Regional Director approval, unless all of the following conditions are met:

- (a) a principal reduction of at least five percent (5%) of the outstanding loan balance is obtained;
- (b) no new funds are advanced;
- (c) the terms of the renewed loan require amortizing principal and interest payments

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<sup>3</sup> The term "construction loan" is defined at 12 C.F.R. § 560.101 – Interagency Guidelines.

<sup>4</sup> The term "land loan" is defined at 12 C.F.R. § 561.26.

on an amortizing schedule not to exceed ten (10) years; and

(d) established interest reserves will not be replenished and new interest reserves will not be established.

The Association shall submit its request for Regional Director approval to modify, renew or extend any construction, nonresidential and/or loan not permitted by this Paragraph not less than forty-five (45) days prior to the loan's maturity date.

**Loan Modifications.**

24. Within thirty (30) days, the Board shall require Management to prepare for Board review a written report identifying all loan modifications and troubled debt restructurings (TDR Report). The TDR Report shall discuss the original terms, the modified terms, and the performance of all modified or restructured loans under the modified terms. The Board will provide a copy of the TDR Report and the Board meeting minutes reflecting the Board's review of the TDR Report to the Regional Director within ten (10) days after the Board meeting date.

**Allowance for Loan and Lease Losses.**

25. 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 2009 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); Generally Accepted Accounting Principles (GAAP) and Statements of Financial Accounting Standards (SFAS).

26. Within fifteen (15) days after the end of each calendar quarter, beginning with the quarter ending September 30, 2009, Management shall analyze the adequacy of the Association's ALLL and prepare and submit to the Board for review a written report detailing Management's analysis and conclusions regarding the adequacy of the Association's ALLL (Quarterly ALLL Report). The Board's review of the Quarterly ALLL Report shall be fully documented in the Board meeting minutes and shall include specific details regarding any corrective actions adopted by the Board. The Board shall ensure that all qualitative factors considered and conclusions reached by the Board in determining the adequacy of the Association's ALLL are supported and documented in the 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 for the preceding twelve (12) months 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>5</sup> credit;
- (d) concentrations of credit, including geographic concentrations; 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 Thrift Financial Report (TFR) with the OTS.

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<sup>5</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.

**Brokered Deposits.**

27. Effective immediately, the Association shall comply with the requirements of 12 C.F.R. § 337.6(b)(2) and shall not, without obtaining the prior written approval of the Federal Deposit Insurance Corporation (FDIC) pursuant to 12 C.F.R. § 337.6(c): (a) accept, renew, or roll over any brokered deposit, as that term is defined at 12 C.F.R. § 337.6(a)(2); or (b) act as a deposit broker, as that term is defined at 12 C.F.R. § 337.6(a)(5).

28. Within thirty (30) days, the Board shall prepare and submit to the Regional Director for review and comment a plan to reduce the Association's reliance on brokered deposits (Brokered Deposit Reduction Plan). The Brokered Deposit Reduction Plan shall, at a minimum, include: (a) a detailed description of the current composition of the Association's brokered deposits, including the source of each deposit and its maturity date; and (b) an explanation of the means by which such deposits will be paid. The Board shall make any changes to the Brokered Deposit Reduction Plan required by the Regional Director within thirty (30) days after being notified of such changes and provide a copy of the revised Brokered Deposit Reduction Plan to the Regional Director for review. Upon receipt of approval of or non-objection to the revised Brokered Deposit Reduction Plan from the Regional Director, the Board shall adopt the revised Brokered Deposit Reduction Plan and ensure that Management and the Bank adhere to and implement the revised Brokered Deposit Reduction Plan. Any material modification to the revised Brokered Deposit Reduction Plan shall be submitted to the Regional Director for review and written approval of or non-objection at least forty-five (45) days prior to implementation.

29. The Board shall require Management to prepare and submit to the Board quarterly variance reports on the Bank's compliance with the revised Brokered Deposit Reduction Plan within thirty (30) days after the close of each calendar quarter (Quarterly Brokered Deposit Variance Reports), beginning with the calendar quarter ending September 30, 2009. The Board

shall review the Quarterly Brokered Deposit Variance Reports each quarter and take corrective actions if necessary to ensure adherence to the revised Brokered Deposit Plan. The Board's review of the Quarterly Brokered Deposit Variance Reports shall be fully documented in the appropriate Board meeting minutes. A copy of the Quarterly Brokered Deposit 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.

**Liquidity.**

30. Within thirty (30) days, the Board shall develop and adopt a liquidity management policy in conformance with the guidance contained in OTS Thrift Bulletin 77 and Sections 530 and 560 of the Examinations Handbook (Liquidity Policy). The Liquidity Policy shall include procedures for monitoring large volume depositors and a 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).

31. The Liquidity Plan shall, at a minimum, include the following:

- (a) a cash flow analysis that includes reasonable assumptions, identifies all anticipated funding needs and the sources to meet those needs, considers the level and maturity of any brokered deposits, and addresses any contingent liabilities; and
- (b) identification of alternative funding sources in order to meet extraordinary demands or to provide liquidity in the event the sources identified in subparagraph (a) above are insufficient. Such alternative funding sources must consider, at a minimum, the selling of assets, obtaining lines of credit from correspondent banks, recovering charged-off assets, and injecting additional equity capital.

Thereafter, the Board shall ensure that the Association complies with the Liquidity Plan.

32. Within thirty (30) days, the Board shall require Management to review and the Association's liquidity on a weekly basis and assess the Association's compliance with its Liquidity Policy and the Liquidity Plan (Liquidity Review). Management's review shall 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.

33. At each monthly Board meeting, beginning with the September 2009 meeting, the Board shall require Management to prepare and submit for Board review a written status report on the Association's compliance with its liquidity policies and procedures and the Liquidity Plan. The Board will require Management to provide copies of the weekly reviews of the Association's liquidity required by Paragraph 32 of this Order for the immediately preceding month and identify any funding needs (to repay loans or advances from correspondent banks or to pay off brokered deposits). The Board's review of Management's weekly reviews, and any corrective actions adopted by the Board, shall be fully documented in the Board meeting minutes. The Board will provide the Regional Director with quarterly updates on the Association's liquidity position and compliance with the Liquidity Plan within thirty (30) days after the end of each calendar quarter beginning with the quarter ending September 30, 2009.

**Interest Rate Risk Management.**

34. Within thirty (30) days, the Board shall revise the Association's policies and procedures

governing interest rate risk exposure (IRR Policy) to address all deficiencies discussed 2009 ROE. A copy of the revised IRR Policy, list of all corrective actions taken by the Board and the Board meeting minutes documenting the Board's discussions and revisions to the IRR Policy shall be provided to the Regional Director within ten (10) days after the Board meeting.

**Flood Insurance.**

35. Within thirty (30) days, the Board shall revise the Association's policies, procedures and systems for compliance with the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. §§ 4001-4129, as implemented by Part 572 of the OTS's Rules and Regulations, 12 C.F.R. Part 572 (collectively, Flood Laws and Regulations) to address the weaknesses and deficiencies discussed in the 2009 Examination including, but not limited to, the establishment of procedures and systems to verify and document the amount of flood insurance required and the methodology used to determine the amount of flood insurance required.

36. Within sixty (60) days, the Board shall engage a qualified independent third party (Consultant) to conduct a review of all loans secured by buildings or mobile homes located in special flood hazard areas that were originated by the Association on or after November 30, 2007 (Relevant Loans) or currently in the Association's portfolio for compliance with the Flood Laws and Regulations. The Consultant shall prepare a written report that, at a minimum, identifies all loans that do not comply with the Flood Act Laws and Regulations or have supporting documentation deficiencies and weaknesses, details all violations of the Flood Act Laws and Regulations or deficiencies and weaknesses identified, and sets forth recommended corrective actions to address instances of noncompliance or weaknesses and deficiencies (Flood Loan Report).

37. Within seventy-five (75) days, the Board shall adopt and ensure that Management implements appropriate corrective actions to ensure that all loans noted on the Flood Loan Report comply with the Flood Act Laws and Regulations. The Board's review of the Flood Loan Report, and the corrective actions adopted by the Board shall be fully documented in the Board meeting minutes. A copy of the Flood Loan Report and the Board minutes shall be provided to the Regional Director within ten (10) calendar days after the date of the Board meeting.

**Equal Credit Opportunity Act/Fair Lending.**

38. Within forty-five (45) days, the Board shall conduct a comprehensive review of the Association's policies, procedures, systems, processes, and recordkeeping and documentation requirements to ensure compliance with the requirements of the Equal Credit Opportunity Act (ECOA), its implementing regulations at 12 CFR Part 202 (Regulation B), and the Interagency Fair Lending Examination Procedures (ECOA Policies) and ensure that all deficiencies, weaknesses and corrective actions identified by OTS in the Association's 2009 Examination have been addressed.

**Home Mortgage Disclosure Act.**

39. Within thirty (30) days, the Board shall review and amend the Association's policies and procedures regarding HMDA and Regulation C (HMDA Policy) to ensure that the Association complies with the requirements of HMDA, Regulation C and this Order.

40. Within thirty (30) days, the Board shall ensure that Management corrects all LAR errors identified in the 2009 Examination. The Board shall require Management to provide documentation to the Board demonstrating that all identified errors have been corrected.

**Directorate and Management Changes.**

41. 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.**

42. Effective immediately, the Association shall not enter into any new, or renew, extend, or revise any existing, 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.**

43. Effective immediately, the Association shall not make any golden parachute payment<sup>6</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 CFR § 545.121.

**Third Party Contracts.**

44. Effective immediately, the Association shall not enter into any new arrangement or contract with a third party service provider 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

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<sup>6</sup> The term “golden parachute payment” is defined at 12 C.F.R. § 359.1(f).

such arrangement or contract and (b) received written notice of non-objection from the Regional Director.

**Dividends.**

45. 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 shall 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.

**Violations of Law.**

46. Within sixty (60) days, the Board shall ensure that all violations of law, rule, and/or regulation discussed in the Association's 2009 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.

47. Within thirty (30) days of receipt of any subsequent Report of Examination, 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 violation of law, rule, or regulation, the Board shall prepare, adopt, and thereafter ensure the Association adheres to specific procedures to correct such violations and prevent future violations.

**Board Compliance Committee.**

48. 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 2009 Examination.

49. Within thirty (30) days after the end of each calendar quarter, beginning with the quarter ending September 30, 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 2009 Examination, and the results of all such actions. The Board shall review the Regulatory Compliance Committee's progress report and adopt a resolution: (i) certifying that each director has reviewed the progress report; (ii) detailing the Association's compliance with the provisions of this Order and the corrective actions contained in the 2009 Examination; (iii) identifying each instance of noncompliance; and (iv) setting forth in detail additional corrective actions or steps adopted or required by the Board to address each instance of noncompliance.

50. Within forty-five (45) days after the end of each calendar quarter, the Board shall submit to the Regional Director: (i) a copy of the Regulatory Compliance Committee's quarterly progress report required by Paragraph 49 of this Order; and (ii) a copy of the Board resolution required by Paragraph 49 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.**

51. 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.**

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

**Time Calculations.**

53. 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.

54. The Regional Director, or an OTS authorized representative, 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.**

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

56. 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)

(b) To the Association:  
Board of Directors  
Partners Bank  
3021 Airport-Pulling Road  
Naples, FL 34105  
239.919.5370 (Fax)

**No Violations Authorized.**

57. 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**

In the Matter of	)	Order No.: SE-09-041
	)	
	)	
<b>PARTNERS BANK</b>	)	Effective Date: August 21, 2009
	)	
Naples, Florida	)	
OTS Docket No. 17991	)	

**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 Partners Bank, Naples, Florida, OTS Docket No. 17991 (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 Paragraphs 1 and 2 below concerning Jurisdiction, hereby stipulates and agrees to the following terms:

**Jurisdiction.**

1. 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).

2. 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).

**OTS Findings of Fact.**

3. Based on its March 23, 2009 Report of Examination of the Association (2009 Examination), the OTS finds that the Association has engaged in violations of applicable laws and regulations, failed to comply with regulatory guidelines, and engaged in unsafe or unsound banking practices including, but not limited to:

- (a) operating the Association with an inadequate level of capital protection for the volume, type, and quality of assets held by the Association;
- (b) operating the Association with an excessive level of construction loans, nonresidential real estate loans, and land loans;
- (c) operating the Association with an excessive level of adversely classified and delinquent loans relative to the Association’s capital, earnings and allowance for loan and lease losses (ALLL) levels;
- (d) operating the Association with inadequate ALLL methodology and failing to establish and maintain adequate ALLL levels for the volume, type, and quality of loans

and leases held;

- (e) 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 problem assets; and
- (f) engaging in violations of 12 C.F.R. §203.4(a) (HMDA);
- (g) engaging in violations of 12 C.F.R. § 560.101 (Real Estate Lending Standards);
- (h) engaging in violations of 12 C.F.R. § 560.160 (Asset Classification);
- (i) engaging in violations of 12 C.F.R. § 572.3(a) (Requirement to Purchase Flood Insurance Where Available);
- (j) operating in contravention of supervisory policy statements and other guidance, including, but not limited to, the Interagency Guidelines Establishing Standards for Safety and Soundness at 12 C.F.R. Part 570 – Appendix A; Chief Executive Officer (CEO) Memorandum No. 252 - Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices (December 14, 2006), Interagency Guidelines for Real Estate Lending Policies at 12 C.F.R. § 560.101; and CEO Memorandum No. 250 - Interagency Policy Statement on the Allowance for Loan and Lease Losses (DATE).

**Consent.**

5. 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.

**Finality.**

6. The Order is issued by the OTS under 12 U.S.C. § 1818(b). Upon the Effective Date, the

Order shall be a final order, effective, and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

**Waivers.**

7. 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.

**OTS Authority Not Affected.**

8. 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.

**Other Governmental Actions Not Affected.**

9. 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 8 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.

**Miscellaneous.**

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

11. 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.

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

13. The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the interpretation of this Stipulation or the Order.

14. The terms of this Stipulation and of the Order represent the final agreement of the parties with respect to the subject matters thereof, and constitute the sole agreement of the parties with respect to such subject matters.

15. The Stipulation and Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Regional Director or other authorized representative.

**Signature of Directors/Board Resolution.**

16. Each Director signing this Stipulation attests that he or she voted in favor of a Board Resolution authorizing the consent of the Association to the issuance of the Order and the execution of the Stipulation.

WHEREFORE, the Association, by its directors, executes this Stipulation.

Accepted by:

**PARTNERS BANK**  
Naples, Florida

**OFFICE OF THRIFT SUPERVISION**

By: \_\_\_\_\_ /s/  
John G. Wolf  
Chairman

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

Date: See Effective Date on page 1

\_\_\_\_\_/s/  
Robert R. Sudbrook, Director

\_\_\_\_\_/s/  
John V. Hoey, III, Director

\_\_\_\_\_/s/  
James E. Boughton, Director

\_\_\_\_\_  
Jerome J. Bushman, Director

\_\_\_\_\_/s/  
Jack J. Crifasi, Jr., Director

\_\_\_\_\_/s/  
Howard F. Crossman, Jr., Director

\_\_\_\_\_/s/  
David Huber, Director

