

## **SUPERVISORY AGREEMENT**

This Supervisory Agreement (Agreement) is made this 20<sup>th</sup> day of August, by and through the Board of Directors (Board) of 1st Commonwealth Bank of Virginia, Arlington, Virginia, OTS Docket No. 18086 (Association) and the Office of Thrift Supervision (OTS), acting by and through its Regional Director for the Southeast Region (Regional Director);

**WHEREAS**, the OTS, pursuant to 12 U.S.C. § 1818, has the statutory authority to enter into and enforce supervisory agreements to ensure the establishment and maintenance of appropriate safeguards in the operation of the entities it regulates; and

**WHEREAS**, the Association is subject to examination, regulation and supervision by the OTS; and

**WHEREAS**, based on its March 1, 2010 Report of Examination (2010 ROE) of the Association, the OTS finds that the Association has engaged in unsafe or unsound practices, including, but not limited to failing to comply with its May 2, 2008 OTS approved business plan and conditions of approval, and/or violations of law or regulation; and

**WHEREAS**, in furtherance of their common goal to ensure that the Association addresses the unsafe or unsound practices and/or violations of law or regulation identified by the OTS 2010 ROE, the Association and the OTS have mutually agreed to enter into this Agreement; and

**WHEREAS**, on August 12, 2010, the Association's Board, at a duly constituted meeting, adopted a resolution (Board Resolution) that authorizes the Association to enter into this Agreement and directs compliance by the Association and its directors, officers, employees, and other institution-affiliated parties with each and every provision of this Agreement.

**NOW THEREFORE**, in consideration of the above premises, it is agreed as follows:

**Compliance with Laws, Regulations and Regulatory Guidance.**

1. The Association shall comply with all applicable laws, regulations, and regulatory guidelines including, but not limited to, the following:

- (a) 12 C.F.R. § 563.180(d)(9)(i) (requiring notification of filing of all suspicious activity reports (SARs));
- (b) 31 C.F.R. § 103.33(g)(1) (requiring originating bank to provide information about the original transmitter in a wire transaction to the receiving financial institution);
- (c) 12 C.F.R. § 572.3 (requiring purchase of flood insurance where available on all loans made, increased, extended or renewed);
- (d) 12 C.F.R. § 230.8(c) (requiring proper disclosures in advertisements where annual percentage yield is stated);
- (e) 12 C.F.R. § 528.4 (requiring Equal Housing Lender logo on all advertisements);
- and
- (f) 12 C.F.R. § 226.24(a) (requiring that advertisement for credit state only those terms that are actually offered by the creditor).

**Business Plan.**

2. By October 31, 2010, the Association shall adhere to and comply with the business plan previously approved by the Regional Director in writing on May 2, 2008 (2008 Business Plan).

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3. Any material modifications<sup>1</sup> to the 2008 Business Plan must receive the prior written non-objection of the Regional Director. The Association shall submit proposed material modifications to the Regional Director at least forty-five (45) days prior to implementation.

4. Within thirty (30) days after the end of each quarter, the Board shall review quarterly variance reports on the Association's compliance with the Business Plan (Variance Reports).

The Variance Reports shall:

- (a) identify variances in the Association's actual performance during the preceding quarter as compared to the projections set forth in the Business Plan;
- (b) contain an analysis and explanation of identified variances; and
- (c) discuss the specific measures taken or to be taken to address identified variances.

5. A copy of the Variance Reports and Board meeting minutes shall be provided to the Regional Director within ten (10) days after the Board meeting.

**Growth.**

6. By October 31, 2010, the Association's total asset growth shall adhere to and comply with the levels contained in the 2008 Business Plan.

**Consumer Compliance Program.**

7. Within sixty (60) days, the Association shall revise its written consumer compliance program (Compliance Program) to address all corrective actions set forth in the 2010 ROE relating to consumer compliance. The Association's Compliance Program shall comply with all applicable consumer and other compliance laws, regulations and regulatory guidance

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<sup>1</sup> A modification shall be considered material under this Section of the Agreement if the Association plans to: (a) engage in any activity that is inconsistent with the Business Plan; or (b) exceed the level of any activity contemplated in the Business Plan or fail to meet target amounts established in the 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.

(Compliance Laws and Regulations)<sup>2</sup> and be appropriate for the Association's size, complexity, product lines and business operations.

**Flood Insurance.**

8. Within sixty (60) days, the Association shall revise its policies, procedures and systems related to flood insurance (Flood Policies) to address all corrective actions set forth in the 2010 ROE relating to flood insurance and comply with all applicable laws, regulations and regulatory guidance, including 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) Laws and Regulations. The Association shall implement and adhere to the revised Flood Policies.

**Fair Lending Monitoring Program.**

9. Within sixty (60) days, the Association shall develop, implement and adhere to a revised fair lending program for all lending products (Fair Lending Program) that addresses the corrective actions in the 2010 ROE related to fair lending. The Association's Fair Lending Program shall comply with all applicable nondiscrimination laws, regulations and regulatory guidance and, at a minimum, shall:

- (a) require the Association to institute a comprehensive system to perform detailed, periodic fair lending monitoring analyses and reviews to detect violations of applicable nondiscrimination laws, regulations and regulatory guidance;

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<sup>2</sup> The term "consumer and other compliance laws, regulations and regulatory guidance" includes all laws and regulations referenced in Section 1100 (Compliance Oversight Examination Program) of the OTS Examination Handbook.

- (b) require the submission to the Board, or its designated committee, of periodic written reports regarding the Association's compliance with its Fair Lending Program and corrective actions implemented based on the monitoring analyses and reviews;
- (c) require a regular fair lending testing program for applicable credit products and product delivery channels;
- (d) require an annual review and revision of applicable written credit product manuals and other materials, including, but not limited to, advertising and marketing materials, to ensure ongoing compliance with applicable nondiscrimination laws, regulations and regulatory guidance;
- (e) require mandatory and documented fair lending training for appropriate Association job positions on a periodic basis; and
- (f) specify appropriate documentation and record retention requirements for the Association's products that shall be applicable to all products regardless of the delivery channel.

**Brokered Deposits.**

10. Effective immediately, the Association shall comply with the requirements of 12 C.F.R. § 337.6(b).

**Directorate and Management Changes.**

11. Effective immediately, the Association shall comply with the prior notification requirements for changes in directors and Senior Executive Officers<sup>3</sup> set forth in 12 C.F.R. Part 563, Subpart H.

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<sup>3</sup> The term "Senior Executive Officer" is defined at 12 C.F.R. § 563.555.

### **Dividends and Other Capital Distributions.**

12. Effective immediately, the Association shall not declare or pay 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 in accordance with applicable regulations and regulatory guidance. The Association's written request for approval shall be submitted to the Regional Director at least thirty (30) days prior to the anticipated date of the proposed declaration, dividend payment or distribution of capital.

### **Employment Contracts and Compensation Arrangements.**

13. 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 Regional Director with not less than forty-five (45) days prior written notice of the proposed transaction. The notice to the Regional Director 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 Regional Director 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.

### **Golden Parachute and Indemnification Payments.**

14. Effective immediately, the Association shall not make any golden parachute payment<sup>4</sup> or prohibited indemnification payment<sup>5</sup> unless, with respect to each such payment, the Association

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<sup>4</sup> The term "golden parachute payment" is defined at 12 C.F.R. § 359.1(f).

<sup>5</sup> The term "prohibited indemnification payment" is defined at 12 C.F.R. § 359.1(l).

has complied with the requirements of 12 C.F.R. Part 359 and, as to indemnification payments, 12 C.F.R. § 545.121.

**Effective Date.**

15. This Agreement is effective on the Effective Date as shown on the first page.

**Duration.**

16. This Agreement 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.**

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

**Submissions and Notices.**

18. All submissions to the OTS that are required by or contemplated by the Agreement shall be submitted within the specified timeframes.

19. Except as otherwise provided herein, all submissions, requests, communications, consents or other documents relating to this Agreement 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  
c/o Sidney G. Simmonds, Chairman  
1<sup>st</sup> Commonwealth Bank of Virginia  
2500 Wilson Boulevard, Suite 100

**No Violations Authorized.**

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

**OTS Authority Not Affected.**

21. Nothing in this Agreement 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.**

22. The Association acknowledges and agrees that its execution of the Agreement is solely for the purpose of resolving the matters addressed herein, consistent with Paragraph 21 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.**

23. The laws of the United States of America shall govern the construction and validity of this Agreement.

24. If any provision of this Agreement is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.



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

26. The section and paragraph headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

27. The terms of this Agreement 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.

**Enforceability of Agreement.**

28. This Agreement is a "written agreement" entered into with an agency within the meaning and for the purposes of 12 U.S.C. § 1818.

**Signature of Directors/Board Resolution.**

29. Each Director signing this Agreement attests that he or she voted in favor of a Board Resolution authorizing the consent of the Association to the issuance and execution of the Agreement. This Agreement may be executed in counterparts by the directors after approval of execution of the Agreement at a duly called board meeting. A copy of the Board Resolution authorizing execution of this Agreement shall be delivered to the OTS, along with the executed original(s) of this Agreement.

**[Remainder of Page Intentionally Left Blank]**

**WHEREFORE**, the OTS, acting by and through its Regional Director, and the Board of the Association, hereby execute this Agreement.

**OFFICE OF THRIFT SUPERVISION**

/s/  
By: \_\_\_\_\_  
James G. Price  
Regional Director, Southeast Region

**1<sup>st</sup> COMMONWEALTH BANK OF VIRGINIA**  
Arlington, Virginia

/s/  
By: \_\_\_\_\_  
Sidney G. Simmonds, Chairman

/s/  
\_\_\_\_\_  
Donald E. Ziegler, Director

/s/  
\_\_\_\_\_  
Ernest L. Tressler, Director

/s/  
\_\_\_\_\_  
Gregory A. Murray, Director

/s/  
\_\_\_\_\_  
David K. Chow, Director

/s/  
\_\_\_\_\_  
Gregory U. Evans, Director

/s/  
\_\_\_\_\_  
Lynn B. Fuechsel, Director

/s/  
\_\_\_\_\_  
Sung Bin Im, Director

/s/  
\_\_\_\_\_  
William B. Lawson, Jr., Director

/s/  
\_\_\_\_\_  
Joseph M. Sullivan, Director