

**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

**POST-EFFECTIVE AMENDMENT NO. 1**  
**ON**  
**FORM S-8**  
**TO**  
**FORM S-4**  
**REGISTRATION STATEMENT**  
**UNDER**  
**THE SECURITIES ACT OF 1933**

**CAPITAL ONE FINANCIAL CORPORATION**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**6141**  
(Primary Standard Industrial Classification Code  
Number)

**54-1719854**  
(I.R.S. Employer  
Identification Number)

**1680 CAPITAL ONE DRIVE**  
**MCLEAN, VIRGINIA 22102**  
(Address of Registrant's Principal Executive Offices)

**North Fork Bancorporation, Inc. 1989 Executive Management Compensation Plan; North Fork Bancorporation, Inc. 1994 Key Employee Stock Plan; North Fork Bancorporation, Inc. 1999 Stock Compensation Plan; North Fork Bancorporation, Inc. 1998 Stock Compensation Plan; North Fork Bancorporation, Inc. 1997 Non-Officer Stock Plan; North Fork Bancorporation, Inc. New Employee Stock Compensation Plan; North Fork Bancorporation, Inc. 2003 Stock Compensation Plan; JSB Financial, Inc. 1996 Stock Option Plan; Reliance Bancorp, Inc. Amended and Restated 1996 Incentive Stock Option Plan; GreenPoint Financial Corp. 1999 Stock Incentive Plan; Headlands Mortgage Company 1997 Executive and Non-Employee Director Stock Plan; GreenPoint Financial Corp. Amended and Restated 1994 Stock Incentive Plan; GreenPoint Financial Corp. 2001 Stock Plan; GreenPoint Financial Corp. Non-Employee Directors Stock Option Plan; GreenPoint Financial Corp. Non-Employee Directors 2001 Stock Option Plan; North Fork Bancorporation, Inc. 2004 Outside Directors Stock in Lieu of Fees Plan; GreenPoint Bank 1993 Directors' Deferred Fee Stock Unit Plan; North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan; The Trust Company of New Jersey's 1993 Incentive Stock Option Plan, as amended; and The Trust Company of New Jersey 2002 Stock Option Plan (the "Plans")**  
(Full Title of the Plan[s])

**John G. Finneran, Jr., Esq.**  
**Executive Vice President, General Counsel and Corporate Secretary**  
**1680 Capital One Drive**  
**McLean, Virginia**  
**(703) 720-1000**  
(Name, Address, and Telephone Number, Including Area Code, of Agent for Service)

*with a copy to:*  
**Victor I. Lewkow, Esq. and Christopher E. Austin, Esq.**  
**Cleary Gottlieb Steen & Hamilton LLP**  
**One Liberty Plaza**  
**New York, NY 10006**  
**(212) 225-2000**

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be registered	Amount to Be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.01 per share (1)	14,915,236(2)	(3)	(3)	(3)

(1) Includes the preferred share purchase rights associated with the Common Stock of Capital One Financial Corporation (the "Registrant").

- (2) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Act"), includes such additional number of shares as may be issued pursuant to the anti-dilution provisions of the Plans and, pursuant to Rule 416(c) under the Act, an indeterminate amount of interests to be offered or sold pursuant to the North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan.
  - (3) This Post-Effective Amendment No. 2 covers securities that were originally registered on the Registrant's registration statement on Form S-4 (File No. 333-13365), as amended by Amendment No. 1, Amendment No. 2 and Amendment No. 3 to Form S-4 registration statement. All filing fees payable in connection with the issuance of these securities were previously paid in connection with the filing of the Form S-4 registration statement.
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**PART I**  
**INTRODUCTION**

This Post-Effective Amendment No. 1 on Form S-8 to the Form S-4 registration statement is filed by the Registrant, and relates to a total of 14,925,761 shares of Common Stock of the Registrant, all of which were originally registered by the Registrant on the Form S-4 registration statement filed on May 1, 2006, as amended by Amendment No. 1 to the Form S-4 registration statement filed by the Registrant on June 8, 2006, Amendment No. 2 to the Form S-4 registration statement filed by the Registrant on June 29, 2006 and Amendment No. 3 to the Form S-4 registration statement filed by the Registrant on July 7, 2006 and which became effective on July 7, 2006.

In connection with the merger on December 1, 2006 of North Fork Bancorporation, Inc. (“North Fork”) with and into the Registrant pursuant to the Agreement and Plan of Merger, dated as of March 12, 2006, between North Fork and the Registrant (the “Merger”), shares of the common stock of North Fork, par value \$0.01 per share (the “North Fork Common Stock”), issuable upon the exercise or settlement of options, restricted shares, restricted units and other equity awards granted under the North Fork Bancorporation, Inc. 1999 Stock Compensation Plan, the North Fork Bancorporation, Inc. 1998 Stock Compensation Plan, the North Fork Bancorporation, Inc. 1997 Non-Officer Stock Plan, the North Fork Bancorporation, Inc. New Employee Stock Compensation Plan, the North Fork Bancorporation, Inc. 2003 Stock Compensation Plan, the JSB Financial, Inc. 1996 Stock Option Plan, the Reliance Bancorp, Inc. 1996 Amended and Restated Incentive Stock Option Plan, the GreenPoint Financial Corp. 1999 Stock Incentive Plan, the Headlands Mortgage Company 1997 Executive and Non-Employee Director Stock Plan, the GreenPoint Financial Corp. Amended and Restated 1994 Stock Incentive Plan, the GreenPoint Financial Corp. 2001 Stock Plan, the GreenPoint Financial Corp. Non-Employee Directors Stock Option Plan, the GreenPoint Financial Corp. Non-Employee Directors 2001 Stock Option Plan, The Trust Company of New Jersey’s 1993 Incentive Stock Option Plan, as amended, and The Trust Company of New Jersey 2002 Stock Option Plan have been converted into corresponding awards covering the Common Stock of the Registrant. In addition, in connection with the Merger, the North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan was amended to permit participants to purchase shares of Common Stock of the Registrant rather than shares of North Fork Common Stock.

**Part II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents, which previously have been filed by the Registrant with the Securities and Exchange Commission (the "Commission"), are incorporated herein by reference and made a part hereof:

(i) The Registrant's Annual Report on Form 10-K, for the fiscal year ended December 31, 2005, filed with the Commission on March 2, 2006, as amended by the Forms 10-K/A filed with the Commission by the Registrant on April 12, 2006;

(ii) The Registrant's Quarterly Reports on Form 10-Q, for the fiscal quarters ended March 31, 2006 and June 30, 2006 and September 30, 2006, filed with the Commission on May 5, 2006, August 7, 2006 and November 3 2006, respectively;

(iii) The Registrant's Current Reports on Form 8-K, filed with the Commission on January 9, 2006, January 19, 2006, February 16, 2006, March 13, 2006, March 16, 2006, April 20, 2006, May 3, 2006, May 12, 2006, May 16, 2006, May 19, 2006, June 12, 2006, July 20, 2006, August 4, 2006, August 8, 2006, August 22, 2006, August 31, 2006, September 18, 2006, October 2, 2006, October 18, 2006, November 9, 2006 and December 1, 2006 (other than the portions of these documents not deemed to be filed);

(iv) The description of the Registrant's Common Stock set forth in the Registrant's registration statement on Form 8-A, filed with the Commission on April 17, 2002 and in Exhibit 4.2.2 to the Registrant's Annual Report on Form 10-K/A for fiscal year ending December 31, 1999, filed with the Commission on March 22, 2000, including any amendment or report filed for the purposes of updating such descriptions;

(v) The Annual Report on Form 11-K of the North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan for the fiscal year ended December 31, 2005, filed with the Commission on June 28, 2006 (File No. 001-10458); and

(vi) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act of 1934, as amended (the "Exchange Act"), since the end of the fiscal year covered by the registration document referred to in (i) above.

All reports and other documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment hereto, which indicates that all securities offered hereunder have been sold or which deregisters all securities remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

For purposes of this Registration Statement, any document or any statement contained in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded to the extent that a subsequently filed document or a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated herein by reference modifies or supersedes such document or such statement in such document. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 4. Description of Securities.**

**Not applicable**

**Item 5. Interests of Named Experts and Counsel.**

**Not applicable**

**Item 6. Indemnification of Directors and Officers.**

Section 145(a) of the General Corporation Law of the State of Delaware (the “Delaware Corporation Law”) provides, in general, that a corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), because the person is or was a director or officer of the corporation. Such indemnity may be against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and if, with respect to any criminal action or proceeding, the person did not have reasonable cause to believe the person’s conduct was unlawful.

Section 145(b) of the Delaware Corporation Law provides, in general, that a corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor because the person is or was a director or officer of the corporation, against any expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145(g) of the Delaware Corporation Law provides, in general, that a corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation against any liability asserted against the person in any such capacity, or arising out of the person’s status as such, whether or not the corporation would have the power to indemnify the person against such liability under the provisions of the law.

Article XI of Capital One Financial Corporation’s Restated Certificate of Incorporation, as amended, and Section 6.7 of Capital One Financial Corporation’s Bylaws provide, in general, for mandatory indemnification of directors and officers to the extent permitted by law, against liability incurred by them in proceedings instituted or threatened against them by third parties, or by or on behalf of Capital One Financial Corporation itself, relating to the manner in which they performed their duties unless they have been guilty of willful misconduct or of a knowing violation of the criminal law.

For the undertaking with respect to indemnification, see Item 9 below.

**Item 7. Exemption From Registration Claimed.**

**Not applicable**

**Item 8. Exhibits.**

The Exhibits to this Registration Statement are listed in the Exhibit Index beginning on page E-1 of this Registration Statement, which Index is incorporated herein by reference.

The Registrant or North Fork will submit or has submitted the North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan, as amended and restated and all amendments thereto, to the Internal Revenue Service ("IRS") in a timely manner and will make or has made all changes required by the IRS to qualify such plan.

**Item 9. Undertakings.**

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of the employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Post-Effective Amendment on Form S-8 to the Registrant's registration statement filed on Form S-4, as amended, to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of McLean, Commonwealth of Virginia on the 6th day of December, 2006.

**CAPITAL ONE FINANCIAL CORPORATION**

By: /s/ Frank R. Borchert, III  
Name: Frank R. Borchert, III  
Title: Senior Vice President, Deputy General  
Counsel and Assistant Secretary

Pursuant to the requirements of the Securities Act of 1933, this Post Effective Amendment on Form S-8 to the Registrant's registration statement filed on Form S-4, as amended, has been signed below by the following persons in the capacities indicated on the 6th day of December, 2006.

<u>Signature</u>	<u>Title</u>
*	
Richard D. Fairbank	Director, Chairman, Chief Executive Officer and President (Principal Executive Officer)
*	
Gary L. Perlin	Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)
*	
Edward R. "Bo" Campbell	Director
*	
W. Ronald Dietz	Director
*	
Patrick W. Gross	Director
*	
Anne Fritz Hackett	Director
*	
Lewis Hay, III	Director
*	
Pierre E. Leroy	Director



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Mayo A. Shattuck, III

Director

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Stanley Westreich

Director

\*By: /s/ Frank R. Borchert, III

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Frank R. Borchert, III

Attorney-in-Fact

North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan

Pursuant to the requirements of the Securities Act of 1933, the trustees (or other persons who administer the employee benefit plan) have duly caused this Post Effective Amendment on Form S-8 to the Registrant's registration statement filed on Form S-4, as amended, to be signed on its behalf, thereunto duly authorized, in the City of Melville, New York on this 6th day of December, 2006.

North Fork Bancorporation, Inc. 401(k) Retirement  
Savings Plan

By: /s/ Aurelie S. Campbell

Name: Aurelie S. Campbell

Title: Vice President

## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>	<u>Method of Filing</u>
4.1	Restated Certificate of Incorporation of Capital One Financial Corporation and Certificate of Amendment to Restated Certificate of Incorporation of Capital One Financial Corporation	Incorporated herein by reference to Exhibits 3.1.1 and 3.1.2 of the Registrant's Current Report on Form 8-K, filed January 16, 2001
4.2	Amended and restated By-laws of Capital One Financial Corporation (as amended on November 18, 1999)	Incorporated herein by reference to Exhibit 3.2 to the Registrant's Annual Report on Form 10-K/A for the fiscal year ended December 31, 1999, filed on March 22, 2000
4.3	North Fork Bancorporation, Inc. 1999 Stock Compensation Plan	Filed herewith
4.4	North Fork Bancorporation, Inc. 1998 Stock Compensation Plan	Filed herewith
4.5	North Fork Bancorporation, Inc. 1997 Non-Officer Stock Plan	Filed herewith
4.6	North Fork Bancorporation, Inc. New Employee Stock Compensation Plan	Filed herewith
4.7	North Fork Bancorporation, Inc. 2003 Stock Compensation Plan	Filed herewith
4.8	JSB Financial, Inc. 1996 Stock Option Plan	Filed herewith
4.9	Reliance Bancorp, Inc. Amended and Restated 1996 Incentive Stock Option Plan	Filed herewith
4.10	GreenPoint Financial Corp. 1999 Stock Incentive Plan	Filed herewith
4.11	Headlands Mortgage Company 1997 Executive and Non-Employee Director Stock Plan	Filed herewith
4.12	GreenPoint Financial Corp. Amended and Restated 1994 Stock Incentive Plan	Filed herewith
4.13	GreenPoint Financial Corp. 2001 Stock Plan;	Filed herewith
4.14	GreenPoint Financial Corp. Non-Employee Directors Stock Option Plan	Filed herewith

4.15	GreenPoint Financial Corp. Non-Employee Directors 2001 Stock Option Plan	Filed herewith
4.16	The Trust Company of New Jersey's 1993 Incentive Stock Option Plan, as amended	Filed herewith
4.17	The Trust Company of New Jersey 2002 Stock Option Plan	Filed herewith
4.18	North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan	Filed herewith
4.19	Amendment Number Four to the North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan	Filed herewith
4.20	Amendment Number Five to the North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan	Filed herewith
4.21	Amendment Number Six to the North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan	Filed herewith
4.22	Amendment Number Seven to the North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan	Filed herewith
5.1	Opinion of Cleary Gottlieb Steen & Hamilton LLP regarding the validity of the Registrant's common shares registered hereunder	Incorporated by reference to Exhibit 5.1 to Amendment No. 3 to the Registrant's Registration Statement filed on Form S-4 on July 7, 2006.
8.1	Opinion of Wachtell, Lipton, Rosen & Katz	Filed herewith
23.1	Consent of Ernst & Young LLP, Independent Auditors	Filed herewith
23.2	Consent of KPMG LLP, Independent Auditors for the North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan	Filed herewith
23.3	Consent of Cleary Gottlieb Steen & Hamilton LLP	Filed herewith
24.1	Powers of Attorney	Incorporated by reference to the signature page of the Registrant's Registration Statement on Form S-4 filed May 1, 2006

**NORTH FORK BANCORPORATION, INC.  
1999 STOCK COMPENSATION PLAN**

**Section 1. Establishment and Purpose**

North Fork Bancorporation, Inc. (the "Company") hereby establishes a long term incentive plan to be named the North Fork Bancorporation, Inc. 1999 Stock Compensation Plan (the "Plan"), for employees of the Company and its subsidiaries. The purpose of this Plan is to encourage those employees who are given awards by the committee administering the Plan to acquire and maintain an interest in the Common Stock of the Company and thus to have additional incentive to continue to work for the success of the Company and its subsidiaries.

**Section 2. Definitions**

Whenever used herein, the following terms shall have the respective meanings set forth below:

- (a) **Award** means any Option or Restricted Stock or right to receive either granted under the Plan.
- (b) **Award Agreement** means the written agreement evidencing an Award under the Plan, which shall be executed by the Company and the Award Holder. Award Holder shall mean the Employee or other eligible individual designated to receive an Award under the Plan or any permitted transferee of such Award.
- (c) **Board** means the Board of Directors of the Company.
- (d) **Code** means the Internal Revenue Code of 1986, as amended and in effect from time to time.
- (e) **Committee** means the Stock and Compensation Committee of the Board, or any successor to such Committee, the members of which shall be elected by the Board.
- (f) **Company** means North Fork Bancorporation, Inc., a Delaware corporation.
- (g) **Employee** means a salaried employee (including officers and directors who are also employees) of the Company or any Subsidiary.
- (h) **Exchange Act** means the Securities Exchange Act of 1934, as amended.
- (i) **Exercise Price** of an Option means a price fixed by the Committee upon grant of the Option as the purchase price for Stock under the Option, as such may be adjusted under Section 10 of the Plan.

- (j) **Fair Market Value** means, for any particular day, (i) for any period during which the Stock shall be listed for trading on a national securities exchange, the average of the high and low price per share of Stock on such exchange on such day, (ii) for any period during which the Stock shall not be listed for trading on a national securities exchange, but when prices for the Stock shall be reported by the National Market System of the National Association of Securities Dealers Automated Quotation System (“NASDAQ”), the average of the high and low transaction price per share as quoted by the National Market System of NASDAQ for such day, (iii) for any period during which the Stock shall not be listed for trading on a national securities exchange or its price reported by the National Market System of NASDAQ, but when prices for the Stock shall be reported by NASDAQ, the average of the high and low bid price per share as reported by NASDAQ for such day, or (iv) in the event none of (i), (ii) and (iii) above shall be applicable, the fair market price per share of Stock for such day as determined by the Board of Directors. If Fair Market Value is to be determined as of a day when the securities markets are not open, the Fair Market Value on that day shall be the Fair Market Value on the nearest preceding day when the markets were open.
- (k) **Option** means the right to purchase Stock at the Exercise Price for a specified period of time and subject to specified conditions. For purposes of the Plan, all Options shall be so-called nonqualified (or nonstatutory) stock options, not qualifying as “incentive stock options” under Section 422 of the Code.
- (l) **Original Issue Shares** means shares of Stock authorized for issuance but unissued by the Company.
- (m) **Period of Restriction** means the period during which Restricted Stock is subject to forfeiture under Section 9 of the Plan.
- (n) **Reporting Person** means a person subject to Section 16 of the Exchange Act.
- (o) **Restricted Stock** means shares of Stock awarded under the Plan that are subject to certain risks of forfeiture during a Period of Restriction, as provided in Section 9 of the Plan, and which cease to be shares of Restricted Stock upon expiration of the Period of Restriction.
- (p) **Rule 16b-3** means Rule 16b-3 promulgated by the Securities and Exchange Commission pursuant to the Exchange Act, or any successor regulation.
- (q) **Stock** means the Common Stock of the Company.
- (r) **Subsidiary** means a subsidiary corporation of the Company as defined in Section 424(f) of the Code.
- (s) **Taxable Event** means an event relating to an Award granted under the Plan which requires federal, state or local tax to be withheld by the Company or a Subsidiary.

- (t) **Terminated for Cause** means, (i) for Employees serving under an employment agreement containing a provision for termination of employment for “cause,” termination of employment of the Employee for “cause” pursuant to such provision, and (ii) for other Employees, termination of employment of the Employee by a two-thirds vote of the entire Board of Directors of the Company or the Subsidiary employing such Employee, expressly for one or both of the following “causes,” as evidenced in a certified resolution of the Board: (A) any willful misconduct by the Employee which is materially injurious to the Company or the Subsidiary, monetarily or otherwise; or (B) conviction of the Employee with no further possibility of appeal of any felony under applicable state or federal banking or financial institution laws, or the agreement of the Employee to plead guilty to any such felony.
- (u) **Treasury Shares** means shares of Stock previously issued but currently held by the Company in the treasury.

### Section 3. Administration

The Plan will be administered by the Committee. The determinations of the Committee shall be made in accordance with its judgment as to the best interests of the Company and its stockholders and in accordance with the purposes of the Plan. Notwithstanding the foregoing, the Committee in its discretion may delegate to the President or other appropriate officers of the Company or any Subsidiary the authority to make any or all determinations under the Plan (including the decision to grant Awards and types of Awards granted) with respect and only with respect to persons receiving Awards or Award Holders (other than the delegates) who are not Reporting Persons, notwithstanding the fact that the delegates may themselves be persons eligible to receive Awards under the Plan and/or Reporting Persons. A majority of members of the Committee shall constitute a quorum, and all determinations of the Committee shall be made by a majority of its members. Any determination of the Committee under the Plan may be made without notice or meeting of the Committee, and all actions made or taken by the Committee pursuant to the provisions of the Plan shall be final, binding and conclusive for all purposes and upon all persons.

### Section 4. Shares Authorized for Awards

(a) The maximum number of Original Issue Shares available for Awards under the Plan is 4,000,000 shares and there is hereby reserved on the books of the Company for issuance under the Plan out of authorized but unissued shares an aggregate of 4,000,000 shares of Stock.

(b) In addition to the authorized Original Issue Shares referred to in subparagraph (a), above, up to 1,000,000 Treasury Shares may be issued from time to time pursuant to Awards granted under the Plan without thereby diminishing the number of Original Issue Shares authorized for issuance under the Plan. Treasury Shares in excess of 1,000,000 also may be issued pursuant to Awards granted under the Plan, provided that in the event of any such issuance of excess Treasury Shares, the number of Original Issue Shares remaining available for issuance under the Plan (and the number of shares of Stock reserved on the books of the Company for such issuance) shall be reduced pari passu, with a reduction of one share of

available Original Issue Shares for each share of excess Treasury Shares thus issued, and provided further that no excess Treasury Shares may be issued if there are no remaining Original Issue Shares available for Awards granted under the Plan.

(c) The maximum number of shares of Stock that may be awarded under the Plan in the form of Restricted Stock, whether issued as Treasury Shares, excess Treasury Shares or Original Issue Shares, shall be 3,300,000.

(d) For purposes of determining from time to time the number of shares available for Awards under the Plan, shares of Stock underlying outstanding but unexercised Options previously granted under the Plan shall be deemed Original Issue Shares, except in the event and to the extent that the Award Agreements for any such unexercised Options may specifically provide that shares issuable upon exercise of such Options must be Treasury Shares. Shares actually issued by the Company upon exercise of any Option granted under the Plan may be Original Issue Shares or Treasury Shares as the Committee may determine in its discretion from time to time, unless the relevant Award Agreement specifies that the shares of Stock issuable upon exercise thereof shall be Original Issue Shares or Treasury Shares.

(e) Upon termination or cancellation of outstanding unexercised Options previously granted under the Plan, the shares of Stock underlying such Options shall be returned to the Plan as Original Issue Shares available for future grants of Awards thereunder, provided that, if the Award Agreement pertaining to any such terminated or cancelled Option specifies that shares of Stock issuable upon exercise thereof shall be Treasury Shares, upon termination or cancellation of such Option the underlying shares shall be returned to the Plan as available Treasury Shares.

(f) If payment of the Exercise Price of any Option granted under the Plan is satisfied, upon exercise of such Option, by a deemed surrender to the Company by the Holder of shares of Stock previously owned by the party exercising the Option, the number of shares of Stock deemed surrendered shall be returned to the Plan as Original Issue Shares available for future grants of Awards thereunder. If payment of the Exercise Price of any such Option is satisfied upon exercise by an actual surrender of shares of Stock previously owned by the party exercising the Option, such number of shares actually surrendered shall be returned to the Plan as Treasury Shares available for future grants of Awards thereunder.

(g) If shares of Restricted Stock granted under the Plan are forfeited prior to the vesting thereof, the number of shares of Restricted Stock thus forfeited shall be returned to the Plan as Treasury Shares available for future grants of Awards thereunder, regardless of whether such shares of Restricted Stock, when initially awarded to the forfeiting Holder, were Treasury Shares, excess Treasury Shares or Original Issue Shares. Such returned Treasury Shares may be the subject of and issued pursuant to future Plan Awards without regard to the numerical limitations of subparagraph (b), above, and shall not be treated upon issuance as excess Treasury Shares under subparagraph (b), regardless of the number of Treasury Shares previously awarded under the Plan.



## **Section 5. Recipients of Awards**

(a) Any Employee of the Company or any Subsidiary of the Company will be eligible to receive one or more Awards under the Plan if the Committee determines in its sole discretion that the job performance of such Employee is likely to be significantly enhanced by the latter's receipt of such Awards. Designation of an Employee as a Participant to receive an Award in any year shall not require the Committee to designate such Employee to receive an Award in any other year or to designate any other Employee to receive an Award in such year or any other year. The Committee shall consider such factors as it deems pertinent in selecting Employees to receive Awards and determining the type and amount of their respective Awards.

(b) The Committee in its discretion may grant one or more Awards to an individual, in connection with the hiring or potential hiring of such individual by the Company or any Subsidiary, prior to the date the latter becomes an Employee and first performs services for the Company or such Subsidiary, provided that no such Award shall become vested or exercisable prior to a date established by the Committee upon grant, which date shall not be earlier than the day 60 days after the date on which the individual first becomes an Employee of the Company or such Subsidiary.

(c) The Committee may grant one or more Awards to any consultant, advisor or other person providing key services to the Company or a Subsidiary, but only to the extent such grant does not prohibit the Company from using a registration statement on Form S-8, or any successor form, to register with the Securities and Exchange Commission the shares of Stock authorized under the Plan.

(d) No individual may receive under the Plan Awards relating to more than 1,250,000 shares of Stock in the aggregate, as adjusted from time to time in accordance with Section 10 of the Plan.

## **Section 6. Types of Awards**

The following Awards, and rights thereto, may be granted under the Plan in any proportion: Options and Restricted Stock, as further described below. Except as specifically limited elsewhere in this Plan, the Committee shall have complete discretion in determining the type and number of Awards to be granted to any eligible person and, subject to the provisions of the Plan, the terms and conditions of each Award, which terms and conditions need not be uniform as among different recipients of Awards or different Awards of the same general type. Each Award shall be evidenced by an Award Agreement, as provided in Section 7 of the Plan. From time to time, as the Committee deems appropriate and in the best long-term interests of the Company and its stockholders, the Committee may elect to modify or waive one or more terms or conditions of an outstanding Award previously granted under the Plan, provided that (i) no such modification or waiver shall give the holder of any other Award granted under the Plan any right to a similar modification or waiver, (ii) no such modification or waiver of an Award shall involve a change in the number of shares subject to the Award or a change in the Exercise Price of an Option or the purchase price, if any, of Restricted Stock which is the subject of the Award, and (iii) any such modification or waiver which is adverse or arguably adverse to the interests of the Award Holder shall not be effective unless and until the Award Holder shall consent thereto in writing.

## Section 7. Award Agreements

As soon as practicable after the grant of an Award, the Company shall notify the recipient of such grant and thereafter shall hand deliver or mail to the recipient an Award Agreement, duly executed by and on behalf of the Company, with the request that the recipient execute the Agreement within 30 days after the date of mailing or delivery by the Company and return the same to the Company. The date of execution and return of the Award Agreement shall not necessarily be or affect the date of grant of the Award, which may precede such date of execution and return, as the Committee may determine. If the recipient shall fail to execute and return to the Company the Award Agreement within said 30-day period, the Committee may elect to treat the Award as void and never granted. If an Award granted under the Plan is eligible for transfer and the subject of a proposed eligible transfer, no such transfer shall be or become effective until and unless the permitted transferee shall have duly executed and returned to the Company an Award Agreement in a form acceptable to the Committee.

## Section 8. Stock Options

(a) Options shall consist of Options to purchase shares of Stock at an Exercise Price established by the Committee upon grant, which Exercise Price shall not be less than, but may be more than, 100 percent of the Fair Market Value of the Stock on the date of grant.

(b) The Committee shall establish upon grant the period of time during which an Option will be exercisable by the Award Holder, provided that no Option shall continue to be exercisable, in whole or in part, later than ten years after the date of grant. Subject to these limitations, the Committee may provide, upon grant of an Option, that full exercisability will be phased in and/or phased out over some designated period of time. The Committee also may provide upon grant that exercisability of an Option will be accelerated, to the extent such Option is not already then exercisable, upon the subsequent occurrence of a "change in control" of the Company, as defined by the Committee, or such other occurrence as the Committee may specify. Generally, exercisability of an Option granted to an Employee also shall be conditioned upon continuity of employment by the original recipient of the Award with the Company and its Subsidiaries, provided that, if the Committee so provides upon grant, exercisability of such an Option may continue for some designated period of time after termination of employment, within the following limitations: (i) if employment is terminated other than due to the death of the original recipient, exercisability may be extended to not more than one year after termination; and (ii) if employment is terminated due to the death of the original recipient, exercisability may be extended to the normal end of the exercise period. However, in no event may any Option continue to be exercisable more than ten years after the date of grant. In addition, no Option granted to an Employee may be exercisable after Termination for Cause of such Employee. Leaves of absence granted by the Company for military service or illness and transfers of employment between the Company and any Subsidiary shall not constitute termination of employment.

(c) Upon exercise of an Option, in whole or in part, the Exercise Price with respect to the number of shares as to which the Option is then being exercised may be paid by check or, if the Award Holder so elects and the Committee shall have authorized such form of payment, in whole or in part by surrender to the Company of shares of Stock owned prior to exercise by the Award Holder. Any previously-owned shares of Stock to be used in full or partial payment of the Exercise Price shall be valued at the Fair Market Value of the Stock on the date of exercise. In lieu of the actual surrender of shares of Stock by the Award Holder to the Company in any such stock-for-stock exercise, the Award Holder may, with the consent of the Committee, in lieu of surrendering some number of previously-owned shares of Stock, affirm to the Company the Award Holder's ownership of such number of shares, in which event the Company, upon its delivery of the shares of Stock as to which the Option is being exercised, deduct from the number of shares otherwise deliverable the number of shares affirmed but not surrendered by the Award Holder. Delivery by the Company of shares of Stock upon exercise of an Option shall be made to the person exercising the Option or the designee of such person subject to such terms, conditions, restrictions and contingencies as the Committee may provide in the Award Agreement. If so provided by the Committee upon grant of the Option, the shares delivered upon exercise may be subject to certain restrictions upon subsequent transfer or sale by the Award Holder.

(d) The Committee may require reasonable advance notice of exercise of an Option, normally not to exceed three calendar days, and may condition exercise of an Option upon the availability of an effective registration statement or exemption from registration under applicable federal and state securities laws relating to the Stock being issued upon exercise.

#### **Section 9. Restricted Stock**

(a) Restricted Stock shall consist of Stock or rights to Stock awarded under the Plan by the Committee which, during a Period of Restriction specified by the Committee upon grant, shall be subject to forfeiture by the Award Holder to the Company if the recipient ceases to be employed by the Company and its Subsidiaries prior to the lapse of such restrictions. Restricted Stock normally will not be transferable or assignable during the Period of Restriction. Restricted Stock may be granted at no cost to Participants or, if subject to a purchase price, such price shall not exceed the par value of the Stock and may be payable by the recipient to the Company in cash or by any other means, including recognition of past employment, as the Committee deems appropriate. The Committee may provide upon grant of an Award of Restricted Stock that any shares of Restricted Stock as may be purchased by the recipient thereunder and subsequently forfeited by the recipient prior to expiration of the Period of Restriction shall be reacquired by the Company at the purchase price originally paid in cash by the recipient therefor.

(b) The minimum Period of Restriction for Restricted Stock shall be three years from the date of grant of the Award. The Committee may provide upon grant of an Award of Restricted Stock that different numbers or portions of the shares subject to the Award shall have different Periods of Restriction. The Committee also may establish upon grant of an Award of Restricted Stock that some or all of the shares subject thereto shall be subject to additional restrictions upon transfer or sale (although not to forfeiture) after expiration of the Period of Restriction.

(c) The Award Holder of Restricted Stock shall be entitled to all dividends declared and paid on Stock generally with respect to all shares of Restricted Stock held thereby, from and after the date of grant of such Award, or from and after such later date or dates as may be specified by the Committee in the Award, and the Award Holder shall not be required to return any such dividends to the Company in the event of forfeiture of the Restricted Stock.

(d) The Award Holder of Restricted Stock shall be entitled to vote all shares of Restricted Stock held thereby from and after the date of grant of such Award, or from and after such later date or dates as may be specified by the Committee in the Award.

(e) Pending expiration of the Period of Restriction, certificates representing shares of Restricted Stock shall be held by the Company or the transfer agent for the Stock. Upon expiration of the Period of Restriction for any such shares, certificates representing such shall be delivered to the Award Holder or the permitted transferee, assignee or beneficiary thereof.

#### **Section 10. Adjustment Provisions**

(a) If the Company shall at any time change the number of issued shares of Stock without new consideration to the Company (such as by a stock dividend or stock split), the total number of shares reserved for issuance under the Plan, the maximum number of shares available for issuance as Restricted Stock, the maximum number of shares available for Award of Options to any individual under the Plan and the number of shares (and, in the case of Options, the Exercise Price) covered by each outstanding Award shall be adjusted so that the aggregate consideration payable to the Company, if any, and the value of each such Award to the Award Holder shall not be changed. Awards may also contain provisions for their continuation or for other equitable adjustments after changes in the Stock resulting from reorganization, sale, merger, consolidation, issuance of stock rights or warrants or similar occurrence.

(b) Notwithstanding any other provision of this Plan, and without affecting the number of shares reserved or available for issuance hereunder, the Board of Directors shall use best efforts to authorize the issuance or assumption of benefits under the Plan in connection with any merger, consolidation, acquisition of property or stock, or reorganization involving the liquidation, discontinuation, merger out of existence or fundamental corporate restructuring of the Company, upon such terms and conditions as it may deem appropriate.

#### **Section 11. Transfers of Awards**

Subject to any overriding restrictions and conditions as may be established from time to time by the Board of Directors, the Committee may determine that any Award granted under the Plan may be transferable, in the case of an Option, prior to exercise thereof, and in the case of Restricted Stock, prior to expiration of the Period of Restriction therefor, under such terms and conditions as the Committee may specify. Unless the Committee shall specifically determine that an Award is thus transferable by the original recipient thereof, each Award granted under the Plan shall not be transferable by the original recipient thereof, otherwise than by will or the laws of descent and distribution, and shall be exercisable, during the recipient's lifetime, only by the recipient. In the event of the death of an Award Holder holding an unexercised Option, exercise of the Option may be made only by the executor or administrator of the estate of the Award

Holder or the person or persons to whom the deceased Award Holder's rights under the Option shall pass by will or the laws of descent and distribution, and such exercise may be made only to the extent that the deceased Award Holder was entitled to exercise such Option at the date of death. If and to the extent the Committee shall so provide upon grant, the Period of Restriction for Restricted Stock may be foreshortened upon the death of the Award Holder during the Period of Restriction, such that the Stock shall be deemed not to be forfeited and no longer to be Restricted Stock as of the date of death.

#### **Section 12. Taxes**

The Company shall be entitled to withhold, and shall withhold, the minimum amount of any federal, state or local tax attributable to any shares deliverable under the Plan, whether upon exercise of an Option or expiration of a Period of Restriction for Restricted Stock or occurrence of any other Taxable Event, after giving the person entitled to receive such delivery notice as far in advance of the Taxable Event as practicable, and the Company may defer making delivery as to any Award, if any such tax is payable, until indemnified to its satisfaction. Such withholding obligation of the Company may be satisfied by any reasonable method, including, if the Committee so provides upon grant of the Award, reducing the number of shares otherwise deliverable to or on behalf of the Award Holder on such Taxable Event by a number of shares of Stock having a fair value, based on the Fair Market Value of the Stock on the date of such Taxable Event, equal to the amount of such withholding obligation.

#### **Section 13. No Right to Employment**

An Employee's right, if any, to continue to serve the Company and any Subsidiary as an officer, employee or otherwise shall not be enhanced or otherwise affected by the designation of such Employee as a recipient of an Award under the Plan.

#### **Section 14. Duration, Amendment and Termination**

No Award shall be granted under the Plan on or after the date which is the tenth anniversary date of the adoption by the Committee or the Board of this Plan. The Committee or the Board may amend the Plan from time to time or terminate the Plan at any time. By mutual agreement between the Company and an Award Holder, one or more Awards may be granted to such Award Holder in substitution and exchange for, and in cancellation of, any certain Awards previously granted such Award Holder under the Plan, provided that any such substitution Award shall be deemed a new Award for purposes of calculating any applicable exercise period for Options or Period of Restriction for Restricted Stock. To the extent that any Awards which may be granted within the terms of the Plan would qualify under present or future laws for tax treatment that is beneficial to an Award Holder, any such beneficial treatment shall be considered within the intent, purpose and operational purview of the Plan and the discretion of the Committee, and to the extent that any such Awards would so qualify within the terms of the Plan, the Committee shall have full and complete authority to grant Awards that so qualify (including the authority to grant, simultaneously or otherwise, Awards which do not so qualify) and to prescribe the terms and conditions (which need not be identical as among recipients) in respect to the grant or exercise of any such Awards under the Plan.

## Section 15. Miscellaneous Provisions

(a) **Naming of Beneficiaries.** In connection with an Award, an Award Holder may name one or more beneficiaries to receive the Award Holder's benefits, to the extent permissible pursuant to the various provisions of the Plan, in the event of the death of the Award Holder.

(b) **Successors.** All obligations of the Company under the Plan with respect to Awards issued hereunder shall be binding on any successor to the Company.

(c) **Governing Law.** The provisions of the Plan and all Award Agreements under the Plan shall be construed in accordance with, and governed by, the laws of the State of Delaware without reference to conflict of laws provisions, except insofar as any such provisions may be expressly made subject to the laws of any other state or federal law.

This Plan supersedes in its entirety the form of this Plan included as Exhibit 10.12 to the Company's Annual Report on Form 10-K as filed with the Securities and Exchange Commission on March 30, 2000.

Dated January 31, 2000

**NORTH FORK BANCORPORATION, INC.**  
**1998 STOCK COMPENSATION PLAN**  
**(revised 12/13/99)**

**Section 1. Establishment and Purpose**

North Fork Bancorporation, Inc. (the "Company") hereby establishes a long term incentive plan to be named the North Fork Bancorporation, Inc. 1998 Stock Compensation Plan (the "Plan"), for employees of the Company and its subsidiaries. The purpose of this Plan is to encourage those employees who are given awards by the committee administering the Plan to acquire and maintain an interest in the Common Stock of the Company and thus to have additional incentive to continue to work for the success of the Company and its subsidiaries.

**Section 2. Definitions**

Whenever used herein, the following terms shall have the respective meanings set forth below:

- (a) **Award** means any Option or Restricted Stock or right to receive either granted under the Plan.
- (b) **Award Agreement** means the written agreement evidencing an Award under the Plan, which shall be executed by the Company and the Award Holder. Award Holder shall mean the Employee or other eligible individual designated to receive an Award under the Plan or any permitted transferee of such Award.
- (c) **Board** means the Board of Directors of the Company.
- (d) **Code** means the Internal Revenue Code of 1986, as amended and in effect from time to time.
- (e) **Committee** means the Stock and Compensation Committee of the Board, or any successor to such Committee, the members of which shall be elected by the Board.
- (f) **Company** means North Fork Bancorporation, Inc., a Delaware corporation.
- (g) **Employee** means a salaried employee (including officers and directors who are also employees) of the Company or any Subsidiary.
- (h) **Exchange Act** means the Securities Exchange Act of 1934, as amended.
- (i) **Exercise Price** of an Option means a price fixed by the Committee upon grant of the Option as the purchase price for Stock under the Option, as such may be adjusted under Section 10 of the Plan.
- (j) **Fair Market Value** means, for any particular day, (i) for any period during which the Stock shall be listed for trading on a national securities exchange, the average

of the high and low price per share of Stock on such exchange on such day, (ii) for any period during which the Stock shall not be listed for trading on a national securities exchange, but when prices for the Stock shall be reported by the National Market System of the National Association of Securities Dealers Automated Quotation System (“NASDAQ”), the average of the high and low transaction price per share as quoted by the National Market System of NASDAQ for such day, (iii) for any period during which the Stock shall not be listed for trading on a national securities exchange or its price reported by the National Market System of NASDAQ, but when prices for the Stock shall be reported by NASDAQ, the average of the high and low bid price per share as reported by NASDAQ for such day, or (iv) in the event none of (i), (ii) and (iii) above shall be applicable, the fair market price per share of Stock for such day as determined by the Board of Directors. If Fair Market Value is to be determined as of a day when the securities markets are not open, the Fair Market Value on that day shall be the Fair Market Value on the nearest preceding day when the markets were open.

- (k) **Option** means the right to purchase Stock at the Exercise Price for a specified period of time and subject to specified conditions. For purposes of the Plan, all Options shall be so-called nonqualified (or nonstatutory) stock options, not qualifying as “incentive stock options” under Section 422 of the Code.
- (l) **Period of Restriction** means the period during which Restricted Stock is subject to forfeiture under Section 9 of the Plan.
- (m) **Reporting Person** means a person subject to Section 16 of the Exchange Act.
- (n) **Restricted Stock** means shares of Stock awarded under the Plan that are subject to certain risks of forfeiture during a Period of Restriction, as provided in Section 9 of the Plan, and which cease to be shares of Restricted Stock upon expiration of the Period of Restriction.
- (o) **Rule 16b-3** means Rule 16b-3 promulgated by the Securities and Exchange Commission pursuant to the Exchange Act, or any successor regulation.
- (p) **Stock** means the Common Stock of the Company.
- (q) **Subsidiary** means a subsidiary corporation of the Company as defined in Section 424(f) of the Code.
- (r) **Taxable Event** means an event relating to an Award granted under the Plan which requires federal, state or local tax to be withheld by the Company or a Subsidiary.
- (s) **Terminated for Cause** means, (i) for Employees serving under an employment agreement containing a provision for termination of employment for “cause,” termination of employment of the Employee for “cause” pursuant to such provision, and (ii) for other Employees, termination of employment of the Employee by a two-thirds vote of the entire Board of Directors of the Company or



the Subsidiary employing such Employee, expressly for one or both of the following “causes,” as evidenced in a certified resolution of the Board: (A) any willful misconduct by the Employee which is materially injurious to the Company or the Subsidiary, monetarily or otherwise; or (B) conviction of the Employee with no further possibility of appeal of any felony under applicable state or federal banking or financial institution laws, or the agreement of the Employee to plead guilty to any such felony.

### **Section 3. Administration**

The Plan will be administered by the Committee. The determinations of the Committee shall be made in accordance with its judgment as to the best interests of the Company and its stockholders and in accordance with the purposes of the Plan. Notwithstanding the foregoing, the Committee in its discretion may delegate to the President or other appropriate officers of the Company or any Subsidiary the authority to make any or all determinations under the Plan (including the decision to grant Awards and types of Awards granted) with respect and only with respect to persons receiving Awards or Award Holders (other than the delegates) who are not Reporting Persons, notwithstanding the fact that the delegates may themselves be persons eligible to receive Awards under the Plan and/or Reporting Persons. A majority of members of the Committee shall constitute a quorum, and all determinations of the Committee shall be made by a majority of its members. Any determination of the Committee under the Plan may be made without notice or meeting of the Committee, and all actions made or taken by the Committee pursuant to the provisions of the Plan shall be final, binding and conclusive for all purposes and upon all persons.

### **Section 4. Shares Authorized for Awards**

The maximum number of shares available for Awards under the Plan is 1,500,000 shares of Stock, of which a maximum of 1,000,000 shares may take the form of Restricted Stock, and there is hereby reserved for issuance under the Plan an aggregate of 1,500,000 shares of Stock, subject in the case of each of the foregoing to adjustment as provided in Section 10 of the Plan. Shares of Stock underlying outstanding Options and outstanding shares of unvested Restricted Stock will be counted against the Plan maximum while such Options and shares of Restricted Stock are outstanding. Upon termination of outstanding Options that are unexercised and upon forfeiture of outstanding shares of Restricted Stock prior to vesting, the shares of Stock underlying such Awards shall be returned to the Plan and available for future grants of Awards thereunder. In addition, if payment of the Exercise Price of any Option granted under the Plan is satisfied, upon exercise of such Option, by the Award Holder by surrender to the Company of shares of Stock previously owned by the Award Holder (or, in lieu of actual surrender, by a deemed surrender of such shares), the number of shares of Stock surrendered or deemed surrendered shall be returned to the Plan and available for future grants of Awards thereunder.

### **Section 5. Recipients of Awards**

Persons eligible for grants of Awards under the Plan will be those Employees of the Company or any Subsidiary whose job performance is likely to be significantly enhanced by the grant to them of such Awards, as determined by the Committee in its sole discretion and as

evidenced by the decision of the Committee to grant Awards to such individuals. Designation of an Employee as a Participant to receive an Award in any year shall not require the Committee to designate such Employee to receive an Award in any other year or to designate any other Employee to receive an Award in such year or any other year. The Committee shall consider such factors as it deems pertinent in selecting Employees to receive Awards and determining the type and amount of their respective Awards. In addition, the Committee may grant Awards to any consultant, advisor or other person providing key services to the Company or a Subsidiary, but only to the extent such grant does not prohibit the Company from using a registration statement on Form S-8, or any successor form, to register with the Securities and Exchange Commission the shares of Stock authorized under the Plan. The Committee may, in its discretion, grant an Award to an individual in connection with the hiring or retention or potential hiring or retention thereof, prior to the date the individual becomes an Employee and first performs services for the Company or any Subsidiary, provided that such Awards shall not become vested or exercisable prior to the date established by the Committee, which date shall be no earlier than 60 days after the date on which the individual first is employed by or performs services for the Company or a Subsidiary. No individual may receive under the Plan Awards relating to more than 1,400,000 shares of Stock in the aggregate.

#### **Section 6. Types of Awards**

The following Awards, and rights thereto, may be granted under the Plan in any proportion: Options and Restricted Stock, as further described below. Except as specifically limited herein, the Committee shall have complete discretion in determining the type and number of Awards to be granted to any eligible person and, subject to the provisions of the Plan, the terms and conditions of each Award, which terms and conditions need not be uniform as among different Awards. Each Award shall be evidenced by an Award Agreement, as provided in Section 7 of the Plan. From time to time, as the Committee deems appropriate and in the best long-term interests of the Company and its stockholders, the Committee may elect to modify or waive one or more terms or conditions of an outstanding Award previously granted under the Plan, provided that (i) no such modification or waiver shall give the holder of any other Award granted under the Plan any right to a similar modification or waiver, (ii) no such modification or waiver of an Award shall involve a change in the number of shares subject to the Award or a change in the Exercise Price of an Option or the purchase price, if any, of Restricted Stock which is the subject of the Award, and (iii) any such modification or waiver which is adverse or arguably adverse to the interests of the Award Holder shall not be effective unless and until the Award Holder shall consent thereto in writing.

#### **Section 7. Award Agreements**

Within ten business days after the grant of an Award, the Company shall notify the recipient of such grant and shall hand deliver or mail to the recipient an Award Agreement, duly executed by and on behalf of the Company, with the request that the recipient execute the Agreement within 30 days after the date of mailing or delivery by the Company and return the same to the Company. The date of execution and return of the Award Agreement shall not necessarily be or affect the date of grant of the Award, which may precede such date of execution and return, as the Committee may determine. If the recipient shall fail to execute and return to the Company the Award Agreement within said 30-day period, the Committee may

elect to treat the Award as void and never granted. If an Award granted under the Plan is eligible for transfer and the subject of a proposed eligible transfer, no such transfer shall be or become effective until and unless the permitted transferee shall have duly executed and returned to the Company an Award Agreement in a form acceptable to the Committee.

### **Section 8. Stock Options**

(a) Options shall consist of Options to purchase shares of Stock at an Exercise Price established by the Committee upon grant, which Exercise Price shall not be less than, but may be more than, 100 percent of the Fair Market Value of the Stock on the date of grant.

(b) The Committee shall establish upon grant the period of time during which an Option will be exercisable by the Award Holder, provided that no Option shall continue to be exercisable, in whole or in part, later than ten years after the date of grant. Subject to these limitations, the Committee may provide, upon grant of an Option, that full exercisability will be phased in and/or phased out over some designated period of time. The Committee also may provide upon grant that exercisability of an Option will be accelerated, to the extent such Option is not already then exercisable, upon the subsequent occurrence of a "change in control" of the Company, as defined by the Committee, or such other occurrence as the Committee may specify. Generally, exercisability of an Option granted to an Employee also shall be conditioned upon continuity of employment by the original recipient of the Award with the Company and its Subsidiaries, provided that, if the Committee so provides upon grant, exercisability of such an Option may continue for some designated period of time after termination of employment, within the following limitations: (i) if employment is terminated other than due to the death of the original recipient, exercisability may be extended to not more than one year after termination; and (ii) if employment is terminated due to the death of the original recipient, exercisability may be extended to the normal end of the exercise period. However, in no event may any Option continue to be exercisable more than ten years after the date of grant. In addition, no Option granted to an Employee may be exercisable after Termination for Cause of such Employee. Leaves of absence granted by the Company for military service or illness and transfers of employment between the Company and any Subsidiary shall not constitute termination of employment.

(c) Upon exercise of an Option, in whole or in part, the Exercise Price with respect to the number of shares as to which the Option is then being exercised may be paid by check or, if the Award Holder so elects and the Committee shall have authorized such form of payment, in whole or in part by surrender to the Company of shares of Stock owned prior to exercise by the Award Holder. Any previously-owned shares of Stock to be used in full or partial payment of the Exercise Price shall be valued at the Fair Market Value of the Stock on the date of exercise. In lieu of the actual surrender of shares of Stock by the Award Holder to the Company in any such stock-for-stock exercise, the Award Holder may, with the consent of the Committee, in lieu of surrendering some number of previously-owned shares of Stock, affirm to the Company the Award Holder's ownership of such number of shares, in which event the Company, upon its delivery of the shares of Stock as to which the Option is being exercised, deduct from the number of shares otherwise deliverable the number of shares affirmed but not surrendered by the Award Holder. Delivery by the Company of shares of Stock upon exercise of an Option shall be made to the person exercising the Option or the designee of such person subject to such terms,

conditions, restrictions and contingencies as the Committee may provide in the Award Agreement. If so provided by the Committee upon grant of the Option, the shares delivered upon exercise may be subject to certain restrictions upon subsequent transfer or sale by the Award Holder.

(d) The Committee may require reasonable advance notice of exercise of an Option, normally not to exceed three calendar days, and may condition exercise of an Option upon the availability of an effective registration statement or exemption from registration under applicable federal and state securities laws relating to the Stock being issued upon exercise.

#### **Section 9. Restricted Stock**

(a) Restricted Stock shall consist of Stock or rights to Stock awarded under the Plan by the Committee which, during a Period of Restriction specified by the Committee upon grant, shall be subject to forfeiture by the Award Holder to the Company if the recipient ceases to be employed by the Company and its Subsidiaries prior to the lapse of such restrictions. Restricted Stock normally will not be transferable or assignable during the Period of Restriction. Restricted Stock may be granted at no cost to Participants or, if subject to a purchase price, such price shall not exceed the par value of the Stock and may be payable by the recipient to the Company in cash or by any other means, including recognition of past employment, as the Committee deems appropriate. The Committee may provide upon grant of an Award of Restricted Stock that any shares of Restricted Stock as may be purchased by the recipient thereunder and subsequently forfeited by the recipient prior to expiration of the Period of Restriction shall be reacquired by the Company at the purchase price originally paid in cash by the recipient therefor.

(b) The minimum Period of Restriction for Restricted Stock shall be three years from the date of grant of the Award. The Committee may provide upon grant of an Award of Restricted Stock that different numbers or portions of the shares subject to the Award shall have different Periods of Restriction. The Committee also may establish upon grant of an Award of Restricted Stock that some or all of the shares subject thereto shall be subject to additional restrictions upon transfer or sale (although not to forfeiture) after expiration of the Period of Restriction.

(c) The Award Holder of Restricted Stock shall be entitled to all dividends declared and paid on Stock generally with respect to all shares of Restricted Stock held thereby, from and after the date of grant of such Award, or from and after such later date or dates as may be specified by the Committee in the Award, and the Award Holder shall not be required to return any such dividends to the Company in the event of forfeiture of the Restricted Stock.

(d) The Award Holder of Restricted Stock shall be entitled to vote all shares of Restricted Stock held thereby from and after the date of grant of such Award, or from and after such later date or dates as may be specified by the Committee in the Award.

(e) Pending expiration of the Period of Restriction, certificates representing shares of Restricted Stock shall be held by the Company or the transfer agent for the Stock. Upon expiration of the Period of Restriction for any such shares, certificates representing such shall be delivered to the Award Holder or the permitted transferee, assignee or beneficiary thereof.

## **Section 10. Adjustment Provisions**

(a) If the Company shall at any time change the number of issued shares of Stock without new consideration to the Company (such as by a stock dividend or stock split), the total number of shares reserved for issuance under the Plan, the maximum number of shares available for issuance as Restricted Stock, the maximum number of shares available for Award of Options to any individual under the Plan and the number of shares (and, in the case of Options, the Exercise Price) covered by each outstanding Award shall be adjusted so that the aggregate consideration payable to the Company, if any, and the value of each such Award to the Award Holder shall not be changed. Awards may also contain provisions for their continuation or for other equitable adjustments after changes in the Stock resulting from reorganization, sale, merger, consolidation, issuance of stock rights or warrants or similar occurrence.

(b) Notwithstanding any other provision of this Plan, and without affecting the number of shares reserved or available for issuance hereunder, the Board of Directors shall use best efforts to authorize the issuance or assumption of benefits under the Plan in connection with any merger, consolidation, acquisition of property or stock, or reorganization involving the liquidation, discontinuation, merger out of existence or fundamental corporate restructuring of the Company, upon such terms and conditions as it may deem appropriate.

## **Section 11. Transfers of Awards**

Subject to any overriding restrictions and conditions as may be established from time to time by the Board of Directors, the Committee may determine that any Award granted under the Plan may be transferable, in the case of an Option, prior to exercise thereof, and in the case of Restricted Stock, prior to expiration of the Period of Restriction therefor, under such terms and conditions as the Committee may specify. Unless the Committee shall specifically determine that an Award is thus transferable by the original recipient thereof, each Award granted under the Plan shall not be transferable by the original recipient thereof, otherwise than by will or the laws of descent and distribution, and shall be exercisable, during the recipient's lifetime, only by the recipient. In the event of the death of an Award Holder holding an unexercised Option, exercise of the Option may be made only by the executor or administrator of the estate of the Award Holder or the person or persons to whom the deceased Award Holder's rights under the Option shall pass by will or the laws of descent and distribution, and such exercise may be made only to the extent that the deceased Award Holder was entitled to exercise such Option at the date of death. If and to the extent the Committee shall so provide upon grant, the Period of Restriction for Restricted Stock may be foreshortened upon the death of the Award Holder during the Period of Restriction, such that the Stock shall be deemed not to be forfeited and no longer to be Restricted Stock as of the date of death.

## **Section 12. Taxes**

The Company shall be entitled to withhold, and shall withhold, the minimum amount of any federal, state or local tax attributable to any shares deliverable under the Plan, whether upon exercise of an Option or expiration of a Period of Restriction for Restricted Stock or occurrence of any other Taxable Event, after giving the person entitled to receive such delivery notice as far in advance of the Taxable Event as practicable, and the Company may defer making delivery as

to any Award, if any such tax is payable, until indemnified to its satisfaction. Such withholding obligation of the Company may be satisfied by any reasonable method, including, if the Committee so provides upon grant of the Award, reducing the number of shares otherwise deliverable to or on behalf of the Award Holder on such Taxable Event by a number of shares of Stock having a fair value, based on the Fair Market Value of the Stock on the date of such Taxable Event, equal to the amount of such withholding obligation.

### **Section 13. No Right to Employment**

An Employee's right, if any, to continue to serve the Company and any Subsidiary as an officer, employee or otherwise shall not be enhanced or otherwise affected by the designation of such Employee as a recipient of an Award under the Plan.

### **Section 14. Duration, Amendment and Termination**

No Award shall be granted under the Plan on or after the date which is the tenth anniversary date of the adoption by the Committee or the Board of this Plan. The Committee or the Board may amend the Plan from time to time or terminate the Plan at any time. By mutual agreement between the Company and an Award Holder, one or more Awards may be granted to such Award Holder in substitution and exchange for, and in cancellation of, any certain Awards previously granted such Award Holder under the Plan, provided that any such substitution Award shall be deemed a new Award for purposes of calculating any applicable exercise period for Options or Period of Restriction for Restricted Stock. To the extent that any Awards which may be granted within the terms of the Plan would qualify under present or future laws for tax treatment that is beneficial to an Award Holder, any such beneficial treatment shall be considered within the intent, purpose and operational purview of the Plan and the discretion of the Committee, and to the extent that any such Awards would so qualify within the terms of the Plan, the Committee shall have full and complete authority to grant Awards that so qualify (including the authority to grant, simultaneously or otherwise, Awards which do not so qualify) and to prescribe the terms and conditions (which need not be identical as among recipients) in respect to the grant or exercise of any such Awards under the Plan.

### **Section 15. Miscellaneous Provisions**

(a) **Naming of Beneficiaries.** In connection with an Award, an Award Holder may name one or more beneficiaries to receive the Award Holder's benefits, to the extent permissible pursuant to the various provisions of the Plan, in the event of the death of the Award Holder.

(b) **Successors.** All obligations of the Company under the Plan with respect to Awards issued hereunder shall be binding on any successor to the Company.

(c) **Governing Law.** The provisions of the Plan and all Award Agreements under the Plan shall be construed in accordance with, and governed by, the laws of the State of Delaware without reference to conflict of laws provisions, except insofar as any such provisions may be expressly made subject to the laws of any other state or federal law.

(d) **Approval by the Board and the Committee.** The Plan, in order to become effective, must be approved by the Board or the Committee. Any Award granted under this Plan

and any Award Agreement executed pursuant thereto prior to the submission of this Plan to the Board or the Committee for approval shall be void and of no effect if this Plan is not approved as provided above.

As amended by the Stock and Compensation Committee on December 13, 1999.

**NORTH FORK BANCORPORATION, INC.****1997 Non-Officer Stock Plan**Section 1. Establishment and Purpose

North Fork Bancorporation, Inc. (the "Company") hereby establishes an incentive plan to be named the North Fork Bancorporation, Inc. 1997 Non-Officer Stock Plan (the "Plan"), for certain valued employees of the Company and its subsidiaries. Eligibility for awards would be limited to full-time employees who are not "officers" of the Company for purposes of certain reporting rules promulgated by the Securities and Exchange Commission and/or listing rules promulgated by the New York Stock Exchange, Inc. The purpose of the Plan is to encourage those valued employees who are given awards under the Plan to acquire and maintain an interest in the Common Stock of the Company and thus to have additional incentive to continue to work for the success of the Company and its subsidiaries. This Plan shall become effective upon its approval by the Stock and Compensation Committee of the Board of Directors.

Section 2. Definitions

Whenever used herein, the following terms shall have the respective meanings set forth below:

- (a) Award means any Option or Restricted Stock or right to receive either granted under the Plan.
- (b) Award Agreement means the written agreement evidencing an Award under the Plan, which shall be executed by the Company and the Participant.
- (c) Committee means the Stock and Compensation Committee of the Board of Directors of the Company (or any successor to such Committee).
- (d) Company means North Fork Bancorporation, Inc., a Delaware corporation.
- (e) Disability means permanent and total disability as defined in Section 22(e)(3) of the Internal Revenue Code of 1986, as amended, as determined by the Committee in good faith upon receipt of and in reliance on sufficient competent medical advice.
- (f) Eligible Employee means any salaried full-time employee of the Company or any Subsidiary other than an Excluded Person.



(g) Excluded Person means (i) any individual who is an “officer” of the Company as defined in Rule 3b-2 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, including but not limited to any individual who currently is a reporting person under Section 16(a) of such Act by virtue of being an officer of the Company, (ii) any individual who is deemed an “officer” of the Company within the meaning of Rule 312.03 promulgated by the New York Stock Exchange, Inc., or (iii) any director of the Company.

(h) Exercise Price of an Option means a price fixed by the Committee upon grant of the Option as the purchase price for Stock under the Option, as such may be adjusted under Section 11 of the Plan.

(i) Fair Market Value of the Stock as of any particular day means (i) for any period during which the Stock shall be listed for trading on a national securities exchange, the average of the high and low prices per share of the Stock on such exchange on the last preceding day on which trading occurred on such exchange, (ii) for any period during which the Stock shall not be listed for trading on a national securities exchange, but when prices for the Stock shall be reported by the National Market System of the National Association of Securities Dealers Automated Quotation System (“NASDAQ”), the average of the high and low transaction prices per share for the Stock as quoted by the National Market System of NASDAQ on the last preceding day on which securities markets were open, or (iii) in the event neither (i) nor (ii) applies, the fair market price per share of the Stock for such day as determined by the Board of Directors of the Company.

(j) Option means the right to purchase Stock at the Exercise Price for a specified period of time and subject to specified conditions. For purposes of the Plan, all Options shall be so-called nonqualified (or nonstatutory) stock options, not qualifying as “incentive stock options” under Section 422 of the Internal Revenue Code of 1986, as amended.

(k) Participant means any Eligible Employee designated by the Committee to receive an Award under the Plan.

(l) Period of Restriction means that period during which Restricted Stock is both subject to certain restrictions on transfer and subject to forfeiture as specified in Section 10 of the Plan.

(m) Restricted Stock means shares of Stock awarded to an Eligible Employee that are both subject to certain restrictions on transfer and are subject to forfeiture as specified in Section 10 of the Plan.

(n) Stock means the Common Stock of the Company.

(o) Subsidiary means any corporation or entity a majority of the voting stock or voting interest of which is owned or controlled, directly or indirectly, by the Company.

(p) Taxable Event means an event relating to an Award granted under the Plan which requires federal, state or local tax to be withheld by the Company or a Subsidiary.

(q) Termination for Cause means, (i) for any Participant serving under an employment agreement containing a provision for termination of employment for "cause," termination of employment of the Participant for "cause" pursuant to such provision, and (ii) for any other Participant, termination of employment of the Participant by a two-thirds vote of the entire Board of Directors of the Company or the Subsidiary employing such Participant, expressly for one or both of the following "causes," as evidenced in a certified resolution of the Board: (A) any willful misconduct by the Participant which is materially injurious to the Company or the Subsidiary, monetarily or otherwise; or (B) conviction of the Participant with no further possibility of appeal of a felony under applicable state or federal banking or financial institution laws, or the agreement of the Participant to plead guilty to any such felony.

### Section 3. Administration

The Plan will be administered by the Committee. The Committee will have sole authority and discretion to select those Eligible Employees who will receive Awards under the Plan and to determine the number and type of Awards to be granted to such Eligible Employees and the conditions applicable to such Awards, consistent with the terms of this Plan, provided that the Committee shall have the authority from time to time to designate a subcommittee consisting of one or more directors of the Company who are also executive officers of the Company, which subcommittee shall have the authority to make such determinations on behalf of the Committee under the Plan as the Committee shall specify, any such determinations if and when made by such a subcommittee to be deemed for all purposes to be determinations of the Committee. Any determination of the Committee under the Plan may be made without notice or meeting thereof, and all actions made or taken by the Committee pursuant to the provisions of the Plan shall be final, binding and conclusive for all purposes and upon all persons.

### Section 4. Duration

The duration of the Plan is to be twelve (12) months, from December 1, 1997 to November 30, 1998, inclusive.

### Section 5. Shares Reserved Under the Plan

Initially, there shall be reserved for issuance under the Plan on the books of the Company 250,000 shares of Stock, and, thereafter, there shall be reserved for issuance under the Plan such number of shares of Stock as the Committee or the Board of Directors may specify from time to time, provided that there shall be reserved for issuance at all times a number of shares of Stock at least equal to the number of shares then subject to Options previously granted under the Plan and not theretofore fully exercised, cancelled or expired.

## Section 6. Participants

Persons eligible for grants of Awards under the Plan will be those Eligible Employees of the Company or any Subsidiary who are expected to provide valuable and significant services to the Company or such Subsidiary, as determined by the Committee in its sole discretion and as evidenced by the decision of the Committee to grant Awards to such individuals. In making all determinations under the Plan, the Committee shall adhere carefully to all laws and regulations requiring nondiscriminatory treatment of employees. Subject to the foregoing, the Committee shall consider such factors as it deems pertinent in selecting Eligible Employees to receive Awards and in determining the type and amount of their respective Awards. Designation of an Eligible Employee as a Participant to receive an Award in any year shall not require the Committee to designate such Eligible Employee to receive an Award in any subsequent year or to designate any other Eligible Employee to receive an Award in such year or any subsequent year.

## Section 7. Types of Awards

The following Awards, and rights thereto, may be granted under the Plan in any proportion: Options and Restricted Stock, as described in Sections 9 and 10 below, respectively. Except as specifically limited herein, the Committee shall have complete discretion in determining the type and number of Awards to be granted to any Eligible Employee and, subject to the provisions of the Plan, the terms and conditions which attach to each Award, which terms and conditions need not be uniform as among different Participants. Each Award shall be evidenced by an Award Agreement, as provided in Section 8 of the Plan. From time to time, as the Committee deems appropriate and in the best long-term interests of the Company and its stockholders, the Committee may elect to modify or waive one or more terms or conditions of an outstanding Award previously granted to a Participant under the Plan, provided that (i) no such modification or waiver shall give the Participant or any other Participant under the Plan any right to a similar modification or waiver of any other Award previously or subsequently granted under the Plan, (ii) no such modification or waiver of an Award shall involve a change in the number of shares subject to the Award or a change in the Exercise Price of an Option, and (iii) any such modification or waiver which is adverse or arguably adverse to the interests of the Participant holding such Award shall not be effective unless and until the Participant shall consent thereto.

## Section 8. Award Agreements

Within ten business days after the grant of an Award, the Company shall notify the Participant of the grant and shall hand deliver or mail to the Participant an Award Agreement, duly executed by and on behalf of the Company, with the request that the Participant execute the Agreement within 30 days after the date of mailing or delivery by the Company and return the same to the Company. The date of execution and return of the Award Agreement shall not necessarily be or affect the date of grant of the Award, which may precede such date of execution and return, as the Committee may determine. If the Participant shall fail to execute and return to the Company the Award Agreement within said 30-day period, the Award shall be deemed void and never to have been granted.

## Section 9. Options

(a) All Options granted under the Plan shall be nonqualified stock options, that is, options that do not qualify as “incentive stock options” under Section 422 of the Internal Revenue Code of 1986, as amended. Such Options shall constitute options to purchase shares of Stock at an Exercise Price established by the Committee upon grant, which Exercise Price shall not be less than, but may be more than, 100 percent of the Fair Market Value of the Stock as of the date of grant.

(b) The Committee shall establish upon grant of an Option the period of time during which such Option will be exercisable by the Participant, provided that no Option will continue to be exercisable, in whole or in part, later than ten years after the date of grant. Subject to this limitation, the Committee may provide that full exercisability of an Option granted under the Plan will be phased in and/or phased out over some designated period of time. The Committee also may provide that exercisability of an Option will be accelerated, to the extent such Option is not already then exercisable, upon the occurrence of a certain event or events as specified by the Committee, such as the retirement of the Participant or a change in control of the Company. Generally, exercisability of an Option granted under the Plan is conditioned upon continued employment of the Participant by the Company and its Subsidiaries, provided that the Committee may specify upon grant that exercisability of an Option will continue for some designated period of time after termination of employment. If the Committee does not specify otherwise, an Option granted under the Plan will continue to be exercisable after termination of employment of the Participant, to the extent such Option was exercisable at termination of employment, in accordance with the following principles: (i) if employment is terminated other than due to the death, Disability or a Termination for Cause of the Participant, exercisability will continue for 90 days after the date of termination; (ii) if employment is terminated due to the death of the Participant, exercisability will continue until the normal end of the exercise period of the Option, as established upon grant thereof, (iii) if employment is terminated due to Disability, exercisability will continue for one full year after the date of termination, and (iv) if employment is terminated in a Termination for Cause, exercisability will terminate immediately. Notwithstanding the preceding sentence, in no event may any Option granted under the Plan be exercised after the tenth anniversary of the date of grant. Leaves of absence required by law or otherwise granted by the Company and transfers of employment between the Company and/or Subsidiaries shall not constitute a termination of employment.

(c) Upon exercise of an Option, in whole or in part, the Exercise Price with respect to the number of shares as to which the Option is then being exercised may be paid by check or, if the Participant so elects and with the consent of the Committee (which consent may be withheld for any reason or no reason), in whole or in part by delivery to the Company of shares of Stock then owned by the Participant. Any Participant-owned Stock to be used in full or partial payment of the Exercise Price shall be valued at the Fair Market Value of the Stock on the date of exercise. Delivery by the Company of the shares as to which an Option has been exercised shall be made to the person exercising the Option or the designee of such person. If so provided by the Committee upon the grant of an Option, the shares of Stock issuable upon exercise of the Option may be subject to certain restrictions upon their subsequent

transfer or sale. In the event the Exercise Price is to be paid in full or in part by surrender of Stock, in lieu of actual surrender of shares of Stock by the Participant, the Company may waive such surrender and instead deliver to or on behalf of the Participant a number of shares equal to the total number of shares as to which the Option is then being exercised less the number of shares which would otherwise have been surrendered by the Participant to the Company.

(d) The Committee may require reasonable advance notice of exercise of an Option, normally not to exceed three calendar days, and may condition exercise of an Option upon the availability of an effective registration statement or exemption from registration under applicable federal and state securities laws relating to the Stock being issued upon exercise.

#### Section 10. Restricted Stock

(a) Restricted Stock shall consist of Stock or rights to Stock awarded under the Plan by the Committee which, during a Period of Restriction specified by the Committee upon grant, shall be subject to (i) restriction on sale or other transfer by the Participant and (ii) forfeiture by the Participant to the Company if the Participant ceases to be employed by the Company and its Subsidiaries, in each case as further defined and described in this Plan and by the Committee upon grant. Restricted Stock may be granted at no cost to Participants or, if subject to a purchase price, such price shall not exceed the par value of the Stock and shall be payable by the Participant to the Company in cash or by any other means that the Committee deems appropriate, including recognition of past employment.

(b) Except as otherwise provided below, the minimum Period of Restriction for Restricted Stock shall be three years from the date of grant of the Award. The Committee may provide upon grant of an Award of Restricted Stock that different numbers or portions of the shares subject to the Award shall have different Periods of Restriction. The Committee also may specify upon grant of an Award of Restricted Stock or thereafter while such Award is outstanding that any Period of Restriction for the Restricted Stock subject to the Award otherwise still in effect will terminate immediately upon the occurrence of a specified event or one of several specified events, such as the retirement of the Participant or a change in control of the Company. The Committee also may establish upon grant of an Award of Restricted Stock that some or all of the shares subject thereto shall be subject to additional restrictions upon transfer or sale by the Participant (although not to forfeiture) after expiration of the Period of Restriction.

(c) The Participant shall be entitled to all dividends declared and paid on Stock with respect to all shares of Restricted Stock held by the Participant, from and after the date such shares are awarded to the Participant and throughout the Period of Restriction except as otherwise specified by the Committee upon grant, and the Participant shall not be required to return any such dividends to the Company in the event of forfeiture of the Restricted Stock.

(d) A Participant shall be entitled to vote all shares of Restricted Stock awarded to the Participant from and after the date of grant and throughout the Period of Restriction except as otherwise specified by the Committee upon grant.

(e) Pending expiration of the Period of Restriction for an Award of Restricted Stock, certificates representing shares of Restricted Stock subject to the Award shall be held by the Company or the transfer agent for the Stock. Upon expiration of the Period of Restriction for any such shares, certificates representing such shares shall be delivered to the Participant or in the event of death of the Participant, to the beneficiary of the Participant.

#### Section 11. Adjustment Provisions

(a) If the Company shall at any time change the number of issued shares of Stock without new consideration to the Company (such as by a stock dividend or stock split), the total number of shares then reserved for issuance on the books of the Company relating to the Plan and the number of shares (and, in the case of Options, the Exercise Price) covered by each outstanding Award shall be adjusted so that the aggregate consideration payable to the Company, if any, and the value of each such Award to the Participant shall not be changed. Awards may also contain provisions for their continuation or for other equitable adjustments after changes in the Stock resulting from any reorganization, sale, merger or consolidation involving the Company or any Subsidiary or any issuance of stock rights or warrants by the Company or any similar occurrence.

(b) Notwithstanding any other provision of this Plan, and without affecting the number of shares reserved for issuance hereunder, the Board of Directors shall use best efforts to authorize the issuance or assumption of benefits under the Plan in connection with any merger, consolidation, acquisition of property or stock, or reorganization involving the liquidation, discontinuation, merger out of existence or fundamental corporate restructuring of the Company, upon such terms and conditions as it may deem appropriate.

#### Section 12. Nontransferability

Each Award of an Option granted under the Plan to a Participant shall not be transferable otherwise than by will or the laws of descent and distribution, and shall be exercisable, during the Participant's lifetime, only by the Participant. In the event of the death of a Participant holding an unexercised Option, exercise of the Option may be made only by the executor or administrator of the estate of the deceased Participant or the person or persons to whom the deceased Participant's rights under the Option shall pass by will or the laws of descent and distribution, and such exercise may be made only to the extent that the deceased Participant was entitled to exercise such Option at the date of death.

### Section 13. Taxes

The Company shall be entitled to withhold, and shall withhold, the minimum amount of any federal, state or local tax attributable to any Award granted under the Plan, whether upon exercise of an Option or expiration or termination of a Period of Restriction for Restricted Stock or the occurrence of any other Taxable Event, after giving notice to the Participant affected by such tax withholding as far in advance of the Taxable Event as practicable, and in any such case in which repayment or indemnification of such amount by or on behalf of the Participant is required, the Company may defer making delivery as to any Award until such repayment or indemnification has been completed. Such withholding obligation of the Company may be satisfied by any reasonable method, including, if the Committee so provides, reducing the number of shares otherwise deliverable to or on behalf of the Participant on such Taxable Event by a number of shares having a fair value, based on the Fair Market Value of the Stock on the date of such Taxable Event, equal to the amount of such withholding obligation.

Upon grant of an Award, the Committee may elect to provide that the Company shall pay on behalf of the Participant any taxes, federal, state or local, payable by the Participant as a result of such grant, including all taxes payable by a Participant as a result of payment of taxes by the Company on behalf of the Participant in accordance with the first clause of this sentence.

### Section 14. No Right to Employment

A Participant's right, if any, to continue to serve the Company or any Subsidiary as an employee shall not be enhanced or otherwise affected by the designation of such person as an Eligible Employee or as a Participant under the Plan.

### Section 15. Amendment and Termination

The Committee or the Board of Directors of the Company may amend the Plan from time to time or terminate the Plan at any time. By mutual agreement between the Company and a Participant, one or more Awards may be granted to such Participant in substitution and exchange for, and in cancellation of, any certain Awards previously granted such Participant under the Plan, provided that any such substitution Award shall be deemed a new Award for purposes of calculating any applicable exercise period for Options or Period of Restriction for Restricted Stock. To the extent that any Awards which may be granted within the terms of the Plan would qualify under present or future laws for tax treatment that is beneficial to a Participant and not detrimental to the Company, any such beneficial treatment shall be considered within the intent, purpose and operational purview of the Plan and the discretion of the Committee, and to the extent that any such Awards would so qualify within the terms of the Plan, the Committee shall have full and complete authority to grant Awards that so qualify (including the authority to grant, simultaneously or otherwise, Awards which do not so qualify) and to prescribe the terms and conditions (which need not be identical as among recipients) in respect to the grant or exercise of any such Awards under the Plan.

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Section 16. Miscellaneous Provisions

(a) Naming of Beneficiaries. In connection with an Award, a Participant may name one or more beneficiaries to receive the Participant's benefits, to the extent permissible pursuant to the various provisions of the Plan, in the event of the death of the Participant.

(b) Successors. All obligations of the Company under the Plan with respect to Awards issued hereunder shall be binding on any successor to the Company.

(c) Governing Law. The provisions of the Plan and all Award Agreements under the Plan shall be construed in accordance with, and governed by, the laws of the State of Delaware without reference to conflict of laws provisions, except insofar as any such provisions may be expressly made subject to the laws of any other state or federal law.



**NORTH FORK BANCORPORATION, INC.  
NEW EMPLOYEE STOCK COMPENSATION PLAN**

**Section 1. Establishment and Purpose**

North Fork Bancorporation, Inc. (the “Company”) hereby establishes a long term incentive plan to be named the North Fork Bancorporation, Inc. New Employee Stock Compensation Plan (the “Plan”), for new employees of the Company and its subsidiaries. The purpose of this Plan is to enhance the ability of the Company and its subsidiaries to attract motivated and talented management personnel by authorizing the grant of stock based awards to persons not previously employed by the Company or any of its subsidiaries in connection with their entering into such an employment relationship.

**Section 2. Definitions**

Whenever used herein, the following terms shall have the respective meanings set forth below:

- (a) **Approval Date** means, for any Award granted under the Plan, the date on which the Committee shall have acted to approve and authorize such Award.
- (b) **Award** means the grant of any Option or Restricted Stock or the right to receive either under the Plan.
- (c) **Award Agreement** means the written agreement between the Company and an Award Holder relating to an Award under the Plan.
- (d) **Award Holder** means an Eligible Employee who has received and continues to hold an Award under the Plan, or any permitted transferee who holds such an Award.
- (e) **Board** means the Board of Directors of the Company.
- (f) **Code** means the Internal Revenue Code of 1986, as amended and in effect from time to time.
- (g) **Committee** means the Compensation and Stock Committee of the Board, which is the initial administrator of the Plan, or any successor administrator of the Plan.
- (h) **Company** means North Fork Bancorporation, Inc., a Delaware corporation.
- (i) **Current Market Value** means, for any particular day, (i) for any period during which the Stock shall be listed for trading on a national securities exchange, the average of the high and low price per share of Stock on such exchange on such day, (ii) for any period during which the Stock shall not be listed for trading on a national securities exchange, but when prices for the Stock shall be reported by the National Market System of the National Association of Securities Dealers Automated Quotation System (“NASDAQ”), the average of the high and low

transaction price per share as quoted by the National Market System of NASDAQ for such day, (iii) for any period during which the Stock shall not be listed for trading on a national securities exchange or its price reported by the National Market System of NASDAQ, but when prices for the Stock shall be reported by NASDAQ, the average of the high and low bid price per share as reported by NASDAQ for such day, or (iv) in the event none of (i), (ii) and (iii) above shall be applicable, the fair market price per share of Stock for such day as determined by the Board of Directors. If Current Market Value is to be determined as of a day when the securities markets are not open, the Current Market Value on that day shall be the Current Market Value on the nearest preceding day when the markets were open.

- (j) **Date of Employment** means the date an Eligible Employee commences employment with the Company or any of its Subsidiaries.
- (k) **Eligible Employee** means any person who has commenced employment or accepted an offer of employment with the Company or any Subsidiary as a salaried employee thereof (including as an officer or a director who is also an employee) but who has not been so employed for more than 60 days.
- (l) **Exchange Act** means the Securities Exchange Act of 1934, as amended.
- (m) **Exercise Price** of an Option means a price fixed by the Committee as the purchase price for Stock under the Option, as such may be adjusted under Section 10.
- (n) **Option** means a right to purchase a certain number of shares of Stock at a designated Exercise Price for a specified period of time and subject to specified conditions. For purposes of the Plan, all Options shall be so-called nonqualified (or nonstatutory) stock options, not qualifying as “incentive stock options” under Section 422 of the Code.
- (o) **Option Date** means, for any Option granted under the Plan, the Date of Employment of the Eligible Employee to which such Option is awarded.
- (p) **Period of Restriction** means the period during which any shares of Restricted Stock awarded under the Plan are subject to forfeiture as provided under Section 9, which period shall extend from the date such shares of Restricted Stock are issued to an Eligible Employee until the last day of such period as determined under the Plan.
- (q) **Reporting Person** means a person subject to Section 16 of the Exchange Act.
- (r) **Restricted Stock** means shares of Stock awarded under the Plan that are subject to a certain risk of forfeiture during the Period of Restriction for such shares as established under Section 9 but that cease to be subject to such risk of forfeiture and cease to be Restricted Stock upon expiration of the Period of Restriction.

- (s) **Rule 16b-3** means Rule 16b-3 promulgated by the Securities and Exchange Commission pursuant to the Exchange Act, or any successor regulation.
- (t) **Stock** means the Common Stock of the Company.
- (u) **Subsidiary** means a subsidiary corporation of the Company as defined in Section 424(f) of the Code.
- (v) **Taxable Event** means an event relating to an Award under the Plan which requires federal, state or local tax to be withheld by the Company or a Subsidiary.
- (w) **Terminated for Cause** means, (i) for Award Holders serving under an employment agreement containing a provision for termination of employment for “cause,” termination of employment of the Award Holder for “cause” pursuant to such provision, and (ii) for other Award Holders, termination of employment of the Award Holder by a two-thirds vote of the entire Board of Directors of the Company or the Subsidiary employing such Award Holder, expressly for one or both of the following “causes,” as evidenced in a certified resolution of the Board: (A) any willful misconduct by the Award Holder that is materially injurious to the Company or the Subsidiary, monetarily or otherwise; or (B) conviction of the Award Holder with no further possibility of appeal of any felony under applicable state or federal banking or financial institution laws, or the agreement of the Award Holder to plead guilty to any such felony.

### **Section 3. Administration**

The Plan initially will be administered by the Committee. The determinations of the Committee shall be made in accordance with its judgment as to the best interests of the Company and its stockholders and in accordance with the purposes of the Plan. Notwithstanding the foregoing, the Committee in its discretion may delegate to the President or other appropriate officers of the Company or any Subsidiary the authority to make any or all determinations under the Plan, including the decision to grant Awards and the types of Awards granted, to the extent permitted under applicable law; provided, however, that no such delegation shall apply to Awards granted to persons who are Reporting Persons. A majority of members of the Committee shall constitute a quorum, and all determinations of the Committee shall be made by a majority of its members. Any determination of the Committee under the Plan may be made without notice or meeting of the Committee, and all actions made or taken by the Committee pursuant to the provisions of the Plan shall be final, binding and conclusive for all purposes and upon all persons.

### **Section 4. Shares Authorized for Awards**

The maximum number of shares available for Awards under the Plan is 1,000,000 shares of Stock and there is hereby reserved for issuance under the Plan an aggregate of 1,000,000 shares of Stock, subject to adjustment as provided in Section 10. Such shares may be allocated as between Awards of Options and Awards of Restricted Stock as the Committee deems appropriate. Shares underlying outstanding Options and outstanding shares of unvested Restricted Stock will be counted against the Plan maximum while such Options and shares of

Restricted Stock are outstanding. Upon termination of exercisability of outstanding Options prior to the full exercise thereof or forfeiture of outstanding shares of Restricted Stock prior to the vesting thereof, the shares underlying such Awards at the time of termination or forfeiture shall be returned to the Plan and shall again be available for future grants of Awards thereunder. In addition, if payment of the Exercise Price of any Option granted under the Plan is satisfied, upon exercise of such Option, by the Award Holder's surrender to the Company of shares of Stock previously owned by the Award Holder (or, in lieu of actual surrender, by a constructive surrender of such shares), the number of shares surrendered or constructively surrendered shall be returned to the Plan and shall again be available for future grants of Awards thereunder. The maximum number of shares subject to Awards that may be granted to any one Eligible Employee under the Plan is two hundred thousand (200,000).

#### **Section 5. Persons Eligible to Receive Awards**

Awards may be granted under the Plan only to Eligible Employees. The Committee shall have the authority, acting in its sole discretion, to grant an Award to an Eligible Employee under the Plan upon a determination that the Award will provide incentive to the individual to work for the benefit of the Company and its stockholders. Subject to the terms of the Plan, an Award may be granted to an Eligible Employee prior to the time that such individual first performs services for the Company or any Subsidiary, provided such individual has accepted or simultaneously accepts an offer of employment, either written or oral, from the Company or any Subsidiary and provided further that any such grant of an Award to an individual prior to commencement of employment shall be conditional upon such individual's subsequently commencing employment.

#### **Section 6. Types of Awards**

The following Awards, and rights thereto, may be granted under the Plan in any proportion: Options and Restricted Stock, each as further described below. Except as specifically limited herein, the Committee, in granting an Award to an Eligible Employee, shall have complete discretion in determining the type of such Award, the number of shares of Stock subject thereto, and the terms and conditions of such Award, which terms and conditions need not be uniform as among different Awards. Each Award shall be evidenced by an Award Agreement, as provided in Section 7 of the Plan. From time to time, as the Committee deems appropriate and in the best long-term interests of the Company and its stockholders, the Committee may elect to modify or waive one or more terms or conditions of an outstanding Award previously granted under the Plan, provided that (i) no such modification or waiver shall give the Award Holder of any other Award granted under the Plan any right to a similar modification or waiver, (ii) no such modification or waiver of an Award shall involve a change in the number of shares subject to the Award or a change in the Exercise Price of an Option or the purchase price, if any, of Restricted Stock which is the subject of the Award, and (iii) any such modification or waiver which is adverse or arguably adverse to the interests of the Award Holder shall not be effective unless and until the Award Holder shall consent thereto in writing.

#### **Section 7. Award Agreements**

Within thirty (30) days after the Approval Date of an Award to an Eligible Employee or the Date of Employment of such individual, whichever is later, the Company shall notify the

individual of the grant of such Award and shall hand deliver or mail to the individual an Award Agreement, duly executed by and on behalf of the Company, with the request that the individual execute the agreement within thirty (30) days after the date of mailing or delivery by the Company and return the same to the Company. If the individual shall fail to execute and return the Award Agreement to the Company within said 30-day period, the Committee may elect to treat the Award as void and never granted. If an Award granted under the Plan is eligible for transfer and the subject of a proposed eligible transfer, no such transfer shall be or become effective until and unless the permitted transferee shall have duly executed and returned to the Company an Award Agreement in a form acceptable to the Committee.

### **Section 8. Stock Options**

(a) Upon the grant of an Award in the form of an Option to an Eligible Employee under the Plan, the Committee shall determine the number of shares of Stock subject to the Award.

(b) The Committee shall determine the Exercise Price of any Option granted hereunder, provided such Exercise Price shall not be less than, but may be more than, 100 percent of the Current Market Value of the Stock on the Date of Employment of the Eligible Employee to whom the Option is granted.

(c) Except as the Committee may otherwise provide, any Option granted hereunder will first become exercisable by the Award Holder, in whole or in part, six (6) months after the Date of Employment. Unless otherwise provided by the Committee, the exercisability of any Option granted hereunder will be accelerated, to the extent such Option is not already then exercisable, upon the subsequent occurrence of a "change in control" of the Company, as defined by the Committee, or such other occurrence as the Committee may specify. Generally, exercisability of any Option granted hereunder to an Eligible Employee also shall be conditioned upon continuity of employment of such individual with the Company and its Subsidiaries, provided that, if the Committee so provides upon grant, exercisability of the Option may continue for some designated period of time after termination of employment, subject to the following limitations: (i) if employment is terminated other than due to the death of such individual, exercisability may be extended to not more than one year after termination; and (ii) if employment is terminated due to the death of such individual, exercisability may be extended to the normal end of the exercise period. In addition, no Option granted hereunder to an Eligible Employee may be exercisable after Termination for Cause of such individual. Leaves of absence granted by the Company for military service or illness and transfers of employment between the Company and any Subsidiary shall not constitute termination of employment.

(d) Upon exercise of any Option granted hereunder, in whole or in part, the Exercise Price with respect to the number of shares as to which the Option is then being exercised may be paid by check or, if the Award Holder so elects, in whole or in part by surrender to the Company of shares of Stock previously owned by the Award Holder and meeting the Company's requirements for such shares. Any previously-owned shares of Stock to be used in full or partial payment of the Exercise Price shall be valued at the Current Market Value of the Stock on the date of exercise. In lieu of the actual surrender of qualifying shares of Stock by the Award Holder to the Company in any such stock-for-stock exercise, the Award Holder may merely

affirm to the Company the Award Holder's ownership of such number of shares, in which event the Award Holder shall be deemed to have constructively surrendered such shares in payment of the Exercise Price and the Company, upon its delivery of the shares of Stock as to which the Option is being exercised, shall deduct from the number of shares otherwise deliverable the number of shares deemed surrendered but not actually surrendered by the Award Holder, which deducted shares shall be deemed to have been constructively delivered to the Award Holder on the exercise date, in exchange for the shares constructively surrendered by the Award Holder on such date. Delivery by the Company of shares of Stock upon exercise of an Option shall be made to the person exercising the Option or the designee of such person subject to such terms, conditions, restrictions and contingencies as may be provided in the Award Agreement.

(e) The Committee, in approving an Award of Options, may require reasonable advance notice from the Award Holder of the exercise thereof, normally not to exceed three calendar days, and may condition exercise thereof upon the availability of an effective registration statement or exemption from registration under applicable federal and state securities laws relating to the Stock being issued upon exercise.

#### **Section 9. Restricted Stock**

(a) Upon the grant of an Award in the form of Restricted Stock to an Eligible Employee under the Plan, the Committee shall determine the number of shares of Restricted Stock subject to the Award. Restricted Stock granted under the Plan will involve no cost to the Eligible Employee, except as applicable law may otherwise specifically require, in which event the Award will be subject to the consent of the Eligible Employee to pay such cost, which will not in any event exceed the aggregate par value of the Stock subject to the Award.

(b) Upon grant of an Award in the form of Restricted Stock to an Eligible Employee under the Plan, the Committee shall determine the last day of the Period of Restriction for the shares of Restricted Stock subject to the Award. If the Committee so provides, different numbers or portions of the shares of Restricted Stock subject to an Award may have different Periods of Restriction. Except under unusual circumstances, as specifically determined by the Committee, the last day of the Period of Restriction for any shares of Restricted Stock granted under the Plan shall not be earlier than the day one (1) year after the Date of Employment. Notwithstanding the foregoing, in the case of any shares of Restricted Stock awarded under the Plan, if the Committee so provides upon grant thereof, the Period of Restriction will be foreshortened upon the occurrence during such period of a "change in control" of the Company, as defined by the Committee. Moreover, the Committee also may foreshorten the Period of Restriction for any shares of Restricted Stock upon the death of the Award Holder, as provided in Section 11. During the Period of Restriction, the shares of Restricted Stock shall be subject to forfeiture by the Award Holder to the Company if such individual ceases to be employed by the Company or its Subsidiaries.

(c) Shares of Restricted Stock awarded under the Plan to an Eligible Employee will be issued in the name of such individual on the Approval Date. Pending expiration of the Period of Restriction, certificates representing shares of Restricted Stock shall be held by the Company or the transfer agent for the Stock. Upon expiration of the Period of Restriction for any such shares, certificates representing such shares shall be delivered to the Award Holder or the Award Holder's designee.

(d) From and after the Approval Date for an Award of Restricted Stock, the Award Holder shall be entitled to receive and hold all dividends declared and paid by the Company with respect to the shares of Restricted Stock subject to the Award, which dividends will be the same as those declared and paid by the Company with respect to all outstanding shares of Stock generally. In the event of any subsequent forfeiture of such shares of Restricted Stock, the Award Holder shall not be required to return to the Company any dividends previously received with respect to such shares.

(e) From and after the Approval Date for an Award of Restricted Stock, the Award Holder shall be entitled to exercise all voting rights with respect to the shares of Restricted Stock subject to the Award, which rights will be the same as those possessed by holders of outstanding shares of Stock generally.

#### **Section 10. Adjustment Provisions**

(a) If the Company shall at any time change the number of issued shares of Stock without new consideration to the Company (such as by a stock dividend, recapitalization, stock split or reverse stock split), the total number of shares reserved for issuance under the Plan and the maximum number of shares available for Awards to any one Eligible Employee under the Plan shall be adjusted accordingly, and the number of shares (and, in the case of Options, the Exercise Price) covered by each outstanding Award shall be adjusted so that the aggregate consideration payable to the Company, if any, and the value of each such Award to the Award Holder shall not be changed. The Committee shall make appropriate adjustments to the terms of the Plan and any outstanding Award to fully effect the intent of this Section 10(a). Awards may also contain provisions for their continuation or for other equitable adjustments after changes in the Stock resulting from reorganization, sale, merger, consolidation, issuance of stock rights or warrants or similar occurrence, as the Committee deems appropriate.

(b) Notwithstanding any other provision of this Plan, and without affecting the number of shares reserved or available for issuance hereunder, the Board shall use best efforts to authorize the issuance or assumption of benefits under the Plan in connection with any merger, consolidation, acquisition of property or stock, or reorganization involving the liquidation, discontinuation, merger out of existence or fundamental corporate restructuring of the Company, upon such terms and conditions as it may deem appropriate.

#### **Section 11. Transfers of Awards**

Subject to any overriding restrictions and conditions as may be established from time to time by the Board, upon the grant of any Award under the Plan the Committee may determine that the Award shall be transferable at the election of the Award Holder, in the case of an Option, prior to exercise thereof, and in the case of Restricted Stock, prior to expiration of the Period of Restriction therefor, to such persons and subject to such terms and conditions as the Committee may specify. Unless the Committee shall specifically determine upon grant that an Award is thus transferable by the Award Holder, each Award granted under the Plan shall not be

transferable by the Award Holder, otherwise than by will or similar instrument by which the Award Holder may effect transfer of the Award upon the Award Holder's death, including any written designation of beneficiary as the Committee may approve, or by or the laws of descent and distribution, and shall be exercisable, during the Award Holder's lifetime, only by the Award Holder. In the event of the death of an Award Holder holding an unexercised Option, exercise of the Option may be made only by the person or persons to whom the deceased Award Holder's rights under the Option shall pass or by the executor or administrator of the estate of the Award Holder, and such exercise may be made only to the extent that the deceased Award Holder was entitled to exercise such Option at the date of death. In the event an Eligible Employee who has received an Award or Awards of Restricted Stock dies before expiration of the Period of Restriction for such Award or Awards, the Committee may, in its sole discretion, if and to the extent it believes such action is warranted in light of all applicable circumstances, elect within sixty (60) days after the date of death to foreshorten the Period of Restriction for some or all of the shares of Restricted Stock subject to the Award(s) to the date of death of the Eligible Employee, such that the shares shall be deemed not to be forfeited and no longer to be Restricted Stock as of the date of death.

#### **Section 12. Taxes**

The Company shall be entitled to withhold, and shall withhold, the minimum amount of any federal, state or local tax attributable to any delivery of shares under the Plan, whether upon exercise of an Option or expiration of a Period of Restriction for Restricted Stock or occurrence of any other Taxable Event, after giving the person entitled to receive such delivery notice as far in advance of the Taxable Event as practicable, and the Company may defer making delivery as to any Award, if any such tax is payable, until indemnified to its satisfaction. Such withholding obligation of the Company may be satisfied by any reasonable method, including, if the Company so elects in its sole discretion, by reducing the number of shares otherwise deliverable to or on behalf of the Award Holder on such Taxable Event by a number of shares of Stock having a Current Market Value on the date of such Taxable Event equal to the amount of such withholding obligation.

#### **Section 13. No Right to Employment**

No Eligible Employee shall have any right to employment or continued employment with the Company or any of its Subsidiaries, as an officer or other employee, solely as a result of such individual's receipt of an Award under the Plan.

#### **Section 14. Duration, Amendment and Termination**

The Committee or the Board may amend the Plan from time to time or terminate the Plan at any time. By mutual agreement between the Company and an Award Holder, one or more Awards may be granted to such Award Holder in substitution and exchange for, and in cancellation of, any certain Awards previously granted such Award Holder under the Plan, provided that any such substitution Award shall be deemed a new Award for purposes of calculating any applicable exercise period for Options or Period of Restriction for Restricted Stock. To the extent that any Awards which may be granted within the terms of the Plan would qualify under present or future laws for tax treatment that is beneficial to an Award Holder, any



such beneficial treatment shall be considered within the intent, purpose and operational purview of the Plan and the discretion of the Committee, and to the extent that any such Awards would so qualify within the terms of the Plan, the Committee shall have full and complete authority to grant Awards that so qualify (including the authority to grant, simultaneously or otherwise, Awards which do not so qualify) and to prescribe the terms and conditions (which need not be identical as among recipients) in respect to the grant or exercise of any such Awards under the Plan.

#### **Section 15. Miscellaneous Provisions**

(a) **Naming of Beneficiaries.** In connection with an Award, an Award Holder may name one or more beneficiaries entitled to receive, in the event of the death of the Award Holder, the Award Holder's benefits, to the extent permissible pursuant to the various provisions of the Plan and in accordance with the Committee's specifications.

(b) **Successors.** All obligations of the Company under the Plan with respect to Awards issued hereunder shall be binding on any successor to the Company.

(c) **Governing Law.** The provisions of the Plan and all Award Agreements under the Plan shall be construed in accordance with, and governed by, the laws of the State of Delaware without reference to conflict of laws provisions, except insofar as any such provisions may be expressly made subject to the laws of any other state or federal law.

(d) **Approval by the Board and the Committee.** The Plan, in order to become effective, must be approved by the Board. Any Award granted under this Plan and any Award Agreement executed pursuant thereto prior to the submission of this Plan to the Board for approval shall be void and of no effect if this Plan is not approved as provided above.

**NORTH FORK BANCORPORATION, INC.  
2003 STOCK COMPENSATION PLAN**

**Section 1. Name and Purpose**

This is the North Fork Bancorporation, Inc. 2003 Stock Compensation Plan (the "Plan"). The Plan provides for the grant of equity-based awards to officers and employees of North Fork Bancorporation, Inc. (the "Company") and its subsidiaries. The purpose of the Plan is to encourage those individuals who receive awards under the Plan to acquire and maintain an equity interest in the Company and thus to have additional incentive to continue to work for the success of the Company and its subsidiaries.

**Section 2. Definitions**

Whenever used herein, the following terms shall have the respective meanings set forth below:

- (a) **Award** means any Option to acquire Stock or shares of Restricted Stock granted under the Plan.
- (b) **Award Agreement** means a written agreement evidencing an Award granted under the Plan entered into between the Company and the Holder of the Award, whether such Holder is an original Grantee or a Permitted Transferee of the Award.
- (c) **Board** means the Board of Directors of the Company.
- (d) **Code** means the Internal Revenue Code of 1986, as amended and in effect from time to time.
- (e) **Committee** means the Compensation and Stock Committee of the Board, or any successor to such Committee charged by the Board with the administration of the Plan.
- (f) **Company** means North Fork Bancorporation, Inc., a Delaware corporation.
- (g) **Employee** means a salaried employee (including officers and directors who are also employees) of the Company or any Subsidiary.
- (h) **Exchange Act** means the Securities Exchange Act of 1934, as amended.
- (i) **Exercise Price** of an Option means that price fixed by the Committee upon grant of an Option as the purchase price per share of Stock that must be paid by the Holder of the Option upon exercise thereof, as the same may be adjusted under Section 10 of the Plan.

- (j) **Fair Market Value** means, for any particular day, for any period during which the Stock shall be listed for trading on a national securities exchange, the average of the high and low price per share of Stock on such exchange on such day. For any period during which the Stock shall not be listed for trading on a national securities exchange the fair market price per share of Stock for such day shall be determined by the Committee. If Fair Market Value is to be determined as of a day when the securities markets are not open, the Fair Market Value on that day shall be the Fair Market Value on the nearest preceding day when the markets were open.
- (k) **Grant Date** of an Award means the date the Committee granted an Award.
- (l) **Grantee** of an Award means the Employee or other eligible individual who was initially granted the Award.
- (m) **Holder** means that individual who possesses the ownership interest in an Award at a given time, whether such individual is the original Grantee of the Award or a Permitted Transferee.
- (n) **Option** means the right to purchase a designated number of shares of Stock at the Exercise Price for a specified period of time and subject to specified conditions. For purposes of the Plan, all Options shall be so-called nonqualified (or nonstatutory) stock options, not qualifying as “incentive stock options” under Section 422 of the Code.
- (o) **Period of Restriction** for shares of Restricted Stock granted under the Plan means the period between the Grant Date of the shares and the Vesting Date of the shares.
- (p) **Permitted Transferee** means any person to whom an Award is transferred in accordance with the terms of the Plan and such Award.
- (q) **Reporting Person** means a person subject to Section 16 of the Exchange Act.
- (r) **Restricted Stock** means shares of Stock awarded under the Plan that are subject to forfeiture prior to the Vesting Date for such shares, as provided in Section 9 of the Plan, and which cease to be shares of Restricted Stock upon expiration of the Period of Restriction.
- (s) **Rule 16b-3** means Rule 16b-3 promulgated by the Securities and Exchange Commission pursuant to the Exchange Act, or any successor regulation.
- (t) **Stock** means the Common Stock of the Company.
- (u) **Subsidiary** means a subsidiary corporation of the Company as defined in Section 424(f) of the Code.

- (v) **Taxable Event** means an event relating to an Award granted under the Plan which requires federal, state or local tax to be withheld by the Company or a Subsidiary.
- (w) **Terminated for Cause** means, (i) for Employees serving under an employment agreement containing a provision for termination of employment for “cause,” termination of employment of the Employee for “cause” pursuant to such provision, and (ii) for other Employees, termination of employment of the Employee by a two-thirds vote of the entire Board or the board of directors of the Subsidiary employing such Employee, expressly for one or both of the following “causes,” as evidenced in a certified board resolution: (A) willful misconduct by the Employee which is materially injurious to the Company or the Subsidiary, monetarily or otherwise; or (B) conviction of the Employee with no further possibility of appeal of any felony under applicable state or federal banking or financial institution laws, or the agreement of the Employee to plead guilty to any such felony.
- (x) **Vesting Date** means, for an Option or a portion of an Option, the first date on which the Option or such portion may be exercised by the Holder and, for shares of Restricted Stock, the date on which the shares cease to be forfeitable and become freely transferable shares in the hands of the Holder.

### **Section 3. Administration**

The Plan will be administered by the Committee. The determinations of the Committee shall be made in accordance with its judgment as to the best interests of the Company and its stockholders and in accordance with the purposes of the Plan. Notwithstanding the foregoing and only to the extent permitted by applicable law, the Committee in its discretion may delegate to the President of the Company or other appropriate officers of the Company the authority to make any or all determinations under the Plan (including the decision to grant Awards and types of Awards granted) with respect and only with respect to Grantees or Holders of Awards (other than the delegates) who are not Reporting Persons, notwithstanding the fact that the delegates may themselves be persons eligible to receive Awards under the Plan and/or Reporting Persons. All determinations made or actions taken by the Committee relating to Plan Awards shall be final, binding and conclusive for all purposes and upon all persons.

### **Section 4. Shares Authorized for Awards**

The maximum number of shares available for Awards under the Plan is 5,000,000 shares of Stock, of which a maximum of 3,300,000 shares may take the form of Restricted Stock. Upon adoption of the Plan, the Company shall reserve for issuance thereunder an aggregate of 5,000,000 shares of Stock. The number of shares available for Awards under the Plan, including Awards of Restricted Stock, and the number of shares reserved for issuance shall be subject to adjustment from time to time as provided in Section 10 of the Plan. Shares of Stock underlying outstanding Options and outstanding shares of unvested Restricted Stock will be counted against the Plan maximum while such Options and shares of Restricted Stock are outstanding. Upon termination of outstanding Options that are unexercised and upon forfeiture of outstanding shares

of Restricted Stock prior to vesting, the shares of Stock underlying such Awards shall be returned to the Plan and available for future grants of Awards thereunder. In addition, if the Holder of an Option granted under the Plan exercises such Option by surrendering to the Company shares of Stock previously owned by the Holder (or, in lieu of an actual surrender, by a deemed surrender of such shares), the number of shares of Stock surrendered or deemed surrendered by such Holder shall be returned to the Plan and available for future grants of Awards thereunder. Similarly, if the Holder of any Award granted under the Plan surrenders such Award to the Company in exchange and substitution for a subsequent Award, the shares underlying the surrendered Award shall be returned to the Plan and available for future grants of Awards thereunder.

#### **Section 5. Eligible Grantees**

(a) Any Employee of the Company or any Subsidiary will be eligible to receive one or more Awards under the Plan if the Committee determines in its sole discretion that the job performance of such Employee is likely to be significantly enhanced by the latter's receipt of such Awards. The Committee shall consider such factors as it deems pertinent in selecting Employees to receive Awards and determining the type and amount of their respective Awards.

(b) The Committee in its discretion may grant one or more Awards to an individual, in connection with the employment or potential employment of such individual by the Company or any Subsidiary, prior to the date such individual becomes an Employee, provided that the Vesting Date for any Award granted to a potential Employee, as determined by the Committee, shall not be earlier than the sixtieth day after the Grantee's first day of employment.

(c) The Committee in its discretion may grant one or more Awards to any consultant, advisor or other person providing key services to the Company or a Subsidiary, but only if and to the extent that the shares of Stock underlying such Award may be included in a registration statement on Form S-8 under the Securities Act of 1933, as amended, or any successor form, as filed with the Securities and Exchange Commission.

(d) The grant of an Award to any Employee or other eligible individual in any year shall not entitle such individual to receive an Award in any other year or any other individual to receive an Award in such year or any other year.

(e) No individual may receive Awards under the Plan relating to more than 1,500,000 shares of Stock in the aggregate, as adjusted from time to time in accordance with Section 10 of the Plan.

#### **Section 6. Types of Awards**

Two types of Awards may be granted under the Plan: Options and Restricted Stock. These two types of Awards may be granted in any proportion to each other, subject to the overall limit on Awards of Restricted Stock set forth in Section 4 of the Plan. Except as specified otherwise in this Plan, the Committee shall have complete discretion in determining the type and number of Awards to be granted to eligible individuals and the terms and conditions of Awards, which terms and conditions need not be uniform as among different Grantees of Awards or

different Awards of the same general type. Each Award shall be evidenced by an Award Agreement, as provided in Section 7 of the Plan. From time to time, as the Committee deems appropriate and in the best long-term interests of the Company and its stockholders, the Committee may elect to modify or waive one or more terms or conditions of an outstanding Award previously granted under the Plan, provided that (i) no such discretionary modification or waiver shall give the Holder of any other Award granted under the Plan any right to a similar modification or waiver, (ii) no such discretionary modification or waiver of an Award shall involve a change in the number of shares subject to the Award or, if the Award is an Option, a change in the Exercise Price thereof, and (iii) no such discretionary modification or waiver that is adverse or arguably adverse to the interests of the Holder of the Award shall be effective unless and until the Holder consents thereto in writing.

#### **Section 7. Award Agreements**

As soon as practicable after the grant of an Award, the Company shall notify the Grantee and thereafter shall hand deliver or mail to the Grantee an Award Agreement, duly executed by and on behalf of the Company, with the request that the Grantee execute the Agreement within 30 days after the date of mailing or delivery by the Company and return the same to the Company. The date of execution and return of the Award Agreement shall not necessarily be or affect the Grant Date of the Award, which may precede such date of execution and return, as the Committee may determine. If the Grantee shall fail to execute and return to the Company the Award Agreement within said 30-day period, the Committee may elect to treat the Award as void and never granted. If an Award granted under the Plan is eligible for transfer and proposed to be transferred to a Permitted Transferee, no such transfer shall be or become effective until and unless the Permitted Transferee shall have duly executed and returned to the Company an Award Agreement in a form acceptable to the Committee.

#### **Section 8. Stock Options**

(a) Options shall consist of Options to purchase shares of Stock at an Exercise Price established by the Committee upon grant, which Exercise Price shall not be less than, but may be more than, 100 percent of the Fair Market Value of the Stock on the Grant Date.

(b) The Committee shall establish upon grant the period of time during which an Option will be exercisable, provided that no Option shall continue to be exercisable, in whole or in part, later than ten years after the Grant Date. The date of first exercise of an Option (the Vesting Date) may be any date on or after the Grant Date as the Committee may specify, subject to the limitation on grants of Options to potential Employees in Section 5(b) of the Plan. In lieu of specifying a single date of first exercisability, the Committee may provide upon grant that an Option will become fully exercisable over some designated period of time, with different Vesting Dates for different portions of the Option. The Committee also may provide that exercisability of an Option will be accelerated, if the Option or a portion thereof is not already then exercisable, upon the subsequent occurrence of a "change in control" of the Company, as defined by the Committee, or such other circumstances (e.g., early retirement of the Grantee) as the Committee may specify. Generally, exercisability of an Option also shall be conditioned upon the continued employment of the Grantee by the Company and/or its Subsidiaries, provided that, if the Committee so provides, exercisability of an Option may continue for some designated

period of time after termination of the Grantee's employment, subject to the following limitations: (i) if the employment of the Grantee is terminated other than due to the death of the Grantee, exercisability may not be extended to more than one year after the date of termination of employment (or the tenth anniversary of the Grant Date, if earlier), and (ii) if the employment of the Grantee is terminated due to the death of the Grantee, exercisability may not be extended beyond the tenth anniversary of the Grant Date. No Option granted to an Employee or potential Employee may be exercisable after Termination for Cause of such Employee. Leaves of absence granted by the Company for military service or illness and transfers of employment between the Company and any Subsidiary shall not constitute termination of employment under the Plan. Any Options granted to individuals who are retained as advisors or consultants shall be subject to similar limitations on exercise following any termination of their engagement that occurs before the normal end of the exercise period of their Options.

(c) Upon exercise of an Option, in whole or in part, the Exercise Price with respect to the number of shares as to which the Option is then being exercised may be paid by check or, if the Committee shall have authorized such form of payment and the Holder so elects, by surrender to the Company of shares of Stock owned by the Holder prior to exercise. The Committee may place such limitations as it deems appropriate and in the best interest of the Company and its stockholders on the length of time any such shares used in exercise of an Option must have been owned by the Holder of the Option prior to exercise. Any previously-owned shares of Stock to be used in full or partial payment of the Exercise Price shall be valued at the Fair Market Value of the Stock on the date of exercise. In lieu of the actual surrender of a number of shares of Stock by the Holder to the Company in a qualifying stock-for-stock exercise, the Holder may, with the consent of the Committee, affirm to the Company the Holder's ownership of such number of shares, in which event the Company, upon its delivery of the shares of Stock as to which the Option is being exercised, shall deduct from the number of shares otherwise deliverable the number of shares affirmed as owned but not surrendered by the Holder. Delivery by the Company of shares of Stock resulting from exercise of an Option shall be made to the Holder or the designee of the Holder, subject to such terms, conditions, restrictions and contingencies as the Committee may provide in the Award Agreement. If so provided by the Committee upon grant of an Option, the shares delivered upon exercise may be subject to certain restrictions upon subsequent transfer or sale thereof by the Holder.

(d) The Committee may require reasonable advance notice of exercise of an Option, normally not to exceed three calendar days, and may condition exercise of an Option upon the availability of an effective registration statement or exemption from registration under applicable federal and state securities laws relating to the Stock issuable as a result of exercise.

(e) If the Committee so provides and subject to such limitations as the Committee may impose, the Holder of an Option may have the right, in connection with the Holder's exercise of the Option, to elect to defer the delivery by the Company to the Holder of some or all of the shares of Stock as to which the Option is being exercised to a date or dates after the date of exercise. In the event of any such deferred delivery of shares incident to exercise of an Option, the shares will not be subject to forfeiture during the deferral period except to the extent, if any, that the Committee may specify in granting such right to the Holder of the Option. The Committee also may specify, in connection with any such deferred delivery of shares, that the Holder may be entitled to receive from the Company after the exercise of the Option and prior to

the deferred delivery of the shares, distributions in cash and kind with respect to such deferred shares identical or comparable in financial value to the dividends or other distributions that the Holder would have received had the Holder received such shares upon exercise and continued to hold such shares.

### **Section 9. Restricted Stock**

(a) An Award of Restricted Stock shall consist of a designated number of shares of Stock that are subject to forfeiture by the Holder to the Company if the Grantee of the Award ceases to be employed by the Company or its Subsidiaries prior to the Vesting Date of the shares, as established by the Committee upon grant. Restricted Stock may be granted at no cost to Grantees, or, if subject to a purchase price, such price shall not exceed the par value of the Stock and may be payable by the Grantee to the Company in cash or by any other means, including recognition of past employment, as the Committee deems appropriate. The Committee may provide upon grant of an Award of Restricted Stock that any shares of Restricted Stock that may be purchased by the Grantee in cash and are subsequently forfeited by the Grantee prior to the Vesting Date therefor shall be reacquired by the Company at the purchase price originally paid therefor by the Grantee.

(b) The Committee shall determine upon grant the Vesting Date for shares of Restricted Stock. Except under extraordinary circumstances, the earliest Vesting Date for any shares of Restricted Stock granted under the Plan shall be three years from the Grant Date. The Committee may provide upon grant of an Award of Restricted Stock that different numbers or portions of the shares subject to the Award shall have different Vesting Dates. The Committee also may provide that the Vesting Dates will be accelerated upon the subsequent occurrence of a "change in control" of the Company, as defined by the Committee, or such other occurrence (e.g., early retirement of the Grantee) as the Committee may specify. The Committee also may establish upon grant of an Award of Restricted Stock that some or all of the shares subject thereto shall be subject after the Vesting Date to additional restrictions upon transfer or sale, although not to forfeiture.

(c) Pending expiration of the Period of Restriction, shares of Restricted Stock shall be registered in the name of the Company or its agent, or their nominees, and certificates for such shares, if the same are certificated, shall be held by the Company or its agent. Upon expiration of the Period of Restriction for shares of Restricted Stock, the shares shall be registered in the name of the Holder and certificates representing such shares shall be issued and delivered to the Holder or its nominee or assigns.

(d) If and to the extent the Committee so specifies upon grant, the Holder of shares of Restricted Stock shall be entitled to receive from the Company, after the Grant Date and until the Vesting Date, dividends or other distributions with respect to the shares identical or comparable in financial value to the dividends and other distributions that would have been received by the Holder had the shares not been subject to the restrictions on Restricted Stock imposed under the Plan, and the Holder shall not be required to return any such distributions to the Company in the event of forfeiture of the Restricted Stock; provided that any such dividends or distribution payable to the Holder that constitute Stock or other equity securities of the Company shall be issued in the same manner and subject to the same restrictions and conditions as apply to the shares of Restricted Stock as to which such dividends and distributions are paid.



(e) If and to the extent the Committee so specifies upon grant, the Holder of shares of Restricted Stock shall be entitled to vote or direct the voting of such shares after the Grant Date and until the Vesting Date.

#### **Section 10. Adjustment Provisions**

(a) If the Company shall at any time change the number of issued shares of Stock without new consideration to the Company (such as by a stock dividend, stock split or similar transaction), the total number of shares reserved for issuance under the Plan, the maximum number of shares available for issuance as Restricted Stock, the maximum number of shares available for Award of Options to any individual under the Plan, and the number of shares subject to outstanding Awards (and other attributes of such Awards directly affected by the change) shall all be adjusted by the Committee so that the aggregate consideration payable to the Company, if any, and the value of each such Award to the Holder shall not be changed. Awards may also contain provisions for their continuation or for other equitable adjustments after changes in the Stock resulting from reorganization, sale, merger, consolidation, issuance of stock rights or warrants or similar occurrence.

(b) Notwithstanding any other provision of this Plan, and without affecting the number of shares reserved or available for issuance hereunder, the Board shall use best efforts to authorize the issuance or assumption of benefits under the Plan in connection with any merger, consolidation, acquisition of property or stock, or reorganization involving the liquidation, discontinuation, merger out of existence or fundamental corporate restructuring of the Company, upon such terms and conditions as it may deem appropriate.

#### **Section 11. Transfers of Awards**

(a) Except as otherwise provided in this Section 11, Awards granted under the Plan shall not be transferable by the Grantee, otherwise than according to an effective beneficiary designation as provided in Section 15(a) of the Plan, by will or similar instrument or by the laws of descent and distribution.

(b) Notwithstanding the provisions of Section 11(a) of the Plan and subject to any overriding restrictions and conditions as may be established from time to time by the Board, the Committee may determine that any Award or portion thereof granted under the Plan may be transferred by the Holder prior to the Vesting Date thereof under such terms and conditions and to such person or persons ("Permitted Transferees") as it deems appropriate and in the best interest of the Company. The Committee may specify the procedures applicable to any such permitted transfer, including placing restrictions and limitations on Transferred Awards not applicable to Awards not transferred and requiring Permitted Transferees to enter into Award Agreements reflecting such restrictions and limitations.

(c) In the event of the death of a Holder holding an unexercised Option, exercise of the Option may be made only by the executor or administrator of the estate of the Holder or the

person or persons to whom the deceased Holder's rights under the Option shall pass according to an effective beneficiary designation as provided in Section 15(a), by will or similar instrument or the laws of descent and distribution, and such exercise may be made only to the extent that the deceased Holder was entitled to exercise such Option at the date of death. If and to the extent the Committee shall so provide upon grant or thereafter, the Vesting Date for Restricted Stock may be accelerated upon the death of the Holder during the Period of Restriction, such that the Stock shall be deemed not to be forfeited and no longer to be Restricted Stock as of the date of death.

#### **Section 12. Taxes**

The Company shall be entitled to withhold, and shall withhold, the minimum amount of any federal, state or local tax attributable to any shares deliverable under the Plan, whether upon exercise of an Option or expiration of a Period of Restriction for Restricted Stock or occurrence of any other Taxable Event, after giving the person entitled to receive such delivery notice as far in advance of the Taxable Event as practicable, and the Company may defer making delivery as to any such shares, if any such tax is payable, until indemnified to its satisfaction. Such withholding obligation of the Company may be satisfied by any reasonable method, including, if the Committee so provides, reducing the number of shares otherwise deliverable to or on behalf of the Holder on such Taxable Event by a number of shares of Stock having a fair value, based on the Fair Market Value of the Stock on the date of such Taxable Event, equal to the amount of such withholding obligation.

#### **Section 13. No Right to Employment**

The right of any Employee or other individual receiving an Award, to continue to serve the Company or any Subsidiary in any capacity, if any, shall not be enhanced or otherwise affected by the designation of such Employee or other individual as a Grantee of an Award under the Plan.

#### **Section 14. Duration, Amendment and Termination**

No Award shall be granted under the Plan on or after the date which is the tenth anniversary date of the effective date of this Plan. To the extent permitted under applicable laws, rules and regulations, the Committee or the Board may amend the Plan from time to time or terminate the Plan at any time. By mutual agreement between the Company and the Holder of an Award, one or more other Awards may be granted to such Holder in substitution and exchange for, and in cancellation of, the existing Award, provided that any such substitution Award shall be deemed a new Award for purposes of calculating any applicable exercise period for Options or Period of Restriction for Restricted Stock. To the extent that any Awards which may be granted within the terms of the Plan would qualify under present or future laws for tax treatment that is beneficial to the Holder thereof, any such beneficial treatment shall be considered within the intent, purpose and operational purview of the Plan and the discretion of the Committee, and to the extent that any such Awards would so qualify within the terms of the Plan, the Committee shall have full and complete authority to grant Awards that so qualify (including the authority to grant, simultaneously or otherwise, Awards which do not so qualify) and to prescribe the terms and conditions (which need not be identical as among recipients) in respect to the grant or exercise of any such Awards under the Plan.

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**Section 15. Miscellaneous Provisions**

(a) **Naming of Beneficiaries.** At any time, the Holder of any Award may name one or more beneficiaries to receive the Award and the Holder's benefits thereunder, to the extent permissible pursuant to the various provisions of the Plan, in the event of the death of the Holder.

(b) **Successors.** All obligations of the Company under the Plan with respect to Awards issued hereunder shall be binding on any successor to the Company.

(c) **Governing Law.** The provisions of the Plan and all Award Agreements under the Plan shall be construed in accordance with, and governed by, the laws of the State of Delaware without reference to conflict of laws provisions, except insofar as any such provisions may be expressly made subject to the laws of any other state or federal law.

Dated June \_\_, 2003

**JSB FINANCIAL, INC. 1996 STOCK OPTION PLAN**

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**Effective as of January 1, 1996  
Incorporating Amendments through November 12, 1996**

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**JSB FINANCIAL, INC. 1996 STOCK OPTION PLAN**

**ARTICLE I**

**Purpose**

Section 1.1 General Purpose of the Plan.

The purpose of the Plan is to advance the interests of JSB Financial, Inc. and its shareholders by providing certain directors and officers of JSB Financial, Inc., and its affiliates, with an incentive to achieve corporate objectives, to attract and retain directors and officers of outstanding competence and to provide such directors and officers with an equity interest in JSB Financial, Inc.

**ARTICLE II**

**Definitions**

The following definitions shall apply for the purposes of this Plan, unless a different meaning is plainly indicated by the context.

Section 2.1 Administrator means the person or persons designated by the Committee pursuant to Section 3.3 to assist the Committee in the administration of the Plan.

Section 2.2 Appreciation Right means a right granted pursuant to Section 5.1 which shall entitle the holder thereof to receive in accordance with the terms of such Appreciation Right an amount of cash equal to the difference between the Fair Market Value of the Shares subject to the Appreciation Right and the Exercise Price applicable to such Appreciation Right. For purposes of this Section 2.2, the Fair Market Value of a Share shall be determined on the date the Appreciation Right is exercised.

Section 2.3 Bank means Jamaica Savings Bank FSB, a federally chartered stock savings bank and any successor thereto.

Section 2.4 Beneficiary means the person or persons designated by an Eligible Individual, Eligible Outside Director or Eligible Director Emeritus, in such form and manner as may be required by the Committee, to receive his or her Options in the event such Options remain unexercised upon his or her death or, if no such Beneficiary has been designated, the legal representative of the Eligible Individual, Eligible Outside Director or Eligible Director Emeritus.

Section 2.5 Board means the board of directors of JSBF.

Section 2.6 Change of Control means an event of the nature that: (a) would be required to be reported by JSBF in response to Item 1 of the current report on Form 8-K, as in effect on the date hereof, pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"); or (b) results in a Change of Control of the Bank or JSBF within the meaning of the Change in Bank Control Act and the rules and regulations promulgated

thereunder by the appropriate federal banking agency, as in effect on the date hereof; or (c) results in a transaction requiring prior Federal Reserve Board (“FRB”) approval under the Bank Holding Company Act of 1956 and the regulations promulgated thereunder by the FRB, as in effect on the date hereof; or (d) results in a transaction requiring prior Office of Thrift Supervision (“OTS”) approval under the Home Owners’ Loan Act and the regulations promulgated thereunder by the OTS, as in effect on the date hereof. Without limiting the foregoing, a Change of Control shall be deemed to have occurred at such time as: (i) any “person” (as the term is used in Section 13(d) and 14(d) of the Exchange Act) is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Bank or JSBF representing 20% or more of the Bank’s or JSBF’s outstanding securities, except for any securities of the Bank purchased by JSBF in connection with the conversion of the Bank to the stock form and any securities purchased by employee benefit plans maintained by the Bank or JSBF, or such plans’ related trusts; (ii) individuals who constitute the Board of Directors of JSBF or the Board of Directors of the Bank on the date hereof (the “Incumbent Board”) cease for any reason to constitute at least a majority thereof, provided that any individual becoming a director subsequent to the date hereof whose election was approved by a vote of at least three-quarters of the directors comprising the Incumbent Board, or whose nomination for election by JSBF’s stockholders was approved by the same Nominating Committee serving under an Incumbent Board, shall be, for purposes of this clause (ii), considered as though he were a member of the Incumbent Board, but only if such individual’s election or nomination did not result from an actual or threatened election contest (within the meaning of Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents (within the meaning of Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) other than by or on behalf of the Board of JSBF; (iii) a plan of reorganization, merger, consolidation, sale of all or substantially all the assets of the Bank or JSBF becomes effective or a similar transaction occurs in which the Bank or JSBF is not the resulting entity; (iv) a plan of reorganization, merger, consolidation, sale of all or substantially all of the assets of the Bank or JSBF or a similar transaction, which will result in the outstanding shares of the class of securities then subject to such plan or transaction being exchanged for or converted into cash or property or securities not issued by the Bank or JSBF, is approved by the stockholders of JSBF in response to a proxy statement that was distributed, soliciting proxies from stockholders of JSBF, by someone other than the current management of JSBF, or (v) 20% or more of the voting securities of the Bank or JSBF then outstanding are tendered and accepted by an offeror as of the closing of a tender offer for such securities.

Section 2.7 Code means the Internal Revenue Code of 1986 (including the corresponding provisions of any succeeding law).

Section 2.8 Committee means the Committee described in Section 3.1.

Section 2.9 Corporation means JSBF, the Bank and any successor or successors thereto, and subject to the approval of, and such terms and conditions as may be imposed by, the Board, such other savings bank, savings and loan association, bank, corporation, financial institution or other business organization or institution as may be or become an affiliate of JSBF.



Section 2.10 Disability means a condition of total incapacity, mental or physical, for further performance of duty with the Corporation, which the Committee shall have determined, on the basis of competent medical evidence, is likely to be permanent.

Section 2.11 Disinterested Board Member means a member of the Board who is not currently and has not at any time during the immediately preceding one-year period been an Eligible Individual.

Section 2.12 Dividend Equivalent Right means a right described in Article VI.

Section 2.13 Effective Date means January 1, 1996.

Section 2.14 Eligible Director means an Eligible Outside Director or Eligible Director Emeritus.

Section 2.15 Eligible Director Emeritus means a former member of the Board or former member of the board of directors of the Bank who has been declared by the Board or the board of directors of the Bank to have the status of “director emeritus”.

Section 2.16 Eligible Individual means any employee of the Corporation whom the Committee may select to receive a grant of an Option or Appreciation Right pursuant to the Plan, *provided, however*, that no Eligible Director shall be identified as an Eligible Individual.

Section 2.17 Eligible Outside Director means a member of the Board or a member of the board of directors of the Bank who is not an employee or an officer of the Corporation.

Section 2.18 Exercise Price means the price per Share at which Shares subject to an Option may be purchased upon exercise of the Option, determined in accordance with Section 4.3, Section 4.4 or Section 4.8.

Section 2.19 Fair Market Value means, when used in connection with Shares on a certain date, the reported closing price of the Shares as reported by the National Association of Securities Dealers Automated Quotation System (as published by the Wall Street Journal, if published) on the day prior to such date or if the Shares were not traded on such date, on the next preceding day on which the Shares were traded thereon.

Section 2.20 Incentive Stock Option means a right to purchase Shares that is granted pursuant to Section 4.3, that is designated by the Committee to be an Incentive Stock Option and that satisfies the requirements of Section 422 of the Code.

Section 2.21 JSBF means JSB Financial, Inc., a corporation organized and existing under the laws of the State of Delaware, and any successor thereto.

Section 2.22 Non-Qualified Stock Option means a right to purchase Shares that is (a) granted pursuant to Section 4.3, designated by the Committee to be a Non-Qualified Stock Option and not intended to satisfy the requirements of Section 422 of the Code, or (b) granted pursuant to Section 4.4 or Section 4.8.

Section 2.23 Option means either an Incentive Stock Option or a Non-Qualified Stock Option granted under this Plan.

Section 2.24 Option Agreement means the written agreement evidencing an Option, and the Appreciation Rights and Dividend Equivalent Rights which relate to such Option, in accordance with the requirements of Sections 4.1, 5.1 and 6.1.

Section 2.25 Option Holder means an Eligible Individual, Eligible Outside Director or Eligible Director Emeritus who has been granted an Option under the Plan, or the Beneficiary of such an Eligible Individual, Eligible Outside Director or Eligible Director Emeritus.

Section 2.26 Option Period means the period during which an Option or an' Appreciation Right may be exercised, determined in accordance with Section 4.3, Section 4.4 or Section 4.8.

Section 2.27 Person means an individual, a corporation, a bank, a savings bank, a savings and loan association, a financial institution, a partnership, an association, a joint-stock company, a trust, an estate, an unincorporated organization and any other business organization or institution.

Section 2.28 Plan means the JSB Financial, Inc. 1996 Stock Option Plan, as amended from time to time.

Section 2.29 Preliminary Purchase Event means any of the following events or transactions occurring after the Effective Date:

(a) JSBF or the Bank shall have entered into an agreement to engage in an Acquisition Transaction (as defined below) with any person (the term "person" for purposes of this Plan having the meaning assigned thereto in Sections 3(a)(9) and 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations thereunder, except that the term "person" shall not include any employee benefit plan maintained by JSBF or the Bank, or such plan's related trust) or the Board of Directors of JSBF shall have recommended that the shareholders of JSBF approve or accept any Acquisition Transaction with any person. For purposes of this Plan, "Acquisition Transaction" shall mean (i) a merger or a purchase, lease or other acquisition of all or substantially all of the assets of JSBF or the Bank or (ii) a purchase or other acquisition (including by way of merger, consolidation, share exchange or otherwise) of securities representing 10% or more of the voting power of JSBF or the Bank; *provided* that the term "Acquisition Transaction" does not include any internal merger or consolidation involving only JSBF and/or any of its subsidiaries.

(b) Any person shall have acquired beneficial ownership or the right to acquire beneficial ownership of 10% or more of the outstanding Shares (the term "beneficial ownership" for purposes of this Plan having the meaning assigned thereto in Section 13(d) of the Exchange Act, and the rules and regulations thereunder);

(c) Any person shall have made a *bona fide* proposal to JSBF or its shareholders, by public announcement or written communication that is or becomes the subject

of public disclosure, to engage in an Acquisition Transaction (including, without limitation, any situation in which any person (i) shall have commenced (as such term is defined in Rule 14d-2 under the Exchange Act) or (ii) shall have filed a registration statement under the Securities Act of 1933, as amended, with respect to, a tender offer or exchange offer to purchase any Shares such that, upon consummation of such offer, such person would own or control 10% or more of the then outstanding Shares; or

(d) Any person shall have filed an application or notice with the Office of Thrift Supervision, Board of Governors of the Federal Reserve System (the "Federal Reserve Board") or any other governmental authority or regulatory or administrative agency or commission for approval to engage in an Acquisition Transaction.

Section 2.30 Retirement means the termination of an Eligible Individual's employment with the Corporation at a time when he or she is eligible to begin receiving an immediate retirement allowance under the Retirement Plan of the Bank.

Section 2.31 Share means a share of common stock of JSBF.

Section 2.32 Termination for Cause means an individual's termination of service or employment with the Corporation because of the individual's personal dishonesty, willful misconduct, any breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, conviction of a felony with respect to the Corporation or for reasons defined in the individual's employment agreement with the Corporation.

### ARTICLE III

#### Administration

##### Section 3.1 Committee.

The Plan shall be administered by the Employee Benefits Committee of the Bank (or any successor committee), or such other committee as shall be designated by or on behalf of the Board to perform the duties as set forth in this Article III; *provided, however*, that all members of such Committee must be Disinterested Board Members. If fewer than 3 members of the Employee Benefits Committee are Disinterested Board Members, then the Board shall appoint to the Committee such additional Disinterested Board Members as shall be necessary to provide for a Committee consisting of at least three Disinterested Board Members.

##### Section 3.2 Committee Action.

The Committee shall hold meetings, at least annually, and may make such administrative rules and regulations as it may deem proper. A majority of the members of the Committee shall constitute a quorum, and the action of a majority of the members of the Committee present at a meeting at which a quorum is present, as well as actions taken pursuant to the unanimous written consent of all of the members of the Committee without holding a meeting, shall be deemed to be actions of the Committee. All actions of the Committee shall be final and conclusive and shall be binding upon the Corporation and all other interested parties.

Section 3.3 Committee Responsibilities.

Subject to the terms and conditions of the Plan and such limitations as may be imposed from time to time by the Board, the Committee shall be responsible for the overall management and administration of the Plan and shall have such authority as shall be necessary or appropriate in order to carry out its responsibilities, including, without limitation, the authority:

- (a) to interpret and construe the Plan, and to determine all questions that may arise under the Plan as to eligibility for participation in the Plan, the number of Shares subject to the Options and Appreciation Rights, if any, to be granted, and the terms and conditions thereof;
  - (b) to adopt rules and regulations and to prescribe forms for the operation and administration of the Plan;
  - (c) to appoint an officer or officers of JSBF or the Bank, who shall not be members of the Committee, and who shall, subject to the responsibilities of the Committee and the Board, serve as the Administrator for the Plan and shall have the responsibility for the day-to-day control, management, operation and administration of the Plan. Such Administrator may, in the Committee's discretion, have the following responsibilities:
    - (i) to maintain records necessary or appropriate for the administration of the Plan;
    - (ii) to give and receive such instructions, notices and information as may be necessary or appropriate in the administration of the Plan;
    - (iii) to prescribe forms consistent with the terms of the Plan and with the interpretations and other actions of the Committee;
    - (iv) to determine any question arising in connection with the Plan, and such officer's decision or action in respect thereof shall be final and conclusive and binding upon JSBF, the Option Holders, Beneficiaries and any other person having an interest under the Plan; *provided, however,* that any question relating to inconsistency or omission in the Plan, or interpretation of the provisions of the Plan, shall be referred to the Committee by such officer, and the decision of the Committee in respect thereof shall be final; and
    - (v) to discharge such other responsibilities or follow such directions as may be assigned or given by the Committee or the Board; and
- any Option Holder dealing with the Administrator shall be fully protected in relying upon any written notice, instruction, direction or other communication signed by the Administrator; and
- (d) to take any other action not inconsistent with the provisions of the Plan that it may deem necessary or appropriate.

ARTICLE IV

Stock Options

Section 4.1 Option Agreements.

Any Option granted pursuant to the Plan shall be evidenced by a written agreement which shall:

- (a) designate the Option as either an Incentive Stock Option or a Non-Qualified Stock Option;
- (b) specify the number of Shares covered by the Option;
- (c) specify the Exercise Price, determined in accordance with Section 4.3, Section 4.4 or Section 4.8, for the Shares subject to the Option;
- (d) specify the Option Period determined in accordance with Section 4.3, Section 4.4 or Section 4.8;
- (e) set forth specifically, or incorporate by reference, the applicable provisions of the Plan; and
- (f) contain such other terms and conditions not inconsistent with the Plan as the Committee may, in its discretion, prescribe with respect to an Option granted to an Eligible Individual.

Section 4.2 Available Shares.

Subject to Section 7.3, the maximum aggregate number of Shares with respect to which Options may be granted at any time pursuant to this Plan shall be equal to the excess of:

- (a) 800,000 Shares; over
- (b) the sum of:
  - (i) the number of Shares with respect to which Options previously granted under this Plan may then or may in the future be exercised; plus
  - (ii) the number of Shares with respect to which Options previously granted under this Plan have been exercised.

Such Shares may be either authorized but unissued Shares, or Shares previously issued and reacquired by JSBF to be held as issued but not outstanding Shares. Solely, for purposes of this Section 4.2, an Option shall not be considered as having been exercised to the extent that such Option terminates by reason other than the purchase of the related Shares, and the exercise of an Appreciation Right shall not be treated as an exercise of the related Option.

Section 4.3 Options Granted to Eligible Individuals.

(a) Subject to the limitations of the Plan, the Committee may, in its discretion, grant to an Eligible Individual an Option to purchase Shares.

(b) Subject to Section 4.2 and such limitations as the Board may from time to time impose, the number of Shares as to which an Eligible Individual may be granted Options shall be determined by the Committee, in its discretion.

(c) The Exercise Price of an Option granted to an Eligible Individual shall be determined by the Committee, in its discretion; *provided, however*, that the Exercise Price established for any Incentive Stock Option shall be determined in accordance with Section 4.7; and *provided, further*, that the Exercise Price established for any Option shall not be less than the par value of a Share on the date on which the Option is granted.

(d) The Option Period during which an Option granted to an Eligible Individual may be exercised shall commence on the date that is the latter of six months after the date the Option is granted or six months after the Plan is approved by the Company's stockholders, and shall expire on the earliest of:

- (i) the date specified by the Committee in the Option Agreement;
- (ii) the last day of the three-month period commencing on the date of the Eligible Individual's termination of employment with the Corporation, other than on account of death or Disability, Retirement or a Termination for Cause;
- (iii) the last day of the one-year period commencing on the date of the Eligible Individual's termination of employment due to death, Disability or Retirement;
- (iv) the date the Eligible Individual ceases to be an employee of the Corporation due to a Termination for Cause; and
- (v) the last day of the ten-year period commencing on the date on which the Option was granted;

*provided, however*, that in the event of a Change of Control while there is outstanding any Option for which the Option Period has not commenced, such Option Period shall automatically commence on the earliest date on which the Change of Control is deemed to have occurred; and *provided, further*, that in the event an Eligible Individual who ceases to be an employee of the Corporation due to Retirement has not exercised his or her Incentive Stock Options, if any, within the three-month period commencing on the date of such Retirement, all such Options shall be deemed Non-Qualified Stock Options thereafter.

(e) The Committee may, in its discretion, establish a specific date or dates on and after which all or a specified portion of the Shares subject to an Option granted to an Eligible Individual pursuant to this Section 4.3 shall be available for purchase during the Option Period, which date or dates shall be specified in the Option Agreement.

Section 4.4 Options Granted to Eligible Directors.

(a) Subject to Sections 4.2 and 4.4(c), effective on the first business day of each calendar year during which the Plan is in effect, each Eligible Outside Director who is an Eligible Outside Director on such date shall be granted a Non-Qualified Stock Option to purchase 4,000 Shares. Notwithstanding the foregoing, in order to attract qualified individuals to serve as Eligible Outside Directors, an individual who first becomes an Eligible Outside Director on or after the Effective Date of the Plan shall be granted, effective on the date he or she becomes an Eligible Outside Director, a Non-Qualified Stock Option to purchase the sum of (i) 5,000 Shares, plus (ii) if such individual becomes an Eligible Outside Director subsequent to the first business day of a calendar year, the number of Shares determined according to the following schedule:

<u>Effective Date of Board Membership</u>	<u>Shares</u>
Before April 1 <sup>st</sup>	4,000
After March 31 <sup>st</sup> and before July 1 <sup>st</sup>	3,000
After June 30 <sup>th</sup> and before October 1 <sup>st</sup>	2,000
After September 30 <sup>th</sup>	1,000

(b) Subject to Sections 4.2 and 4.4(c), on the first business day of each calendar year during which the Plan is in effect, each Eligible Director Emeritus shall be granted a Non-Qualified Stock Option to purchase 2,000 Shares; *provided, however*, that no individual shall receive a grant under both Sections 4.4(a) and (b).

(c) Notwithstanding Sections 4.4(a) and (b), in the event that, as of the first business day of a calendar year, the number of available Shares determined under Section 4.2 is less than the total number of Shares with respect to which Non-Qualified Stock Options would be granted under Sections 4.4(a) and (b), each Eligible Director shall be granted a Non-Qualified Stock Option for the number of Shares determined by multiplying (i) the number of Shares with respect to which the Eligible Director would have been granted a Non-Qualified Stock Option on such date by (ii) a fraction, the numerator of which is the number of Shares that are available under Section 4.2 and the denominator of which is the total number of Shares that would have to have been available under Section 4.2 in order to grant all of the Non-Qualified Stock Options that would otherwise have been granted under Sections 4.4(a) and (b), absent this Section 4.4(c).

(d) The Exercise Price of an Option granted to an Eligible Director shall be the Fair Market Value of a Share on the date on which the Option is granted.

(e) The Option Period during which an Option granted to an Eligible Director may be exercised shall commence on the date that is the latter of six months after the date the Option was granted or six months after the Plan is approved by the Company's stockholders, and shall expire on the earliest of:

- (i) the last day of the one-year period commencing on the date the Eligible Director ceases to be an Eligible Director other than due to a Termination for Cause;

- (ii) the date the Eligible Director ceases to be an Eligible Director due to a Termination for Cause; and
- (iii) the last day of the ten-year period commencing on the date on which the Option was granted;

*provided, however*, that in the event of a Change of Control while there is outstanding any Option for which the Option Period has not commenced, such Option Period shall automatically commence on the earliest date on which the Change of Control is deemed to have occurred.

(f) All Shares subject to an Option granted to an Eligible Director pursuant to this Section 4.4 shall be available for purchase at any time during the Option Period.

Section 4.5 Method of Exercise.

(a) Subject to the limitations of the Plan and the Option Agreement, an Option Holder may, at any time during the Option Period, exercise his or her right to purchase all or any part of the Shares to which the Option relates; *provided, however*, that the minimum number of Shares which may be purchased shall be 100, or, if less, the total number of Shares relating to the Option which remain unpurchased. An Option Holder shall exercise an Option to purchase Shares by:

- (i) giving written notice to the Committee or Administrator in such form and manner as the Committee may prescribe, of his or her intent to exercise the Option;
- (ii) delivering to the Committee or Administrator full payment for the Shares as to which the Option is to be exercised; and
- (iii) satisfying such other conditions as may be prescribed in the Option Agreement.

Payment shall be made (A) in United States dollars by certified check, money order or bank draft drawn payable to the order of JSBF, (B) in Shares duly endorsed for transfer and with all necessary stock transfer tax stamps attached, already owned by the Option Holder and having a fair market value equal to the Exercise Price, such fair market value to be determined in such manner as may be provided by the Committee or Administrator or as may be required in order to comply with or conform to the requirements of any applicable laws or regulations or (C) a combination of (A) or (B). Notwithstanding the provisions of Section 8.9, the date of exercise shall be the earliest date practicable following the date on which the notice referred to in this Section 4.5(a) is received by the Committee or Administrator, but in no event more than three days after such notice is received.



(b) When the requirements of Section 4.5(a) have been satisfied, the Committee or Administrator shall take such action as is necessary to cause the issuance, in the name of the Option Holder, of a stock certificate evidencing the ownership of such Shares. Except as may be provided under Article VI with respect to Dividend Equivalent Rights, an Option Holder shall have no right to vote or to receive dividends, nor have any other rights with respect to the Shares, prior to the date as of which such Shares are transferred to the Option Holder on the stock transfer records of JSBF, and no adjustments shall be made for any dividends or other rights for which the record date is prior to the date as of which such transfer is effected, except as may be required under Section 7.3.

Section 4.6 Limitations on Options.

(a) No Eligible Individual shall be granted an Option unless at the time the Option is granted, each member of the Committee is a Disinterested Board Member.

(b) An Option by its terms shall not be transferable by the Option Holder other than by will or by the laws of descent and distribution, and shall be exercisable, during the lifetime of an Option Holder only by such Option Holder.

(c) The obligation of JSBF to deliver Shares with respect to an Option shall, if the Committee or Administrator so requests, be conditioned upon the receipt of a representation as to the investment intention of the Option Holder to whom such Shares are to be delivered, in such form as the Committee or Administrator shall determine to be necessary or advisable to comply with the provisions of applicable federal, state or local law. It may be provided that any such representation shall become inoperative upon a registration of the Shares or upon the occurrence of any other event eliminating the necessity of such representation. JSBF shall not be required to deliver any Shares under the Plan prior to (i) the admission of such Shares to listing on any stock exchange on which Shares may then be listed, or (ii) the completion of such registration or other qualification under any state or federal law, rule or regulation as the Committee or Administrator shall determine to be necessary or advisable.

Section 4.7 Additional Limitations on Incentive Stock Options.

In addition to the limitations of Section 4.6, an Option designated by the Committee to be an Incentive Stock Option shall be subject to the following limitations:

(a) if, for any calendar year, the sum of (i) plus (ii) exceeds \$100,000, where (i) equals the Fair Market Value (determined as of the date of the grant) of Shares subject to an Option intended to be an Incentive Stock Option which first become available for purchase during such calendar year, and (ii) equals the Fair Market Value (determined as of the date of grant) of Shares subject to any other Options intended to be Incentive Stock Options and previously granted to the same Eligible Individual which first become exercisable in such calendar year, than that portion of the Shares granted pursuant to such Options which cause the sum of (i) and (ii) to exceed \$100,000 shall be deemed to be Shares granted pursuant to a Non-Qualified Stock Option or Non-Qualified Stock Options, with the same terms as the Option or Options intended to be an Incentive Stock Option;

(b) except as provided in Section 4.7(c), the Exercise Price established for an Option intended to be an Incentive Stock Option shall not be less than the reported closing price of a Share as reported by the National Association of Securities Dealers Automated Quotation System for the date the Option is granted; and

(c) the Exercise Price established for an Option intended to be an Incentive Stock Option that is granted to an Eligible Individual who, at the time the Option is granted, owns Shares comprising more than 10% of the total combined voting power of all classes of stock of JSBF, shall not be less than 110% of the amount determined under Section 4.7(b) without regard to this Section 4.7(c).

Section 4.8 Grants in the Event of a Preliminary Purchase Event.

(a) In the event of a Preliminary Purchase Event, Non-Qualified Stock Options for all of the Shares then available for grant under this Plan pursuant to Section 4.2 shall be automatically granted among those current Eligible Individuals and current Eligible Directors who have previously been granted Options under this Plan, as of the date of such Preliminary Purchase Event. The number of Shares subject to the Option to be granted to each such individual under this Section 4.8(a) shall be determined by multiplying the number of Shares then available for grant pursuant to Section 4.2 by a fraction, the numerator of which is the number of Shares subject to Options previously granted to that individual under this Plan, and the denominator of which is the total number of Shares subject to Options previously granted to all current Eligible Individuals and current Eligible Directors under this Plan; however, both the numerator and the denominator will exclude the Options granted under Section 4.4(a)(i).

(b) The Exercise Price for any Option granted pursuant to Section 4.8(a) shall be the average of the Exercise Price for each Share subject to an Option granted under this Plan to the respective Eligible Individual or Eligible Director prior to the Preliminary Purchase Event, excluding the Options granted under Section 4.4(a)(i).

(c) The Option Period during which an Option granted pursuant to Section 4.8(a) may be exercised shall commence on the earliest to occur of (i) the date which is six months after the date the Option is granted or (ii) the date of a Change of Control and shall expire on the last day of the ten-year period commencing on the date on which the Option is granted.

(d) All Shares subject to an Option granted pursuant to Section 4.8(a) shall be available for purchase by the Option Holder immediately upon the date the Option Period begins.

ARTICLE V  
Appreciation Rights

Section 5.1 In General.

Each Eligible Individual or Eligible Director who has been granted an Option pursuant to the Plan, shall, at the time the Option is granted, also be granted an Appreciation Right relating to all of the Shares subject to such Option, with an Exercise Price equal to the Exercise Price of the related Option, and such Appreciation Right shall be exercisable only in the event of a Change of Control. Such Appreciation Right shall be evidenced by provisions included in the Option Agreement for the Option to which the Appreciation Right relates. Except as provided otherwise in this Article V, Appreciation Rights shall be exercisable in accordance with and subject to the terms and conditions imposed under the Plan and the relevant Option Agreement.

Section 5.2 Exercise of Appreciation Rights.

An Option Holder in possession of an Appreciation Right who desires to exercise such Appreciation Right shall do so by delivering to the Committee or Administrator advance written notice, in the form and manner prescribed by the Committee or Administrator, of his or her intent to exercise the Appreciation Right and the number of Shares with respect to which the Appreciation Right is to be exercised. On the date of exercise or as soon thereafter as is practicable, JSBF shall pay to the Option Holder exercising the Appreciation Right an amount equivalent to the excess of (a) the Fair Market Value of the applicable Shares on the date of exercise, over (b) the Exercise Price of such Shares. Payment of an Appreciation Right shall be made in cash. Notwithstanding the provisions of Section 8.9, the date of exercise shall be the earliest date practicable following the date on which the notice referred to in this Section 5.2 is received by the Committee or Administrator, but in no event more than three days after such notice is received.

Section 5.3 Effect of Exercise.

The exercise of an Appreciation Right shall, for all purposes of the Plan other than determining the amount of Shares available for Options pursuant to Section 4.2, be treated as an exercise of the related Option and a subsequent resale of the Shares acquired thereby.

ARTICLE VI  
Dividend Equivalent Rights

Section 6.1 In General.

Each Eligible Individual and Eligible Director who has been granted an Option under the Plan shall, at the time the Option is granted, also be granted a Dividend Equivalent Right relating to each Share subject to such Option. Upon the exercise of an Option, the Option Holder shall receive a payment equal to the value of the Dividend Equivalent Rights relating to the Shares being acquired pursuant to such Option exercise. Dividend Equivalent Rights granted

pursuant to this Article VI shall be evidenced by provisions included in the Option Agreement for the Option to which the Dividend Equivalent Rights relate and shall be valued and paid in accordance with and subject to the terms and conditions imposed under the Plan and the relevant Option Agreement.

Section 6.2 Value of Dividend Equivalent Rights.

(a) For purposes of this Section 6.2 only, the following special definitions shall apply:

- (i) Credit Date means each anniversary of the Effective Date of the Plan.
- (ii) DER Credit means an amount relating to a Share subject to an Option granted pursuant to Section 4.3, 4.4 and 4.8 which amount shall be credited to a memorandum account established and maintained by the Corporation for the Option Holder.
- (iii) DER Year means the most recent calendar year ending prior to the applicable Credit Date.
- (iv) EPS means earnings per share.
- (v) JSBF DIV means the percentage of EPS paid as cash dividends (including “regular”, “special” or “extraordinary” dividends) on outstanding Shares of JSBF during the applicable DER Year.
- (vi) US DIV means the average percentage of EPS paid as cash dividends (including “regular,” “special” or “extraordinary” dividends) on the outstanding common stock of the 25 largest stock form thrift institutions in the United States during the applicable DER Year, as determined by JSBF on the basis of such institutions’ market capitalization at the end of such DER Year.
- (vii) Weighted Average Value means the sum of the DER Credits attributable to Shares subject to Options granted to an Eligible Individual or Eligible Director prior to a Preliminary Purchase Event, divided by the total number of Shares subject to such Options.

(b) For purposes of determining the value of Dividend Equivalent Rights relating to Shares subject to Options granted pursuant to Section 4.3 and 4.4, as of each Credit Date the Option Holder shall receive a DER Credit for each such Share if JSBF DIV exceeded US DIV for the applicable DER Year. The value of the DER Credit shall be equal to one percent (1%) of JSBF EPS for the applicable DER Year for each whole percentage point that JSBF DIV exceeded US DIV for such DER Year. The value of the Dividend Equivalent Rights to be paid to the Option Holder upon the exercise of an Option granted pursuant to Section 4.3 or 4.4 shall be equal to the sum of the DER Credits attributable to the Shares acquired pursuant to the exercise of the Option.

(c) The value of a Dividend Equivalent Right relating to a Share subject to an Option granted pursuant to Section 4.8 shall be the Weighted Average Value of all DER Credits attributable to Shares subject to Options granted to the Option Holder prior to the Preliminary Purchase Event, excluding Options granted pursuant to Section 4.4(a)(i).

Section 6.3 Exercise Prior to Credit Date.

In the event an Option Holder exercises an Option granted pursuant to Section 4.3, 4.4 or 4.8 during the period beginning with a Credit Date and ending on the date JSBF actually determines the value of the DER Credit, if any, to be credited pursuant to Section 6.2(b) with respect to such Credit Date, JSBF shall pay the Option Holder an amount equal to the value of the DER Credit as soon as practicable following the determination of such value.

ARTICLE VII

Amendment and Termination

Section 7.1 Termination.

The Board may suspend or terminate the Plan in whole or in part at any time prior to the tenth anniversary of the Effective Date by giving written notice of such suspension or termination to the Committee. Unless sooner terminated, the Plan shall terminate automatically on the day preceding the tenth anniversary of the Effective Date. In the event of any suspension or termination of the Plan, all Options, Appreciation Rights and Dividend Equivalent Rights theretofore granted under the Plan that are effective on the date of such suspension or termination of the Plan shall remain effective under the terms of the Option Agreements granting such Options and corresponding Appreciation Rights and Dividend Equivalent Rights.

Section 7.2 Amendment.

The Board may amend or revise the Plan in whole or in part; except that the provisions affecting director awards may not be amended more than once every six months, other than pursuant to changes in the Code, or ERISA, or the rules thereunder. In addition, if the amendment or revision:

(a) materially increases the benefits accruing under the Plan;

(b) materially increases the number of Shares which may be issued under the Plan;

(c) materially modifies the requirements as to eligibility for Options, Appreciation Rights or Dividend Equivalent Rights under the Plan;

such amendment or revision shall be subject to approval by the stockholders of JSBF.

Section 7.3 Adjustments for Business Reorganization, Stock Split or Stock Dividend.

(a) In the event of any merger, consolidation, or other business reorganization in which JSBF is the surviving entity, and in the event of any stock split, stock dividend or other event generally affecting the number of Shares held by each Person who is then a holder of Shares on the record date for such event, the number of Shares covered by each outstanding Option and the number of Shares available under Section 4.2 shall be adjusted to account for such event. The adjustment to be made pursuant to this Section 7.3 for outstanding Options shall be effected by multiplying the number of Shares then covered by each such outstanding Option by an amount ("Adjustment Amount") equal to the number of Shares that would be owned after such event by a Person who, immediately prior to such event, was the holder of record of one Share, and the Exercise Price for such outstanding Option shall be adjusted by dividing the Exercise Price by the Adjustment Amount; *provided, however*, that the Committee may, in its discretion, establish another appropriate method of adjusting outstanding Options. The adjustment to be made to the number of Shares available under Section 4.2 shall be effected by multiplying the number of such Shares by the Adjustment Amount.

(b) In the event of any merger, consolidation, or other business reorganization in which JSBF is not the surviving entity:

- (i) any Options granted under the Plan which remain outstanding may be cancelled by the Committee as of the effective date of such merger, consolidation, business reorganization, liquidation or sale by the Board upon 30 days' written notice to each Option Holder in advance of the effective date of such event and the Option Holder shall receive in consideration of such cancellation an amount in cash equal to the excess of (A) the value, as determined by the Committee in its absolute discretion, of the property (including cash) received by the holder of a Share as a result of such event over (B) the Exercise Price of such Option; and
- (ii) any Option which is not cancelled pursuant to Section 7.3(b)(i) shall be exchanged or adjusted in such manner as the Committee shall deem appropriate, in its absolute discretion, to account for such merger, consolidation or other business reorganization and, if appropriate, the Committee may provide, in its absolute discretion, that a cash payment will be made to the Option Holder in connection with such exchange or adjustment of the Option.

ARTICLE VIII

Miscellaneous

Section 8.1 Status as an Employee Benefit Plan.

This Plan is not intended to satisfy the requirements for qualification under Section 401(a) of the Code or to satisfy the definitional requirements for an "employee benefit

plan” under Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended. It is intended to be a non-qualified incentive compensation program that is exempt from the regulatory requirements of the Employee Retirement Income Security Act of 1974, as amended. The Plan shall be construed and administered so as to effectuate this intent.

Section 8.2 No Right to Continued Employment.

Neither the establishment of the Plan nor any provisions of the Plan nor any action of the Board or the Committee with respect to the Plan shall be held or construed to confer upon any Eligible Individual any right to a continuation of employment by the Corporation. The Corporation reserves the right to dismiss any Eligible Individual or otherwise deal with any Eligible Individual to the same extent as though the Plan had not been adopted.

Section 8.3 Construction of Language.

Whenever appropriate in the Plan, words used in the singular may be read in the plural, words used in the plural may be read in the singular, and words importing the masculine gender may be read as referring equally to the feminine or the neuter. Any reference to an Article or Section number shall refer to an Article or Section of this Plan unless otherwise indicated.

Section 8.4 Governing Law.

The Plan shall be construed, administered and enforced according to the laws of the State of Delaware without giving effect to the conflict of laws principles thereof, except to the extent that such laws are preempted by federal law.

Section 8.5 Headings.

The headings of Articles and Sections are included solely for convenience of reference. If there is any conflict between such headings and the text of the Plan, the text shall control.

Section 8.6 Non-Alienation of Benefits.

The right to receive a benefit under the Plan shall not be subject in any manner to anticipation, alienation or assignment, nor shall such right be liable for or subject to debts, contracts, liabilities, engagements or torts.

Section 8.7 Taxes.

The Corporation shall have the right to deduct from all amounts paid by the Corporation in cash with respect to an Option, Appreciation Right or Dividend Equivalent Right under the Plan any taxes required by law to be withheld with respect to such Option, Appreciation Right or Dividend Equivalent Right. Where any Person is entitled to receive Shares pursuant to the exercise of an Option, Appreciation Right or Dividend Equivalent Right, the Corporation shall have the right to require such Person to pay the Corporation the amount of any tax which the Corporation is required to withhold with respect to such Shares, or, in lieu

thereof, to retain, or to sell without notice, a sufficient number of Shares to cover the amount required to be withheld. The Corporation may consider, but is not required to grant, a request by the Person entitled to receive Shares subject to withholding as to the manner in which such withholding shall be made.

Section 8.8 Approval of Stockholders.

All Options, Appreciation Rights and Dividend Equivalent Rights granted pursuant to Articles IV, V and VI, respectively, of the Plan shall be conditioned on the approval of the Plan by the stockholders of JSBF on or prior to the date of the first annual meeting of such stockholders immediately following the adoption of the Plan by JSBF. No Option, Appreciation Right or Dividend Equivalent Right granted under the Plan shall be effective, nor shall any such Option or Appreciation Right be exercised or any Shares issued or purchased pursuant to the Plan, prior to such approval.

Section 8.9 Notices.

Any communication required or permitted to be given under the Plan, including any notice, direction, designation, comment, instruction, objection or waiver, shall be in writing and shall be deemed to have been given at such time as it is delivered personally or five (5) days after mailing if mailed, postage prepaid, by registered or certified mail, return receipt requested, addressed to such party at the address listed below, or at such other address as one such party may by written notice specify to the other party:

- (a) If to the Committee:

JSB Financial, Inc.  
303 Merrick Road  
Lynbrook, New York 11563-2574

Attention: Administrator of the JSB Financial, Inc.  
1996 Stock Option Plan

- (b) If to an Option Holder, to the Option Holder's address as shown in the Corporation's personnel records.



**EXHIBIT A**  
**AMENDMENT TO THE**  
**JSB FINANCIAL, INC. 1996 STOCK OPTION PLAN**

Effective as of March 19, 1998, the JSB Financial, Inc. 1996 Stock Option Plan (the "Plan") shall be amended as follows:

1. Section 4.6 of the Plan shall be amended by deleting subsection "(b)" thereof in its entirety and by redesignating subsection "(c)" thereof as subsection "(b)".
2. A new Section 4.9 "Transferability of Options" shall be added to the Plan, which shall read in its entirety as follows:

Section 4.9 Transferability of Options.

- (a) Options which are intended to be Incentive Stock Options shall not be transferable by an Eligible Individual except by will or the laws of descent and distribution and are exercisable during such Eligible Individual's lifetime only by the Eligible Individual or by his or her guardian or legal representative. The Committee shall have the authority, in its discretion, to grant (or to sanction by way of amendment to an existing Option Agreement) Non-Qualified Options which may be transferred by the Option Holder during his or her lifetime to: (i) any member of the Options Holder's immediate family (as defined below); (ii) a trust, limited liability corporation, family limited partnership or other equivalent vehicle, established for the exclusive benefit of one or more members of the Option Holder's immediate family; or (iii) an entity exempt from federal income tax pursuant to Section 501(c)(3) of the Code, or any successor provision. The written documentation containing the terms and conditions of an Option which is intended to be transferable in accordance with this Section 4.9 shall reflect such transferability. For purposes of this Section 4.9 "immediate family" shall mean, with respect to any Option Holder, the Option Holder's spouse, any lineal ascendant or descendant (including stepparents and stepchildren) of the Option Holder or the Option Holder's spouse, and siblings (including half-brothers and half-sisters) of the Option Holder or the Option Holder's spouse, and shall include relationships arising from legal adoption.
- (b) Transfer of a Non-Qualified Option in accordance with this Section 4.9 shall be effected by giving written notice to JSBF in such form and manner as may be prescribed by the Committee or Administrator and shall become effective only when received by the Administrator.
- (c) In the event a Non-Qualified Option is transferred pursuant to this Section 4.9, such Option may not be subsequently transferred by the transferee except by will or the laws of descent and distribution. An Option transferred pursuant to this Section 4.9 shall continue to be governed by and subject to the terms and limitations of the Plan and the Option Agreement memorializing the Option grant, and the transferee shall be entitled to the same rights and privileges, and subject to the same obligations, as the person to whom the Option was originally granted, as if no transfer had taken place. If a privilege, right or obligation of the Option depends on the life, employment or other status of the person

to whom the Option was originally granted, such privilege, right or obligation shall continue to depend upon the life, employment or other status of the person to whom the Option was originally granted following the transfer of the Option. The Committee shall have full and exclusive authority to interpret and apply the provisions of the Plan to transferees to the extent not specifically addressed herein.

3. Except as expressly provided otherwise herein, the Plan is hereby ratified and approved and shall remain in full force and effect.

**RESOLUTIONS OF THE BOARD OF DIRECTORS OF JSB FINANCIAL, INC.  
REGARDING THE JSB FINANCIAL, INC. 1996 STOCK OPTION PLAN**

WHEREAS, JSB Financial, Inc. (the "Company") has established the JSB Financial, Inc. 1996 Stock Option Plan (the "Plan") for the benefit of directors and eligible individuals of the Company and its wholly owned subsidiary, Jamaica Savings Bank FSB (the "Bank"); and

WHEREAS, Section 7.2 of the Plan reserves the right of the Company, by action of its Board, to amend the Plan in the manner described herein; and

WHEREAS, at the request of the Company's management, the Company's legal counsel, Thacher Proffitt & Wood, has prepared a proposed amendment to the Plan to permit option holders to transfer non-qualified stock options granted to them under the Plan under certain circumstances.

NOW, THEREFORE, BE IT RESOLVED, that effective as of March 19, 1998, the Amendment to the JSB Financial, Inc. 1996 Stock Option Plan, attached hereto as Exhibit A, be, and it hereby is, adopted and approved.

BE IT FURTHER RESOLVED, that the appropriate officers of the Company, acting for and on behalf of the Company be, and they hereby are, authorized, empowered and directed to take such actions and execute and deliver such documents, including, but not limited to, the adoption and implementation of procedures to effect the transfer of options under the Plan, as they, in consultation with legal counsel, may deem necessary or appropriate to implement the foregoing resolutions.

APPROVED BY BOARD OF DIRECTORS OF JSB FINANCIAL, INC. MARCH 19, 1998

**RELIANCE BANCORP, INC.**  
**1996 INCENTIVE STOCK OPTION PLAN**  
**AMENDED AND RESTATED AS OF FEBRUARY 19, 1997**

1. DEFINITIONS.

(a) "Affiliate" means (i) a member of a controlled group of corporations of which the Holding Company is a member or (ii) an unincorporated trade or business which is under common control with the Holding Company as determined in accordance with Section 414(c) of the Internal Revenue Code of 1986, as amended, (the "Code") and the regulations issued thereunder. For purposes hereon a "controlled group of corporations" shall mean a controlled group of corporations as defined in Section 1563(a) of the Code determined without regard to Section 1563(a)(4) and (e)(3)(C).

(b) "Alternate Option Payment Mechanism" refers to one of several methods available to a Participant to fund the exercise of a stock option set out in Section 12. These mechanisms include: broker assisted cashless exercise and stock for stock exchange.

(c) "Award" means any grant of benefits pursuant to Section 3 hereof.

(d) "Bank" means Reliance Federal Savings Bank.

(e) "Board of Directors" or "Board" means the board of directors of the Holding Company.

(f) "Change in Control" means a change in control of the Bank or Holding Company of a nature that: (i) would be required to be reported in response to Item 1(a) of the current report on Form 8-K, as in effect on the date hereof, pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"); or (ii) results in a Change in Control within the meaning of the Home Owners' Loan Act of 1933, as amended ("HOLA") and the Rules and Regulations promulgated by the Office of Thrift Supervision ("OTS") (or its predecessor agency), as in effect on the date hereof (provided that, in applying the definition of change in control as set forth under such rules and regulations, the Board shall substitute its judgment for that of the OTS); or (iii) without limitation such a Change in Control shall be deemed to have occurred at such time as (A) any "person" (as the term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Bank or the Holding Company representing 20% or more of the Bank's or the Holding Company's outstanding securities except for any securities of the Bank purchased by the Holding Company and any securities purchased by any tax qualified employee benefit plan of the Holding Company or the Bank; or (B) individuals who constitute the Board on the date hereof (the "Incumbent Board") cease for any reason to constitute at least a majority thereof, provided that any person becoming a director subsequent to the date hereof whose election was approved by a vote of at least seventy-five percent (75%) of the directors comprising the Incumbent Board, or whose nomination for election by the Holding Company's stockholders was approved by the same Nominating Committee serving under an Incumbent Board, shall be, for purposes of this clause (B), considered as though he were a member of the Incumbent Board; or (C) a plan of

reorganization, merger, consolidation, sale of all or substantially all the assets of the Bank or the Holding Company or similar transaction occurs in which the Bank or Holding Company is not the resulting entity; or (D) a solicitation of shareholders of the Holding Company, by someone other than the current management of the Holding Company, seeking stockholder approval of a plan of reorganization, merger or consolidation of the Holding Company or Bank or similar transaction with one or more corporations, as a result of which the outstanding shares of the class of securities then subject to the plan are exchanged for or converted into cash or property or securities not issued by the Bank or the Holding Company; or (E) a tender offer is made for 20% or more of the voting securities of the Bank or the Holding Company.

(g) "Committee" means a committee consisting of at least two members of the Board of Directors who are defined as Outside Directors, all of whom are "Non-Employee Directors" as such term is defined under Rule 16b-3 under the Exchange Act as promulgated by the Securities and Exchange Commission.

(h) "Common Stock" means the Common Stock of the Holding Company, par value, \$.01 per share or any stock exchanged for shares of Common Stock pursuant to Section 17 hereof.

(i) "Date of Grant" means the effective date of an Award.

(j) "Directors' Awards" means awards of Non-statutory Stock Options to Outside Directors pursuant to the terms of Section 10.

(k) "Disability" means the permanent and total inability by reason of mental or physical infirmity, or both, of a Participant to perform the work customarily assigned. Additionally, a medical doctor selected or approved by the Board of Directors must advise the Committee that it is either not possible to determine when such Disability will terminate or that it appears probable that such Disability will be permanent during the remainder of said Participant's lifetime.

(l) "Dividend Adjustment Right" means the adjustment of the number of shares subject to an option and/or the Exercise Price of an option and/or the right to receive an amount of cash based upon the terms set forth in Section 9.

(m) "Effective Date" means July 17, 1996, the effective date of the Plan.

(n) "Employee" means any person who is currently employed by the Holding Company or an Affiliate, including officers, but such term shall not include Outside Directors.

(o) "Exercise Price" means the purchase price per share of Common Stock deliverable upon the exercise of each Option in order for the option to be exchanged for shares of Common Stock.

(p) "Extraordinary Dividend" means a distribution to shareholders by the Holding Company of earnings or capital in excess of either (i) current earnings or (ii) the weighted average cost of funds of the Bank for the period in which the dividend is paid, as determined for this purpose by the Committee.

(q) "Fair Market Value" means, when used in connection with the Common Stock on a certain date, the average of the high and low bid prices of the Common Stock as reported by the Nasdaq National Market ("Nasdaq") (as published by the Wall Street Journal, if published) on such date or if the Common Stock was not traded on such date, on the next preceding day on which the Common Stock was traded thereon or the last previous date on which a sale is reported. If the Common Stock is not reported on the Nasdaq, the Fair Market Value of the Common Stock is the value so determined by the Committee in good faith.

(r) "Holding Company" means Reliance Bancorp, Inc.

(s) "Incentive Stock Option" means an Option granted by the Committee to a Participant, which Option is designated by the Committee as an Incentive Stock Option pursuant to Section 7.

(t) "Limited Right" means the right to receive an amount of cash based upon the terms set forth in Section 8.

(u) "Non-statutory Stock Option" means an Option granted by the Committee to a Participant pursuant to Section 6, which is not designated by the Committee as an Incentive Stock Option or which is redesignated by the Committee under Section 7 as a Non-Statutory Stock Option. All options granted to Outside Directors pursuant to Section 10 shall be Non-statutory Stock Options.

(v) "Option" means the right to buy a fixed amount of Common Stock at the Exercise Price within a limited period of time designated as the term of the option as granted under Sections 6 and 7 of the Plan.

(w) "Outside Director" means a member of the Board of Directors of the Holding Company or its Affiliates, who is not also an Employee.

(x) "Participant" means any Employee who holds an outstanding Award under the terms of the Plan.

(y) "Retirement" with respect to a Participant means termination of employment which constitutes retirement under any tax qualified plan maintained by the Holding Company or the Bank. However, "Retirement" will not be deemed to have occurred for purposes of this Plan if a Participant continues to serve on the Board of Directors of the Holding Company or its Affiliates even if such Participant is receiving benefits under any tax-qualified retirement plan of the Holding Company or its Affiliates. With respect to an Outside Director, "Retirement" means the termination of service from the Board of Directors of the Holding Company or its Affiliates following written notice to the Board as a whole of such Outside Director's intention to retire or retirement as determined by the Holding Company or applicable Affiliate's bylaws, except that an Outside Director shall not be deemed to have "Retired" for purposes of the Plan in the event he continues to serve as a consultant or advisory director to the Holding Company or any of its Affiliates.

(z) "Termination for Cause" shall mean termination because of a material loss to the Holding Company or one of its subsidiaries caused by the Participant's intentional failure to

perform stated duties, personal dishonesty, willful violation of any law, rule, regulation, (other than traffic violations or similar offenses) or final cease and desist order. No act, or the failure to act, on Participant's part shall be "willful" unless done, or omitted to be done, not in good faith and without reasonable belief that the action or omission was in the best interest of the Holding Company or its affiliates.

## 2. ADMINISTRATION.

(a) The Plan as regards Options shall be granted and administered by the Committee. The Committee is authorized, subject to the provisions of the Plan, to establish such rules and regulations as it deems necessary for the proper administration of the Plan and to make whatever determinations and interpretations in connection with the Plan it deems necessary or advisable. All determinations and interpretations made by the Committee shall be binding and conclusive on all Participants and on their legal representatives and beneficiaries.

(b) The grant of Non-statutory Stock Options to Outside Directors are made herein by the terms of this Plan. Actual transference of any Non-statutory Stock Options to Outside Directors requires no, nor allows any, discretion by the Committee.

## 3. TYPES OF AWARDS.

The following Awards may be granted under the Plan:

- (a) Non-statutory Stock Options;
- (b) Incentive Stock Options;
- (c) Limited Rights;
- (d) Dividend Adjustment Rights; and
- (e) Directors Awards

as described below in paragraphs 6 through 10 of the Plan.

## 4. STOCK SUBJECT TO THE PLAN.

Subject to adjustment as provided in Section 17, the maximum number of shares reserved hereby for purchase pursuant to the exercise of Options and Option-related Awards granted under the Plan is 450,000 shares of which Options to purchase 315,000 shares are reserved for grants to Employees and Options to purchase 135,000 shares are reserved for grants to Outside Directors. These shares of Common Stock subject to Options which may be awarded hereunder may be either authorized but unissued shares or authorized shares previously issued and reacquired by the Holding Company. To the extent that Options are granted under the Plan, the shares underlying such Options will be unavailable for any other use including future grants under the Plan except that, to the extent that Options terminate, expire, are forfeited or are cancelled without having been exercised (in the case of Limited Rights, exercised for cash), new Options may be made with respect to these shares.

## 5. ELIGIBILITY.

All Employees shall be eligible to receive Options under the Plan. Outside Directors shall only be eligible to receive Non-statutory Stock Options under the Plan under Section 10 of this Plan. An Outside Director who is a former Employee may, however, continue to hold unexercised or unvested Awards granted while such person was an Employee.

## 6. NON-STATUTORY STOCK OPTIONS.

The Committee may, subject to the limitations of the Plan, from time to time, grant Non-statutory Stock Options to Employees and, upon such terms and conditions as the Committee may determine, grant Non-statutory Stock Options in exchange for and upon surrender of previously granted Awards under this Plan. Non-statutory Stock Options granted under this Plan are subject to the following terms and conditions:

(a) Exercise Price. The Exercise Price of each Non-statutory Stock Option shall be determined by the Committee on the date the option is granted. Such Exercise Price shall not be less than 100% of the Fair Market Value of the Common Stock on the Date of Grant. Common Stock underlying such Non-statutory Stock Options may be purchased only upon full payment of the Exercise Price or upon operation of an Option Exercise Alternative set out in Section 12 of the Plan.

(b) Terms of Options. Non-Statutory Stock Options may in the discretion of the Committee be granted at any time and subject to any conditions allowed under this Plan. The term during which each Non-statutory Stock Option may be exercised shall be determined by the Committee, but in no event shall a Non-statutory Stock Option be exercisable in whole or in part more than 10 years from the Date of Grant. Unless otherwise determined by the Committee, Non-statutory Stock Options shall become exercisable six months subsequent to the Date of Grant; provided, however, that all options shall become fully vested and exercisable upon the Participant's termination due to death, Disability, Retirement or in the event of a Change in Control. The Common Stock comprising each installment may be purchased in whole or in part at any time during the term of such Non-statutory Stock Option after such Non-Statutory Stock Option becomes exercisable. The Committee may, in its sole discretion, accelerate the time at which any Non-statutory Stock Option may be exercised in whole or in part. The acceleration of any Non-statutory Stock Option under the authority of this paragraph will create no right, expectation or reliance on the part of any other Participant or that certain Participant regarding any other unaccelerated Non-statutory Stock Options.

(c) The terms and conditions of any Non-statutory Stock Options shall be evidenced by an agreement (the "NSO Agreement") which such NSO Agreement will be subject to the terms and conditions of the Plan.

(d) Termination of Employment. Notwithstanding any provisions set forth herein or contained in any NSO Agreement relating to an award of an Option, in the event of termination for reasons other than for death, Disability, Retirement or Change in Control or Termination for Cause, only those options exercisable at the time of termination may be exercised and only for a period of one year after such termination. In the event of the Participant's termination of service



for death, Disability, Retirement or in the event of a Change in Control, all options shall become exercisable and may be exercised for a period of one year after such termination. In the event of Termination for Cause, all rights under the Participant's Non-Statutory Stock Options shall expire immediately upon termination.

## 7. INCENTIVE STOCK OPTIONS.

The Committee may, subject to the limitations of the Plan, from time to time, grant Incentive Stock Options to Employees. Incentive Stock Options granted pursuant to the Plan shall be subject to the following terms and conditions:

(a) Exercise Price. The Exercise Price of each Incentive Stock Option shall be not less than 100% of the Fair Market Value of the Common Stock on the Date of Grant. However, if at the time an Incentive Stock Option is granted to a Participant, the Participant owns Common Stock representing more than 10% of the total combined voting securities of the Holding Company (or, under Section 424(d) of the Code, is deemed to own Common Stock representing more than 10% of the total combined voting power of all classes of stock of the Holding Company, by reason of the ownership of such classes of stock, directly or indirectly, by or for any brother, sister, spouse, ancestor or lineal descendent of such Participant, or by or for any corporation, partnership, estate or trust of which such Participant is a shareholder, partner or beneficiary), ("10% Owner"), the Exercise Price per share of Common Stock deliverable upon the exercise of each Incentive Stock Option shall not be less than 110% of the Fair Market Value of the Common Stock on the Date of Grant. Shares may be purchased only upon payment of the full Exercise Price or upon operation of an Option Exercise Alternative set forth in Section 12 of the Plan.

(b) Amounts of Incentive Stock Options. Incentive Stock Options may be granted to any Employee in such amounts as determined by the Committee; provided that the amount granted is consistent with the terms of Section 422 of the Code. In the case of a stock option intended to qualify as an Incentive Stock Option, the aggregate Fair Market Value (determined as of the time the Option is granted) of the Common Stock with respect to which Incentive Stock Options granted are exercisable for the first time by the Participant during any calendar year (under all plans of the Participant's employer corporation and its parent and subsidiary corporations) shall not exceed \$100,000. The provisions of this Section 7(b) shall be construed and applied in accordance with Section 422(d) of the Code and the regulations, if any, promulgated thereunder. To the extent an Award of an Incentive Stock Option under this Section 7 exceeds this \$100,000 limit, the portion of the Award of an Incentive Stock Option in excess of such limit shall be deemed a Non-statutory Stock Option. The Committee shall have discretion to redesignate Stock Options granted as Incentive Stock Options as Non-statutory Stock Options. Such Non-statutory Stock Options shall be subject to Section 6 of the Plan.

(c) Terms of Incentive Stock Options. Incentive Stock Options may in the discretion of the Committee be granted at any time and subject to any conditions allowed under this Plan. The term during which each Incentive Stock Option may be exercised shall be determined by the Committee, but in no event shall an Incentive Stock Option be exercisable in whole or in part more than 10 years from the Date of Grant. If at the time an Incentive Stock Option is granted to a Participant who is a 10% Owner, the Incentive Stock Option granted to such Participant shall

not be exercisable after the expiration of five years from the Date of Grant. No Incentive Stock Option granted under this Plan is transferable except by will or the laws of descent and distribution and is exercisable in his lifetime only by the Participant to whom it is granted.

Unless otherwise determined by the Committee, Incentive Stock Options shall become exercisable six months subsequent to the Date of Grant; provided, however, that all options shall become fully vested and exercisable upon the Participant's termination due to death, Disability, Retirement or Change in Control. The shares comprising each installment may be purchased in whole or in part at any time during the term of such Incentive Stock Option after such installment becomes exercisable. The Committee may, in its sole discretion, accelerate the time at which any Incentive Stock Option may be exercised in whole or in part. To the extent that such acceleration, through the operation of law, destroys incentive treatment under the Code, then such accelerated Stock Option shall be deemed to be a Non-Statutory Stock Option. The acceleration of any Incentive Stock Option under the authority of this paragraph will create no right, expectation or reliance on the part of any other Participant or that certain Participant regarding any other unaccelerated Incentive Stock Options.

(d) The terms and conditions of any Incentive Stock Option shall be evidenced by an agreement (the "Incentive Stock Option Agreement") which such Incentive Stock Option Agreement will be subject to the terms and conditions of the Plan.

(e) Termination of Employment. Unless otherwise determined by the Committee, upon the termination of a Participant's service for any reason other than death, Disability, Retirement or Change in Control the Participant's Incentive Stock Options shall be exercisable only as to those shares that were immediately exercisable by the Participant at the date of termination and only for a period of three months following termination; provided, however, that, in the event that the Committee extends the exercisability of any Incentive Stock Options beyond three months following termination, such Incentive Stock Options shall be treated as Non-Statutory Stock Options. In the event of the termination of a Participant's service due to death, Disability, Retirement or in the event of a Change in Control, all of the Participant's Incentive Stock Options shall become exercisable for a period of one year after such termination. Notwithstanding, any Incentive Stock Options are exercised more than three months after the Participant's terminations, such Options shall be treated as Non-Statutory Stock Options. In the event of Termination for Cause all rights under the Participant's Incentive Stock Options shall expire immediately upon termination. In the event of Disability, the period for exercise is one year from termination of employment.

(f) Compliance with Code. The Incentive Stock Options granted under this Section 7 of the Plan are intended to qualify as "incentive stock options" within the meaning of Section 422 of the Code, but the Holding Company makes no warranty as to the qualification of any option as an incentive stock option within the meaning of Section 422 of the Code. All Incentive Stock Options that do not so qualify shall be treated as Non-statutory Stock Options.

## 8. LIMITED RIGHTS.

Simultaneously with the grant of any Option to an Employee or Outside Director, the Committee may grant a Limited Right with respect to all or some of the shares covered by such Option. Limited Rights granted under this Plan are subject to the following terms and conditions:

(a) Terms of Rights. In no event shall a Limited Right be exercisable in whole or in part before the expiration of six months from the Date of Grant of the Limited Right. A Limited Right may be exercised only in the event of a Change in Control.

The Limited Right may be exercised only when the underlying Option is eligible to be exercised, and only when the Fair Market Value of the underlying shares on the day of exercise is greater than the Exercise Price of the underlying Option.

Upon exercise of a Limited Right, the underlying Option shall cease to be exercisable. Upon exercise or termination of an Option, any related Limited Rights shall terminate. The Limited Rights may be for no more than 100% of the difference between the purchase price and the Fair Market Value of the Common Stock subject to the underlying option. The Limited Right is transferable only when the underlying option is transferable and under the same conditions.

(b) Payment. Upon exercise of a Limited Right, the holder shall promptly receive from the Holding Company an amount of cash or some other payment alternative found in Section 11, equal to the difference between the Exercise Price of the underlying option and the Fair Market Value of the Common Stock subject to the underlying Option on the date the Limited Right is exercised, multiplied by the number of shares with respect to which such Limited Right is being exercised. Payments shall be less an applicable tax withholding as set forth in Section 18.

#### 9. DIVIDEND ADJUSTMENT RIGHT.

Simultaneously with the grant of any Option under this Plan, the Committee may grant a Dividend Adjustment Right. Upon the payment of an Extraordinary Dividend, the Committee may grant to the holder of a Dividend Adjustment Right a payment from the Holding Company of an amount of cash equal to the amount of the Extraordinary Dividend paid on one share of Common Stock, multiplied by the number of shares of Common Stock subject to the underlying Option

#### 10. DIRECTORS' AWARDS.

Awards to Outside Directors under this Plan ("Directors' Awards") are made in the form of Non-statutory Stock Options. Directors' Awards shall be made subject to the following terms and conditions:

(a) Initial Grant of Directors' Awards. Each Outside Director who is serving on the Board of Directors on the Effective Date of this Plan shall receive Non-statutory Stock Options for 6,750 shares of Common Stock, each with a Dividend Adjustment Right pursuant to Section 9, which shall be granted as of the Effective Date of the Plan.

(b) Continuing Grant of Directors' Awards. Any Outside Director currently serving on the Board of Directors as of the Effective Date of the Plan who continues to serve as a Director on July 1, 1997 and July 1, 1998, shall be granted Options for 6,750 shares on each respective date pursuant to the terms fixed by the Committee.

(c) Grants to Subsequent Outside Directors. To the extent Options to purchase shares are available for grant under the Plan, due to such Options not being reserved for granting under paragraphs (a) and (b) of this Section 10 or due to forfeiture of Options previously awarded to Outside Directors, the Committee shall have the authority to grant such available Options to Outside Directors in amounts and with terms as determined by the Committee.

The terms and conditions of any Director Award will be evidenced by an agreement which shall be subject to the terms and conditions of the Plan.

(d) Exercise Price. The Exercise Price of each Non-statutory Stock Option awarded to an Outside Director shall equal the Fair Market Value of the Common Stock on the date of the grant of the Option. Shares may be purchased only upon full payment of the Exercise Price or upon operation of an Option Exercise Alternative set forth in Section 12 of the Plan.

(e) Terms of Non-statutory Stock Options Award to Directors. Unless otherwise determined by the Committee, Non-Statutory Stock Options granted to Outside Directors shall become exercisable six months subsequent to the Date of Grant. The term during which each Non-statutory Stock Option awarded to a director may be exercised shall be 10 years from the Date of Grant. The shares comprising each installment may be purchased in whole or in part at any time during the term of such Non-statutory Stock Option.

(f) Death, Disability, Retirement or Change in Control of a Director. All Stock Options shall be fully vested and exercisable upon death, Disability, Retirement or Change in Control.

(g) Forfeiture. If the service of an Outside Director as a member of the Board is terminated for any other reason than death, Disability, Retirement or Change in Control, all unvested Stock Options shall be forfeited immediately upon such termination and the Outside Director shall have no further rights with respect to such Directors' Award.

#### 11. PAYOUT ALTERNATIVES.

Payments due to a Participant upon the exercise or redemption of an Award, may be made under the following terms and conditions:

(a) Discretion of the Committee. The Committee has the sole discretion to determine the form of payment (whether monetary, Common Stock, a combination of payout alternatives or otherwise) it shall use in making distributions or payments for all Options. If the Committee requests any or all Participants to make an election as to form of payment or distribution, it shall not be considered bound by the election.

(b) Payment in the form of Common Stock. Any shares of Common Stock tendered in satisfaction of an obligation arising under this Plan shall be valued at the Fair Market Value of the Common Stock at the time of the distribution. The Committee may use Common Stock in Treasury or may direct the market purchase of such Common Stock to satisfy its obligations under this Plan.

12. OPTION EXERCISE ALTERNATIVES.

The Committee has sole discretion to determine the form of payment it will accept for the exercise of an Option. The Committee may indicate acceptable forms in the Incentive Stock Option or Non-statutory Stock Option Agreement covering such Options or may reserve its decision until the time of exercise. No Option is to be considered exercised until payment in full is accepted by the Committee or its agent.

(a) Cash Payment. The exercise price may be paid in cash or by certified check.

(b) Borrowed Funds. To the extent permitted by law, the Committee may permit all or a portion of the exercise price of an Option to be paid through borrowed funds.

(c) Exchange of Common Stock. (i) The Committee may, in its sole discretion, permit payment by the tendering of previously acquired shares of Common Stock.

(ii) Any shares of Common Stock tendered in payment of the exercise price of an Option shall be valued at the Fair Market Value of the Common Stock on the date prior to the date of exercise.

13. GRANTS IN THE EVENT OF A CHANGE IN CONTROL.

(a) In the event of a Change in Control, Options then available for grant under this Plan pursuant to Section 4 shall be automatically granted among those current Employees and current Outside Directors who have previously been granted Options under this Plan, as of the date of the Change in Control. The number of shares subject to Options to be granted to each such individual pursuant to this Section 13 shall be determined by multiplying the number of Options to purchase shares of Common Stock then available for grant to Employees and Outside Directors, respectively, pursuant to Section 4 by a fraction, the numerator of which is the number of Options to purchase shares of Common Stock previously granted to that individual under this Plan, and the denominator of which is the total number of Options to purchase shares of Common Stock previously granted to all Employees, in the case of an Employee, and all current Outside Directors, in the case of an Outside Director, under this Plan.

(b) The Exercise Price for any option granted pursuant to Section 13 shall be the average of the Exercise Price of each share of Common Stock, as adjusted pursuant to Section 17, subject to an Option granted under this Plan to the respective Employee or Outside Director prior to the Change in Control.

(c) All Options granted pursuant to Section 13 shall be 100% vested and exercisable upon the Change in Control and shall remain exercisable for a period of 10 years from the date of grant.

**14. RIGHTS OF A SHAREHOLDER: NONTRANSFERABILITY.**

(a) No Participant or Outside Director shall have any rights as a shareholder with respect to any shares of Common Stock covered by an Option until the date of issuance of a stock certificate for such Common Stock. Nothing in this Plan or in any Option granted confers on any person any right to continue in the employ or service of the Holding Company or its Affiliates or interferes in any way with the right of the Holding Company or its Affiliates to terminate a Participant's services as an officer or other employee at any time.

(b) No Option shall be transferred, assigned, hypothecated, or disposed of in any manner by a Participant or Outside Director other than by will or the laws of intestate succession; provided, however, that with respect to a Non-qualified Stock Option, the Committee or full Board may, in their sole discretion, permit transferability if such transfer is, in the determination of the Committee or full Board, for valid estate planning purposes and such transfer is permitted under the Code and Rule 16b-3 promulgated under the Exchange Act. For the purposes of this section a transfer for valid estate planning purposes includes, but is not limited to: (a) a transfer to revocable inter vivos trust as to which the Participant or Outside Director is both the settlor and trustee, or (b) a transfer for no consideration to: (i) any member of the Participant's or Outside Director's Immediate Family, (ii) any trust solely for the benefit of members of the Participant's or Outside Director's Immediate Family, (iii) any partnership whose only partners are members of the Participant's or Outside Director's Immediate Family, and (iv) any limited liability corporation or corporate entity whose only members or equity owners are members of the Participant's or Outside Director's Immediate Family. For purposes of this Section 14, "Immediate Family" includes, but is not necessarily limited to, a Participant's or Outside Director's spouse, children, and grandchildren.

(c) Nothing contained in this Section 14 shall be construed to require the Committee or full Board to give its approval to any transfer of an Option or portion thereof, and approval to transfer any Option or portion thereof does not mean that such approval will be given for the transfer of any other Option or portion of an Option. The transferee of any Option shall be subject to all of the terms and conditions applicable to such Option immediately prior to the transfer and shall be subject to the rules and regulations proscribed by the Committee or full Board with respect to such Option. The Committee or the full Board may limit the amount of any Option, whether as to number or percentage of underlying shares, for which permission to transfer is otherwise granted.

**15. AGREEMENT WITH GRANTEEES.**

Each Option will be evidenced by a written agreement ("Agreement"), executed by the Participant or Outside Director and the Holding Company or its Affiliates that describes the terms and conditions for receiving the Option including the date of Option, the Exercise Price if any, the term or other applicable periods, and other terms and conditions as may be required or imposed by the Plan, the Board of Directors, tax law consideration or applicable securities law.

16. DESIGNATION OF BENEFICIARY.

A Participant or Outside Director may, with the consent of the Committee, designate a person or persons to receive, in the event of death, any Option to which the Participant would then be entitled. Such designation will be made upon forms supplied by and delivered to the Holding Company and may be revoked in writing. If a Participant or Outside Director fails effectively to designate a beneficiary, then the Participant's or Outside Director's estate will be deemed to be the beneficiary.

17. ADJUSTMENTS.

In the event of any change in the outstanding shares of Common Stock by reason of any stock dividend, split, recapitalization, merger, consolidation, spin-off, reorganization, combination or exchange of shares, or other similar corporate change, or other increase or decrease in such shares without receipt or payment of consideration by the Holding Company, the Committee will make such adjustments to previously granted Awards, to prevent dilution or enlargement of the rights of the Participant or Outside Director, including any or all of the following:

- (a) adjustments in the aggregate number or kind of shares of Common Stock or other securities that may underlie future Options under the Plan;
- (b) adjustments in the aggregate number or kind of shares of Common Stock or other securities underlying Options already made under the Plan;
- (c) adjustments in the purchase price of outstanding Incentive and/or Non-statutory Stock Options, or any Limited Rights attached to such Options.

No such adjustments may, however, materially change the value of benefits available to a Participant or Outside Director under a previously granted Option. All awards under this Plan shall be binding upon any successors or assigns of the Holding Company.

18. TAX WITHHOLDING.

Awards under this Plan shall be subject to tax withholding to the extent required by any governmental authority. If this Plan meets the requirements under 17 C.F.R. §240.16b-3 under the Exchange Act ("Rule 16b-3"), then any withholding shall comply with Rule 16b-3 or any amendment or successive rule.

19. AMENDMENT OF THE PLAN.

The Board of Directors may at any time, and from time to time, modify or amend the Plan in any respect, prospectively or retroactively; provided however, that provisions governing grants of Options and Limited Rights, unless permitted by the rules promulgated to Section 16(b) of the Exchange Act, shall not be amended more than once every six months other than to comport with the Internal Revenue Code or the Employee Retirement Income Security Act, if applicable.

No such termination, modification or amendment may affect the rights of a Participant or Outside Director under an outstanding Option without the written permission of such Participant or Outside Directors.

20. APPROVAL OF SHAREHOLDERS.

The Plan shall be presented to shareholders for approval for purposes of: (i) obtaining favorable treatment under Section 16(b) of the Securities Exchange Act; (ii) obtaining preferential tax treatment for Incentive Stock Options; and (iii) maintaining listing on Nasdaq National Market. The failure to obtain shareholder approval will not effect the validity or effectiveness of the Plan and the Options granted hereunder, provided, however, that if the Plan is not approved by stockholders, the Board of Directors may, in its sole discretion, terminate the Plan and rescind any Options granted hereunder and, to the extent the Board of Directors does not exercise its discretion to terminate the Plan, any Incentive Stock Options granted shall be deemed to be Non-Statutory Stock Options.

21. TERMINATION OF THE PLAN.

The right to grant Options under the Plan will terminate upon the earlier of (i) ten (10) years after the Effective Date or (ii) the issuance of Common Stock or (iii) the exercise of Options, or related Limited Rights equivalent to the maximum number of shares reserved under the Plan as set forth in Section 4. The Board of Directors has the right to suspend or terminate the Plan at any time, provided that, except as to termination of the Plan or rescission of awards pursuant to Section 20 hereof, no such action will, without the consent of a Participant or Outside Director, adversely affect his vested rights under a previously granted Option.

22. APPLICABLE LAW.

The Plan will be administered in accordance with the laws of the state of Delaware.

23. COMPLIANCE WITH SECTION 16.

If this Plan is qualified under Rule 16b-3 (or any successor rule), with respect to persons subject to Section 16 of the Exchange Act, transactions under this Plan are intended to comply with all applicable conditions of Rule 16b-3 or its successors under the Exchange Act. To the extent any provisions of the Plan or action by the Committee fail to so comply, such provisions shall be deemed null and void, to the extent permitted by law and deemed advisable by the Committee.

24. DELEGATION OF AUTHORITY.

The Committee may delegate all authority for: the determination of forms of payment to be made by or received by the Plan; the execution of Agreements; the determination of Fair Market Value; the determination of all other aspects of administration of the plan to the executive officer(s) of the Holding Company or Reliance Federal Savings Bank ("Bank"). The Committee may rely on the descriptions, representations, reports and estimate provided to it by the management of the Holding Company or the Bank for determinations to be made pursuant to the Plan.



IN WITNESS WHEREOF, Reliance Bancorp, Inc. established this Plan, effective as of the 17th day of July, 1996 and amended and restated as of January 21, 1997, with this Amended and Restated Plan to be executed by a designee of the Board of Directors its duly corporate seal to be affixed and duly attested.

[CORPORATE SEAL]

RELIANCE BANCORP, INC.

ADOPTED BY THE BOARD OF DIRECTORS:

July 17, 1996

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Date

By: /s/ Raymond L. Nielsen

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Raymond L. Nielsen  
Chairman of the Board of Directors  
for Board of Directors

APPROVED BY STOCKHOLDERS:

November 12, 1996

\_\_\_\_\_

Date

By: /s/ Robert F. Pelosi

\_\_\_\_\_

Robert F. Pelosi  
Secretary

AMENDED AND RESTATED BY ACTION OF THE BOARD OF DIRECTORS:

February 19, 1997

\_\_\_\_\_

Date

By: /s/ Raymond L. Nielsen

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Raymond L. Nielsen  
Chairman of the Board of Directors  
for Board of Directors

**GREENPOINT FINANCIAL CORP.**  
**1999 STOCK INCENTIVE PLAN**

SECTION 1  
PURPOSE; DEFINITIONS

The purpose of the Plan is to give the Company a competitive advantage in attracting, retaining and motivating officers, employees and/or consultants and to provide the Company and its Subsidiaries and Affiliates with a stock plan providing incentives directly linked to the profitability of the Company's businesses and increases in the Company's shareholder value.

For purposes of the Plan, the following terms are defined as set forth below:

(a) "Affiliate" means a corporation or other entity controlled by, controlling or under common control with the Company and designated by the Committee from time to time as such.

(b) "Award" means a Stock Appreciation Right, Stock Option, Restricted Stock, Performance Unit, or other stock-based award.

(c) "Award Cycle" shall mean a period of consecutive fiscal years or portions thereof designated by the Committee over which Performance Units are to be earned.

(d) "Board" means the Board of Directors of the Company.

(e) "Cause" means, unless otherwise provided by the Committee, (1) "Cause" as defined in any Individual Agreement to which the participant is a party, or (2) if there is no such Individual Agreement or if it does not define Cause: an intentional failure to perform stated duties, willful misconduct, breach of a fiduciary duty involving personal profit, or acts or omissions of personal dishonesty, any of which results in material loss to the Company or any of its Subsidiaries or Affiliates or, any willful violation of any law, rule or regulation (other than traffic violations or similar offenses) or final cease-and-desist order which results in material loss to the Company or any of its Subsidiaries or Affiliates. The Committee shall, unless otherwise provided in an Individual Agreement with the participant, have the sole discretion to determine whether "Cause" exists, and its determination shall be final.

(f) "Change in Control" and "Change in Control Price" have the meanings set forth in Sections 11(b) and (c), respectively.

(g) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.

(h) "Commission" means the Securities and Exchange Commission or any successor agency.

(i) "Committee" means the Committee referred to in Section 2.

(j) "Common Stock" means common stock, par value \$.01 per share, of the Company (or as may be converted pursuant to Section 3 hereof).

(k) "Company" means GreenPoint Financial Corp., a bank holding company registered under federal law and incorporated in Delaware.

(l) "Covered Employee" means a participant designated prior to the grant of Restricted Stock or Performance Units by the Committee who is or may be a "covered employee" within the meaning of Section 162(m)(3) of the Code in the year in which Restricted Stock or Performance Units are expected to be taxable to such participant.

(m) "Disability" means, unless otherwise provided by the Committee, disability as defined in the Company's retirement plan, or if not so defined, shall mean the permanent and total inability of a participant by reason of mental or physical infirmity, or both, to perform the work customarily assigned to him or her. In order to qualify as a Disability, a medical doctor selected or approved by the Board, and knowledgeable in the field of such infirmity, must advise the Committee either that it is not possible to determine when such Disability will terminate or that it appears probable that such Disability will be permanent during the remainder of said participant's lifetime.

(n) "Eligible Individuals" mean officers, employees and consultants of the Company or any of its Subsidiaries or Affiliates, and prospective employees and consultants who have accepted offers of employment or consultancy from the Company or its Subsidiaries or Affiliates, who are or will be responsible for or contribute to the management, growth or profitability of the business of the Company, or its Subsidiaries or Affiliates.

(o) "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor thereto.

(p) "Fair Market Value" means, as of any given date, the closing price on such date or, if there are no reported sales on such date, on the last day prior to such date on which there were sales of the Common Stock on the New York Stock Exchange or, if not listed on such exchange, on any other national securities exchange on which the Common Stock is listed or on NASDAQ. If there is no regular public trading market for such Common Stock, the Fair Market Value of the Common Stock shall be determined by the Committee in good faith.

(q) "Incentive Stock Option" means any Stock Option designated as, and qualified as, an "incentive stock option" within the meaning of Section 422 of the Code.

(r) "Individual Agreement" means an employment, consulting or similar agreement between a participant and the Company or one of its Subsidiaries or Affiliates.

(s) "NonQualified Stock Option" means any Stock Option that is not an Incentive Stock Option.

(t) "Qualified Performance-Based Award" means an Award of Restricted Stock or Performance Units designated as such by the Committee at the time of grant, based upon a determination that (i) the recipient is or may be a "covered employee" within the meaning of

Section 162(m)(3) of the Code in the year in which the Company would expect to be able to claim a tax deduction with respect to such Restricted Stock or Performance Units and (ii) the Committee wishes such Award to qualify for the Section 162(m) Exemption.

(u) "Performance Goals" means the performance goals established by the Committee in connection with the grant of Restricted Stock or Performance Units. In the case of Qualified Performance-Based Awards, (i) such goals shall be based on the attainment of specified levels of one or more of the following measures: return on equity, return on assets, earnings per share, net income and/or achievement of predetermined strategic milestones and (ii) such Performance Goals shall be set by the Committee within the time period prescribed by Section 162(m) of the Code and related regulations. Performance Goals may be stated in the alternative or in combination.

(v) "Performance Units" means an Award granted under Section 8.

(w) "Plan" means the GreenPoint Financial Corp. 1999 Stock Incentive Plan, as set forth herein and as hereinafter amended from time to time.

(x) "Restricted Stock" means an Award granted under Section 7.

(y) "Retirement" means retirement from the employ of the Company or its Subsidiaries or Affiliates at the normal or early retirement date as set forth in any tax-qualified retirement/pension plan of the Company.

(z) "Rule 16b-3" means Rule 16b-3, as promulgated by the Commission under Section 16(b) of the Exchange Act, as amended from time to time.

(aa) "Section 162(m) Exemption" means the exemption from the limitation on deductibility imposed by Section 162(m) of the Code that is set forth in Section 162(m)(4)(C) of the Code.

(bb) "Stock Appreciation Right" means an Award granted under Section 6.

(cc) "Stock Option" means an Award granted under Section 5.

(dd) "Subsidiary" means any corporation, partnership, joint venture or other entity during any period in which at least a 50% voting or profits interest is owned, directly or indirectly, by the Company or any successor to the Company.

(ee) "Termination of Employment" means the termination of the participant's employment with, or performance of services for, the Company and any of its Subsidiaries or Affiliates. A participant employed by, or performing services for, a Subsidiary or an Affiliate shall also be deemed to incur a Termination of Employment if the Subsidiary or Affiliate ceases to be such a Subsidiary or an Affiliate, as the case may be, and the participant does not immediately thereafter become an employee of, or service-provider for, the Company or another Subsidiary or Affiliate. Temporary absences from employment because of illness, vacation or leave of absence and transfers among the Company and its Subsidiaries and Affiliates shall not be considered Terminations of Employment. For purposes of the Plan, a participant's

employment shall be deemed to have terminated at the close of business on the day preceding the first date on which he or she is no longer for any reason whatsoever employed by the Company or any of its Subsidiaries or Affiliates.

In addition, certain other terms used herein have definitions given to them in the first place in which they are used.

## SECTION 2 ADMINISTRATION

The Plan shall be administered by the Compensation Committee or such other committee of the Board as the Board may from time to time designate (the "Committee"), which shall be composed of not less than two directors, and shall be appointed by and serve at the pleasure of the Board.

The Committee shall have plenary authority to grant Awards pursuant to the terms of the Plan to Eligible Individuals.

Among other things, the Committee shall have the authority, subject to the terms of the Plan:

(a) To select the Eligible Individuals to whom Awards may from time to time be granted;

(b) To determine whether and to what extent Incentive Stock Options, NonQualified Stock Options, Stock Appreciation Rights, Restricted Stock, Performance Units and other stock-based awards or any combination thereof are to be granted hereunder;

(c) To determine the number of shares of Common Stock to be covered by each Award granted hereunder;

(d) To determine the terms and conditions of any Award granted hereunder (including, but not limited to, the option price (subject to Section 5(a)), any vesting condition, restriction or limitation (which may be related to the performance of the participant, the Company or any Subsidiary or Affiliate) and any vesting acceleration or forfeiture waiver regarding any Award and the shares of Common Stock relating thereto, based on such factors as the Committee shall determine;

(e) To modify, amend or adjust the terms and conditions of any Award, at any time or from time to time, including but not limited to Performance Goals; *provided, however*, that the Committee may not (i) subject to the last paragraph of Section 3, reduce the exercise price or cancel and regrant a Stock Option theretofore granted and (ii) adjust upwards the amount payable with respect to a Qualified Performance-Based Award or waive or alter the Performance Goals associated therewith;

(f) To determine to what extent and under what circumstances Common Stock and other amounts payable with respect to an Award shall be deferred; and

(g) To determine under what circumstances an Award may be settled in cash or Common Stock under Sections 5(j), 6(b)(ii) and 8(b)(iv).

The Committee shall have the authority to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it shall from time to time deem advisable, to interpret the terms and provisions of the Plan and any Award issued under the Plan (and any agreement relating thereto) and to otherwise supervise the administration of the Plan.

The Committee may act only by a majority of its members then in office, except that the Committee may, except to the extent prohibited by applicable law or the applicable rules of a stock exchange, allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any part of its responsibilities and powers to any person or persons selected by it; *provided* that no such delegation may be made that would cause Awards or other transactions under the Plan to cease to be exempt from Section 16(b) of the Exchange Act or cause an Award designated as a Qualified Performance-Based Award not to qualify for the Section 162(m) Exemption. Any such allocation or delegation may be revoked by the Committee at any time.

Any determination made by the Committee or pursuant to delegated authority pursuant to the provisions of the Plan with respect to any Award shall be made in the sole discretion of the Committee or such delegate at the time of the grant of the Award or, unless in contravention of any express term of the Plan, at any time thereafter. All decisions made by the Committee or any appropriately delegated officer pursuant to the provisions of the Plan shall be final and binding on all persons, including the Company and Plan participants.

Any authority granted to the Committee may also be exercised by the full Board, except to the extent that the grant or exercise of such authority would cause any Award or transaction to become subject to (or lose an exemption under) the short-swing profit recovery provisions of Section 16 of the Exchange Act or cause an Award designated as a Qualified Performance-Based Award not to qualify for, or to cease to qualify for, the Section 162(m) Exemption. To the extent that any permitted action taken by the Board conflicts with action taken by the Committee, the Board action shall control.

### SECTION 3

#### COMMON STOCK SUBJECT TO PLAN

The maximum number of shares of Common Stock that may be delivered to participants and their beneficiaries under the Plan shall be 4,700,000, which number includes 200,000 of the shares of Common Stock remaining available for awards as of the date of adoption of this Plan under the Company's Amended and Restated 1994 Stock Incentive Plan. No participant may be granted Stock Options and Stock Appreciation Rights covering in excess of 800,000 shares of Common Stock in any calendar year, Shares subject to an Award under the Plan may be authorized and unissued shares or may be treasury shares.

If any Award is forfeited, or if any Stock Option (and related Stock Appreciation Right, if any) terminates, expires or lapses without being exercised, or if any Stock Appreciation Right is exercised for cash, shares of Common Stock subject to such Awards shall again be available for distribution in connection with Awards under the Plan.

In the event of any change in corporate capitalization (including, but not limited to, a change in the number of shares of Common Stock outstanding), such as a stock split or a corporate transaction, such as any merger, consolidation, separation, including a spin-off, or other distribution of stock or property of the Company, any reorganization (whether or not such reorganization comes within the definition of such term in Section 368 of the Code) or any partial or complete liquidation of the Company, the Committee or Board may make such substitution or adjustments in the aggregate number and kind of shares reserved for issuance under the Plan, and the maximum limitation upon Stock Options and Stock Appreciation Rights and Qualified Performance-Based Awards to be granted to any participant, in the number, kind and option price of shares subject to outstanding Stock Options, Stock Appreciation Rights and Restricted Stock, in the number and kind of shares subject to other outstanding Awards granted under the Plan and/or such other equitable substitution or adjustments as it may determine to be appropriate in its sole discretion; *provided, however*, that the number of shares subject to any Award shall always be a whole number. Such adjusted option price shall also be used to determine the amount payable by the Company upon the exercise of any Stock Appreciation Right associated with any Stock Option.

#### SECTION 4 ELIGIBILITY

Awards may be granted under the Plan to Eligible Individuals. No grant shall be made under this Plan to a director who is not an officer or a salaried employee of the Company or its Subsidiaries or Affiliates.

#### SECTION 5 STOCK OPTIONS

Stock Options may be granted alone or in addition to other Awards granted under the Plan and may be of two types: Incentive Stock Options and NonQualified Stock Options. Any Stock Option granted under the Plan shall be in such form as the Committee may from time to time approve.

The Committee shall have the authority to grant any optionee Incentive Stock Options, NonQualified Stock Options or both types of Stock Options (in each case with or without Stock Appreciation Rights); *provided, however*, that grants hereunder are subject to the aggregate limit on grants to individual participants set forth in Section 3. Incentive Stock Options may be granted only to employees of the Company and its subsidiaries or parent corporation (within the meaning of Section 424(f) of the Code). To the extent that any Stock Option is not designated as an Incentive Stock Option or even if so designated does not qualify as an Incentive Stock Option on or subsequent to its grant date, it shall constitute a NonQualified Stock Option.

Stock Options shall be evidenced by option agreements, the terms and provisions of which may differ. An option agreement shall indicate on its face whether it is intended to be an agreement for an Incentive Stock Option or a NonQualified Stock Option. The grant of a Stock Option shall occur on the date the Committee by resolution selects an Eligible Individual to receive a grant of a Stock Option, determines the number of shares of Common Stock to be subject to such Stock Option to be granted to such Eligible Individual and specifies the terms and provisions of the Stock Option. The Company shall notify an Eligible Individual of any grant of a Stock Option, and a written option agreement or agreements shall be duly executed and delivered by the Company to the participant. Such agreement or agreements shall become effective upon execution by the Company and the participant.

Stock Options granted under the Plan shall be subject to the following terms and conditions and shall contain such additional terms and conditions as the Committee shall deem desirable:

(a) Option Price. The option price per share of Common Stock purchasable under a Stock Option shall be determined by the Committee and set forth in the option agreement, and shall not be less than the Fair Market Value of the Common Stock subject to the Stock Option on the date of grant.

(b) Option Term. The term of each Stock Option shall be fixed by the Committee, but no Stock Option shall be exercisable more than 10 years after the date the Stock Option is granted.

(c) Exercisability. Except as otherwise provided herein, Stock Options shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Committee. If the Committee provides that any Stock Option is exercisable only in installments, the Committee may at any time waive such installment exercise provisions, in whole or in part, based on such factors as the Committee may determine. In addition, the Committee may at any time accelerate the exercisability of any Stock Option.

(d) Method of Exercise. Subject to the provisions of this Section 5, Stock Options may be exercised, in whole or in part, at any time during the option term by giving written notice of exercise to the Company specifying the number of shares of Common Stock subject to the Stock Option to be purchased.

Such notice shall be accompanied by payment in full of the purchase price by certified or bank check or such other instrument as the Company may accept. If approved by the Committee, payment, in full or in part, may also be made in the form of unrestricted Common Stock (by delivery of such shares or by attestation) already owned by the optionee of the same class as the Common Stock subject to the Stock Option (based on the Fair Market Value of the Common Stock on the date the Stock Option is exercised); *provided, however*, that, in the case of an Incentive Stock Option, the right to make a payment in the form of already owned shares of Common Stock of the same class as the Common Stock subject to the Stock Option may be authorized only at the time the Stock Option is granted and *provided, further*, that such already owned shares have been held by the optionee for at least six months at the time of exercise or had been purchased on the open market.



If approved by the Committee, payment in full or in part may also be made by delivering a properly executed exercise notice to the Company, together with a copy of irrevocable instructions to a broker to deliver promptly to the Company the amount of sale or loan proceeds necessary to pay the purchase price, and, if requested, reduced by the amount of any federal, state, local or foreign withholding taxes. To facilitate the foregoing, the Company may enter into agreements for coordinated procedures with one or more brokerage firms.

In addition, if approved by the Committee, payment in full or in part may also be made by instructing the Committee to withhold a number of such shares having a Fair Market Value on the date of exercise equal to the aggregate exercise price of such Stock Option.

No shares of Common Stock shall be issued until full payment therefor has been made. Except as otherwise provided in Section 5(1) below, an optionee shall have all of the rights of a shareholder of the Company holding the class or series of Common Stock that is subject to such Stock Option (including, if applicable, the right to vote the shares and the right to receive dividends), when the optionee has given written notice of exercise, has paid in full for such shares and, if requested, has given the representation described in Section 14(a).

If determined by the Committee at or, with respect to a NonQualified Stock Option, subsequent to the date of grant of a Stock Option, in the event an optionee who has not incurred a Termination of Employment pays the option price of such Stock Option (in whole or in part) by delivering (or attesting to ownership of) shares of Common Stock previously owned by the optionee, such optionee shall automatically be granted a reload Stock Option (a "Reload Option") for the number of shares of Common Stock used to pay the option price. Unless otherwise determined by the Committee, the Reload Option shall be subject to the same terms and conditions as the Stock Option, except that the Reload Option shall be a NonQualified Stock Option, have an option price equal to the Fair Market Value of the Common Stock on the date the Reload Option is granted, expire the same date as the expiration date of the Stock Option so exercised, shall vest and become exercisable 6 months following the date of grant of such Reload Option and shall not have the rights set forth in Section 5(k) hereof. Additional Reload Options may only be granted upon exercise of a Reload Option if the Fair Market Value of the Common Stock on the date of such exercise is 25% or more higher than the Fair Market Value of the Common Stock on the date of grant of the Reload Option being exercised. Reload Options shall not be treated as grants for purposes of the limitations set forth in the second sentence of Section 3 of the Plan.

(e) Nontransferability of Stock Options. No Stock Option shall be transferable by the optionee other than (i) by will or by the laws of descent and distribution; or (ii) in the case of a NonQualified Stock Option, as otherwise expressly permitted by the Committee including, if so permitted, pursuant to a transfer to such optionee's immediate family, whether directly or indirectly or by means of a trust or partnership or otherwise. For purposes of this Plan, unless otherwise determined by the Committee, "immediate family" shall mean the optionee's children, spouse and grandchildren. All Stock Options shall be exercisable, subject to the terms of this Plan, only by the optionee, the guardian or legal representative of the optionee, or any person to whom such option is transferred pursuant to this paragraph, it being understood that the term "holder" and "optionee" include such guardian, legal representative and other transferee.

(f) Additional Rules for Incentive Stock Options. Notwithstanding anything contained herein to the contrary, no Stock Option which is intended to qualify as an Incentive Stock Option may be granted to an Eligible Employee who at the time of such grant owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of any Subsidiary, unless at the time such Stock Option is granted the option price is at least 110% of the Fair Market Value of a share of Common Stock and such Stock Option by its terms is not exercisable after the expiration of five years from the date such Stock Option is granted. In addition, the aggregate Fair Market Value of the Common Stock (determined at the time a Stock Option for the Common Stock is granted) for which Incentive Stock Options are exercisable for the first time by an optionee during any calendar year, under all of the incentive stock option plans of the Company and of any Subsidiary, may not exceed \$100,000. To the extent a Stock Option that by its terms was intended to be an Incentive Stock Option exceeds this \$100,000, limit, the portion of the Stock Option in excess of such limit shall be treated as a NonQualified Stock Option.

(g) Termination by Death. Unless otherwise determined by the Committee, if an optionee incurs a Termination of Employment by reason of death, any Stock Option held by such optionee may thereafter be exercised, to the extent then exercisable, or on such accelerated basis as the Committee may determine, for a period of one year (or such other period as the Committee may specify in the option agreement) from the date of such death or until the expiration of the stated term of such Stock Option, whichever period is the shorter.

(h) Termination by Reason of Disability or Retirement. Unless otherwise determined by the Committee, if an optionee incurs a Termination of Employment by reason of Disability or Retirement, any Stock Option held by such optionee may thereafter be exercised by the optionee, to the extent it was exercisable at the time of termination, or on such accelerated basis as the Committee may determine, for a period of one year (or such other period as the Committee may specify in the option agreement) from the date of such Termination of Employment or until the expiration of the stated term of such Stock Option, whichever period is the shorter; *provided, however*, that if the optionee dies within such period, any unexercised Stock Option held by such optionee shall, notwithstanding the expiration of such period, continue to be exercisable to the extent to which it was exercisable at the time of death for a period of 12 months from the date of such death or until the expiration of the stated term of such Stock Option, whichever period is the shorter. In the event of Termination of Employment by reason of Disability or Retirement, if an Incentive Stock Option is exercised after the expiration of the exercise periods that apply for purposes of Section 422 of the Code, such Stock Option will thereafter be treated as a NonQualified Stock Option.

(i) Other Termination. Unless otherwise determined by the Committee: (A) if an optionee incurs a Termination of Employment for Cause, all Stock Options held by such optionee shall thereupon terminate; and (B) if an optionee incurs a Termination of Employment for any reason other than death, Disability, Retirement or for Cause, any Stock Option held by such optionee, to the extent it was then exercisable at the time of termination, or on such accelerated basis as the Committee may determine, may be exercised for the lesser of three months from the date of such Termination of Employment or the balance of such Stock Option's term; *provided, however*, that if the optionee dies within such three-month period, any unexercised Stock Option held by such optionee shall, notwithstanding the expiration of such

three-month period, continue to be exercisable to the extent to which it was exercisable at the time of death for a period of 12 months from the date of such death or until the expiration of the stated term of such Stock Option; whichever period is the shorter. Notwithstanding any other provision of this Plan to the contrary, in the event an optionee incurs a Termination of Employment other than for Cause during the 24-month period following a Change in Control, any Stock Option held by such optionee may thereafter be exercised by the optionee, to the extent it was exercisable at the time of termination, including on such accelerated basis as provided in Section 11(a), for (x) the longer of (i) one year from such date of termination or (ii) such other period as may be provided in the Plan for such Termination of Employment or as the Committee may provide in the option agreement, or (y) until expiration of the stated term of such Stock Option, whichever period is the shorter. If an Incentive Stock Option is exercised after the expiration of the post-termination exercise periods that apply for purposes of Section 422 of the Code, such Stock Option will thereafter be treated as a NonQualified Stock Option.

(j) Cashing Out of Stock Option. On receipt of written notice of exercise, the Committee may elect to cash out all or part of the portion of the shares of Common Stock for which a Stock Option is being exercised by paying the optionee an amount, in cash or Common Stock, equal to the excess of the Fair Market Value of the Common Stock over the option price times the number of shares of Common Stock for which the Option is being exercised on the effective date of such cash-out.

(k) Change in Control Cash-Out. Notwithstanding any other provision of the Plan, during the 60-day period from and after a Change in Control (the "Exercise Period"), if the Committee shall determine at the time of grant or thereafter, an optionee shall have the right, whether or not the Stock Option is fully exercisable and in lieu of the payment of the option price for the shares of Common Stock being purchased under the Stock Option and by giving notice to the Company, to elect (within the Exercise Period) to surrender all or part of the Stock Option to the Company and to receive cash, within 5 days of such election, in an amount equal to the amount by which the Change in Control Price per share of Common Stock on the date of such election shall exceed the exercise price per share of Common Stock under the Stock Option multiplied by the number of shares of Common Stock granted under the Stock Option as to which the right granted under this Section 5(k) shall have been exercised. Notwithstanding the foregoing, if any right granted pursuant to this Section 5(k) would make a Change in Control transaction ineligible for pooling-of-interests accounting under APB No. 16 that but for the nature of such grant would otherwise be eligible for such accounting treatment, the Committee shall have the ability to substitute for the cash payable pursuant to such right Common Stock with a Fair Market Value (as of the date of such election) equal to the cash that would otherwise be payable hereunder or, if necessary to preserve such accounting treatment, otherwise modify or eliminate such right.

(l) Deferral of Option Shares. The Committee may from time to time establish procedures pursuant to which an optionee may elect to defer, until a time or times later than the exercise of an Option, receipt of all or a portion of the shares of Common Stock subject to such Option and/or to receive cash at such later time or times in lieu of such deferred shares, all on such terms and conditions as the Committee shall determine. If any such deferrals are permitted, then notwithstanding Section 5(d) above, an optionee who elects such deferral shall not have any rights as a stockholder with respect to such deferred shares unless and until shares are actually delivered to the optionee with respect thereto, except to the extent otherwise determined by the Committee.

SECTION 6  
STOCK APPRECIATION RIGHTS

(a) Grant and Exercise. Stock Appreciation Rights may be granted in conjunction with all or part of any Stock Option granted under the Plan. In the case of a NonQualified Stock Option, such rights may be granted either at or after the time of grant of such Stock Option. In the case of an Incentive Stock Option, such rights may be granted only at the time of grant of such Stock Option. A Stock Appreciation Right shall terminate and no longer be exercisable upon the termination or exercise of the related Stock Option.

A Stock Appreciation Right may be exercised by an optionee in accordance with Section 6(b) by surrendering the applicable portion of the related Stock Option in accordance with procedures established by the Committee. Upon such exercise and surrender, the optionee shall be entitled to receive an amount determined in the manner prescribed in Section 6(b). Stock Options, which have been so surrendered, shall no longer be exercisable to the extent the related Stock Appreciation Rights have been exercised.

(b) Terms and Conditions. Stock Appreciation Rights shall be subject to such terms and conditions as shall be determined by the Committee, including the following:

(i) Stock Appreciation Rights shall be exercisable only at such time or times and to the extent that the Stock Options to which they relate are exercisable in accordance with the provisions of Section 5 and this Section 6.

(ii) Upon the exercise of a Stock Appreciation Right, an optionee shall be entitled to receive an amount in cash, shares of Common Stock or both, in value equal to the excess of the Fair Market Value of one share of Common Stock over the option price per share specified in the related Stock Option multiplied by the number of shares in respect of which the Stock Appreciation Right shall have been exercised, with the Committee having the right to determine the form of payment.

(iii) Stock Appreciation Rights shall be transferable only to permitted transferees of the underlying Stock Option in accordance with Section 5(e).

(iv) Upon the exercise of a Stock Appreciation Right, the Stock Option or part thereof to which such Stock Appreciation Right is related shall be deemed to have been exercised for the purpose of the limitation set forth in Section 3 on the number of shares of Common Stock to be issued under the Plan, but only to the extent of the number of shares covered by the Stock Appreciation Right at the time of exercise based on the value of the Stock Appreciation Right at such time.

SECTION 7  
RESTRICTED STOCK

(a) Administration. Shares of Restricted Stock may be awarded either alone or in addition to other Awards granted under the Plan. The Committee shall determine the Eligible Individuals to whom and the time or times at which grants of Restricted Stock will be awarded, the number of shares to be awarded to any Eligible Individual, the conditions for vesting, the time or times within which such Awards may be subject to forfeiture and any other terms and conditions of the Awards, in addition to those contained in Section 7(c); *provided, however*, that, subject to Section 7(c)(i) and Section 11(a)(ii), no shares of Restricted Stock shall vest prior to three years from the date of grant. Notwithstanding the previous sentence, the Committee shall have discretion to permit vesting of shares of Restricted Stock prior to three years from the date of grant in the event of a participant's Termination of Employment by reason of Retirement, Disability or death, or under other limited circumstances if the Committee determines that such earlier vesting is necessary to fulfill a legitimate corporate purpose such as the hiring or retention of a key employee; *provided, however*, that the Committee shall exercise its discretion (under this Section 7(a) and Section 7(c)(i)) in these other limited circumstances with respect to shares of Restricted Stock which in the aggregate do not exceed 10% of the maximum number of shares of Common Stock authorized for issuance in Section 3.

(b) Awards and Certificates. Shares of Restricted Stock shall be evidenced in such manner as the Committee may deem appropriate, including book-entry registration or issuance of one or more stock certificates. Any certificate issued in respect of shares of Restricted Stock shall be registered in the name of such participant and shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Award, substantially in the following form:

“The transferability of this certificate and the shares of stock represented hereby are subject to the terms and conditions (including forfeiture) of the GreenPoint Financial Corp. 1999 Stock Incentive Plan and a Restricted Stock Agreement. Copies of such Plan and Agreement are on file at the offices of GreenPoint Financial Corp., 90 Park Avenue, New York, New York 10016-1303.”

The Committee may require that the certificates evidencing such shares be held in custody by the Company until the restrictions thereon shall have lapsed and that, as a condition of any Award of Restricted Stock, the participant shall have delivered a stock power, endorsed in blank, relating to the Common Stock covered by such Award.

(c) Terms and Conditions. Shares of Restricted Stock shall be subject to the following terms and conditions:

(i) The Committee may, prior to or at the time of grant, designate an Award of Restricted Stock as a Qualified Performance-Based Award, in which event it shall condition the grant or vesting, as applicable, of such Restricted Stock upon the attainment

of Performance Goals. If the Committee does not designate an Award of Restricted Stock as a Qualified Performance-Based Award, it may also condition the grant or vesting thereof upon the attainment of Performance Goals. Subject to Section 11(a)(ii), no shares of Restricted Stock, the vesting of which is conditioned upon the attainment of Performance Goals, shall vest prior to one year from the date of grant. Notwithstanding the previous sentence, the Committee shall have discretion to permit vesting of shares of Restricted Stock, the vesting of which is conditioned upon the attainment of Performance Goals, prior to one year from the date of grant in the event of a participant's Termination of Employment by reason of Retirement, Disability or death, or under other limited circumstances if the Committee determines that such earlier vesting is necessary to fulfill a legitimate corporate purpose such as the hiring or retention of a key employee; *provided, however*, that the Committee shall exercise its discretion (under this Section 7(c)(i) and Section 7(a)) in these other limited circumstances with respect to shares of Restricted Stock which in the aggregate do not exceed 10% of the maximum number of shares of Common Stock authorized for issuance in Section 3. Regardless of whether an Award of Restricted Stock is a Qualified Performance-Based Award, the Committee may also condition the grant or vesting thereof upon the continued service of the participant. The conditions for grant or vesting and the other provisions of Restricted Stock Awards (including without limitation any applicable Performance goals) need not be the same with respect to each recipient. The Committee may at any time, in its sole discretion, accelerate or waive, in whole or in part, any of the foregoing restrictions, other than the restriction period minimums described in Section 7(a) and this Section 7(c)(i); *provided, however*, that in the case of Restricted Stock that is a Qualified Performance-Based Award, the applicable Performance Goals have been satisfied with respect to each participant who is a Covered Employee (other than in the case of the participant's Disability or death).

(ii) Subject to the provisions of the Plan and the Restricted Stock Agreement referred to in Section 7(c)(vi), during the period, if any, set by the Committee, commencing with the date of such Award for which such participant's continued service is required (the "Restriction Period"), and until the later of (A) the expiration of the Restriction Period and (B) the date the applicable Performance Goals (if any) are satisfied, the participant shall not be permitted to sell, assign, transfer, pledge or otherwise encumber shares of Restricted Stock.

(iii) Except as provided in Section 7(c)(i) through 7(c)(iii), the Restricted Stock Agreement, or as otherwise determined by the Committee, the participant shall have, with respect to the shares of Restricted Stock, all of the rights of a stockholder of the Company holding the class or series of Common Stock that is the subject of the Restricted Stock, including, if applicable, the right to vote the shares and the right to receive any cash dividends. If so determined by the Committee in the applicable Restricted Stock Agreement and subject to Section 14(e) of the Plan, (A) cash dividends on the class or series of Common Stock that is the subject of the Restricted Stock Award shall be automatically deferred and reinvested in additional Restricted Stock, held subject to the vesting of the underlying Restricted Stock, or held subject to meeting Performance Goals applicable only to dividends, and (B) dividends payable in Common Stock shall be paid in the form of Restricted Stock of the same class as the Common Stock with which such dividend was paid, held subject to the vesting of the underlying Restricted Stock, or held subject to meeting Performance Goals applicable only to dividends.

(iv) Except to the extent otherwise provided in the applicable Restricted Stock Agreement or Section 7(c)(i), 7(c)(ii) or 11(a)(ii), upon a participant's Termination of Employment for any reason during the Restriction Period or before the applicable Performance Goals are satisfied, all shares still subject to restriction shall be forfeited by the participant; *provided, however*, that the Committee shall have the discretion to waive, in whole or in part, any or all remaining restrictions (other than the restriction period minimums set forth in Sections 7(a) and 7(c)(i), and, in the case of Qualified Performance-Based Awards with respect to which a participant is a Covered Employee, satisfaction of the applicable Performance Goals unless the participant's employment is terminated by reason of death or Disability) with respect to any or all of such participant's shares of Restricted Stock.

(v) If and when any applicable Performance Goals are satisfied and the Restriction Period expires without a prior forfeiture of the Restricted Stock, unlegended certificates for such shares shall be delivered to the participant upon surrender of the legended certificates.

(vi) Each Award shall be confirmed by, and be subject to, the terms of a Restricted Stock Agreement.

## SECTION 8 PERFORMANCE UNITS

(a) Administration. Performance Units may be awarded either alone or in addition to other Awards granted under the Plan. The Committee shall determine the Eligible Individuals to whom and the time or times at which Performance Units shall be awarded, the number of Performance Units to be awarded to any Eligible Individual, the duration of the Award Cycle and any other terms and conditions of the Award, in addition to those contained in Section 8(b).

(b) Terms and Conditions. Performance Units Awards shall be subject to the following terms and conditions:

(i) The Committee may, prior to or at the time of the grant, designate Performance Units as Qualified Performance-Based Awards, in which event it shall condition the settlement thereof upon the attainment of Performance Goals. If the Committee does not designate Performance Units as Qualified Performance-Based Awards, it may also condition the settlement thereof upon the attainment of Performance Goals. Regardless of whether Performance Units are Qualified Performance-Based Awards, the Committee may also condition the settlement thereof upon the continued service of the participant. The provisions of such Awards (including without limitation any applicable Performance Goals) need not be the same with respect to each recipient. Subject to the provisions of the Plan and the Performance Units Agreement referred to in Section 8(b)(v), Performance Units may not be sold, assigned, transferred, pledged or

otherwise encumbered during the Award Cycle. Subject to Section 11(a)(iii), no Performance Units may be earned prior to three years from the date of grant (or one year from the date of grant if the settlement thereof is conditioned upon the attainment of Performance Goals). Notwithstanding the previous sentence, the Committee shall have the discretion to permit Performance Units to be earned and payable in full in the event the participant's employment is terminated by reason of Disability or death. No more than 100,000 shares of Common Stock may be granted as Qualified Performance-Based Awards to any participant in any calendar year.

(ii) Except to the extent otherwise provided in the applicable Performance Units Agreement or Section 8(b)(iii) or 11(a)(iii), upon a participant's Termination of Employment for any reason during the Award Cycle or before any applicable Performance Goals are satisfied, all rights to receive cash or stock in settlement of the Performance Units shall be forfeited by the participant; *provided, however*, that the Committee shall have the discretion to waive, in whole or in part, any or all remaining payment limitations (other than the restriction period minimums set forth in Section 8(b)(i), and, in the case of Performance Units that are Qualified Performance-Based Awards, satisfaction of the applicable Performance Goals unless the participant's employment is terminated by reason of Disability or death) with respect to any or all of such participant's Performance Units.

(iii) A participant may elect to further defer receipt of cash or shares in settlement of Performance Units for a specified period or until a specified event, subject in each case to the Committee's approval and to such terms as are determined by the Committee. Subject to any exceptions adopted by the Committee, such election must generally be made prior to commencement of the Award Cycle for the Performance Units in question.

(iv) At the expiration of the Award Cycle, the Committee shall evaluate the Company's performance in light of any Performance Goals for such Award, and shall determine the number of Performance Units granted to the participant which have been earned, and the Committee shall then cause to be delivered (A) a number of shares of Common Stock equal to the number of Performance Units determined by the Committee to have been earned, or (B) cash equal to the Fair Market Value of such number of shares of Common Stock to the participant, as the Committee shall elect (subject to any deferral pursuant to Section 8.(b)(iii)).

(v) Each Award shall be confirmed by, and be subject to, the terms of a Performance Units Agreement.

## SECTION 9 TAX OFFSET BONUSES

At the time an Award is made hereunder or at any time thereafter, the Committee may grant to the participant receiving such Award the right to receive a cash payment in an amount specified by the Committee, to be paid at such time or times (if ever) as the Award results in



compensation income to the participant, for the purpose of assisting the participant to pay the resulting taxes, all as determined by the Committee and on such other terms and conditions as the Committee shall determine.

SECTION 10  
OTHER STOCK-BASED AWARDS

Other Awards of Common Stock and other Awards that are valued in whole or in part by reference to, or are otherwise based upon, Common Stock, including (without limitation) dividend equivalents and convertible debentures, may be granted either alone or in conjunction with other Awards granted under the Plan. In the event that an Award is granted under this Section 10 to a participant who is an officer, the Award shall be granted in lieu of additional cash compensation to the officer for services.

SECTION 11  
CHANGE IN CONTROL PROVISIONS

(a) Impact of Event. Notwithstanding any other provision of the Plan to the contrary, in the event of a Change in Control:

(i) Any Stock options and Stock Appreciation Rights outstanding as of the date such Change in Control is determined to have occurred, and which are not then exercisable and vested, shall become fully exercisable and vested to the full extent of the original grant.

(ii) The restrictions and deferral limitations applicable to any Restricted Stock shall lapse, and such Restricted Stock shall become free of all restrictions and become fully vested and transferable to the full extent of the original grant.

(iii) All Performance Units shall be considered to be earned and payable in full based upon maximum performance, and any deferral or other restriction shall lapse and such Performance Units shall be settled in cash (or shares of Common Stock at the Committee's election) as promptly as is practicable.

(iv) The Committee may also make additional adjustments and/or settlements of outstanding Awards as it deems appropriate and consistent with the Plan's purposes.

(b) Definition of Change in Control. For purposes of the Plan, a "Change in Control" shall mean the happening of any of the following events:

(i) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (A) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of

directors (the “Outstanding Company Voting Securities”); *provided, however*, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (1) any acquisition directly from the Company, (2) any acquisition by the Company, (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company or (4) any acquisition by any corporation pursuant to a transaction which complies with clauses (A), (B) and (C) of subsection (iii) of this Section 11(b); or

(ii) Individuals who, as of the effective date of the Plan, constitute the Board (the “Incumbent Board”) cease for any reason not to constitute at least a majority of the Board; *provided, however*, that any individual becoming a director subsequent to the effective date of the Plan whose election, or nomination for election by the Company’s shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(iii) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a “Business Combination”), in each case, unless, following such Business Combination, (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (B) no Person (excluding any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (C) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(iv) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

(c) **Change in Control Price.** For purposes of the Plan, “Change in Control Price” means the higher of (i) the highest reported sales price, regular way, of a share of Common Stock in any transaction reported on the New York Stock Exchange Composite Tape or other national exchange on which such shares are listed or on NASDAQ during the 60-day period prior to and including the date of a Change in Control or (ii) if the Change in Control is the result of a tender or exchange offer or a Corporate Transaction, the highest price per share of Common Stock paid in such tender or exchange offer or Corporate Transaction; *provided, however*, that in the case of Incentive Stock Options and Stock Appreciation Rights relating to Incentive Stock Options, the Change in Control Price shall be in all cases the Fair Market Value of the Common Stock on the date such Incentive Stock Option or Stock Appreciation Right is exercised. To the extent that the consideration paid in any such transaction described above consists all or in part of securities or other noncash consideration, the value of such securities or other noncash consideration shall be determined in the sole discretion of the Board.

## SECTION 12

### TERM, AMENDMENT AND TERMINATION

The Plan will terminate on the tenth anniversary of the effective date of the Plan. Under the Plan, Awards outstanding as of such date shall not be affected or impaired by the termination of the Plan.

The Board may amend, alter, or discontinue the Plan, but no amendment, alteration or discontinuation shall be made which would impair the rights of an optionee under a Stock Option or a recipient of a Stock Appreciation Right, Restricted Stock Award, Performance Unit Award or other stock-based Award theretofore granted without the optionee’s or recipient’s consent, except such an amendment made to comply with applicable law, stock exchange rules or accounting rules. In addition, no such amendment shall be made without the approval of the Company’s stockholders to the extent such approval is required by applicable law or stock exchange rules; *provided, however*, that stockholder approval shall be required for any amendment which (i) increases the maximum number of shares for which Awards may be granted under the Plan (subject, however, to the provisions of Section 3 hereof), (ii) reduces the exercise price at which Stock Options may be granted (subject, however, to the provisions of Section 3 hereof), (iii) extends the period during which Stock Options may be granted or exercised beyond the times originally prescribed, (iv) changes the persons eligible to participate in the Plan, or (v) materially increases the benefits accruing to participants under the Plan.

Subject to the repricing restrictions in Section 2(e)(i) and the restriction period minimums described in Sections 7(a), 7(c)(i) and 8(b)(i), the Committee may amend the terms of any Stock Option or other Award theretofore granted, prospectively or retroactively, but no such amendment shall cause a Qualified Performance-Based Award to cease to qualify for the Section 162(m) Exemption or impair the rights of any holder without the holder’s consent except such an amendment made to cause the Plan or Award to comply with applicable law, stock exchange rules or accounting rules.

Subject to the above provisions, the Board shall have authority to amend the Plan to take into account changes in law and tax and accounting rules as well as other developments, and to grant Awards which qualify for beneficial treatment under such rules without stockholder approval.

SECTION 13  
UNFUNDED STATUS OF PLAN

It is presently intended that the Plan constitute an “unfunded” plan for incentive and deferred compensation. The Committee may authorize the creation of trusts or other arrangements to meet the obligations created under the Plan to deliver Common Stock or make payments; *provided, however*, that unless the Committee otherwise determines, the existence of such trusts or other arrangements is consistent with the “unfunded” status of the Plan.

SECTION 14  
GENERAL PROVISIONS

(a) The Committee may require each person purchasing or receiving shares pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the shares without a view to the distribution thereof. The certificates for such shares may include any legend that the Committee deems appropriate to reflect any restrictions on transfer.

Notwithstanding any other provision of the Plan or agreements made pursuant thereto, the Company shall not be required to issue or deliver any certificate or certificates for shares of Common Stock under the Plan prior to fulfillment of all of the following conditions:

- (1) Listing or approval for listing upon notice of issuance, of such shares on the New York Stock Exchange, Inc., or such other securities exchange as may at the time be the principal market for the Common Stock;
- (2) Any registration or other qualification of such shares of the Company under any state or federal law or regulation, or the maintaining in effect of any such registration or other qualification which the Committee shall, in its absolute discretion upon the advice of counsel, deem necessary or advisable; and
- (3) Obtaining any other consent, approval, or permit from any state or federal governmental agency, which the Committee shall, in its absolute discretion after receiving the advice of counsel, determine to be necessary or advisable.

(b) Nothing contained in the Plan shall prevent the Company or any Subsidiary or Affiliate from adopting other or additional compensation arrangements for its employees.

(c) The Plan shall not constitute a contract of employment, and adoption of the Plan shall not confer upon any employee any right to continued employment, nor shall it interfere in any way with the right of the Company or any Subsidiary or Affiliate to terminate the employment of any employee at any time.

(d) No later than the date as of which an amount first becomes includible in the gross income of the participant for federal income tax purposes with respect to any Award under the Plan, the participant shall pay to the Company, or make arrangements satisfactory to the Company regarding the payment of, any federal, state, local or foreign taxes of any kind required by law to be withheld with respect to such amount. Unless otherwise determined by the Company, withholding obligations may be settled with Common Stock, including Common Stock that is part of the Award that gives rise to the withholding requirement. The obligations of the Company under the Plan shall be conditional on such payment or arrangements, and the Company and its Subsidiaries and Affiliates shall, to the extent permitted by law, have the right to deduct any such taxes from any payment otherwise due to the participant. The Committee may establish such procedures as it deems appropriate, including making irrevocable elections, for the settlement of withholding obligations with Common Stock.

(e) Reinvestment of dividends in additional Restricted Stock at the time of any dividend payment shall only be permissible if sufficient shares of Common Stock are available under Section 3 for such reinvestment (taking into account then outstanding Stock Options and other Awards).

(f) The Committee shall establish such procedures as it deems appropriate for a participant to designate a beneficiary to whom any amounts payable in the event of the participant's death are to be paid or by whom any rights of the participant, after the participant's death, may be exercised.

(g) In the case of a grant of an Award to any employee of a Subsidiary of the Company, the Company may, if the Committee so directs, issue or transfer the shares of Common Stock, if any, covered by the Award to the Subsidiary, for such lawful consideration as the Committee may specify, upon the condition or understanding that the Subsidiary will transfer the shares of Common Stock to the employee in accordance with the terms of the Award specified by the Committee pursuant to the provisions of the Plan. All shares of Common Stock underlying Awards that are forfeited or canceled should revert to the Company.

(h) The Plan and all Awards made and actions taken thereunder shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws.

(i) Except as otherwise provided in Section 5(e) or 6(b)(iii) or by the Committee, Awards under the Plan are not transferable except by will or by the laws of descent and distribution.

(j) In the event an Award is granted to an Eligible Individual who is employed or providing services outside the United States and who is not compensated from a payroll maintained in the United States, the Committee may, in its sole discretion, modify the provisions of the Plan as they pertain to such individual to comply with applicable foreign law.

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SECTION 15  
EFFECTIVE DATE OF PLAN

The Plan shall be effective as of the date it is adopted by the Board, subject to the approval of the Company's stockholders.

**HEADLANDS MORTGAGE COMPANY**  
**1997 EXECUTIVE AND NON-EMPLOYEE DIRECTOR STOCK OPTION PLAN**  
**February 5, 1998**

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## SUMMARY

### **General Information**

This Prospectus relates to the 1997 Executive and Non-Employee Director Stock Option Plan (the “Stock Option Plan” or the “Plan”) of Headlands Mortgage Company (the “Company”), and to shares of the Company’s common stock, no par value the “Common Stock”) offered pursuant to the Plan.

The Plan was adopted by the Board effective as of July 22, 1997, subject to the approval of the Company stockholders. The stockholders approved the Plan on September 15, 1997. The Plan has been amended and restated from time to time by the Board of Directors of the Company. The Company’s Plan provides for the grant of qualified incentive stock options (“ISOs”) which meet the requirements of section 422 of the Internal Revenue Code of 1986, as amended (the “Code”), stock options not so qualified (“NQSOs”), dividend equivalent rights (“DERs”), deferred stock, restricted stock, performance shares, stock appreciation and limited stock awards (“Awards”).

### **Purpose of the Stock Option Plan**

The Stock Option Plan is intended to provide a means of performance-based compensation in order to attract and retain qualified personnel and to provide an incentive to employees, officers, directors and others whose job performance affects the Company, to encourage proprietary interest in the Company, to encourage such key employees to remain in the employ of the Company, to attract new employees with outstanding qualifications, and to afford additional incentive to others to increase their efforts in providing significant services to the Company.

### **Administration**

The Stock Option Plan is administered by the Compensation Committee of the Board of Directors (the “Committee”), which is composed solely of non-employee directors. Members of the Committee are eligible to receive NQSOs pursuant to automatic grants of stock options discussed below.

### **Options and Awards**

Options granted under the Stock Option Plan will become exercisable in accordance with the terms of the grants made by the Committee. Awards will be subject to the terms and restrictions of the Awards made by the Committee. Option and Award recipients shall enter into a written stock option agreement with the Company. The Committee has discretionary authority to select participants from among eligible persons and to determine at the time an option or Award is granted when and in what increments shares covered by the option or Award may be purchased or will vest and, in the case of options, whether it is intended to be an ISO or a NQSO *provided, however*, that certain restrictions applicable to ISOs are mandatory, including a requirement that ISOs not be issued for less than 100 percent of the then fair market value of the Common Stock (110 percent in the case of a grantee who holds more than ten percent of the

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outstanding Common Stock) and a maximum term of ten years (five years in the case of a grantee who holds more than ten percent of the outstanding Common Stock). Fair market value means as of any given date, with respect to any option or Award granted, at the discretion of the Committee, (i) the closing sale price of the Common Stock on the preceding business day as reported in the Western Edition of the Wall Street Journal or (ii) the average of the closing price of the Common Stock on each day on which it was traded over a period of up to twenty trading days immediately prior to such date, or (iii) if the Common Stock is not publicly traded, the fair market value of the Common Stock as otherwise determined by the Committee in the good faith exercise of its discretion.

### ***Eligible Persons***

Officers and directors and employees of the Company and other persons expected to provide significant services to the Company are eligible to participate in the Stock Option Plan. ISOs may be granted to the officers and employees of the Company. NQSOs and Awards may be granted to the directors, officers, employees, agents and consultants of the Company or any of its subsidiaries.

Under current law, ISOs may not be granted to any director of the Company who is not also an employee, or to directors, officers and other employees of entities unrelated to the Company.

### ***Shares Subject to the Plan***

The Stock Option Plan authorizes the grant of options to purchase, and Awards of, an aggregate of up to ten percent of the Company's total outstanding shares at any time, *provided* that no more than 1,000,000 shares of Common Stock shall be cumulatively available for grant as ISOs. If an option granted under the Stock Option Plan expires or terminates, or an Award is forfeited, the shares subject to any unexercised portion of such option or Award will again become available for the issuance of further options or Awards under the Stock Option Plan. In connection with any reorganization, merger, consolidation, recapitalization, stock split or similar transaction, the Committee shall appropriately adjust the number of shares of Common Stock subject to outstanding options, Awards and DERs and the total number of shares for which options, Awards or DERs may be granted under the Plan.

### ***Term of the Plan***

Unless previously terminated by the Board of Directors, the Stock Option Plan will terminate on September 15, 2007, and no options or Awards may be granted under the Stock Option Plan thereafter, but existing options or Awards will remain in effect until the options are exercised or the options or Awards are terminated by their terms.

### ***Term of Options***

Each option must terminate no more than ten years from the date it is granted (or five years in the case of ISOs granted to an employee who is deemed to own an excess of 10 percent of the combined voting power of the Company's outstanding equity stock). Options may be granted on terms providing for exercise either in whole or in part at any time or times during their respective terms, or only in specified percentages at stated time periods or intervals during the term of the option.

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### ***DERs***

The Plan provides for granting DERs in tandem with options. DERs can be granted in “accrued” or “current-pay” form. Accrued DERs accrue for the account of the optionee shares of Common Stock upon the payment of cash dividends on outstanding shares of Common Stock. The number of shares accrued is determined by a formula, and such shares are currently transferred to the optionee only upon exercise of the related option. Shares of Common Stock accrued for the account of the optionee can also be made eligible to receive dividends and distributions. DERs issued in current-pay form provide that cash payments are made to the optionee at the same time as dividends are paid to holders of outstanding Common Stock. DERs can be made “performance based” by conditioning the right of the holder of the DER to receive any dividend equivalent payment or accrual upon the satisfaction of specified performance objectives.

### ***Option Exercise***

The exercise price of any option granted under the Stock Option Plan is payable in full in cash, or its equivalent as determined by the Committee. The Company may make loans available to options holders to exercise options evidenced by a promissory note executed by the option holder and secured by a pledge of Common Stock with fair value at least equal to the principal of the promissory note unless otherwise determined by the Committee:

### ***Automatic Grants to Non-Employee Directors***

Each non-employee director of the Company is automatically granted NQSOs to purchase 10,000 shares of Common Stock without DERs upon becoming a director of the Company. Such automatic grants of stock options vest 25 percent on the anniversary date in the year following the date of the grant and 25 percent on each anniversary date thereafter. The exercise price for such automatic grants of stock options is the fair market value of the Common Stock on the date of grant, and is required to be paid in cash.

### ***Amendment and Termination of Stock Option Plan***

The Board of Directors may, without affecting any outstanding options or Awards, from time to time revise or amend the Stock Option Plan, and may suspend or discontinue it at any time. However, no such revision or amendment may, without stockholder approval, increase the number of shares subject to the Stock Option Plan, modify the class of participants eligible to receive options or Awards granted under the Stock Option Plan or extend the maximum option term under the Stock Option Plan.

### ***Limited Transferability of Options***

Options may be granted on terms which permit transfer by such optionee to family members or trusts or partnerships for the exclusive benefit of such immediate family members or any other persons or entities as may be approved by the Committee, subject in all cases to the terms of the Plan.

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### ***No Right to Continued Employment***

Neither the adoption of the Plan nor the grant of Stock Options or other benefits under the Plan to any employee of the Company or any Subsidiary shall confer upon any employee any right to continued employment with the Company or a Subsidiary, as the case may be, or interfere in any way with the right of the Company or a Subsidiary to terminate the employment of any of its employees at any time.

### ***Restrictions on Resale of Shares***

Employees who are affiliates (directors and certain executive officers) of the Company may not reoffer or resell shares of the Common Stock by use or delivery of this Prospectus. Such affiliates may reoffer or resell Common Stock only (a) pursuant to a prospectus of the Company that is part of a registration statement covering reoffers and resales of securities that has become effective under the Securities Act of 1933, as amended (the "Securities Act") or (b) in reliance upon and in compliance with applicable provisions of Rule 144 under the Securities Act.

Employees who are not affiliates of the Company at the time of their proposed reoffer or resale of shares of Common Stock generally will be entitled to effect such reoffers or resales without use of a prospectus or compliance with Rule 144.

Employees who are subject to the short-swing profit provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), may be limited in their ability to purchase and sell equity securities of the Company by virtue of their participation in the Plan.

### ***Outstanding Options***

As of February 5, 1998, options for up to 1,850,000 shares of Common Stock were authorized to be issued under the Stock Option Plan, options to acquire 1,090,500 shares were issued and outstanding under such Plan and no options had previously been exercised, leaving 759,500 shares available for the grant of additional options, Awards or DERs.

The Plan provides that, in connection with any reorganization, merger, consolidation, recapitalization, stock split or similar transaction, the Committee shall appropriately adjust the number of shares of Common Stock subject to outstanding options, Awards and DERs and the total number of shares for which options, Awards or DERs may be granted under the Plan.

The number, if any, and terms of options, DERs or Awards which may be granted in future periods is not presently determinable as the Committee has sole discretion to determine the number, if any, and terms of such options, DERs or Awards within the specified limits stated above under "Shares Subject to the Plan."

**Federal Income Tax Considerations**

*General.* The following is a brief summary of the principal U.S. federal income tax consequences, based on current income tax laws, of the issuance and exercise of options, DERs and Awards under the Company's Plan. This summary is not intended to be exhaustive and does not describe state, local or foreign tax consequences. Grantees are strongly urged to consult their tax advisors regarding the federal, state, local or other tax consequences of the receipt and exercise of options, DERs and Awards under a Plan and the rules concerning taxation of capital gains, which were recently revised and which continue to be under review by Congress.

*Incentive Stock Options ("ISOs").* No taxable income will be recognized by a grantee upon the grant or exercise of an ISO. If shares of Common Stock are issued to a grantee pursuant to the exercise of an ISO granted under the Plan and if no disqualifying disposition of such shares is made by such grantee within two years after the date of grant or within one year after the receipt of such shares by such grantee, then upon the sale of such shares, any amount realized in excess of the option price will be taxed to such grantee (a) as a mid-term capital gain and any loss sustained will be a mid-term capital loss or (b) if such shares have been held for more than 18 months, as a long-term capital gain or loss. In either case, no deduction will be allowed to the Company. Additionally, the exercise of an ISO will give rise to an item of tax preference that may result in alternative minimum tax liability of the grantee.

If shares of Common Stock acquired upon the exercise of an ISO are disposed of prior to the expiration of two years after the date of grant or one year after exercise, generally (a) the grantee will recognize ordinary income in the year of disposition in an amount equal to the excess (if any) of the fair market value of the shares at exercise (or, if less, the amount realized on the disposition of the shares) over the option price thereof, and (b) the Company will be entitled to deduct such amount. Any further gain or loss recognized by the grantee will be subject to tax as capital gain or loss (generally long-term capital gain or loss if the stock has been held for more than 18 months and midterm gain or loss if held more than one year but no more than 18 months) and will not result in any deduction by the Company.

If an ISO is exercised at a time when it no longer qualifies as an ISO, the option will be treated as an NQSO. Subject to certain exceptions for disability or death, an ISO generally will not be eligible for the federal income tax treatment described above if it is exercised more than three months following the termination of employment.

*Non-Qualified Options ("NQSOs").* No taxable income will be recognized by a grantee upon the grant of an NQSO. Upon exercise, however, the grantee will generally recognize ordinary income in an amount equal to the difference between the option price (the amount paid for the shares) and the fair market value of the shares on the date of exercise, the grantee will have a basis in such stock in an amount equal to such fair market value, and the Company will be entitled to deduct a like amount.

Upon subsequent sale of any such shares of Common Stock acquired pursuant to the exercise of an NQSO, a grantee will have capital gain or loss equal to the difference between the amount realized upon such sale and the grantee's adjusted tax basis in the shares of Common Stock. Such gain or loss will be capital gain or loss and generally will be long-term if the shares of Common Stock have been held for more than 18 months from the date the option is exercised and mid-term if held more than one year but not more than 18 months.

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*Transfer of NQSO's to Family Members.* If an employee transfers a vested NQSO to a family member prior to exercise, the employee will generally be required to treat the transfer as a completed gift for federal estate and gift tax purposes and will not recognize any income upon such transfer. However, upon exercise of the NQSO, the employee (or his or her estate) will recognize the income, if any, attributable thereto. Any gain or loss from a subsequent disposition of the shares of Common Stock will be taxable to the family member and not the employee.

*Awards and DERs.* No taxable income will be recognized by a grantee upon the grant of an Award or current-pay DER or the grant or accrual of an accrual DER. Taxable income is recognized when cash is received by the holder of a current-pay DER. If the Award or the underlying option to which an accrual DER relates, is exercised, the grantee generally will be subject to tax at ordinary income rates on the fair market value of the Common Stock subject to the Award or DER, less the amount paid for such stock, at the time it becomes transferable or is no longer subject to forfeiture. Alternatively, a grantee who makes an election under Section 83(b) of the Code within 30 days of the date of purchase/exercise will include in income on the date of the purchase/exercise an amount equal to the excess of the fair market value of the shares of Common Stock subject to the Award or DER, assuming the shares were then unrestricted and could be sold immediately, over the purchase price of such Common Stock. If the shares of Common Stock subject to such election are forfeited, the grantee will only be entitled to a deduction, refund or loss for federal income tax purposes equal to the purchase price, if any, of the forfeited shares.

With respect to the sale of the shares after the forfeiture period has expired, the holding period to determine whether the grantee has long-term or short-term capital gain or loss begins when the restriction period expires. If the grantee timely elects to be taxed as of the date of the purchase/exercise, however, such grantee's holding period will commence on the date of the purchase/exercise and such grantee's tax basis will be equal to the excess of the fair market value of the shares of Common Stock subject to the Award or DER on the date of the purchase/exercise, assuming the shares were then unrestricted and could be sold immediately, over the purchase price of such Common Stock. Except as noted below, the Company generally will be entitled to a deduction equal to the amount that is taxable as ordinary compensation income to the grantee.

*Company Deductions.* If applicable withholding requirements are met, the Company generally will be entitled to a tax deduction in an amount equal to the ordinary income realized by the participant at the time the participant recognizes such income. However, Code Section 162(m) contains specific rules regarding the federal income tax deductibility of compensation paid to the Company's Chief Executive Officer and to each of the other four most highly compensated executive officers. The general rule is that annual compensation paid to any of these specified executives will be deductible only to the extent that it does not exceed \$1 million. However, the Company can preserve the deductibility of certain compensation in excess of \$1 million if it complies with conditions imposed by the rules, including (1) the establishment of a maximum number of shares with respect to which options, DERs and Awards may be granted to any one employee during a specified time period, and (2) for restricted stock, DERs and

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performance units/shares, inclusion in the Plan of performance goals which must be achieved prior to accrual or payment. The Plan has been designed to permit the Committee to grant options and Awards which satisfy the requirements of new Section 162(m).

### ***Income Tax Withholding***

In the event that the Company or any subsidiary is required to withhold any federal, state or local taxes in respect of any compensation income realized by an employee (a) as a result of any “disqualifying disposition” of any shares of Common Stock acquired upon exercise of any ISO granted hereunder, or (b) in respect of an NQSO or Award granted hereunder, any shares acquired by the employee or any permitted transferee pursuant to an NQSO, DER or Award, or the vesting of any such shares of Common Stock, then the Company shall deduct from any payments of any kind otherwise due to such employee the aggregate amount of such federal, state or local taxes required to be so withheld or, if such payments are insufficient to satisfy such federal, state or local taxes, such employee will be required to pay to the Company, or make other arrangements satisfactory to the Company regarding payment to the Company of, the aggregate amount of any such taxes.

### ***Available Information***

Additional information regarding the 1997 Stock Option Plan and the Committee is available at the following address and telephone number: Headlands Mortgage Company, 1100 Larkspur Landing Circle, Suite 101, Larkspur, California 94939, Attention Paul Casellini (415) 461-6790.

### ***Incorporation of Certain Information by Reference***

There are incorporated herein by reference the following documents heretofore filed by the Company with the Commission, and copies are available to employees without charge upon written or oral request (excluding exhibits to those documents unless the exhibits are specifically incorporated herein by reference into the documents that this Prospectus incorporates by reference):

- (a) The Company’s Prospectus, dated February 4, 1998, and filed pursuant to Rule 424(b) under the Securities Act on February 5, 1998.
- (b) The Company’s Form 8-K dated February 4, 1998 and filed on February 5, 1998.
- (c) The description of the Company’s Common Stock contained in the Company’s Registration Statement on Form 8-A, filed December 29, 1997 and amended on January 30, 1998 and February 3, 1998.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Prospectus and prior to the filing of a post-effective amendment indicating that such Common Stock shares have been sold, or deregistering all of the Common Stock shares that, at the time of such post-effective amendment, remain unsold, shall be deemed to be incorporated by reference in this Prospectus and to be a part hereof from the date of filing of such documents. Any statement contained herein or in any

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document incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Prospectus to the extent that a statement contained herein or in any other subsequently filed document, which also is or is deemed to be incorporated by reference herein, modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Prospectus.

The Company will also provide any employee with any updates to this Prospectus, free of charge, upon written or oral request at the address and telephone number listed above under “Available Information.”



**APPENDIX A**  
**HEADLANDS MORTGAGE COMPANY**  
**AMENDED AND RESTATED**  
**1997 EXECUTIVE AND NON-EMPLOYEE DIRECTOR**  
**STOCK OPTION PLAN**

(Adopted Effective July 22, 1997)

As Amended January 8, 1998

**1. General Purpose of Plan; Definitions.**

The name of this plan is the Headlands Mortgage Company 1997 Executive and Non-Employee Director Stock Option Plan (the "Plan"). The Plan was adopted by the Board effective as of July 22, 1997, subject to the approval of the Company stockholders. The stockholders approved the Plan on September 15, 1997. The Plan has been amended and restated from time to time by the Board of Directors of the Company. The purpose of the Plan is to enable the Company and its Subsidiaries to obtain and retain competent personnel who will contribute to the Company's success by their ability, ingenuity and industry, to give the Company's non-employee directors a proprietary interest in the Company and to provide incentives to the participating directors, officers and other key employees, and agents and consultants that are linked directly to increases in stockholder value and will therefore inure to the benefit of all stockholders of the Company.

For purposes of the Plan, the following terms shall be defined as set forth below:

(1) "Accrued DERs" means dividend equivalent rights with the accrual rights described in Section 5(11).

(2) "Administrator" means the Board, or if the Board does not administer the Plan, the Committee in accordance with Section 2.

(3) "Board" means the Board of Directors of the Company.

(4) "Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor thereto.

(5) "Committee" means the Compensation Committee of the Board, which shall be composed entirely of individuals who meet the qualifications to be a "Non-Employee Director" as defined in Rule 16b-3 ("Rule 16b-3") as promulgated by the Securities and Exchange Commission (the "Commission") under the Securities Exchange Act of 1934 (the "Act"), and as such Rule may be amended from time to time, or any successor definition adopted by the

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Commission, or any other Committee the Board may subsequently appoint to administer the Plan. If at any time the Board shall not administer the Plan, then the functions of the Board specified in the Plan shall be exercised by the Committee.

(6) “Company” means Headlands Mortgage Company, a corporation organized under the laws of the State of California (or any successor corporation).

(7) “Current-pay DERs” means dividend equivalent rights with the current-pay rights described in Section 5(11).

(8) “DERs” shall mean Accrued DERs and Current-pay DERs.

(9) “Deferred Stock” means an award granted pursuant to Section 7 of the right to receive Stock at the end of a specified deferral period.

(10) “Disability” means permanent and total disability as determined under the Company’s disability program or policy.

(11) “Effective Date” shall mean the date provided pursuant to Section 12.

(12) “Eligible Employee” means an employee of the Company or any Subsidiary eligible to participate in the Plan pursuant to Section 4.

(13) “Eligible Non-Employee Director” means a member of the Board or the board of directors of any Subsidiary who is not a bona fide employee of the Company or any Subsidiary and who is eligible to participate in the Plan pursuant to Section 5A.

(14) “Fair Market Value” means, as of any given date, with respect to any awards granted hereunder, at the discretion of the Administrator and subject to such limitations as the Administrator may impose, (A) the closing sale price of the Stock on the next preceding business day as reported in the Western Edition of the Wall Street Journal Composite Tape, or (B) the average of the closing price of the Stock on each day on which the Stock was traded over a period of up to twenty trading days immediately prior to such date, or (C) if the Stock is not publicly traded, the fair market value of the Stock as otherwise determined by the Administrator in the good faith exercise of its discretion.

(15) “Incentive Stock Option” means any Stock Option intended to be designated as an “incentive stock option” within the meaning of Section 422 of the Code.

(16) “Limited Stock Appreciation Right” means a Stock Appreciation Right that can be exercised only in the event of a “Change of Control” (as defined in Section 10 below).

(17) “Non-Employee Director” shall have the meaning set forth in Rule 16b-3.

(18) “Non-Qualified Stock Option” means any Stock Option that is not an Incentive Stock Option, including any Stock Option that provides (as of the time such option is granted) that it will not be treated as an Incentive Stock Option.

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(19) “Parent Corporation” means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations in the chain (other than the Company) owns stock possessing 50% or more of the combined voting power of all classes of stock in one of the other corporations in the chain.

(20) “Participant” means any Eligible Employee or any consultant or agent of the Company or any Subsidiary selected by the Committee, pursuant to the Administrator’s authority in Section 2, to receive grants of Stock Options, DERs, Stock Appreciation Rights, Limited Stock Appreciation Rights, Restricted Stock awards, Deferred Stock awards, Performance Shares or any combination of the foregoing, or any Eligible Non-Employee Director eligible to receive grants of Non-Qualified Stock Options and DERs pursuant to Section 5A below.

(21) “Performance Share” means an award of shares of Stock granted pursuant to Section 7 that is subject to restrictions based upon the attainment of specified performance objectives.

(22) “Restricted Stock” means an award granted pursuant to Section 7 of shares of Stock subject to restrictions that will lapse with the passage of time.

(23) “Stock” means the Common Stock of the Company.

(24) “Stock Appreciation Right” means the right pursuant to an award granted under Section 6 to receive an amount equal to the difference between (A) the Fair Market Value, as of the date such Stock Appreciation Right or portion thereof is surrendered, of the shares of Stock covered by such right or such portion thereof, and (B) the aggregate exercise price of such right or such portion thereof.

(25) “Stock Option” means an option to purchase shares of Stock granted pursuant to Section 5 or Section 5A.

(26) “Subsidiary” means any corporation (other than the Company) either (i) in an unbroken chain of corporations beginning with the Company, if each of the corporations (other than the last corporation) in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in the chain or (ii) organized to act as the mortgage loan conduit for the Company.

## **2. Administration.**

The Plan shall be administered by the Board or by the Committee appointed by the Board, which shall serve at the pleasure of the Board; *provided, however*, that at all times following the closing of an initial public offering of the Stock, the Plan shall be administered by the Committee appointed by the Board.

The Administrator shall have the power and authority to grant to Eligible Employees and consultants or agents of the Company or any Subsidiary, pursuant to the terms of the Plan: (a) Stock Options (with or without DERs), (b) Stock Appreciation Rights or Limited Stock Appreciation Rights, (c) Restricted Stock, (d) Deferred Stock, (e) Performance Shares or (f) any combination of the foregoing.

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In particular, the Administrator shall have the authority:

(a) to select those employees of the Company or any Subsidiary who shall be Eligible Employees;

(b) to determine whether and to what extent Stock Options (with or without DERs), Stock Appreciation Rights, Limited Stock Appreciation Rights, Restricted Stock, Deferred Stock, Performance Shares or a combination of the foregoing, are to be granted to Eligible Employees or any consultant or agent of the Company or any Subsidiary hereunder;

(c) to determine the number of shares to be covered by each such award granted hereunder;

(d) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder (including, but not limited to, (x) the restricted period applicable to Restricted or Deferred Stock awards and the date or dates on which restrictions applicable to such Restricted or Deferred Stock shall lapse during such period, and (y) the performance goals and periods applicable to the award of Performance Shares); and

(e) to determine the terms and conditions, not inconsistent with the terms of the Plan, which shall govern all written instruments evidencing the Stock Options, DERs, Stock Appreciation Rights, Limited Stock Appreciation Rights, Restricted Stock, Deferred Stock, Performance Shares or any combination of the foregoing.

The Administrator shall have the authority, in its discretion, to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it shall from time to time deem advisable; to interpret the terms and provisions of the Plan and any award issued under the Plan (and any agreements relating thereto); and to otherwise supervise the administration of the Plan.

All decisions made by the Administrator pursuant to the provisions of the Plan shall be final and binding on all persons, including the Company, any Subsidiaries and the Participants.

### **3. Stock Subject to Plan.**

The total number of shares of Stock reserved and available for issuance under the Plan shall be 50; *provided, however*, that from and after such time as the Company closes an initial public offering of the Stock, the total number of shares of Stock reserved and available for issuance (inclusive of shares already issued) under the Plan shall automatically be increased so as to equal ten percent (10%) of the number of then outstanding shares of Stock, and *provided further*, that no more than 1,000,000 shares of Stock shall be cumulatively available for Incentive Stock Options. At all times, the number of shares reserved and available for issuance hereunder as so determined from time to time shall be decreased by virtue of awards granted and outstanding or exercised hereunder.

To the extent that (i) a Stock Option or DER expires or is otherwise terminated without being exercised, or (ii) any shares of Stock subject to any Restricted Stock, Deferred Stock or Performance Share award granted hereunder are forfeited, such shares shall again be available

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for issuance in connection with future awards under the Plan. If any shares of Stock have been pledged as collateral for indebtedness incurred by a Participant in connection with the exercise of a Stock Option and such shares are returned to the Company in satisfaction of such indebtedness, such shares shall again be available for issuance in connection with future awards under the Plan.

In the event of any merger, reorganization, consolidation, recapitalization, Stock dividend, or other change in corporate structure affecting the Stock, a substitution or adjustment may be made in (i) the aggregate number of shares reserved for issuance under the Plan, and (ii) the kind, number and option price of shares subject to outstanding Stock Options and DERs granted under the Plan as may be determined by the Administrator, in its sole discretion, *provided* that the number of shares subject to any award shall always be a whole number. Such other substitutions or adjustments shall be made as may be determined by the Administrator, in its sole discretion; *provided, however*, that with respect to Incentive Stock Options, such adjustment shall be made in accordance with Section 424 of the Code. An adjusted option price shall also be used to determine the amount payable by the Company upon the exercise of any Stock Appreciation Right or Limited Stock Appreciation Right associated with any Stock Option.

The aggregate number of shares of Stock for which Stock Options or Stock Appreciation Rights may be granted to any individual during any calendar year may not, subject to adjustment as provided in this Section 3, exceed 75% of the shares of Stock reserved for the purposes of the Plan in accordance with the provisions of this Section 3.

#### **4. Eligibility.**

Employees of the Company who are responsible for or contribute to the management, growth and/or profitability of the business of the Company or its Subsidiaries shall be eligible to be granted Stock Options, DERs, Stock Appreciation Rights, Limited Stock Appreciation Rights, Restricted Stock awards, Deferred Stock awards or Performance Shares hereunder. The Participants under the Plan shall be selected from time to time by the Administrator, in its sole discretion, from among the Eligible Employees recommended by the senior management of the Company, and the Administrator shall determine, in its sole discretion, the number of shares covered by each award; *provided, however*, that Eligible Non-Employee Directors shall only be eligible to receive Stock Options as provided in Section 5A.

#### **5. Stock Options.**

Stock Options may be granted alone or in addition to other awards granted under the Plan, including DERs as described in Section 5(11). Any Stock Option granted under the Plan shall be in such form as the Administrator may from time to time approve, and the provisions of Stock Option awards need not be the same with respect to each optionee. Recipients of Stock Options shall enter into a stock option agreement with the Company, in such form as the Administrator shall determine, which agreement shall set forth, among other things, the exercise price of the option, the term of the option and provisions regarding exercisability of the option granted thereunder.

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The Stock Options granted under the Plan may be of two types: (i) Incentive Stock Options and (ii) Non-Qualified Stock Options.

The Administrator shall have the authority under this Section 5 to grant any optionee (except Eligible Non-Employee Directors) Incentive Stock Options, Non-Qualified Stock Options, or both types of Stock Options (in each case with or without DERs, Stock Appreciation Rights or Limited Stock Appreciation Rights), *provided, however*, that Incentive Stock Options may not be granted to any individual who is not an employee of the Company or its Subsidiaries. To the extent that any Stock Option does not qualify as an Incentive Stock Option, it shall constitute a separate Non-Qualified Stock Option. More than one option may be granted to the same optionee and be outstanding concurrently hereunder.

Stock Options granted under the Plan shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable:

(1) Option Price. The option price per share of Stock purchasable under a Stock Option shall be determined by the Administrator in its sole discretion at the time of grant but shall not, in the case of Incentive Stock Options, be less than 100% of the Fair Market Value of the Stock on such date, and shall not, in any event, be less than the par value of the Stock, if any. The option price per share of Stock purchasable under a Non-Qualified Stock Option may be less than 100% of such Fair Market Value. If an employee owns or is deemed to own (by reason of the attribution rules applicable under Section 425(d) of the Code) more than 10% of the combined voting power of all classes of stock of the Company or any Parent Corporation or Subsidiary and an Incentive Stock Option is granted to such employee, the option price of such Incentive Stock Option (to the extent required by the Code at the time of grant) shall be no less than 110% of the Fair Market Value of the Stock on the date such Incentive Stock Option is granted.

(2) Option Term. The term of each Stock Option shall be fixed by the Administrator, but no Stock Option shall be exercisable more than ten years after the date such Stock Option is granted; *provided, however*, that if an employee owns or is deemed to own (by reason of the attribution rules of Section 425(d) of the Code) more than 10% of the combined voting power of all classes of stock of the Company or any Parent Corporation or Subsidiary and an Incentive Stock Option is granted to such employee, the term of such Incentive Stock Option (to the extent required by the Code at the time of grant) shall be no more than five years from the date of grant.

(3) Exercisability. Stock Options shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Administrator at or after grant; *provided, however*, that, except as provided herein or unless otherwise determined by the Administrator at or after grant, Stock Options shall become exercisable as to 25% of the shares subject to such Stock Option on the first anniversary of the date of grant of the Stock Option, and as to an additional 25% on each of the next three anniversaries of the date of grant. To the extent not exercised, installments shall accumulate and be exercisable in whole or in part at any time after becoming exercisable but not later than the date the Stock Option expires. The Administrator may provide, in its discretion, that any Stock Option shall be exercisable only in installments, and the Administrator may waive such installment exercise provisions at any time in whole or in part based on such factors as the Administrator may determine, in its sole discretion.

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(4) **Method of Exercise.** Subject to Section 5(3), Stock Options may be exercised in whole or in part at any time during the option period, by giving written notice of exercise to the Company specifying the number of shares to be purchased, accompanied by payment in full of the purchase price in cash or its equivalent as determined by the Administrator. As determined by the Administrator, in its sole discretion, payment in whole or in part may also be made in the form of unrestricted Stock already owned by the optionee, or, in the case of the exercise of a Non-Qualified Stock Option, Restricted Stock or Performance Shares subject to an award hereunder (based, in each case, on the Fair Market Value of the Stock on the date the option is exercised); *provided, however*, that in the case of an Incentive Stock Option, the right to make payment in the form of already owned shares may be authorized only at the time of grant. Any payment in the form of stock already owned by the optionee may be effected by use of an attestation form approved by the Administrator. If payment of the option exercise price of a Non-Qualified Stock Option is made in whole or in part in the form of Restricted Stock or Performance Shares, the shares received upon the exercise of such Stock Option (to the extent of the number of shares of Restricted Stock or Performance Shares surrendered upon exercise of such Stock Option) shall be restricted in accordance with the original terms of the Restricted Stock or Performance Share award in question, except that the Administrator may direct that such restrictions shall apply only to that number of shares equal to the number of shares surrendered upon the exercise of such option. An optionee shall generally have the rights to dividends and other rights of a stockholder with respect to shares subject to the option only after the optionee has given written notice of exercise, has paid in full for such shares, and, if requested, has given the representation described in paragraph (1) of Section 11.

The Administrator may require the voluntary surrender of all or a portion of any Stock Option granted under the Plan as a condition precedent to a grant of a new Stock Option. Subject to the provisions of the Plan, such new Stock Option shall be exercisable at the price, during such period and on such other terms and conditions as are specified by the Administrator at the time the new Stock Option is granted; *provided, however*, that should the Administrator so require, the number of shares subject to such new Stock Option shall not be greater than the number of shares subject to the surrendered Stock Option. Upon their surrender, Stock Options shall be canceled and the shares previously subject to such canceled Stock Options shall again be available for grants of Stock Options and other awards hereunder.

(5) **Loans.** The Company may make loans available to Stock Option holders in connection with the exercise of outstanding options granted under the Plan, as the Administrator, in its discretion, may determine. Such loans shall (i) be evidenced by promissory notes entered into by the Stock Option holders in favor of the Company, (ii) be subject to the terms and conditions set forth in this Section 5(5) and such other terms and conditions, not inconsistent with the Plan, as the Administrator shall determine, and (iii) bear interest, if any, at such rate as the Administrator shall determine. In no event may the principal amount of any such loan exceed the sum of (x) the exercise price less the par value of the shares of Stock covered by the option, or portion thereof, exercised by the holder, and (y) any federal, state, and local income tax attributable to such exercise. The initial term of the loan, the schedule of payments of principal and interest under the loan, the extent to which the loan is to be with or without recourse against

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the holder with respect to principal or interest and the conditions upon which the loan will become payable in the event of the holder's termination of employment shall be determined by the Administrator; *provided, however*, that the term of the loan, including extensions, shall not exceed seven years. Unless the Administrator determines otherwise, when a loan is made, shares of Stock having a Fair Market Value at least equal to the principal amount of the loan shall be pledged by the holder to the Company as security for payment of the unpaid balance of the loan, and such pledge shall be evidenced by a pledge agreement, the terms of which shall be determined by the Administrator, in its discretion; *provided, however*, that each loan shall comply with all applicable laws, regulations and rules of the Board of Governors of the Federal Reserve System and any other governmental agency having jurisdiction.

### (6) Limits on Transferability of Options.

(a) Subject to Section 5(6)(b), no Stock Option shall be transferable by the optionee otherwise than by will or by the laws of descent and distribution or pursuant to a "qualified domestic relations order," as such term is defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and all Stock Options shall be exercisable, during the optionee's lifetime, only by the optionee or in accordance with the terms of a qualified domestic relations order.

(b) The Administrator may, in its discretion, authorize all or a portion of the options to be granted to an optionee to be on terms which permit transfer by such optionee to (i) the spouse, qualified domestic partner, children or grandchildren of the optionee and any other persons related to the optionee as may be approved by the Administrator ("Immediate Family Members"), (ii) a trust or trusts for the exclusive benefit of such Immediate Family Members, (iii) a partnership or partnerships in which such Immediate Family Members are the only partners, or (iv) any other persons or entities as may be approved by the Administrator, *provided* that (x) there may be no consideration for any transfer unless approved by the Administrator, (y) the stock option agreement pursuant to which such options are granted must be approved by the Administrator, and must expressly provide for transferability in a manner consistent with this Section 5(6)(b), and (z) subsequent transfers of transferred options shall be prohibited except those in accordance with Section 5(6)(a) or expressly approved by the Administrator. Following transfer, any such options shall continue to be subject to the same terms and conditions as were applicable immediately prior to transfer, *provided* that, except for purposes of Sections 5(7), (8) and (9) and 11(3) hereof, the terms "optionee," "Stock Option holder" and "Participant" shall be deemed to refer to the transferee. The events of termination of employment under Sections 5(7), (8) and (9) hereof shall continue to be applied with respect to the original optionee, following which the options shall be exercisable by the transferee only to the extent, and for the periods specified under such sections unless the option agreement governing such options otherwise provides. Notwithstanding the transfer, the original optionee will continue to be subject to the provisions of Section 11(3) regarding payment of taxes, including the provisions entitling the Company to deduct such taxes from amounts otherwise due to such optionee. Any transfer of a Stock Option that was originally granted with DERs related thereto shall automatically include the transfer of such DERs, any attempt to transfer such Stock Option separately from such DERs shall be void, and such DERs shall continue in effect according to their terms. "Qualified domestic partner" for the purpose of this Section 5(6)(b) shall mean a domestic partner living in the same household as the optionee and registered with, certified by or otherwise acknowledged by the county or other applicable governmental body as a domestic partner or otherwise establishing such status in any manner satisfactory to the Administrator.



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(7) Termination by Death. If an optionee's employment with the Company or any Subsidiary terminates by reason of death, the Stock Option may thereafter be immediately exercised, to the extent then exercisable (or on such accelerated basis as the Administrator shall determine at or after grant), by the legal representative of the estate or by the legatee of the optionee under the will of the optionee, for a period of twelve months (or such shorter period as the Administrator shall specify at grant) from the date of such death or until the expiration of the stated term of such Stock Option, whichever period is shorter.

(8) Termination by Reason of Disability. If an optionee's employment with the Company or any Subsidiary terminates by reason of Disability, any Stock Option held by such optionee may thereafter be exercised, to the extent it was exercisable at the time of such termination (or on such accelerated basis as the Administrator shall determine at the time of grant), for a period of twelve months (or such shorter period as the Administrator shall specify at grant) from the date of such termination of employment or until the expiration of the stated term of such Stock Option, whichever period is shorter; *provided, however*, that, if the optionee dies within such twelve-month period (or such shorter period as the Administrator shall specify at grant) and prior to the expiration of the stated term of such Stock Option, any unexercised Stock Option held by such optionee shall thereafter be exercisable to the extent to which it was exercisable at the time of termination for a period of twelve months (or such shorter period as the Administrator shall specify at grant) from the time of death or until the expiration of the stated term of such Stock Option, whichever period is shorter. In the event of a termination of employment by reason of Disability, if an Incentive Stock Option is exercised after the expiration of the applicable exercise periods under Section 422 of the Code, such Stock Option shall thereafter be treated as a Non-Qualified Stock Option.

(9) Other Termination. Except as otherwise determined by the Administrator, if an optionee's employment with the Company or any Subsidiary terminates for any reason other than death or Disability, the Stock Option may be exercised for a period of three months from the date of such termination, or until the expiration of the stated term of such Stock Option, whichever period is shorter.

(10) Annual Limit on Incentive Stock Options. To the extent that the aggregate Fair Market Value (determined as of the date the Incentive Stock Option is granted) of shares of Stock with respect to which Incentive Stock Options granted to an Optionee under this Plan and all other option plans of the Company, its Parent Corporation or any Subsidiary become exercisable for the first time by the Optionee during any calendar year exceeds \$100,000, such Stock Options shall be treated as Non-Qualified Stock Options.

(11) DERs. The Administrator shall have the discretion to grant DERs in conjunction with grants of Stock Options pursuant to this Section 5. DERs may be granted in either of two forms, "Current-pay DERs" and "Accrued DERs" and the Administrator may condition the payment or accrual of amounts in respect thereof subject to satisfaction of such performance objectives as the Administrator may specify at the time of grant. Assuming satisfaction of any applicable conditions, Current-pay DERs shall be paid concurrently with any dividends or

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distributions paid on the Stock during the time the related Stock Options are outstanding in an amount equal to the cash dividend (or Stock or other property hereby distributed) per share being paid on the Stock times the number of shares subject to the related Stock Options. Current-pay DERs are payable in cash, Stock or such other property in the same manner as may be distributed to shareholders. Accrued DERs may be accrued in respect of cash dividends only or cash dividends and the value of any Stock or other property distributed to shareholders, as the Administrator shall determine at the time of grant. Assuming satisfaction of any applicable conditions, Accrued DERs shall be accrued with respect to the related Stock Options outstanding as of the date dividends are declared on the Company's Stock in accordance with the following formula:

$$(A \times B) / C$$

under which "A" equals the number of shares subject to such Stock Options, "B" equals the cash dividend per share or the value per share of the Stock or other property being distributed, as the case may be, and "C" equals the Fair Market Value per share of Stock on the dividend payment date. The Accrued DERs shall represent shares of Stock which shall be issuable to the holder of the related Stock Option proportionately as the holder exercises the Stock Option to which the Accrued DERs relate, rounded down to the nearest whole number of shares. DERs shall expire upon the expiration of the Stock Options to which they relate. The Administrator shall specify at the time of grant whether dividends shall be payable or credited on Accrued DERs. Notwithstanding anything to the contrary herein, Accrued DERs granted with respect to Stock Options shall be accrued only to the extent of the number of shares of stock then reserved and available for issuance under the Plan in excess of the number of shares subject to issuance pursuant to outstanding Stock Option, Accrued DER, Stock Appreciation Right, Limited Stock Appreciation Right, Deferred Stock or Performance Share awards.

### **5A. Stock Options For Eligible Non-Employee Directors.**

This Section 5A shall apply only to automatic grants of Stock Options to Eligible Non-Employee Directors.

(1) Following the closing of an initial public offering of the Stock, each Eligible Non-Employee Director serving at the time or thereafter duly elected or appointed shall automatically be granted a Non-Qualified Stock Option to purchase 10,000 shares of Stock. The option price per share of Stock purchasable under such Stock Option shall be 100% of the Fair Market Value on the date of grant. Such Stock Option shall become exercisable as to 25% of the shares subject to such Stock Option on the first anniversary of the date of grant of the Stock Option, and as to an additional 25% of the shares subject to such Stock Option on each of the next three anniversaries of the date of grant. To the extent not exercised, installments shall accumulate and be exercisable in whole or in part at any time after becoming exercisable but not later than the date the Stock Option expires. Exercise shall be by payment in full of the purchase price in cash and no stock option shall be exercisable more than ten years after the date of grant. The aggregate number of shares of Stock that may be granted to Eligible Non-Employee Directors pursuant to the Plan may not exceed 150,000 shares.

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(2) Eligible Non-Employee Directors who receive grants of Stock Options shall enter into a stock option agreement with the Company, which agreement shall set forth, among other things, the exercise price of the option, the term of the option and provisions regarding exercisability of the option granted thereunder. The Stock Options granted under this section shall be Non-Qualified Stock Options.

(3) Non-Qualified Stock Options granted to Eligible Non-Employee Directors hereunder shall be transferable only to the extent provided in Sections 5(6)(a) and (b).

(4) No DERs shall be paid with respect to such Non-Qualified Stock Options.

(5) The Board may not amend, alter or discontinue the provisions of this Section 5A more than once every six months other than to comport with changes in the Code, ERISA and the rules thereunder or the federal securities laws and the rules thereunder.

### **6. Stock Appreciation Rights and Limited Stock Appreciation Rights.**

(1) Grant and Exercise. Stock Appreciation Rights and Limited Stock Appreciation Rights may be granted either alone (“Free Standing Rights”) or in conjunction with all or part of any Stock Option granted under the Plan (“Related Rights”). In the case of a Non-Qualified Stock Option, Related Rights may be granted either at or after the time of the grant of such Stock Option. In the case of an Incentive Stock Option, Related Rights may be granted only at the time of the grant of the Incentive Stock Option.

A Related Right or applicable portion thereof granted in conjunction with a given Stock Option shall terminate and no longer be exercisable upon the termination or exercise of the related Stock Option, except that, unless otherwise provided by the Administrator at the time of grant, a Related Right granted with respect to less than the full number of shares covered by a related Stock Option shall only be reduced if and to the extent that the number of shares covered by the exercise or termination of the related Stock Option exceeds the number of shares not covered by the Stock Appreciation Right.

A Related Right may be exercised by an optionee, in accordance with paragraph (2) of this Section 6, by surrendering the applicable portion of the related Stock Option. Upon such exercise and surrender, the optionee shall be entitled to receive an amount determined in the manner prescribed in paragraph (2) of this Section 6. Stock Options which have been so surrendered, in whole or in part, shall no longer be exercisable to the extent the Related Rights have been so exercised.

(2) Terms and Conditions. Stock Appreciation Rights shall be subject to such terms and conditions, not inconsistent with the provisions of the Plan, as shall be determined from time to time by the Administrator, including the following:

(a) Stock Appreciation Rights that are Related Rights (“Related Stock Appreciation Rights”) shall be exercisable only at such time or times and to the extent that the Stock Options to which they relate shall be exercisable in accordance with the provisions of Section 5 and this Section 6; *provided, however*, that no Related Stock Appreciation Right shall be exercisable during the first six months of its term, except that this additional limitation shall not apply in the event of death or Disability of the optionee prior to the expiration of such six-month period.

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(b) Upon the exercise of a Related Stock Appreciation Right, an optionee shall be entitled to receive up to, but not more than, an amount in cash or that number of shares of Stock (or in some combination of cash and shares of Stock) equal in value to the excess of the Fair Market Value of one share of Stock as of the date of exercise over the option price per share specified in the related Stock Option multiplied by the number of shares of Stock in respect of which the Related Stock Appreciation Right is being exercised, with the Administrator having the right to determine the form of payment.

(c) Related Stock Appreciation Rights shall be transferable or exercisable only when and to the extent that the underlying Stock Option would be transferable or exercisable under paragraph (6) of Section 5.

(d) Upon the exercise of a Related Stock Appreciation Right, the Stock Option or part thereof to which such Related Stock Appreciation Right is related shall be deemed to have been exercised for the purpose of the limitation set forth in Section 3 on the number of shares of Stock to be issued under the Plan.

(e) A Related Stock Appreciation Right granted in connection with an Incentive Stock Option may be exercised only if and when the Fair Market Value of the Stock subject to the Incentive Stock Option exceeds the exercise price of such Stock Option.

(f) Stock Appreciation Rights that are Free Standing Rights ("Free Standing Stock Appreciation Rights") shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Administrator at or after grant; *provided, however*, that no Free Standing Stock Appreciation Right shall be exercisable during the first six months of its term, except that this limitation shall not apply in the event of death or Disability of the recipient of the Free Standing Stock Appreciation Right prior to the expiration of such six-month period.

(g) The term of each Free Standing Stock Appreciation Right shall be fixed by the Administrator, but no Free Standing Stock Appreciation Right shall be exercisable more than ten years after the date such right is granted.

(h) Upon the exercise of a Free Standing Stock Appreciation Right, a recipient shall be entitled to receive up to, but not more than, an amount in cash or that number of shares of Stock (or any combination of cash or shares of Stock) equal in value to the excess of the Fair Market Value of one share of Stock as of the date of exercise over the price per share specified in the Free Standing Stock Appreciation Right (which price shall be no less than 100% of the Fair Market Value of the Stock on the date of grant) multiplied by the number of shares of Stock with respect to which the right is being exercised, with the Administrator having the right to determine the form of payment.

(i) Free Standing Stock Appreciation Rights shall be transferable or exercisable subject to the provisions governing the transferability and exercisability of Stock Options set forth in paragraphs (3) and (6) of Section 5.

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(j) In the event of the termination of an employee who has been granted one or more Free Standing Stock Appreciation Rights, such rights shall be exercisable to the same extent that a Stock Option would have been exercisable in the event of the termination of the optionee.

(k) Limited Stock Appreciation Rights may only be exercised within the 30-day period following a “Change of Control” (as defined in Section 10 below), and, with respect to Limited Stock Appreciation Rights that are Related Rights (“Related Limited Stock Appreciation Rights”), only to the extent that the Stock Options to which they relate shall be exercisable in accordance with the provisions of Section 5 and this Section 6; *provided, however*, that no Related Limited Stock Appreciation Right shall be exercisable during the first six months of its term, except that this additional limitation shall not apply in the event of death or Disability of the optionee prior to the expiration of such six-month period.

(l) Upon the exercise of a Limited Stock Appreciation Right, the recipient shall be entitled to receive an amount in cash equal in value to the excess of the “Change of Control Price” (as defined in Section 10) of one share of Stock as of the date of exercise over (A) the option price per share specified in the related Stock Option, or (B) in the case of a Limited Stock Appreciation Right which is a Free Standing Stock Appreciation Right, the price per share specified in the Free Standing Stock Appreciation Right, such excess to be multiplied by the number of shares in respect of which the Limited Stock Appreciation Right shall have been exercised.

(m) For the purpose of the limitation set forth in Section 3 on the number of shares to be issued under the Plan, the grant or exercise of Free Standing Stock Appreciation Rights shall be deemed to constitute the grant or exercise, respectively, of Stock Options with respect to the number of shares of Stock with respect to which such Free Standing Stock Appreciation Rights were so granted or exercised.

### **7. Restricted Stock, Deferred Stock and Performance Shares.**

(1) General. Restricted Stock, Deferred Stock or Performance Share awards may be issued either alone or in addition to other awards granted under the Plan. The Administrator shall determine the Eligible Employees to whom, and the time or times at which, grants of Restricted Stock, Deferred Stock or Performance Share awards shall be made; the number of shares to be awarded; the price, if any, to be paid by the recipient of Restricted Stock, Deferred Stock or Performance Share awards; the Restricted Period (as defined in Section 7(3)) applicable to Restricted Stock or Deferred Stock awards; the performance objectives applicable to Performance Share or Deferred Stock awards; the date or dates on which restrictions applicable to such Restricted Stock or Deferred Stock awards shall lapse during such Restricted Period; and all other conditions of the Restricted Stock, Deferred Stock and Performance Share awards. The Administrator may also condition the grant of Restricted Stock, Deferred Stock awards or Performance Shares upon the exercise of Stock Options, or upon such other criteria as the Administrator may determine, in its sole discretion. The provisions of Restricted Stock, Deferred Stock or Performance Share awards need not be the same with respect to each recipient.

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(2) Awards and Certificates. The prospective recipient of a Restricted Stock, Deferred Stock or Performance Share award shall not have any rights with respect to such award, unless and until such recipient has executed an agreement evidencing the award (a “Restricted Stock Award Agreement,” “Deferred Stock Award Agreement,” or “Performance Share Award Agreement,” as appropriate) and delivered a fully executed copy thereof to the Company, within a period of sixty days (or such other period as the Administrator may specify) after the award date. Except as otherwise provided below in this Section 7(2), (i) each Participant who is awarded Restricted Stock or Performance Shares shall be issued a stock certificate in respect of such shares of Restricted Stock or Performance Shares; and (ii) such certificate shall be registered in the name of the Participant, and shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such award, substantially in the following form:

“The transferability of this certificate and the shares of stock represented hereby are subject to the terms and conditions (including forfeiture) of the Headlands Mortgage Company 1997 Executive and Non-Employee Director Stock Option Plan and a Restricted Stock Award Agreement or Performance Share Award Agreement entered into between the registered owner and Headlands Mortgage Company. Copies of such Plan and Agreement are on file in the offices of Headlands Mortgage Company.”

The Company shall require that the stock certificates evidencing such shares be held in the custody of the Company until the restrictions thereon shall have lapsed, and that, as a condition of any Restricted Stock award or Performance Share award, the Participant shall have delivered a stock power, endorsed in blank, relating to the Stock covered by such award.

(3) Restrictions and Conditions. The Restricted Stock, Deferred Stock and Performance Share awards granted pursuant to this Section 7 shall be subject to the following restrictions and conditions:

(a) Subject to the provisions of the Plan and the Restricted Stock, Deferred Stock or Performance Share award agreement, during such period as may be set by the Administrator commencing on the grant date (the “Restricted Period”), the Participant shall not be permitted to sell, transfer, pledge or assign shares of Restricted Stock, Performance Shares or Deferred Stock awarded under the Plan; *provided, however,* that the Administrator may, in its sole discretion, provide for the lapse of such restrictions in installments and may accelerate or waive such restrictions in whole or in part based on such factors and such circumstances as the Administrator may determine, in its sole discretion, including, but not limited to, the attainment of certain performance related goals, the Participant’s termination, death or Disability or the occurrence of a “Change of Control” as defined in Section 10.

(b) Except as provided in paragraph (3)(a) of this Section 7, the Participant shall have, with respect to the shares of Restricted Stock or Performance Shares, all of the rights of a stockholder of the Company, including the right to vote the shares, and the right to receive any dividends thereon during the Restricted Period. With respect to Deferred Stock awards, the Participant shall generally not have the rights of a shareholder of the Company, including the right to vote the shares during the Restricted Period; *provided, however,* that dividends declared during the Restricted Period with respect to the number of shares covered by a Deferred Stock

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award shall be paid to the Participant. Certificates for shares of unrestricted Stock shall be delivered to the Participant promptly after, and only after, the Restricted Period shall expire without forfeiture in respect of such shares covered by the award of Restricted Stock, Performance Shares or Deferred Stock, except as the Administrator, in its sole discretion, shall otherwise determine.

(c) Subject to the provisions of the Restricted Stock, Deferred Stock or Performance Share award agreement and this Section 7, upon termination of employment for any reason during the Restricted Period, all shares subject to any restriction as of the date of such termination shall be forfeited by the Participant, and the Participant shall only receive the amount, if any, paid by the Participant for such Restricted Stock or Performance Shares, plus simple interest on such amount at the rate of 8% per year.

### **8. Amendment and Termination.**

Subject to the provisions of Section 5A(5), the Board may amend, alter or discontinue the Plan, but no amendment, alteration, or discontinuation shall be made that would impair the rights of a Participant under any award theretofore granted without such Participant's consent, or that without the approval of the stockholders (as described below) would:

- (1) except as provided in Section 3, increase the total number of shares of Stock reserved for the purpose of the Plan;
- (2) change the employees or class of employees eligible to participate in the Plan; or
- (3) extend the maximum option period under paragraph (2) of Section 5 of the Plan.

Notwithstanding the foregoing, stockholder approval under this Section 8 shall only be required at such time and under such circumstances as stockholder approval would be required under (a) Rule 16b-3 of the Act with respect to any material amendment to any employee benefit plan of the Company or (b) Sections 162(m), 280G or 422 of the Code.

The Administrator may amend the terms of any award theretofore granted, prospectively or retroactively, but, subject to Section 3, no such amendment shall impair the rights of any holder without his or her consent.

### **9. Unfunded Status of Plan.**

The Plan is intended to constitute an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Participant or optionee by the Company, nothing contained herein shall give any such Participant or optionee any rights that are greater than those of a general creditor of the Company.

### **10. Change of Control.**

The following acceleration and valuation provisions shall apply in the event of a "Change of Control" as defined in paragraph (2) of this Section 10:

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(1) In the event of a “Change of Control,” unless otherwise determined by the Administrator or the Board in writing at or after grant (including under any individual agreement), but prior to the occurrence of such Change of Control:

(a) any Stock Appreciation Rights outstanding for at least six months and any Stock Options, including Stock Options granted under Section 5A, awarded under the Plan not previously exercisable and vested shall become fully exercisable and vested;

(b) the restrictions applicable to any Restricted Stock, Deferred Stock or Performance Share awards under the Plan shall lapse, and such shares and awards shall be deemed fully vested; and

(c) the value of all outstanding Stock Options (except Stock Options granted under Section 5A), DERs, Stock Appreciation Rights, Limited Stock Appreciation Rights, and Restricted Stock, Deferred Stock and Performance Share awards shall, to the extent determined by the Administrator at or after grant, be cashed out by a payment in cash or other property, as the Administrator may determine, on the basis of the “Change of Control Price” (as defined in paragraph (3) of this Section 10) as of the date the Change of Control occurs or such other date as the Administrator may determine prior to the Change of Control.

(2) For purposes of paragraph (1) of this Section 10, a “Change of Control” shall be deemed to have occurred if, at any time following an initial public offering of the Stock by the Company:

(a) any “person,” as such term is used in Sections 13(d) and 14(d) of the Act (other than the Company; any trustee or other fiduciary holding securities under an employee benefit plan of the Company; or any company owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of Stock of the Company) is or becomes after the Effective Date the “beneficial owner” (as defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such person any securities acquired directly from the Company or its affiliates) representing 25% or more of the combined voting power of the Company’s then outstanding securities; or

(b) during any period of two consecutive years (not including any period prior to the Effective Date), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in clause (a), (c) or (d) of this Section 10(2)) whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority thereof; or

(c) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation, other than (A) a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the



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surviving entity), in combination with the ownership of any trustee or other fiduciary holding securities under an employee benefit plan of the Company, at least 75% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation or (B) a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no person acquires more than 50% of the combined voting power of the Company's then outstanding securities; or

(d) the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets.

(3) For purposes of this Section 10, "Change of Control Price" means the higher of (i) the highest price per share paid or offered in any transaction related to a Change of Control of the Company or (ii) the highest price per share paid in any transaction reported on the exchange or national market system on which the Stock is listed, at any time during the preceding sixty day period as determined by the Administrator, except that, in the case of Incentive Stock Options and Stock Appreciation Rights or Limited Stock Appreciation Rights relating to Incentive Stock Options, such price shall be based only on transactions reported for the date on which the Administrator decides to cash out such options.

### **11. General Provisions.**

(1) The Administrator may require each person purchasing shares pursuant to a Stock Option to represent to and agree with the Company in writing that such person is acquiring the shares without a view to distribution thereof. The certificates for such shares may include any legend which the Administrator deems appropriate to reflect any restrictions on transfer.

All certificates for shares of Stock delivered under the Plan shall be subject to such stock-transfer orders and other restrictions as the Administrator may deem advisable under the rules, regulations, and other requirements of the Commission, any stock exchange upon which the Stock is then listed, and any applicable federal or state securities law, and the Administrator may cause a legend or legends to be placed on any such certificates to make appropriate reference to such restrictions.

(2) Nothing contained in the Plan shall prevent the Board from adopting other or additional compensation arrangements, subject to stockholder approval if such approval is required; and such arrangements may be either generally applicable or applicable only in specific cases. Neither the adoption of the Plan nor the grant of Stock Options or other benefits under the Plan to any employee of the Company or any Subsidiary shall confer upon any employee any right to continued employment with the Company or a Subsidiary, as the case may be, or interfere in any way with the right of the Company or a Subsidiary to terminate the employment of any of its employees at any time.

(3) Each Participant shall, no later than the date as of which the value of an award first becomes includable in the gross income of the Participant for federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Administrator regarding payment of, any federal, state, or local taxes of any kind required by law to be withheld with respect to the

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award. The obligations of the Company under the Plan shall be conditional on the making of such payments or arrangements, and the Company (and, where applicable, its Subsidiaries) shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the Participant.

(4) No member of the Board or the Administrator, nor any officer or employee of the Company acting on behalf of the Board or the Administrator, shall be personally liable for any action, determination, or interpretation taken or made in good faith with respect to the Plan, and all members of the Board or the Administrator and each and any officer or employee of the Company acting on their behalf shall, to the extent permitted by law, be fully indemnified and protected by the Company in respect of any such action, determination or interpretation.

(5) The Administrator may appoint from time to time one or more financial institutions to act as Plan financial agent to facilitate the exercise by Participants of Stock Options and other benefits granted or awarded under the Plan and to assist the Administrator with recordkeeping, accounting and taxation requirements under the Plan. The Administrator may encourage Participants to take any actions required to permit the Plan financial agent to perform its services, including but not limited to opening accounts with the Plan financial agent.

### **12. Effective Date of Plan.**

The Plan became effective (the "Effective Date") on September 15, 1997, the date the Company's stockholders formally approved the Plan.

### **13. Term of Plan.**

No Stock Option, Stock Appreciation Right, Limited Stock Appreciation Right, Restricted Stock, Deferred Stock or Performance Share award shall be granted pursuant to the Plan on or after the tenth anniversary of the Effective Date, but awards theretofore granted may extend beyond that date.

## GREENPOINT FINANCIAL CORP.

AMENDED AND RESTATED  
1994 STOCK INCENTIVE PLAN**1. Purpose.**

The purpose of the GREENPOINT FINANCIAL CORP. Amended and Restated 1994 Stock Incentive Plan (the “Plan”) is to advance the interests of GreenPoint Financial Corp. (the “Holding Company” or “Company”), its shareholders and its present and future Affiliates (as that term is defined below), by providing those key employees of the Holding Company and its Affiliates, including GreenPoint Bank (the “Savings Bank”), upon whose judgment, initiative and efforts the successful conduct of the business of the Holding Company and its Affiliates largely depends, with additional incentive to perform in a superior manner. A purpose of the Plan is also to attract people of experience and ability to the service of the Holding Company and its Affiliates.

**2. Definitions.**

(a) “Affiliate” means (i) a member of a controlled group of corporations of which the Holding Company is a member or (ii) an unincorporated trade or business which is under common control with the Holding Company as determined in accordance with Section 414(c) of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations issued thereunder. For purposes hereof, a “controlled group of corporations” shall mean a controlled group of corporations as defined in Section 1563(a) of the Code determined without regard to Sections 1563(a)(4) and (e)(3)(C).

(b) “Award” means a grant of Non-statutory Stock Options, Incentive Stock Options, Limited Rights and/or Restricted Stock under the provisions of this Plan.

(c) “Board of Directors” or “Board” means the board of directors of the Holding Company.

(d) “Change in Control” means

A. the acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (a “Person”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (i) the then outstanding shares of common stock of the Company (the “Outstanding Company Common Stock”) or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Outstanding Company Voting Securities”); provided, however, that for purposes of this subsection (a), the following acquisitions shall not constitute a Change of Control: (i) any acquisition directly from the Company, (ii) any acquisition by the Company, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company or (iv) any acquisition by any corporation pursuant to a transaction which complies with clauses (i), (ii) and (iii) of paragraph C; or

B. individuals who, as of August 1, constitute the Board (the “Incumbent Board”) cease for any reason not to constitute at least a majority of the Board, provided, however, that any individual becoming a director subsequent to August 1 whose election, or nomination for election by the Company’s shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

C. consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a “Business Combination”), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (ii) no Person (excluding any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

D. approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

(e) “Code” means the Internal Revenue Code of 1986, as amended.

(f) “Commission” means the Securities and Exchange Commission.

(g) “Committee” means the Compensation Committee, which is a committee consisting of at least three members of the Board of Directors, all of whom are “non-employee directors” as such term is defined under Rule 16b-3 under the Exchange Act, as promulgated by the Commission and are “outside directors” as such term is defined under Section 162(m) of the Code.

(h) "Common Stock" means the Common Stock of the Holding Company, par value \$.01 per share.

(i) "Date of Grant" means the date an Award granted by the Committee is effective pursuant to the terms hereof.

(j) "Disability" means disability as defined in the Savings Bank's retirement plan, or if not so defined, shall mean the permanent and total inability of an employee by reason of mental or physical infirmity, or both, to perform the work customarily assigned to him. In order to qualify as a Disability, a medical doctor selected or approved by the Board of Directors, and knowledgeable in the field of such infirmity, must advise the Committee either that it is not possible to determine when such Disability will terminate or that it appears probable that such Disability will be permanent during the remainder of said participant's lifetime.

(k) "Fair Market Value" means as of any given date, the closing price of the Common Stock on the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ") or on any national exchange on which the Common Stock is listed. If there is no regular public trading market for such Common Stock, the Fair Market Value of the Common Stock shall be determined by the Committee. For purposes of the grant of Options at the time of the conversion of the Savings Bank, Fair Market Value shall mean the initial public offering price of the Common Stock.

(l) "Incentive Stock Option" means an Option granted by the Committee to a Participant, which Option is designated by the Committee as an Incentive Stock Option pursuant to Section 8.

(m) "Limited Right" means the right to receive an amount of cash based upon the terms set forth in Section 9.

(n) "Non-statutory Stock Option" means an Option granted by the Committee to a Participant, which is not designated by the Committee as an Incentive Stock Option.

(o) "Option" means an Award granted under Section 7 or Section 8.

(p) "Participant" means an employee of the Holding Company or its Affiliates chosen by the Committee to receive Incentive Stock Options, Non-statutory Stock Options and/or Limited Rights under the Plan, subject to the terms of Section 6.

(q) "Plan Year(s)" means a calendar year or years commencing on or after January 1, 1994.

(r) "Restricted Stock" means an Award granted under Section 11.

(s) "Retirement" means retirement from the employ of the Holding Company or its Affiliates at the normal or early retirement date as set forth in any tax-qualified retirement/pension plan of the Savings Bank.

(t) "Termination for Cause" means the termination upon an intentional failure to perform stated duties, willful misconduct, breach of a fiduciary duty involving personal profit, or acts or omissions of personal dishonesty, any of which results in material loss to the Holding Company or one of its Affiliates or, any willful violation of any law, rule or regulation (other than traffic violations or similar offenses) or final cease-and-desist order which results in material loss to the Holding Company or one of its Affiliates.

### **3. Administration.**

Subject to the express provisions of the Plan, the Committee shall have the plenary authority in its discretion to determine when and to whom Awards shall be granted and the number of shares to be covered by each Award; to interpret the Plan and to prescribe, amend and rescind rules and regulations relating to it; to determine the terms and provisions of the respective Award agreements; to modify, amend or adjust the terms and conditions of any Award, at any time and from time to time; and to make all other determinations deemed necessary or advisable for administering the Plan. The Committee's determination on the foregoing matters shall be conclusive on all Participants in the Plan and on their legal representatives and beneficiaries.

The Board of Directors may from time to time appoint members of the Committee in substitution for, or in addition to, members previously appointed and may fill vacancies, however caused, in the Committee. The Committee shall select one of its members as its chairman and shall hold its meetings at such times and places as it shall deem advisable. A majority of its members shall constitute a quorum. All determinations of the Committee shall be made by a majority of its members eligible to vote. Any decision or determination reduced to writing and signed by a majority of the members shall be fully as effective as if it had been made by a majority vote at a meeting duly called and held. The Committee may appoint a secretary, shall keep minutes of its meetings and shall make such rules and regulations for the conduct of its business as it shall deem advisable. The Committee may also designate the Secretary or any Assistant Secretary of the Holding Company or other employees of the Holding Company or any of its Affiliates to assist the Committee in the administration of the Plan and may grant authority to such persons to execute Option agreements or other documents on behalf of the Committee.

No member of the Board or the Committee shall be liable for any determination made in good faith with respect to the Plan. If a member of the Board or the Committee is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of anything done or not done by him in such capacity under or with respect to the Plan, the Holding Company shall indemnify such member against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Holding Company and its Affiliates and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, provided,

however, that no indemnification may be made if a judgment or adjudication establishes that his acts were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

#### **4. Types of Awards.**

Awards under the Plan may be granted in any one or a combination of:

- A. Non-statutory Stock Options;
- B. Incentive Stock Options;
- C. Limited Rights; and
- D. Restricted Stock

as defined below in Sections 7 through 11.

#### **5. Stock Subject to the Plan.**

Subject in each case to adjustment as provided in Section 15, the maximum number of shares of Common Stock available for grant under the Plan is 10,800,000 shares of Common Stock, provided that no more than 7,850,000 shares may be granted as Incentive Stock Options. These shares of Common Stock may be either authorized but unissued shares or shares previously issued and reacquired by the Holding Company (including treasury shares). To the extent that Options or Limited Rights are granted under the Plan, the shares underlying such Options will be unavailable for future grants under the Plan except that, to the extent that Options (and any Limited Rights related thereto) granted under the Plan terminate, expire or are cancelled without having been exercised in full (or in the case of Limited Rights, exercised for cash), the corresponding number of unpurchased shares which were reserved for issuance upon exercise thereof shall again be available for the purposes of the Plan, and new Awards may be made with respect to these shares. If any shares of Restricted Stock are forfeited for which the participant did not receive any benefits of ownership (as such phrase is construed by the Commission), such Awards shall again be available for distribution under the Plan.

#### **6. Eligibility.**

Only persons who, on the Date of Grant, are regular salaried officers or other key employees of the Holding Company or its Affiliates shall be eligible to be Participants hereunder, provided that in no event shall any Options be granted that will violate the Articles of Incorporation or Bylaws of the Holding Company or any applicable federal or state law, regulation or order. Directors who are not such regularly salaried employees or officers of the Holding Company or its Affiliates shall not be eligible to be Participants. A Participant who has been granted an Award under the Plan may be granted an additional Award or Awards.

In determining the employees to whom Awards shall be granted and the number of shares to be covered by each Award, the Committee shall take into account the duties of the respective

employees, their present and potential contributions to the success of the Holding Company and its Affiliates, the anticipated number of years of effective service remaining and such other factors as the Committee shall deem relevant in connection with accomplishing the purposes of the Plan.

## **7. Non-statutory Stock Options.**

The Committee may, from time to time, grant Non-statutory Stock Options to Participants and, upon such terms and conditions as the Committee may determine, grant Non-statutory Stock Options in exchange for and upon surrender of previously granted Awards under this Plan, provided that, subject to adjustment as provided in Section 15, no participant may be granted Options (both Non-statutory and Incentive Stock Options) covering more than 800,000 shares in any one calendar year (the "Maximum Grant"). Non-statutory Stock Options granted under this Plan are subject to the following terms and conditions:

(a) *Price.* The purchase price per share of Common Stock deliverable upon the exercise of each Non-statutory Stock Option shall be determined by the Committee on the Date of Grant. Such purchase price shall not be less than 100% of the Fair Market Value of the Holding Company's Common Stock on the Date of Grant. Shares may be purchased only upon full payment of the purchase price. Non-statutory Stock Options may be exercised pursuant to a "cashless exercise" (*i.e.*, payment of the purchase price may be made, in whole or in part, through the surrender of shares by the Participant of Common Stock at the Fair Market Value of such shares on the date of surrender determined in the manner described in Section 2(k)), in accordance with applicable securities laws.

In the discretion of the Committee, payment for any shares subject to an Option may also be made by delivering a properly executed exercise notice to the Company, together with a copy of irrevocable instructions to a broker to deliver promptly to the Company the amount of sale or loan proceeds to pay the purchase price, and, if requested by the amount of any federal, state, local or foreign withholding taxes. To facilitate the foregoing, the Company may enter into agreements for coordinated procedures with one or more brokerage firms.

(b) *Terms of Non-statutory Stock Options.* The term during which each Non-statutory Stock Option may be exercised shall be determined by the Committee, but in no event shall a Non-statutory Stock Option be exercisable in whole or in part more than 10 years from the Date of Grant. The Committee shall determine the date on which each Non-statutory Stock Option shall become exercisable and may provide that a Non-statutory Stock Option shall become exercisable in installments. The shares comprising each installment may be purchased in whole or in part at any time after such installment becomes purchasable, subject to the terms of the Option agreement made pursuant to Section 13. The Committee may, in its sole discretion, accelerate the time at which any Non-statutory Stock Option may be exercised in whole or in part. Notwithstanding the above, in the event of a Change in Control, all Non-statutory Stock Options shall become immediately exercisable.

(c) *Termination of Employment.* Upon the termination of a Participant's service for any reason other than Disability, Retirement, Change in Control, death, or Termination for Cause, the Participant's Non-statutory Stock Options shall be exercisable only as to those shares



which were immediately purchasable by the Participant at the date of termination and only for a period of three months following termination. In the event of Termination for Cause, all rights under the Participant's Non-statutory Stock Options shall expire upon such Termination for Cause. In the event of the death or Disability of any Participant, or upon termination following a Change in Control, all Non-statutory Stock Options held by the Participant, whether or not exercisable at such time, shall be exercisable in full by the Participant or the legal representatives or beneficiaries of the Participant for one year or for such shorter or longer period as determined by the Committee on the Date of Grant, provided that in no event shall the period extend beyond the expiration of the Non-statutory Stock Option term as originally granted. In the event of the Retirement of any Participant (i) all Non-statutory Stock Options held by the Participant which were granted to the Participant before January 1, 1997, whether or not exercisable at such time, shall be exercisable in full by the Participant for one year or such shorter or longer period as determined by the Committee on the Date of Grant, provided that in no event shall the period extend beyond the expiration of the Non-statutory Stock Option term as originally granted, and (ii) unless otherwise determined by the Committee, all Non-statutory Stock Options held by the Participant which were granted to the Participant after December 31, 1996 shall be exercisable only as to those shares which were immediately purchasable by the Participant at the date of Retirement for one year or such shorter or longer period as determined by the Committee on the Date of Grant, provided that in no event shall the period extend beyond the expiration of the Non-statutory Stock Option term as originally granted.

For purposes of the Plan and each Option granted under the Plan, a Participant's employment shall be deemed to have terminated at the close of business on the day preceding the first date on which he is no longer for any reason whatsoever employed by the Holding Company or any of its Affiliates; provided, however, that the Committee may deem in one or more particular cases that a leave of absence granted by the Holding Company or its Affiliate shall not result in the termination of the Participant's employment. For purposes of the Plan and each Option granted under the Plan, a transfer of an employee from the Holding Company to an Affiliate or *vice versa* shall not result in the termination of such Participant's employment.

#### **8. Incentive Stock Options.**

Subject to the Maximum Grant, the Committee may, from time to time, grant Incentive Stock Options to Participants. Incentive Stock Options granted pursuant to the Plan shall be subject to the following terms and conditions:

(a) *Price.* The purchase price per share of Common Stock deliverable upon the exercise of each Incentive Stock Option shall be not less than 100% of the Fair Market Value of Common Stock on the Date of Grant. However, if a Participant owns stock possessing more than 10% of the total combined voting power of all classes of common stock of the Holding Company (or, under Section 424(d) of the Code, is deemed to own common stock of the Holding Company representing more than 10% of the total combined voting power of all such classes of common stock by reason of the ownership of such classes of common stock, directly or indirectly, by or for any brother, sister, spouse, ancestor or lineal descendent of such employee, or by or for any corporation, partnership, estate or trust of which such employee is a shareholder, partner or beneficiary), the purchase price per share of Common Stock deliverable upon the exercise of each Incentive Stock Option shall not be less than 110% of the Fair Market Value of

Common Stock on the Date of Grant. Shares may be purchased only upon payment of the full purchase price. Incentive Stock Options may be exercised pursuant to a "cashless exercise" (i.e., payment of the purchase price may be made, in whole or in part, through the surrender of shares by the Participant of Common Stock at the Fair Market Value of such shares on the date of surrender determined in the manner described in Section 2(k)), in accordance with applicable securities laws.

(b) *Amounts of Incentive Stock Options.* Incentive Stock Options may be granted to any eligible employee in such amounts as determined by the Committee. The aggregate Fair Market Value (determined as of the Date of Grant) of Common Stock with respect to which Incentive Stock Options granted are exercisable for the first time by the Participant during any calendar year (together with any incentive stock options under all other plans of the Participant's employer corporation and its parent and subsidiary corporations) shall not exceed \$100,000. The provisions of this Section 8(b) shall be construed and applied in accordance with Section 422(d) of the Code and the regulations, if any, promulgated thereunder. To the extent an Award by its terms purported to be an Incentive Stock Option under this Section 8 exceeds this \$100,000 limit, the portion of the Award in excess of such limit shall be deemed a Non-statutory Stock Option.

(c) *Terms of Incentive Stock Options.* The term during which each Incentive Stock Option may be exercised shall be determined by the Committee, but in no event shall an Incentive Stock Option be exercisable in whole or in part more than ten (10) years from the Date of Grant. If at the time an Incentive Stock Option is granted to an employee, the employee owns Common Stock representing more than 10% of the total combined voting power of the Holding Company (or, under Section 424(d) of the Code, is deemed to own Common Stock representing more than 10% of the total combined voting power of all such classes of Common Stock, by reason of the ownership of such classes of Common Stock, directly or indirectly, by or for any brother, sister, spouse, ancestor or lineal descendent of such employee, or by or for any corporation, partnership, estate or trust of which such employee is a shareholder, partner or beneficiary), the Incentive Stock Option granted to such employee shall not be exercisable after the expiration of five (5) years from the Date of Grant. No Incentive Stock Option granted under this Plan is transferable except by will or the laws of descent and distribution and is exercisable in his lifetime only by the employee to whom it is granted.

The Committee shall determine the date on which each Incentive Stock Option shall become exercisable and may provide that an Incentive Stock Option shall become exercisable in installments. The shares comprising each installment may be purchased in whole or in part at any time after such installment becomes purchasable, subject to the terms of the Option agreement made pursuant to Section 12, provided that the amount able to be first exercised in a given year is consistent with the terms of Section 422 of the Code. The Committee may, in its sole discretion, accelerate the time at which any Incentive Stock Option may be exercised, in whole or in part, provided that it is consistent with the terms of Section 422 of the Code. Notwithstanding the above, in the event of a Change in Control, all Incentive Stock Options shall become immediately exercisable.

(d) *Termination of Employment.* Upon the termination of a Participant's service for any reason other than Disability, Retirement, Change in Control, death, or Termination for

Cause, the Participant's Incentive Stock Options shall be exercisable only as to those shares which were immediately purchasable by the Participant at the date of termination and only for a period of three months following termination. In the Event of Termination for Cause all rights under the Participant's Incentive Stock Options shall expire upon such Termination for Cause.

In the event of death or Disability of any Participant, all Incentive Stock Options held by such Participant, whether or not exercisable at such time, shall be exercisable in full by the Participant or the Participant's legal representatives or beneficiaries for one year following the date of the Participant's death or cessation of employment due to Disability. Upon termination of the Participant's service due to a Change in Control, all Incentive Stock Options held by such Participant, whether or not exercisable at such time, shall be exercisable in full for a period of one year or such shorter or longer period as determined by the Committee at the Date of Grant, provided, however, that such Option shall not be an Incentive Stock Option under this Plan in the event such Option is exercised more than three months following the date of the Participant's termination due to a Change in Control. Upon termination of the Participant's service due to Retirement (i) all Incentive Stock Options held by such Participant which were granted to the Participant before January 1, 1997, whether or not exercisable at such time, shall be exercisable in full for a period of one year or such shorter or longer period as determined by the Committee at the Date of Grant, and (ii) unless otherwise determined by the Committee, all Incentive Stock Options held by such Participant which were granted to the Participant after December 31, 1996 shall be exercisable only as to those shares which were immediately purchasable by the Participant at the date of termination due to Retirement for a period of one year or such shorter or longer period as determined by the Committee at the Date of Grant; provided, however, that in either case, such Option shall not be an Incentive Stock Option under this Plan in the event such Option is exercised more than three months following the date of the Participant's termination due to Retirement. In no event shall the exercise period extend beyond the expiration of the Incentive Stock Option term as originally granted.

For purposes of the Plan and each Option granted under the Plan, a Participant's employment shall be deemed to have terminated at the close of business on the day preceding the first date on which he is no longer for any reason whatsoever employed by the Holding Company or any of its Affiliates; provided, however, that the Committee may deem in one or more particular cases that a leave of absence granted by the Holding Company or its Affiliate shall not result in the termination of the Participant's employment. For purposes of the Plan and each Option granted under the Plan, a transfer of an employee from the Holding Company to an Affiliate or *vice versa* shall not result in the termination of such Participant's employment.

(e) *Compliance with Code.* Except as otherwise specified in Section 8(d), the Options granted under this Section 8 of the Plan are intended to qualify as "incentive stock options" within the meaning of Section 422 of the Code, but the Company makes no warranty as to the qualification of any Option as an "incentive stock option" within the meaning of Section 422 of the Code.

## 9. Limited Rights.

Simultaneously with the grant of any Option, the Committee may grant a Limited Right with respect to all or some of the shares covered by such Option. Limited Rights granted under this Plan are subject to the following terms and conditions:

(a) *Terms of Limited Rights.* In no event shall a Limited Right be exercisable in whole or in part before the expiration of six months from the Date of Grant of the Limited Right. A Limited Right may be exercised only in the event of a Change in Control.

A Limited Right may be exercised only when the underlying Option is eligible to be exercised, and only when the Fair Market Value of the shares of Common Stock covered by the underlying Option on the day of exercise is greater than the exercise price of the related Option.

Upon exercise of a Limited Right, the related Option shall cease to be exercisable. Upon exercise or termination of an Option, any related Limited Rights shall terminate to the extent such Option has been exercised or terminated. The Limited Rights may be for no more than 100% of the difference between the exercise price and the Fair Market Value of the common Stock subject to the underlying Option. The Limited Right is transferable only when the underlying option is transferable and under the same conditions.

(b) *Payment.* Upon exercise of a Limited Right, the holder shall promptly receive from the Holding Company an amount of cash equal to the difference between the Fair Market Value on the Date of Grant of the related Option and the Fair Market Value of the underlying shares on the date the Limited Right is exercised, multiplied by the number of shares with respect to which such Limited Right is being exercised.

(c) *Termination of Employment.* Subject to the terms of Section 9(a), upon the termination of a Participant's service for any reason other than Termination for Cause, any Limited Rights held by the Participant shall then be exercisable by the Participant or the Participant's legal representative or beneficiaries for a period of one year following termination. In no event shall the period extend beyond the expiration of the term of the related Option. In the event of Termination for Cause, all Limited Rights held by the Participant shall expire immediately.

For purposes of the Plan and each Option granted under the Plan, a Participant's employment shall be deemed to have terminated at the close of business on the day preceding the first date on which he is no longer for any reason whatsoever employed by the Holding Company or any of its Affiliates; provided, however, that the Committee may deem in one or more particular cases that a leave of absence granted by the Holding Company or its Affiliate shall not result in the termination of the Participant's employment. For purposes of the Plan and each Option granted under the Plan, a transfer of an employee from the Holding Company to an Affiliate or *vice versa* shall not result in the termination of such Participant's employment.

Notwithstanding the foregoing, if any right granted pursuant to this Section 9 would make a Change in Control transaction ineligible for pooling of interests accounting under APB No. 16 that but for this Section 9 would otherwise be eligible for such accounting treatment, the Committee shall have the ability to substitute for the cash otherwise payable pursuant to this Section 9, Stock with a Fair Market Value equal to the cash that would otherwise be payable hereunder.

## **10. Surrender of Option.**

In the event of a Participant's termination of employment as a result of death, Disability or Retirement, the Participant (or the Participant's personal representative(s), heir(s), or devisee(s)) may, in a form acceptable to the Committee make application to the Committee to surrender all or part of Options held by such Participant in exchange for a cash payment from the Holding Company of an amount equal to the difference between the Fair Market Value of the Common Stock on the date of termination of employment and the exercise price per share of the Option on the Date of Grant; provided, however, that in the event of Retirement, the application must be submitted by the Participant within a "window period" as defined in Rule 16b-3(e)(3) under Section 16 of the Exchange Act. Whether the Committee accepts such application or determines to make payment, in whole or part, is within its absolute and sole discretion, it being expressly understood that the Committee is under no obligation to any Participant whatsoever to make such payments. In the event that the Committee accepts such application and the Company determines to make payment, such payment shall be in lieu of the exercise of the underlying Option and such Option shall cease to be exercisable.

## **11. Restricted Stock.**

(a) *Administration.* Shares of Restricted Stock may be awarded either alone or in addition to other Awards granted under the Plan. The Committee shall determine the officers and employees to whom and the time or times at which grants of Restricted Stock will be awarded, the number of shares to be awarded to any participant, the time or times within which such Awards may be subject to forfeiture and any other terms and conditions of the Awards, in addition to those contained in Section 11(c). The Committee shall determine the conditions for vesting of shares of Restricted Stock; provided, however, that no shares of Restricted Stock shall vest prior to three years from the date of grant. Notwithstanding the previous sentence, the Committee shall have discretion to permit vesting of shares of Restricted Stock prior to three years from the date of grant under limited circumstances if the Committee determines that such earlier vesting is necessary to fulfill a legitimate corporate purpose such as retention of a key employee.

The Committee may condition the grant and vesting of Restricted Stock upon the attainment of specified performance goals of the participant or of the Company or subsidiary, division or department of the Company for or within which the participant is primarily employed or upon such other factors or criteria as the Committee shall determine. The provisions of Restricted Stock Awards need not be the same with respect to each recipient.

(b) *Awards and Certificates.* Shares of Restricted Stock shall be evidenced in such manner as the Committee may deem appropriate, including book-entry registration or issuance of one or more stock certificates. Any certificate issued in respect of shares of Restricted Stock shall be registered in the name of such participant and shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Award, substantially in the following form:

“The transferability of this certificate and the shares of stock represented hereby are subject to the terms and conditions (including forfeiture) of the GreenPoint Financial Corp. Amended and Restated 1994 Stock Incentive Plan and a Restricted Stock Agreement. Copies of such Plan and Agreement are on file at the offices of GreenPoint Financial Corp., 90 Park Avenue, New York, New York 10016.”

The Committee may require that the certificates evidencing such shares be held in custody by the Company until the restrictions thereon shall have lapsed and that, as a condition of any Award of Restricted Stock, the participant shall have delivered a stock power, endorsed in blank, relating to the Stock covered by such Award.

(c) *Terms and Conditions.* Shares of Restricted Stock shall be subject to the following terms and conditions:

(i) Subject to the provisions of the Plan and the Restricted Stock Agreement referred to in Section 11(c)(vi), during a period set by the Committee, commencing with the date of such Award (the “Restriction Period”), the participant shall not be permitted to sell, assign, transfer, pledge or otherwise encumber shares of Restricted Stock. The Committee may provide for the lapse of such restrictions in installments or otherwise and may accelerate or waive such restrictions, in whole or in part, in each case based on period of service, performance of the participant or of the Company or the subsidiary, division or department for which the participant is employed or such other factors or criteria as the Committee may determine.

(ii) Except as provided in this paragraph (ii) and Section 11(c)(i) and the Restricted Stock Agreement, the participant shall have, with respect to the shares of Restricted Stock, all of the rights of a stockholder of the Company holding the class or series of Stock that is the subject of the Restricted Stock, including, if applicable, the right to vote the shares and the right to receive any cash dividends. If so determined by the Committee in the applicable Restricted Stock Agreement, (1) cash dividends on the shares of Stock that are the subject of the Restricted Stock Award shall be automatically deferred and reinvested in additional Restricted Stock, and (2) dividends payable in Stock shall be paid in the form of Restricted Stock.

(iii) Except to the extent otherwise provided in the applicable Restricted Stock Agreement and Sections 11(c)(i) and 11(c)(iv), upon a participant’s termination of employment for any reason during the Restriction Period, all shares still subject to restriction shall be forfeited by the participant.

(iv) In the event of a participant’s termination of employment for any reason other than Termination for Cause, the Committee shall have the discretion to waive in whole or in part any or all remaining restrictions with respect to any or all of such participant’s shares of Restricted Stock.

(v) If and when the Restriction Period expires without a prior forfeiture of the Restricted Stock subject to such Restriction Period, unlegended certificates for such shares shall be delivered to the participant upon surrender of the legended certificates.

(vi) Each Award shall, if required by law, require the payment of the total par value of the Stock by the participant to the Company and shall be confirmed by, and be subject to the terms of, a Restricted Stock Agreement.

(vii) Notwithstanding the foregoing, all restrictions to which shares of Restricted Stock are subject shall lapse immediately upon a Change in Control.

## **12. Rights of a Shareholder; Nontransferability.**

No Participant shall have any rights as a shareholder with respect to any shares covered by a Non-statutory and/or Incentive Stock Option until the date of issuance of a stock certificate for such shares, which shall be deemed to be the date the Participant becomes the record owner of such shares on the books of the Holding Company. Nothing in this Plan or in any Award granted confers on any person any right to continue in the employ of the Holding Company or its Affiliates or to continue to perform services for the Holding Company or its Affiliates or interferes in any way with the right of the Holding Company or its Affiliates to terminate a Participant's services as an officer or other employee at any time. Options granted under the Plan shall not be affected by any change of duties or positions so long as the Participant continues to be an employee of the Holding Company or an Affiliate.

Nothing contained in the Plan or in any resolution adopted or to be adopted by the Board of Directors of the Holding Company or any of its Affiliates or the holders of Common Stock shall constitute the granting of an Option hereunder. The granting of an Option pursuant to the Plan shall take place on the day the Committee determines, pursuant to its authority under Section 3, to be the Date of Grant.

Except as otherwise provided in the immediately succeeding sentences with respect to Options, no Award under the Plan shall be transferable by the optionee other than by will or the laws of descent and distribution and may only be exercised during his lifetime by the optionee, or by a guardian or legal representative. No Option shall be transferable by the optionee other than (i) by will or the laws of descent and distribution; or (ii) in case of a Non-statutory Stock Option, as otherwise expressly permitted by the Committee, including, if so permitted, pursuant to a transfer to such optionee's immediate family, whether directly or indirectly or by means of a trust or partnership or otherwise. For purposes of this Plan, unless otherwise determined by the Committee, "immediate family" shall mean the optionee's children, spouse and grandchildren. All Options shall be exercisable, subject to the terms of this Plan, only by the optionee, the guardian or legal representative of the optionee, or any person to whom such option is transferred pursuant to this paragraph, it being understood that the term "holder" and "optionee" include such guardian, legal representative and other transferee.

## **13. Agreement with Grantees.**

Each Award of Options, and/or Limited Rights will be evidenced by a written Stock Option Agreement, executed by the Participant and the Holding Company or its Affiliates which describes the conditions for receiving the Awards including the date of Award, the purchase price if any, applicable periods, and any other terms and conditions as may be required by the Board of Directors or applicable securities law, including, in the case of Awards of Incentive

Stock Options, such terms and provisions as shall be requisite in the judgment of the Committee to provide for Options which qualify as “incentive stock options” as defined in Section 422 of the Code, including, but not by way of limitation, any amendment of the Code which supersedes Section 422, as amended. However, no Option granted by the Committee may be exercised after thirty (30) days after the Date of Grant unless prior to said thirtieth (30th) day a written Stock Option Agreement shall have been duly executed and delivered by the Participant, or on the Participant’s behalf by the Participant’s agent or attorney.

**14. Designation of Beneficiary.**

A Participant may, with the consent of the Committee, designate a person or persons to receive, in the event of death, any Award to which the Participant would then be entitled. Such designation will be made upon forms supplied by and delivered to the Holding Company and may be revoked in writing. If a Participant fails effectively to designate a beneficiary, then the Participant’s estate will be deemed to be the beneficiary.

**15. Dilution and Other Adjustments.**

In the event of any change in the outstanding shares of Common Stock of the Holding Company by reason of any stock dividend or split, recapitalization, merger, consolidation, spin-off, reorganization, combination or exchange of shares, or other similar corporate change, or other increase or decrease in such shares effected without receipt or payment of consideration by the Company, the Committee will make such adjustments to previously granted Awards, to prevent dilution or enlargement of the rights of the Participant as it deems equitable in its sole discretion, including, without limitation, any or all of the following:

- (a) adjustments in the aggregate number or kind of shares of Common Stock which may be awarded under the Plan;
- (b) adjustments in the aggregate number or kind of shares of Common Stock covered by Awards already made under the Plan;
- (c) adjustments in the purchase price of outstanding Incentive and/or Non-statutory Stock Options, or any Limited Rights attached to such Options.

No such adjustments may, however, materially change the value of benefits available to a Participant under a previously granted Award.

**16. Withholding.**

There may be deducted from each distribution of cash and/or Common Stock under the Plan the amount of tax required by any governmental authority to be withheld. Alternatively, a Participant may pay to the Company the amount of cash necessary to be withheld for taxes in lieu of any withholding of payments or distributions under this Plan. If a Participant elects to have such taxes withheld, the election must be made in compliance with Rule 16b-3 in order to receive exemptive treatment.



## **17. Amendment of the Plan.**

The Board of Directors may at any time, and from time to time, modify or amend the Plan in any respect; provided, however, that Sections 7, 8 and 11 governing grants shall not be amended more than once every six months other than to comport with the Code or the Employee Retirement Income Security Act of 1974, as amended, if applicable, and, provided further, that if it has been determined by the Board of Directors to continue to qualify the Plan under the Securities and Exchange Commission Rule 16b-3, shareholder approval shall be required for any such modification or amendment which:

- (a) increases the maximum number of shares for which Options may be granted under the Plan (subject, however, to the provisions of Section 15 hereof);
- (b) reduces the exercise price at which Awards may be granted (subject, however, to the provisions of Section 15 hereof);
- (c) extends the period during which Options may be granted or exercised beyond the times originally prescribed; or
- (d) changes the persons eligible to participate in the Plan.

Failure to ratify or approve amendments or modifications to subsections (a) through (d) of this Section by shareholders shall be effective only as to the specific amendment or modification requiring such ratification. Other provisions, sections, and subsections of this Plan will remain in full force and effect.

No such termination, modification or amendment may affect the rights of a Participant under an outstanding Award.

## **18. Effective Date of Plan.**

The Plan shall become effective upon the consummation of the conversion of The Green Point Savings Bank from the mutual to capital stock form of ownership (the "Effective Date") on January 28, 1994. The Plan shall be presented to shareholders of the Holding Company for ratification for purposes of: (i) obtaining favorable treatment under Section 16(b) of the Exchange Act; (ii) satisfying one of the requirements of Section 422 of the Code governing the treatment for Incentive Stock Options; and (iii) maintaining listing on the NASDAQ National Market, provided, however, that if the Plan is not ratified within twelve (12) months of the Effective Date, the Plan shall remain in full force and effect, and any Incentive Stock Options granted under the Plan shall be deemed to be Non-statutory Stock Options provided that no grants may be made to an executive officer of the Company who was an executive officer on the date of the conversion unless this Plan is ratified by shareholders.

## **19. Termination of the Plan.**

The right to grant Awards under the Plan will terminate upon the earlier of (i) ten (10) years after the Effective Date of the Plan or (ii) the issuance of Common Stock or the exercise of Options or related Limited Rights equivalent to the maximum number of shares reserved under

the Plan as set forth in Section 5. The Board of Directors has the right to suspend or terminate the Plan at any time, provided that no such action will, without the consent of a Participant, adversely affect his rights under a previously granted Award.

**20. Applicable Law.**

The Plan will be administered in accordance with the laws of the State of Delaware.

**21. Government and Other Regulations.**

The obligation of the Holding Company to sell and deliver shares of Common Stock under Options granted under the Plan shall be subject to (i) all applicable laws, rules and regulations, and such approvals by any governmental agencies as may be required, including, but not by way of limitation, the effectiveness of a Registration Statement under the Securities Act of 1933, as amended, as deemed necessary or appropriate by counsel for the Holding Company, and (ii) the condition that the shares of Common Stock reserved for issuance upon the exercise of the Options granted under the Plan shall be traded on NASDAQ or on a national securities exchange.

**22. Non-Exclusivity of the Plan.**

Neither the adoption of the Plan by the Holding Company's Board of Directors nor the submission of the Plan to the shareholders of the Holding Company for ratification and approval shall be construed as creating any limitations on the power of the Board of Directors to adopt such other incentive arrangements as it may deem desirable, including, without limitation, the granting of stock options otherwise than under the Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

## GREENPOINT FINANCIAL CORP.

## 2001 Stock Plan

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**Section 1****Purpose: Definitions**

The purpose of the Plan is to give the Company a competitive advantage in attracting, retaining and motivating officers, employees and/or consultants and to provide the Company and its Subsidiaries and Affiliates with a stock plan providing incentives directly linked to the profitability of the Company's businesses and increases in the Company's shareholder value.

For purposes of the Plan, the following terms are defined as set forth below:

- a. "Affiliate" means a corporation or other entity controlled by, controlling or under common control with the Company and designated by the Committee from time to time as such.
- b. "Award" means a Stock Appreciation Right, Stock Option, Restricted Stock, Performance Unit, or other stock-based award.
- c. "Award Cycle" shall mean a period of one or more consecutive fiscal years or portions thereof designated by the Committee over which Performance Units are to be earned.
- d. "Board" means the Board of Directors of the Company.
- e. "Cause" means, unless otherwise provided by the Committee, (1) "Cause" as defined in any Individual Agreement to which the participant is a party, or (2) if there is no such Individual Agreement or if it does not define Cause: an intentional failure to perform stated duties, willful misconduct, breach of a fiduciary duty involving personal profit, or acts or omissions of personal dishonesty, any of which results in material loss to the Company or any of its Subsidiaries or Affiliates or, any willful violation of any law, rule or regulation (other than traffic violations or similar offenses) or final cease-and-desist order which results in material loss to the Company or any of its Subsidiaries or Affiliates. The Committee shall, unless otherwise provided in an Individual Agreement with the participant, have the sole discretion to determine whether "Cause" exists, and its determination shall be final.
- f. "Change in Control" and "Change in Control Price" have the meanings set forth in Sections 11(b) and (c), respectively.
- g. "Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.
- h. "Commission" means the Securities and Exchange Commission or any successor agency.

i. "Committee" means the Committee referred to in Section 2.

j. "Common Stock" means common stock, par value \$.01 per share, of the Company (or as may be converted pursuant to Section 3 hereof).

k. "Company" means GreenPoint Financial Corp., a bank holding company registered under federal law and incorporated in Delaware.

l. "Disability" means, unless otherwise provided by the Committee, disability as defined in the Company's retirement plan, or if not so defined, shall mean the permanent and total inability of a participant by reason of mental or physical infirmity, or both, to perform the work customarily assigned to him or her. In order to qualify as a Disability, a medical doctor selected or approved by the Board, and knowledgeable in the field of such infirmity, must advise the Committee either that it is not possible to determine when such Disability will terminate or that it appears probable that such Disability will be permanent during the remainder of said participant's lifetime.

m. "Eligible Individuals" mean employees and consultants of the Company or any of its Subsidiaries or Affiliates, and prospective employees and consultants who have accepted offers of employment or consultancy from the Company or its Subsidiaries or Affiliates, who are or will be responsible for or contribute to the management, growth or profitability of the business of the Company, or its Subsidiaries or Affiliates; provided, however, that any person who is designated by the Board as an "officer" for purposes of Section 16 of the Exchange Act shall not be an Eligible Individual for purposes of the Plan.

n. "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor thereto.

o. "Fair Market Value" means, as of any given date, the closing price on such date or, if there are no reported sales on such date, on the last day prior to such date on which there were sales of the Common Stock on the New York Stock Exchange or, if not listed on such exchange, on any other national securities exchange on which the Common Stock is listed or on Nasdaq. If there is no regular public trading market for such Common Stock, the Fair Market Value of the Common Stock shall be determined by the Committee in good faith.

p. "Individual Agreement" means an employment, consulting or similar agreement between a participant and the Company or one of its Subsidiaries or Affiliates.

q. "Performance Goals" means the performance goals established by the Committee in connection with the grant of Restricted Stock or Performance Units. Performance Goals may be stated in the alternative or in combination.

r. "Performance Units" means an Award granted under Section 8.

s. "Plan" means the GreenPoint Financial Corp. 2001 Stock Plan, as set forth herein and as hereinafter amended from time to time.

t. "Restricted Stock" means an Award granted under Section 7.

u. "Retirement" means retirement from the employ of the Company or its Subsidiaries or Affiliates at the normal or early retirement date as set forth in any tax-qualified retirement/pension plan of the Company.

v. "Stock Appreciation Right" means an Award granted under Section 6.

w. "Stock Option" means an Award granted under Section 5.

x. "Subsidiary" means any corporation, partnership, joint venture or other entity during any period in which at least a 50% voting or profits interest is owned, directly or indirectly, by the Company or any successor to the Company.

y. "Termination of Employment" means the termination of the participant's employment with, performance of services for, the Company and any of its Subsidiaries or Affiliates. A participant employed by, or performing services for, a Subsidiary or an Affiliate shall also be deemed to incur a Termination of Employment if the Subsidiary or Affiliate ceases to be such a Subsidiary or an Affiliate, as the case may be, and the participant does not immediately thereafter become an employee of, or service-provider for, the Company or another Subsidiary or Affiliate. Temporary absences from employment because of illness, vacation or leave of absence and transfers among the Company and its Subsidiaries and Affiliates shall not be considered Terminations of Employment.

For purposes of the Plan, a participant's employment shall be deemed to have terminated at the close of business on the day preceding the first date on which he or she is no longer for any reason whatsoever employed by the Company or any of its Subsidiaries or Affiliates.

In addition, certain other terms used herein have definitions given to them in the first place in which they are used.

## **SECTION 2 ADMINISTRATION**

The Plan shall be administered by the Compensation Committee or such other committee of the Board as the Board may from time to time designate (the "Committee"), which shall be composed of not less than two directors, and shall be appointed by and serve at the pleasure of the Board.

The Committee shall have plenary authority to grant Awards pursuant to the terms of the Plan to Eligible Individuals.

Among other things, the Committee shall have the authority, subject to the terms of the Plan:

a. To select the Eligible Individuals to whom Awards may from time to time be granted;

b. To determine whether and to what extent Stock Options, Stock Appreciation Rights, Restricted Stock, Performance Units and other stock-based awards or any combination thereof are to be granted hereunder;

c. To determine the number of shares of Common Stock to be covered by each Award granted hereunder;

d. To determine the terms and conditions of any Award granted hereunder (including, but not limited to, the option price (subject to Section 5(a)), any vesting condition, restriction or limitation (which may be related to the performance of the participant, the Company or any Subsidiary or Affiliate) and any vesting acceleration or forfeiture waiver regarding any Award and the shares of Common Stock relating thereto, based on such factors as the Committee shall determine;

e. To modify, amend or adjust the terms and conditions of any Award, at any time or from time to time, including but not limited to Performance Goals; provided, however, that the Committee may not, subject to the last paragraph of Section 3, reduce the exercise price or cancel and regrant a Stock Option theretofore granted;

f. To determine to what extent and under what circumstances Common Stock and other amounts payable with respect to an Award shall be deferred; and

g. To determine under what circumstances an Award may be settled in cash or Common Stock under Sections 5(i), 6(b)(ii) and 8(b)(iv).

The Committee shall have the authority to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it shall from time to time deem advisable, to interpret the terms and provisions of the Plan and any Award issued under the Plan (and any agreement relating thereto) and to otherwise supervise the administration of the Plan.

The Committee may act only by a majority of its members then in office, except that the Committee may, except to the extent prohibited by applicable law or the applicable rules of a stock exchange, allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any part of its responsibilities and powers to any person or persons selected by it. Any such allocation or delegation may be revoked by the Committee at any time.

Any determination made by the Committee or pursuant to delegated authority pursuant to the provisions of the Plan with respect to any Award shall be made in the sole discretion of the Committee or such delegate at the time of the grant of the Award or, unless in contravention of any express term of the Plan, at any time thereafter. All decisions made by the Committee or any appropriately delegated officer pursuant to the provisions of the Plan shall be final and binding on all persons, including the Company and Plan participants.

Any authority granted to the Committee may also be exercised by the full Board. To the extent that any action taken by the Board conflicts with action taken by the Committee, the Board action shall control.

**SECTION 3**  
**COMMON STOCK SUBJECT TO PLAN**

The maximum number of shares of Common Stock that may be delivered to participants and their beneficiaries under the Plan shall be 2,000,000. Shares subject to an Award under the Plan may be authorized and unissued shares or may be treasury shares.

If any Award is forfeited, or if any Stock Option (and related Stock Appreciation Right, if any) terminates, expires or lapses without being exercised, or if any Stock Appreciation Right is exercised for cash, shares of Common Stock subject to such Awards shall again be available for distribution in connection with Awards under the Plan.

In the event of any change in corporate capitalization (including, but not limited to, a change in the number of shares of Common Stock outstanding), such as a stock split or a corporate transaction, such as any merger, consolidation, separation, including a spin-off, or other distribution of stock or property of the Company, any reorganization (whether or not such reorganization comes within the definition of such term in Section 368 of the Code) or any partial or complete liquidation of the Company, the Committee or Board may make such substitution or adjustments in the aggregate number and kind of shares reserved for issuance under the Plan, in the number, kind and option price of shares subject to outstanding Stock Options, Stock Appreciation Rights and Restricted Stock, in the number and kind of shares subject to other outstanding Awards granted under the Plan and/or such other equitable substitution or adjustments as it may determine to be appropriate in its sole discretion; provided, however, that the number of shares subject to any Award shall always be a whole number. Such adjusted option price shall also be used to determine the amount payable by the Company upon the exercise of any Stock Appreciation Right associated with any Stock Option.

**SECTION 4**  
**ELIGIBILITY**

Awards may be granted under the Plan to Eligible Individuals. No grant shall be made under this Plan to persons who are not Eligible Individuals.

**SECTION 5**  
**STOCK OPTIONS**

Stock Options may be granted alone or in addition to other Awards granted under the Plan. All Stock Options granted under the Plan shall be non-qualified stock options and not incentive stock options as defined under Section 422 of the Code. Any Stock Option granted under the Plan shall be in such form as the Committee may from time to time approve.

The Committee shall have the authority to grant any optionee Stock Options (with or without Stock Appreciation Rights).

Stock Options shall be evidenced by option agreements, the terms and provisions of which may differ. The grant of a Stock Option shall occur on the date the Committee by resolution selects an Eligible Individual to receive a grant of a Stock Option, determines the number of shares of Common Stock to be subject to such Stock Option to be granted to such Eligible Individual and specifies the terms and provisions of the Stock Option. The Company shall notify an Eligible Individual of any grant of a Stock Option, and a written option agreement or agreements shall be duly executed and delivered by the Company to the participant. Such agreement or agreements shall become effective upon execution by the Company and the participant.

Stock Options granted under the Plan shall be subject to the following terms and conditions and shall contain such additional terms and conditions as the Committee shall deem desirable:

a. *Option Price.* The option price per share of Common Stock purchasable under a Stock Option shall be determined by the Committee and set forth in the option agreement, and shall not be less than the Fair Market Value of the Common Stock subject to the Stock Option on the date of grant.

b. *Option Term.* The term of each Stock Option shall be fixed by the Committee, but no Stock Option shall be exercisable more than 10 years after the date the Stock Option is granted.

c. *Exercisability.* Except as otherwise provided herein, Stock Options shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Committee. If the Committee provides that any Stock Option is exercisable only in installments, the Committee may at any time waive such installment exercise provisions, in whole or in part, based on such factors as the Committee may determine. In addition, the Committee may at any time accelerate the exercisability of any Stock Option.

d. *Method of Exercise.* Subject to the provisions of this Section 5, Stock Options may be exercised, in whole or in part, at any time during the option term by giving written notice of exercise to the Company specifying the number of shares of Common Stock subject to the Stock Option to be purchased.

Such notice shall be accompanied by payment in full of the purchase price by certified or bank check or such other instrument as the Company may accept. If approved by the Committee, payment, in full or in part, may also be made in the form of unrestricted Common Stock (by delivery of such shares or by attestation) already owned by the optionee of the same class as the Common Stock subject to the Stock Option (based on the Fair Market Value of the Common Stock on the date the Stock Option is exercised); provided, however, that such already owned shares have been held by the optionee for at least six months at the time of exercise or had been purchased on the open market.

If approved by the Committee, payment in full or in part may also be made by delivering a properly executed exercise notice to the Company, together with a copy of irrevocable instructions to a broker to deliver promptly to the Company the amount of sale or loan proceeds



necessary to pay the purchase price, and, if requested, reduced by the amount of any federal, state, local or foreign withholding taxes. To facilitate the foregoing, the Company may enter into agreements for coordinated procedures with one or more brokerage firms.

No shares of Common Stock shall be issued until full payment therefor has been made. Except as otherwise provided in Section 5(k) below, an optionee shall have all of the rights of a shareholder of the Company holding the class or series of Common Stock that is subject to such Stock Option (including, if applicable, the right to vote the shares and the right to receive dividends), when the optionee has given written notice of exercise, has paid in full for such shares and, if requested, has given the representation described in Section 14(a).

If determined by the Committee at the date of grant of a Stock Option, in the event an optionee who has not incurred a Termination of Employment pays the option price of such Stock Option (in whole or in part) by delivering (or attesting to ownership of) shares of Common Stock previously owned by the optionee, such optionee shall automatically be granted a reload Stock Option (a "Reload Option") for the number of shares of Common Stock used to pay the option price. Unless otherwise determined by the Committee, the Reload Option shall be subject to the same terms and conditions as the Stock Option, except that the Reload Option shall have an option price equal to the Fair Market Value of the Common Stock on the date the Reload Option is granted, expire the same date as the expiration date of the Stock Option so exercised, shall vest and become exercisable 6 months following the date of grant of such Reload Option and shall not have the rights set forth in Section 5(j) hereof. Additional Reload Options may only be granted upon exercise of a Reload Option if the Fair Market Value of the Common Stock on the date of such exercise is 25% or more higher than the Fair Market Value of the Common Stock on the date of grant of the Reload Option being exercised.

e. *Nontransferability of Stock Options.* No Stock Option shall be transferable by the optionee other than (i) by will or by the laws of descent and distribution; or (ii) as otherwise expressly permitted by the Committee including, if so permitted, pursuant to a transfer to such optionee's immediate family, whether directly or indirectly or by means of a trust or partnership or otherwise. For purposes of this Plan, unless otherwise determined by the Committee, "immediate family" shall mean the optionee's children, spouse and grandchildren. All Stock Options shall be exercisable, subject to the terms of this Plan, only by the optionee, the guardian or legal representative of the optionee, or any person to whom such option is transferred pursuant to this paragraph, it being understood that the term "holder" and "optionee" include such guardian, legal representative and other transferee.

f. *Termination by Death.* Unless otherwise determined by the Committee, if an optionee incurs a Termination of Employment by reason of death, any Stock Option held by such optionee may thereafter be exercised, to the extent then exercisable, or on such accelerated basis as the Committee may determine, for a period of one year (or such other period as the Committee may specify in the option agreement) from the date of such death or until the expiration of the stated term of such Stock Option, whichever period is the shorter.

g. *Termination by Reason of Disability or Retirement.* Unless otherwise determined by the Committee, if an optionee incurs a Termination of Employment by reason of Disability or Retirement, any Stock Option held by such optionee may thereafter be exercised by the optionee,

to the extent it was exercisable at the time of termination, or on such accelerated basis as the Committee may determine, for a period of one year (or such other period as the Committee may specify in the option agreement) from the date of such Termination of Employment or until the expiration of the stated term of such Stock Option, whichever period is the shorter; provided, however, that if the optionee dies within such period, any unexercised Stock Option held by such optionee shall, notwithstanding the expiration of such period, continue to be exercisable to the extent to which it was exercisable at the time of death for a period of 12 months from the date of such death or until the expiration of the stated term of such Stock Option, whichever period is the shorter.

h. *Other Termination.* Unless otherwise determined by the Committee: (A) if an optionee incurs a Termination of Employment for Cause, all Stock Options held by such optionee shall thereupon terminate; and (B) if an optionee incurs a Termination of Employment for any reason other than death, Disability, Retirement or for Cause, any Stock Option held by such optionee, to the extent it was then exercisable at the time of termination, or on such accelerated basis as the Committee may determine, may be exercised for the lesser of three months from the date of such Termination of Employment or the balance of such Stock Option's term; provided, however, that if the optionee dies within such three-month period, any unexercised Stock Option held by such optionee shall, notwithstanding the expiration of such three-month period, continue to be exercisable to the extent to which it was exercisable at the time of death for a period of 12 months from the date of such death or until the expiration of the stated term of such Stock Option, whichever period is the shorter.

Notwithstanding any other provision of this Plan to the contrary, in the event an optionee incurs a Termination of Employment other than for Cause during the 24-month period following a Change in Control, any Stock Option held by such optionee may thereafter be exercised by the optionee, to the extent it was exercisable at the time of termination, including on such accelerated basis as provided in Section 11(a), for (x) the longer of (i) one year from such date of termination or (ii) such other period as may be provided in the Plan for such Termination of Employment or as the Committee may provide in the option agreement, or (y) until expiration of the stated term of such Stock Option, whichever period is the shorter.

i. *Cashing Out of Stock Option.* On receipt of written notice of exercise, the Committee may elect to cash out all or part of the portion of the shares of Common Stock for which a Stock Option is being exercised by paying the optionee an amount, in cash or Common Stock, equal to the excess of the Fair Market Value of the Common Stock over the option price times the number of shares of Common Stock for which the Option is being exercised on the effective date of such cash-out.

j. *Change in Control Cash-Out.* Notwithstanding any other provision of the Plan, during the 60-day period from and after a Change in Control (the "Exercise Period"), if the Committee shall determine at the time of grant or thereafter, an optionee shall have the right, whether or not the Stock Option is fully exercisable and in lieu of the payment of the option price for the shares of Common Stock being purchased under the Stock Option and by giving notice to the Company, to elect (within the Exercise Period) to surrender all or part of the Stock Option to the Company and to receive cash, within 5 days of such election, in an amount equal to the amount by which the Change in Control Price per share of Common Stock on the date of such

election shall exceed the exercise price per share of Common Stock under the Stock Option multiplied by the number of shares of Common Stock granted under the Stock Option as to which the right granted under this Section 5(j) shall have been exercised.

k. *Deferral of Option Shares.* The Committee may from time to time establish procedures pursuant to which an optionee may elect to defer, until a time or times later than the exercise of an Option, receipt of all or a portion of the shares of Common Stock subject to such Option and/or to receive cash at such later time or times in lieu of such deferred shares, all on such terms and conditions as the Committee shall determine. If any such deferrals are permitted, then notwithstanding Section 5(d) above, an optionee who elects such deferral shall not have any rights as a stockholder with respect to such deferred shares unless and until shares are actually delivered to the optionee with respect thereto, except to the extent otherwise determined by the Committee.

## **SECTION 6**

### **STOCK APPRECIATION RIGHTS**

a. *Grant and Exercise.* Stock Appreciation Rights may be granted in conjunction with all or part of any Stock Option granted under the Plan. Such rights may be granted either at or after the time of grant of such Stock Option. A Stock Appreciation Right shall terminate and no longer be exercisable upon the termination or exercise of the related Stock Option.

A Stock Appreciation Right may be exercised by an optionee in accordance with Section 6(b) by surrendering the applicable portion of the related Stock Option in accordance with procedures established by the Committee. Upon such exercise and surrender, the optionee shall be entitled to receive an amount determined in the manner prescribed in Section 6(b). Stock Options, which have been so surrendered, shall no longer be exercisable to the extent the related Stock Appreciation Rights have been exercised.

b. *Terms and Conditions.* Stock Appreciation Rights shall be subject to such terms and conditions as shall be determined by the Committee, including the following:

(i) Stock Appreciation Rights shall be exercisable only at such time or times and to the extent that the Stock Options to which they relate are exercisable in accordance with the provisions of Section 5 and this Section 6.

(ii) Upon the exercise of a Stock Appreciation Right, an optionee shall be entitled to receive an amount in cash, shares of Common Stock or both, in value equal to the excess of the Fair Market Value of one share of Common Stock over the option price per share specified in the related Stock Option multiplied by the number of shares in respect of which the Stock Appreciation Right shall have been exercised, with the Committee having the right to determine the form of payment.

(iii) Stock Appreciation Rights shall be transferable only to permitted transferees of the underlying Stock Option in accordance with Section 5(e).

(iv) Upon the exercise of a Stock Appreciation Right, the Stock Option or part thereof to which such Stock Appreciation Right is related shall be deemed to have been exercised for the purpose of the limitation set forth in Section 3 on the number of shares of Common Stock to be issued under the Plan, but only to the extent of the number of shares covered by the Stock Appreciation Right at the time of exercise based on the value of the Stock Appreciation Right at such time.

#### SECTION 7 RESTRICTED STOCK

a. *Administration.* Shares of Restricted Stock may be awarded either alone or in addition to other Awards granted under the Plan. The Committee shall determine the Eligible Individuals to whom and the time or times at which grants of Restricted Stock will be awarded, the number of shares to be awarded to any Eligible Individual, the conditions for vesting, the time or times within which such Awards may be subject to forfeiture and any other terms and conditions of the Awards, in addition to those contained in Section 7(c); provided, however, that, subject to Section 7(c)(i) and Section 11(a)(ii), no shares of Restricted Stock shall vest prior to three years from the date of grant. Notwithstanding the previous sentence, the Committee shall have discretion to permit vesting of shares of Restricted Stock prior to three years from the date of grant in the event of a participant's Termination of Employment by reason of Retirement, Disability or death, or under other limited circumstances if the Committee determines that such earlier vesting is necessary to fulfill a legitimate corporate purpose such as the hiring or retention of a key employee; provided, however, that the Committee shall exercise its discretion (under this Section 7(a) and Section 7(c)(i)) in these other limited circumstances with respect to shares of Restricted Stock which in the aggregate do not exceed 10% of the maximum number of shares of Common Stock authorized for issuance in Section 3.

b. *Awards and Certificates.* Shares of Restricted Stock shall be evidenced in such manner as the Committee may deem appropriate, including book-entry registration or issuance of one or more stock certificates. Any certificate issued in respect of shares of Restricted Stock shall be registered in the name of such participant and shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Award, substantially in the following form:

"The transferability of this certificate and the shares of stock represented hereby are subject to the terms and conditions (including forfeiture) of the GreenPoint Financial Corp. 2001 Stock Plan and a Restricted Stock Agreement. Copies of such Plan and Agreement are on file at the offices of GreenPoint Financial Corp., 90 Park Avenue, New York, New York 10016-1303."

The Committee may require that the certificates evidencing such shares be held in custody by the Company until the restrictions thereon shall have lapsed and that, as a condition of any Award of Restricted Stock, the participant shall have delivered a stock power, endorsed in blank, relating to the Common Stock covered by such Award.

c. *Terms and Conditions.* Shares of Restricted Stock shall be subject to the following terms and conditions:

(i) The Committee may condition the grant or vesting of an Award of Restricted Stock upon the attainment of Performance Goals. Subject to Section 11(a)(ii), no shares of Restricted Stock, the vesting of which is conditioned upon the attainment of Performance Goals, shall vest prior to one year from the date of grant. Notwithstanding the previous sentence, the Committee shall have discretion to permit vesting of shares of Restricted Stock, the vesting of which is conditioned upon the attainment of Performance Goals, prior to one year from the date of grant in the event of a participant's Termination of Employment by reason of Retirement, Disability or death, or under other limited circumstances if the Committee determines that such earlier vesting is necessary to fulfill a legitimate corporate purpose such as the hiring or retention of a key employee; provided, however, that the Committee shall exercise its discretion (under this Section 7(c)(i) and Section 7(a)) in these other limited circumstances with respect to shares of Restricted Stock which in the aggregate do not exceed 10% of the maximum number of shares of Common Stock authorized for issuance in Section 3. The Committee may also condition the grant or vesting of an Award of Restricted Stock upon the continued service of the participant. The conditions for grant or vesting and the other provisions of Restricted Stock Awards (including without limitation any applicable Performance Goals) need not be the same with respect to each recipient. The Committee may at any time, in its sole discretion, accelerate or waive, in whole or in part, any of the foregoing restrictions, other than the restriction period minimums described in Section 7(a) and this Section 7(c)(i).

(ii) Subject to the provisions of the Plan and the Restricted Stock referred to in Section 7(c)(vi), during the period, if any, set by the Committee, commencing with the date of such Award for which such participant's continued service is required (the "Restriction Period"), and until the later of (A) the expiration of the Restriction Period and (B) the date the applicable Performance Goals (if any) are satisfied, the participant shall not be permitted to sell, assign, transfer, pledge or otherwise encumber shares of Restricted Stock.

(iii) Except as provided in Section 7(c)(i) through 7(c)(iii), the Restricted Stock Agreement, or as otherwise determined by the Committee, the participant shall have, with respect to the shares of Restricted Stock, all of the rights of a stockholder of the Company holding the class or series of Common Stock that is the subject of the Restricted Stock, including, if applicable, the right to vote the shares and the right to receive any cash dividends. If so determined by the Committee in the applicable Restricted Stock Agreement and subject to Section 14(e) of the Plan, (A) cash dividends on the class or series of Common Stock that is the subject of the Restricted Stock Award shall be automatically deferred and reinvested in additional Restricted Stock, held subject to the vesting of the underlying Restricted Stock, or held subject to meeting Performance Goals applicable only to dividends, and (B) dividends payable in Common Stock shall be paid in the form of Restricted Stock of the same class as the Common Stock with which such dividend was paid, held subject to the vesting of the underlying Restricted Stock, or held subject to meeting Performance Goals applicable only to dividends.

(iv) Except to the extent otherwise provided in the applicable Restricted Stock Agreement or Section 7(c)(i), 7(c)(ii) or 11(a)(ii), upon a participant's Termination of

Employment for any reason during the Restriction Period or before the applicable Performance Goals are satisfied, all shares still subject to restriction shall be forfeited by the participant; provided, however, that the Committee shall have the discretion to waive, in whole or in part, any or all remaining restrictions (other than the restriction period minimums set forth in Sections 7(a) and 7(c)(i) with respect to any or all of such participant's shares of Restricted Stock.

(v) If and when any applicable Performance Goals are satisfied and the Restriction Period expires without a prior forfeiture of the Restricted Stock, unlegended certificates for such shares shall be delivered to the participant upon surrender of the legended certificates.

(vi) Each Award shall be confirmed by, and be subject to, the terms of a Restricted Stock Agreement.

## SECTION 8 PERFORMANCE UNITS

a. *Administration.* Performance Units may be awarded either alone or in addition to other Awards granted under the Plan. The Committee shall determine the Eligible Individuals to whom and the time or times at which Performance Units shall be awarded, the number of Performance Units to be awarded to any Eligible Individual, the duration of the Award Cycle and any other terms and conditions of the Award, in addition to those contained in Section 8(b).

b. *Terms and Conditions.* Performance Units Awards shall be subject to the following terms and conditions:

(i) The Committee may condition the settlement of Performance Units Awards upon the attainment of Performance Goals. The Committee may also condition the settlement thereof upon the continued service of the participant. The provisions of such Awards (including without limitation any applicable Performance Goals) need not be the same with respect to each recipient. Subject to the provisions of the Plan and the Performance Units Agreement referred to in Section 8(b)(v), Performance Units may not be sold, assigned, transferred, pledged or otherwise encumbered during the Award Cycle. Subject to Section 11(a)(iii), no Performance Units may be earned prior to three years from the date of grant (or one year from the date of grant if the settlement thereof is conditioned upon the attainment of Performance Goals). Notwithstanding the previous sentence, the Committee shall have the discretion to permit Performance Units to be earned and payable in full (or such other portions as the Committee may determine) in the event the participant's employment is terminated by reason of Disability or death, or upon other types of Termination of Employment that the Committee may specify.

(ii) Except to the extent otherwise provided in the applicable Performance Units Agreement or Section 8(b)(i) or (iii) or 11(a)(iii), upon a participant's Termination of Employment for any reason during the Award Cycle or before any applicable Performance Goals are satisfied, all rights to receive cash or stock in settlement of the Performance Units shall be forfeited by the participant; provided, however, that the

Committee shall have the discretion to waive, in whole or in part, any or all remaining payment limitations (other than the restriction period minimums set forth in Section 8(b)(i)) with respect to any or all of such participant's Performance Units.

(iii) A participant may elect to further defer receipt of cash or shares in settlement of Performance Units for a specified period or until a specified event, subject in each case to the Committee's approval and to such terms as are determined by the Committee. Subject to any exceptions adopted by the Committee, such election must generally be made prior to commencement of the final 12-month period of the Award Cycle for the Performance Units in question.

(iv) At the expiration of the Award Cycle, the Committee shall evaluate the Company's performance in light of any Performance Goals for such Award, and shall determine the number of Performance Units granted to the participant which have been earned, and the Committee shall then cause to be delivered (A) a number of shares of Common Stock equal to the number of Performance Units determined by the Committee to have been earned, or (B) cash equal to the Fair Market Value of such number of shares of Common Stock to the participant, as the Committee shall elect (subject to any deferral pursuant to Section 8(b)(iii)).

(v) Each Award shall be confirmed by, and be subject to, the terms of a Performance Units Agreement.

## **SECTION 9 TAX OFFSET BONUSES**

At the time an Award is made hereunder or at any time thereafter, the Committee may grant to the participant receiving such Award the right to receive a cash payment in an amount specified by the Committee, to be paid at such time or times (if ever) as the Award results in compensation income to the participant, for the purpose of assisting the participant to pay the resulting taxes, all as determined by the Committee and on such other terms and conditions as the Committee shall determine.

## **SECTION 10 OTHER STOCK-BASED AWARDS**

Other Awards of Common Stock and other Awards that are valued in whole or in part by reference to, or are otherwise based upon, Common Stock, including (without limitation) dividend equivalents, convertible debentures, and restricted stock units (i.e., rights to receive shares at a specified future date, subject to such vesting, forfeiture, deferral of delivery, and other terms and conditions as the Committee may specify) may be granted either alone or in conjunction with other Awards granted under the Plan.

## SECTION 11

### CHANGE IN CONTROL PROVISIONS

a. *Impact of Event.* Notwithstanding any other provision of the Plan to the contrary, in the event of a Change in Control:

(i) Any Stock Options and Stock Appreciation Rights outstanding as of the date such Change in Control is determined to have occurred, and which are not then exercisable and vested, shall become fully exercisable and vested to the full extent of the original grant.

(ii) The restrictions and deferral limitations applicable to any Restricted Stock outstanding as of the date of such Change in Control shall lapse, and such Restricted Stock shall become free of all restrictions and become fully vested and transferable to the full extent of the original grant.

(iii) All Performance Units outstanding as of the date of such Change in Control shall be considered to be earned and payable in full based upon maximum performance, and any deferral or other restriction shall lapse and such Performance Units shall be settled in cash (or shares of Common Stock at the Committee's election) as promptly as is practicable.

(iv) The Committee may also make additional adjustments and/or settlements of outstanding Awards as it deems appropriate and consistent with the Plan's purposes.

b. *Definition of Change in Control.* For purposes of the Plan, a "Change in Control" shall mean the happening of any of the following events:

(i) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (A) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (1) any acquisition directly from the Company, (2) any acquisition by the Company, (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company or (4) any acquisition by any corporation pursuant to a transaction which complies with clauses (A), (B) and (C) of subsection (iii) of this Section 11(b); or

(ii) Individuals who, as of the effective date of the Plan, constitute the Board (the "Incumbent Board") cease for any reason not to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the effective date of the Plan whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors then



comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(iii) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a "Business Combination"), in each case, unless, following such Business Combination, (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (B) no Person (excluding any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (C) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(iv) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

c. *Change in Control Price.* For purposes of the Plan, "Change in Control Price" means the higher of (i) the highest reported sales price, regular way, of a share of Common Stock in any transaction reported on the New York Stock Exchange Composite Tape or other national exchange on which such shares are listed or on Nasdaq during the 60-day period prior to and including the date of a Change in Control or (ii) if the Change in Control is the result of a tender or exchange offer or a Corporate Transaction, the highest price per share of Common Stock paid in such tender or exchange offer or Corporate Transaction. To the extent that the consideration paid in any such transaction described above consists all or in part of securities or other non-cash consideration, the value of such securities or other non-cash consideration shall be determined in the sole discretion of the Board.

## SECTION 12

### TERM, AMENDMENT AND TERMINATION

Unless earlier terminated by action of the Board, the Plan will terminate at such time as no shares of Common Stock remain available for delivery in connection with Awards and the Company has fulfilled all of its obligations with respect to Awards granted under the Plan.

The Board may amend, alter, or discontinue the Plan, but no amendment, alteration or discontinuation shall be made which would impair the rights of an optionee under a Stock Option or a recipient of a Stock Appreciation Right, Restricted Stock Award, Performance Unit Award or other stock-based Award theretofore granted without the optionee's or recipient's consent, except such an amendment made to comply with applicable law, stock exchange rules or accounting rules. Subject to the repricing restrictions in Section 2(e)(i) and the restriction period minimums described in Sections 7(a), 7(c)(i) and 8(b)(i), the Committee may amend the terms of any Stock Option or other Award theretofore granted, prospectively or retroactively, but no such amendment shall impair the rights of any holder without the holder's consent except such an amendment made to cause the Plan or Award to comply with applicable law, stock exchange rules or accounting rules. Subject to the above provisions, the Board shall have authority to amend the Plan to take into account changes in law and tax and accounting rules as well as other developments, and to grant Awards which qualify for beneficial treatment under such rules without stockholder approval.

## SECTION 13

### UNFUNDED STATUS OF PLAN

It is presently intended that the Plan constitute an "unfunded" plan for incentive and deferred compensation. The Committee may authorize the creation of trusts or other arrangements to meet the obligations created under the Plan to deliver Common Stock or make payments; provided, however, that unless the Committee otherwise determines, the existence of such trusts or other arrangements is consistent with the "unfunded" status of the Plan.

## SECTION 14

### GENERAL PROVISIONS

a. The Committee may require each person purchasing or receiving shares pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the shares without a view to the distribution thereof. The certificates for such shares may include any legend that the Committee deems appropriate to reflect any restrictions on transfer.

Notwithstanding any other provision of the Plan or agreements made pursuant thereto, the Company shall not be required to issue or deliver any certificate or certificates for shares of Common Stock under the Plan prior to fulfillment of all of the following conditions:

- (1) Listing or approval for listing upon notice of issuance, of such shares on the New York Stock Exchange, Inc., or such other securities exchange as may at the time be the principal market for the Common Stock;

(2) Any registration or other qualification of such shares of the Company under any state or federal law or regulation, or the maintaining in effect of any such registration or other qualification which the Committee shall, in its absolute discretion upon the advice of counsel, deem necessary or advisable; and

(3) Obtaining any other consent, approval, or permit from any state or federal governmental agency, which the Committee shall, in its absolute discretion after receiving the advice of counsel, determine to be necessary or advisable.

b. Nothing contained in the Plan shall prevent the Company or any Subsidiary or Affiliate from adopting other or additional compensation arrangements for its employees.

c. The Plan shall not constitute a contract of employment, and adoption of the Plan shall not confer upon any employee any right to continued employment, nor shall it interfere in any way with the right of the Company or any Subsidiary or Affiliate to terminate the employment of any employee at any time.

d. No later than the date as of which an amount first becomes includible in the gross income of the participant for federal income tax purposes with respect to any Award under the Plan, the participant shall pay to the Company, or make arrangements satisfactory to the Company regarding the payment of, any federal, state, local or foreign taxes of any kind required by law to be withheld with respect to such amount. Unless otherwise determined by the Company, withholding obligations may be settled with Common Stock, including Common Stock that is part of the Award that gives rise to the withholding requirement. The obligations of the Company under the Plan shall be conditional on such payment or arrangements, and the Company and its Subsidiaries and Affiliates shall, to the extent permitted by law, have the right to deduct any such taxes from any payment otherwise due to the participant. The Committee may establish such procedures as it deems appropriate, including making irrevocable elections, for the settlement of withholding obligations with Common Stock.

e. Reinvestment of dividends in additional Restricted Stock at the time of any dividend payment shall only be permissible if sufficient shares of Common Stock are available under Section 3 for such reinvestment (taking into account then outstanding Stock Options and other Awards).

f. The Committee shall establish such procedures as it deems appropriate for a participant to designate a beneficiary to whom any amounts payable in the event of the participant's death are to be paid or by whom any rights of the participant, after the participant's death, may be exercised.

g. In the case of a grant of an Award to any employee of a Subsidiary of the Company, the Company may, if the Committee so directs, issue or transfer the shares of Common Stock, if any, covered by the Award to the Subsidiary, for such lawful consideration as the Committee may specify, upon the condition or understanding that the Subsidiary will transfer the shares of Common Stock to the employee in accordance with the terms of the Award specified by the Committee pursuant to the provisions of the Plan. All shares of Common Stock underlying Awards that are forfeited or canceled should revert to the Company.

h. The Plan and all Awards made and actions taken thereunder shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws.

Except as otherwise provided in Section 5(e), 6(b)(iii), or 14(f) or by the Committee, Awards under the Plan are not transferable except by will or by the laws of descent and distribution.

j. In the event an Award is granted to an Eligible Individual who is employed or providing services outside the United States and who is not compensated from a payroll maintained in the United States, the Committee may, in its sole discretion, modify the provisions of the Plan as they pertain to such individual to comply with applicable foreign law or custom, including in order to provide benefits under the Award comparable to those accruing to a participant providing services in the United States.

k. Notwithstanding any other Plan provision, (A) the Committee's authority under the Plan is limited to the extent necessary to ensure that any Option or other Award of a type that the Committee has intended to be subject to fixed accounting with a measurement date at the date of grant or the date performance conditions are satisfied under APB 25 shall not become subject to "variable" accounting or to measurement of accounting expense at some later date solely due to the existence of such authority, unless the Committee specifically determines that the authority shall remain in force and the Award shall be subject to such "variable" accounting, and (B), if any right granted under the Plan, including pursuant to Section 5(j), would make a Change in Control transaction ineligible for pooling-of-interests accounting under APB No. 16 that but for such rights would otherwise be eligible for such accounting treatment, the Committee shall have the ability to substitute for the cash payable pursuant to such right Common Stock with a Fair Market Value (as of the date of such election) equal to the cash that would otherwise be payable hereunder or, if necessary to preserve such accounting treatment, otherwise modify or eliminate such right.

## **SECTION 15**

### **EFFECTIVE DATE OF PLAN**

The Plan shall be effective as of the date it is adopted by the Board.

## GREENPOINT FINANCIAL CORP.

NON-EMPLOYEE DIRECTORS  
STOCK OPTION PLAN**SECTION 1. Purpose; Definitions.**

The purpose of the Plan is to provide compensation to Non-Employee Directors in the form of Stock Options.

For purposes of the Plan, the following terms are defined as set forth below:

“*Board*” means the Board of Directors of the Company.

“*Change of Control*” means any of the following:

a. the acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (a “Person”), of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (i) the then outstanding shares of common stock of the Company (the “Outstanding Company Common Stock”) or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Outstanding Company Voting Securities”); provided, however, that for purposes of this subsection (a), the following acquisitions shall not constitute a Change of Control: (i) any acquisition directly from the Company, (ii) any acquisition by the Company, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company or (iv) any acquisition by any corporation pursuant to a transaction which complies with clauses (i), (ii) and (iii) of paragraph c; or

b. individuals who, as of the date hereof, constitute the Board (the “Incumbent Board”) cease for any reason not to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company’s shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

c. consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a “Business Combination”), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were

the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (ii) no Person (excluding any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

d. approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.

"Company" means GreenPoint Financial Corp., a Delaware corporation.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor thereto.

"Fair Market Value" means as of any given date, the closing price of the Stock on the National Association of Securities Dealers, Inc. Automated Quotation System or on any national exchange on which the Stock is listed. If there is no regular public trading market for such Stock, the Fair Market Value of the Stock shall be determined by the Committee (as defined in Section 2(a)) in good faith.

"Non-Employee Director" means a person who as of any applicable date is a member of the Board and is not an officer or employee of the Company or any subsidiary of the Company.

"Non-Qualified Stock Option" means a Stock Option that does not meet the requirements of Section 422 of the Code.

“Original Non-Employee Director” means a Non-Employee Director who was a Non-Employee Director on January 28, 1994.

“Participant” means a Non-Employee Director who is granted a Stock Option hereunder.

“Plan” means the GreenPoint Financial Corp. Non-Employee Directors Stock Option Plan, as set forth herein and as hereinafter amended from time to time.

“Stock” means the Common Stock, par value \$.01 per share, of the Company.

“Stock Option” means an option to purchase shares of Stock.

“Termination of Directorship” means the date upon which any Participant ceases to be a member of the Board for any reason whatsoever.

In addition, certain other terms used herein have definitions given to them in the first place in which they are used.

## **SECTION 2. Administration.**

a. *Committee.* The Plan shall be administered by the Compensation Committee of the Board (the “Committee”), which shall consist of not less than three members of the Board, each of whom shall be a “non-employee director” as that term is used in Rule 16b-3 as promulgated by the Securities and Exchange Commission or any successor agency under Section 16(b) of the Exchange Act (“Rule 16b-3”). Grants of Stock Options to Participants under the Plan and the amount, nature and timing of the grants shall be automatically determined as described in Section 5 and shall not be subject to the determination of the Committee.

b. *Authority of the Committee.* Subject to certain specific limitations and restrictions set forth in the Plan, the Committee shall have full and final authority to interpret the Plan; to prescribe, amend and rescind rules and regulations, if any, relating to the Plan; and to make all determinations necessary or advisable for the administration of the Plan. No member of the Committee shall be liable for anything done or omitted to be done by him or by any other member of the Committee in connection with the Plan, except for his own willful misconduct or gross negligence. All decisions which are made by the Committee with respect to interpretation of the terms of the Plan and with respect to any questions or disputes arising under the Plan shall be final and binding on the Company and the Participants, their heirs or beneficiaries. The Committee shall not be empowered to take any action, whether or not otherwise authorized under the Plan, which would result in any Director of the Company failing to qualify as a “non-employee director”.

c. *Acts of the Committee.* A majority of the Committee shall constitute a quorum and the acts of a majority of the members present at any meeting at which a quorum is present, or acts approved in writing by all members of the Committee without a meeting, shall be the acts of the Committee.

### **SECTION 3. Stock Subject to Plan.**

Subject to adjustment as provided herein, there may be granted under the Plan an aggregate of not more than 1,450,000 shares of Stock.

In the event of any merger, reorganization, consolidation, recapitalization, stock dividend, stock split, extraordinary distribution with respect to the Stock or other change in corporate structure affecting the Stock, the aggregate number of shares of Stock reserved for issuance under the Plan and the number and option price of shares of Stock subject to outstanding Stock Options shall be appropriately adjusted; *provided, however*, that the number of shares subject to any Stock Option shall always be a whole number.

### **SECTION 4. Eligibility.**

Only individuals who are Non-Employee Directors are eligible to be granted Stock Options under the Plan.

### **SECTION 5. Stock Options.**

a. *Initial Grants.* On January 28, 1995, each Original Non-Employee Director shall be granted a Non-Qualified Stock Option to acquire 100,000 shares of Stock at a price equal to the Fair Market Value at the time of grant of the shares of Stock subject to such Non-Qualified Stock Option (the "Special Grant"). Each Non-Employee Director, who is not an Original Non-Employee Director, shall initially receive on the date the stockholders of the Company approve the Plan, or within thirty days after initial election to office, a Non-Qualified Stock Option to purchase 10,000 shares of Stock at a price equal to the Fair Market Value at the time of the grant of the shares of Stock subject to such Non-Qualified Stock Option (the "Initial Grant").

b. *Annual Grants.* Prior to termination of the Plan pursuant to Section 6, on the day following the Company's Annual Meeting commencing with its Annual Meeting in 1995, or in the case of Original Non-Employee Directors commencing with its Annual Meeting in 1997 (the "first annual grant date"), such Non-Employee Director shall receive an additional Non-Qualified Stock Option to purchase 4,000 shares of Stock at a price equal to the Fair Market Value at the time of the grant of the shares of Stock subject to such additional Non-Qualified Stock Option, provided such individual shall continue to be a Non-Employee Director.

c. *Insufficient Shares of Stock.* In the event that the number of shares of Stock available for grant under the Plan is insufficient to make all grants required to be made on a given date, then all Non-Employee Directors entitled to a grant on such date shall share ratably in the number of Stock Options on shares available for grant under the Plan.

d. *Additional Terms and Conditions.* Stock Options granted under the Plan other than the Special Grant shall be subject to the following terms and conditions in addition to those set forth above:

1. *Option Term.* The term of each Stock Option shall be 10 years from the date the Stock Option is granted.



2. *Exercisability.* Other than the Initial Grant and the Special Grant, Stock Options shall be fully exercisable one year after the date of grant.

All Stock Options shall become immediately exercisable upon the death, retirement or disability of a Non-Employee Director or upon a Change of Control of the Company.

3. Stock Options subject to the Initial Grant shall become exercisable with respect to 6,000 shares, one year after the date of grant, and with respect to an additional 2,000 shares on each of the second and third anniversaries of the date of grant. Stock Options subject to the Special Grant shall be subject to the terms and conditions set forth on Annex A.

4. *Method of Exercise.* Subject to the provisions of this Section 5, Stock Options may be exercised, in whole or in part, at any time during the option term by giving written notice of exercise to the Company specifying the number of shares of Stock subject to the Stock Option to be purchased.

Such notice shall be accompanied by payment in full of the purchase price by certified or bank check or such other instrument as the Company may accept. Stock Options may be exercised pursuant to a "cashless exercise" (*i.e.*, payment of the purchase price may be made, in whole or in part, through the surrender of shares of Common Stock at the Fair Market Value of such shares on the date of surrender), in accordance with applicable securities laws.

No shares of Stock shall be issued until full payment therefor has been made. An optionee shall have all of the rights of a stockholder of the Company holding the class or series of Stock that is subject to such Stock Option (including, if applicable, the right to vote the shares and the right to receive dividends), when the optionee has given written notice of exercise, has paid in full for such shares and, has given the representation described in Section 7(a).

5. *Non-transferability of Stock Options.* No Stock Option shall be transferable by the optionee other than (i) by will or by the laws of descent and distribution; (ii) as otherwise expressly permitted by the Committee including, if so permitted, pursuant to a transfer to such optionee's immediate family, whether directly or indirectly or by means of a trust or partnership or otherwise; or (iii) pursuant to a qualified domestic relations order (as defined in the Code or the Employee Retirement Income Security Act of 1974 ("ERISA")). For purposes of this Plan, unless otherwise determined by the Committee, "immediate family" shall mean the optionee's children, spouse and grandchildren. All Stock Options shall be exercisable, subject to the terms of this Plan, only by the optionee, the guardian or legal representative of the optionee, or any person to whom such Stock Option is transferred pursuant to this paragraph, it being understood that the term "optionee" includes such guardian, legal representative and other transferee.

6. *Termination.* If a Termination of Directorship occurs for any reason, any Stock Option held by such Participant shall continue to be exercisable, in accordance with their terms and may be exercised for the balance of such Stock Option's term.

**SECTION 6. Term, Amendment and Termination.**

The Plan will terminate on December 31, 2004. Under the Plan, Stock Options outstanding as of December 31, 2004 shall not be affected or impaired by the termination of the Plan.

The Board may amend, alter, or discontinue the Plan, but no amendment, alteration or discontinuation shall be made which would (a) impair the rights of an optionee under a Stock Option without the optionee's consent, except such an amendment made to cause the Plan to qualify for the exemption provided by Rule 16b-3, or (b) disqualify the Plan from the exemption provided by Rule 16b-3. In addition, (a) no amendment shall be made without the approval of the Company's stockholders to the extent such approval is required by law or agreement and (b) the Plan shall not be amended more often than once every six months, other than to comport with changes in the Code, ERISA, or the rules thereunder.

**SECTION 7. General Provisions.**

a. Unless the shares have been registered under the Securities Act of 1933, as amended, each person purchasing or receiving shares of Stock pursuant to a Stock Option shall represent to and agree with the Company in writing that such person is acquiring the shares of Stock without a view to the distribution thereof. The certificates for such shares of Stock shall include an appropriate legend to reflect the restrictions on transfer.

b. Nothing contained in the Plan shall prevent the Company or any subsidiary from adopting other or additional compensation arrangements for its Non-Employee Directors.

c. No later than the date as of which an amount first becomes includible in the gross income of the Participant for Federal income tax purposes with respect to any Stock Option awarded under the Plan, the Participant shall pay to the Company, or make arrangements satisfactory to the Company regarding the payment of, any Federal, state, local or foreign taxes of any kind required by law to be withheld with respect to such amount. Withholding obligations may, at the election of the optionee (which election shall be subject to compliance with requirements of Rule 16b-3), be settled with Stock, including Stock that is part of the Stock Option that gives rise to the withholding requirement. The obligations of the Company under the Plan shall be conditional on such payment or arrangements, and the Company shall, to the extent permitted by law, have the right to deduct any such taxes from any payment otherwise due to the Participant.

d. The Plan and all Stock Options awarded and actions taken thereunder shall be governed by and construed in accordance with the laws of the State of Delaware.

**SECTION 8. Effective Date of Plan.**

The Plan shall be adopted by the Board and presented to stockholders of the Company for their approval. Stock Options may be granted prior to such approval but are contingent upon such approval being obtained.

**ANNEX A**  
**to**  
**NON-EMPLOYEE DIRECTORS**  
**STOCK OPTION PLAN**

Options will become exercisable during the first three years after the date of grant in accordance with the following formula:

$$\frac{\text{Years of Board Service}}{\text{Years of Board Service} + \text{Option Term}}$$

multiplied by the total number of options (the result of the foregoing, the "Formula Result"); provided, however, that if the Formula Result as calculated above is less than 30,000 options, the Formula Result will be deemed to be 30,000 options. The Formula Result is then divided by three in order to determine the number of options that vest each year for the first three years. All options unexercisable after three years from the date of grant will become exercisable pro rata over years four through ten (subject to an adjustment in year ten to take into account rounding in prior years).

Thus, Original Non-Employee Directors will have their options become exercisable as follows:

Director	Number of Options Becoming Exercisable	
	Years 1-3	4-10
Neumeyer	22,222	4,762
O'Rourke	24,560	3,760
Berman	23,808	4,082
Uhl	17,460	6,802
McLane	17,460	6,802
Heubner	16,666	7,142
Vizza	10,000	10,000
Zimmerman	10,000	10,000
Quinn	14,814	7,936
Puryear	10,000	10,000
McQuade	10,000	10,000
Jackson	10,000	10,000

All options shall become exercisable immediately upon a Change of Control, or death, disability or retirement on or after January 28, 2000. In the event of death, disability or retirement prior to January 28, 2000, one-half all of unexercisable options shall become immediately exercisable, with all remaining options becoming exercisable pro rata over the remaining option term.

## GREENPOINT FINANCIAL CORP.

NON-EMPLOYEE DIRECTORS  
2001 STOCK OPTION PLAN

## SECTION 1. Purpose; Definitions.

The purpose of the Plan is to provide compensation to Non-Employee Directors in the form of Stock Options.

For purposes of the Plan, the following terms are defined as set forth below:

“Board” means the Board of Directors of the Company.

“Change of Control” means any of the following:

a. the acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a “Person”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (i) the then outstanding shares of common stock of the Company (the “Outstanding Company Common Stock”) or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Outstanding Company Voting Securities”); provided, however, that for purposes of this subsection (a), the following acquisitions shall not constitute a Change of Control: (A) any acquisition directly from the Company, (B) any acquisition by the Company, (C) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company or (D) any acquisition by any corporation pursuant to a transaction which complies with clauses (i), (ii) and (iii) of paragraph c; or

b. individuals who, as of the effective date of the Plan, constitute the Board (the “Incumbent Board”) cease for any reason not to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the effective date of the Plan whose election, or nomination for election by the Company’s shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

c. consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a “Business Combination”), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of

common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (ii) no Person (excluding any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

d. approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.

“Company” means GreenPoint Financial Corp., a Delaware corporation.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and any successor thereto.

“Fair Market Value” means as of any given date, the closing price of the Stock on the New York Stock Exchange or on any national exchange on which the Stock is listed. If there is no regular public trading market for such Stock, the Fair Market Value of the Stock shall be determined by the Committee (as defined in Section 2(a)) in good faith.

“Non-Employee Director” means a person who as of any applicable date is a member of the Board and is not an officer or employee of the Company or any subsidiary of the Company.

“Non-Qualified Stock Option” means a Stock Option that does not meet the requirements of Section 422 of the Code.

“Participant” means a Non-Employee Director who is granted a Stock Option hereunder.

“Plan” means the GreenPoint Financial Corp. Non-Employee Directors 2001 Stock Option Plan, as set forth herein and as hereinafter amended from time to time.

“Stock” means the common stock, par value \$.01 per share, of the Company.

“Stock Option” means an option to purchase shares of Stock.

“Termination of Directorship” means the date upon which any Participant ceases to be a member of the Board for any reason whatsoever.

In addition, certain other terms used herein have definitions given to them in the first place in which they are used.

## **SECTION 2. Administration.**

a. *Committee.* The Plan shall be administered by the Compensation Committee of the Board (the “Committee”), which shall consist of not less than three members of the Board, each of whom shall be a “non-employee director” as that term is used in Rule 16b-3 as promulgated by the Securities and Exchange Commission or any successor agency under Section 16(b) of the Exchange Act (“Rule 16b-3”). Grants of Stock Options to Participants under the Plan and the amount, nature and timing of the grants shall be automatically determined as described in Section 5 and shall not be subject to the determination of the Committee.

b. *Authority of the Committee.* Subject to certain specific limitations and restrictions set forth in the Plan, the Committee shall have full and final authority to interpret the Plan; to prescribe, amend and rescind rules and regulations, if any, relating to the Plan; and to make all determinations necessary or advisable for the administration of the Plan. No member of the Committee shall be liable for anything done or omitted to be done by him or her or by any other member of the Committee in connection with the Plan, except for his or her own willful misconduct or gross negligence. All decisions which are made by the Committee with respect to interpretation of the terms of the Plan and with respect to any questions or disputes arising under the Plan shall be final and binding on the Company and the Participants, their heirs or beneficiaries. The Committee shall not be empowered to take any action, whether or not otherwise authorized under the Plan, which would result in any Director of the Company failing to qualify as a “non-employee director”.

c. *Acts of the Committee.* A majority of the Committee shall constitute a quorum and the acts of a majority of the members present at any meeting at which a quorum is present, or acts approved in writing by all members of the Committee without a meeting, shall be the acts of the Committee.

## **SECTION 3. Stock Subject to Plan.**

Subject to adjustment as provided herein, there may be granted under the Plan an aggregate of not more than 275,000 shares of Stock, which number includes 12,000 of the shares of Stock remaining available for awards as of the date of adoption of the Plan under the Company’s Non-Employee Directors Stock Option Plan.

In the event of any change in corporate capitalization (including, but not limited to, a change in the number of shares of Stock outstanding), such as a stock split or a corporate transaction, such as any merger, consolidation, separation, including a spin-off, or other

distribution of stock or property of the Company, any reorganization (whether or not such reorganization comes within the definition of such term in Section 368 of the Code) or any partial or complete liquidation of the Company, the Committee or Board may make such substitution or adjustments in the aggregate number of shares of Stock reserved for issuance under the Plan, and the number and option price of shares of Stock subject to outstanding Stock Options, and/or such other equitable substitution or adjustments as it may determine to be appropriate in its sole discretion; *provided, however*, that the number of shares subject to any Stock Option shall always be a whole number.

#### **SECTION 4. Eligibility.**

Only individuals who are Non-Employee Directors are eligible to be granted Stock Options under the Plan.

#### **SECTION 5. Stock Options.**

a. *Initial Grants.* Each Non-Employee Director shall initially receive, within thirty days after initial election to office, a Non-Qualified Stock Option to purchase 10,000 shares of Stock at a price equal to the Fair Market Value at the time of the grant of the shares of Stock subject to such Non-Qualified Stock Option (the "Initial Grant").

b. *Annual Grants.* Prior to termination of the Plan pursuant to Section 6, on the day following the Company's Annual Meeting commencing with its Annual Meeting in 2001, such Non-Employee Director shall receive a Non-Qualified Stock Option to purchase 4,000 shares of Stock at a price equal to the Fair Market Value at the time of the grant of the shares of Stock subject to such Non-Qualified Stock Option, provided such individual shall continue to be a Non-Employee Director.

c. *Insufficient Shares of Stock.* In the event that the number of shares of Stock available for grant under the Plan is insufficient to make all grants required to be made on a given date, then all Non-Employee Directors entitled to a grant on such date shall share ratably in the number of Stock Options on shares available for grant under the Plan.

d. *Additional Terms and Conditions.* Stock Options granted under the Plan shall be subject to the following terms and conditions in addition to those set forth above:

1. *Option Term.* The term of each Stock Option shall be 10 years from the date the Stock Option is granted.
2. *Exercisability.* Other than the Initial Grant, Stock Options shall be fully exercisable one year after the date of grant. Stock Options subject to the Initial Grant shall become exercisable with respect to 6,000 shares, one year after the date of grant, and with respect to an additional 2,000 shares on each of the second and third anniversaries of the date of grant.

All Stock Options shall become immediately exercisable upon the death, retirement or disability of a Non-Employee Director or upon a Change of Control of the Company.

3. *Method of Exercise.* Subject to the provisions of this Section 5, Stock Options may be exercised, in whole or in part, at any time during the option term by giving written notice of exercise to the Company specifying the number of shares of Stock subject to the Stock Options to be purchased.  
Such notice shall be accompanied by payment in full of the purchase price by certified or bank check or such other instrument as the Company may accept. Stock Options may be exercised pursuant to a “cashless exercise” of a Stock Option (i.e., payment of the purchase price may be made, in whole or in part, through the surrender of shares of Common Stock at the Fair Market Value of such shares on the date of surrender) in accordance with applicable securities laws.  
No shares of Stock shall be issued until full payment therefor has been made. An optionee shall have all of the rights of a stockholder of the Company holding the class or series of Stock that is subject to such Stock Option (including, if applicable, the right to vote the shares and the right to receive dividends), when the optionee has given written notice of exercise, has paid in full for such shares and, has given the representation described in Section 7(a).
4. *Non-transferability of Stock Options.* No Stock Option shall be transferable by the optionee other than (i) by will or by the laws of descent and distribution; (ii) as otherwise expressly permitted by the Committee including, if so permitted, pursuant to a transfer to such optionee’s immediate family, whether directly or indirectly or by means of a trust or partnership or otherwise; or (iii) pursuant to a qualified domestic relations order (as defined in the Code or ERISA). For purposes of this Plan, unless otherwise determined by the Committee, “immediate family” shall mean the optionee’s children, spouse and grandchildren. All Stock Options shall be exercisable, subject to the terms of this Plan, only by the optionee, the guardian or legal representative of the optionee, or any person to whom such Stock Option is transferred pursuant to this paragraph, it being understood that the term “optionee” includes such guardian, legal representative and other transferee.
5. *Termination.* If a Termination of Directorship occurs for any reason, any Stock Option held by such Participant shall continue to be exercisable, in accordance with its terms and may be exercised for the balance of such Stock Option’s term.

#### **SECTION 6. Term, Amendment and Termination.**

The Plan will terminate on the tenth anniversary of the effective date of the Plan. Under the Plan, Stock Options outstanding as of such date shall not be affected or impaired by the termination of the Plan.

The Board may amend, alter, or discontinue the Plan, but no amendment, alteration or discontinuation shall be made which would (a) impair the rights of an optionee under a Stock Option without the optionee’s consent, except such an amendment made to comply with



applicable law, stock exchange rules or accounting rules, or (b) disqualify the Plan from the exemption provided by Rule 16b-3. In addition, (a) no amendment shall be made without the approval of the Company's stockholders to the extent such approval is required by applicable law or stock exchange rules and (b) the Plan shall not be amended more often than once every six months, other than to comport with changes in the Code, ERISA, or the rules thereunder.

Subject to the above provisions, the Board shall have the authority to amend the Plan to take into account changes in law and accounting rules as well as other developments, and to grant Stock Options which qualify for beneficial treatment under such rules without stockholder approval.

#### **SECTION 7. General Provisions.**

a. Unless the shares have been registered under the Securities Act of 1933, as amended, each person purchasing or receiving shares of Stock pursuant to a Stock Option shall represent to and agree with the Company in writing that such person is acquiring the shares of Stock without a view to the distribution thereof. The certificates for such shares of Stock shall include an appropriate legend to reflect the restrictions on transfer.

b. Nothing contained in the Plan shall prevent the Company or any subsidiary from adopting other or additional compensation arrangements for its Non-Employee Directors.

c. No later than the date as of which an amount first becomes includible in the gross income of the Participant for Federal income tax purposes with respect to any Stock Option awarded under the Plan, the Participant shall pay to the Company, or make arrangements satisfactory to the Company regarding the payment of, any Federal, state, local or foreign taxes of any kind required by law to be withheld with respect to such amount. Withholding obligations may, at the election of the optionee (which election shall be subject to compliance with requirements of Rule 166-3), be settled with Stock, including Stock that is part of the Stock Option that gives rise to the withholding requirement. The obligations of the Company under the Plan shall be conditional on such payment or arrangements, and the Company shall, to the extent permitted by law, have the right to deduct any such taxes from any payment otherwise due to the Participant.

d. The Plan and all Stock Options awarded and actions taken thereunder shall be governed by and construed in accordance with the laws of the State of Delaware.

#### **SECTION 8. Effective Date of Plan.**

The Plan shall be adopted by the Board and presented to stockholders of the Company for their approval. Stock Options may be granted prior to such approval but are contingent upon such approval being obtained.

## 1993 INCENTIVE STOCK OPTION PLAN

1. *Purpose of the Plan.* The purpose of this 1993 Incentive Stock Option Plan (“Plan”) is to encourage stock ownership by officers of The Trust Company of New Jersey (the “Company”), to provide additional incentive for them to promote the successful business operations of the Company, to encourage them to remain in the employ of the Company and to attract new officers.

2. *Definitions.* As used in the Plan, unless the context requires otherwise, the following terms shall have the meanings specified hereinafter:

(a) “Committee” shall mean the stock option committee of the Board provided in Section 4 of the Plan.

(b) “Common Stock” shall mean the Common Stock, par value \$2.00 per share, of the Company, or, if another security is substituted for the Common Stock pursuant to the adjustment provisions of Section 8, such other security.

(c) “Fair Market Value” shall mean the greater of (i) \$2.00 per share and (ii) the average of the over-the-counter bid and asked prices for a share of the Common Stock on the Grant Date or other relevant date; provided, that if in the opinion of the Committee the trading activity of the Common Stock is deemed not to constitute a representative market price, the Committee shall have the discretion to engage an independent party to determine Fair Market Value for this purpose.

(d) “Option” shall mean the right to purchase one or more shares of Common Stock granted under Section 6 of the Plan.

(e) “Grant Date” shall mean the date on which an option is granted.

(f) “Optionee” shall mean an officer to whom an Option has been granted under the plan.

(g) “Board” shall mean the Board of Directors of the Company.

(h) “Code” shall mean the Internal Revenue Code of 1986, as amended.

(i) The term “officer” shall mean any officer or other key employee of the Company, as determined by the Committee.

(j) “Suspend”, “Suspended” or “Suspension”, when referring to the employment of an Optionee, shall mean the reasonable determination by the Board of Directors or the President of the Company that the Optionee’s performance of his duties or the Optionee’s conduct warrants an investigation by management in order to determine whether or not the Optionee’s employment should be terminated. The duties of an Optionee may but need not be limited by management while the Optionee’s employment is so Suspended, and the Optionee will be deemed by management to be an employee who is not in good standing.

(k) "Suspended Optionee" shall mean an Optionee whose employment has been Suspended.

(l) "Suspension Period" shall mean the time period beginning with the date on which the Board of Directors or President of the Company makes its determination that the investigation of the Optionee is warranted and ending on the date the Company (i) terminates the employment of a Suspended Optionee or (ii) determines to continue the employment of a Suspended Optionee and terminate any investigation of such Optionee.

3. *Stock Subject to the Plan.* There will be reserved for use upon the exercise of Options granted from time to time under the Plan an aggregate of up to 450,000 authorized but unissued shares of Common Stock, subject to adjustment as provided in Section 8 hereof. If any Option granted under the Plan should expire or terminate for any reason without having been exercised in full, the unpurchased shares shall again become available for the grant of Options under the Plan.

4. *Administration of the Plan.* The Board shall appoint a Stock Option Committee ("Committee") which shall consist of not less than three nor more than five members of the Board, none of whom shall be officers or employees of the Company. No member of the Committee, while a member, shall be at present, or within one year shall have been, eligible to participate in any plan of the Company pursuant to which equity securities could be granted. Subject to the provisions of the Plan, the Committee shall have full discretion:

(a) To designate the officers of the Company, as described above, to whom Options shall be granted, the number of shares to be covered by each of the Options, and the time or times at which Options shall be granted;

(b) To interpret the Plan;

(c) To promulgate, amend and rescind rules and regulations relating to the Plan;

(d) To subject any Option to such terms and conditions as the Committee may specify when granting the Option, including without limitation additional restrictions or conditions on the exercise of an Option;

(e) To modify at any time and for any reason the vesting schedule set forth in Section 6(c) of the Plan for any or all outstanding Options or for any or all Options to be granted in the future; provided, however, that the Committee shall not lengthen the vesting schedule for any outstanding Option; and

(f) To make all other determinations in connection with the administration of the Plan.

The Board may, from time to time, appoint members of the Committee in substitution for or in addition to members previously appointed and may fill vacancies, however caused, in the Committee. The Board shall designate one of the members of the Committee as its chairman. The Committee shall hold its meetings at such times and places as it shall deem advisable. A

majority of its members shall constitute a quorum. All action of the Committee may be taken by a written instrument signed by a majority of the members and action so taken shall be fully effective as if it had been taken by a vote of the majority of the members at a meeting duly called and held. The Committee shall make such rules and regulations for the conduct of its business as it shall deem advisable. The committee shall also appoint a secretary, who may be the secretary of the Company, to keep minutes of the meetings of the Committee. The Plan shall be so administered as to qualify the Options granted under it as incentive stock options pursuant to Section 422A of the Code, as it may be amended from time to time.

5. *Employees Eligible.* All officers of the Company, as defined above, shall be eligible to receive Options under the Plan. In selecting officers to whom Options shall be granted, and in determining the number of shares to be covered by each Option, the Committee may take into consideration any factors it may deem relevant, including its estimate of the officer's present and potential contribution to the success of the Company.

6. *Options.*

(a) *Option Grant.* The Committee shall, from time to time, select the officers to whom Options will be granted and shall determine the number of shares to be covered by each Option. The Fair Market Value (determined at the time the Options are granted) of Common Stock with respect to which Options are exercisable for the first time by any person during any calendar year (under this Plan and all other plans of the Company) cannot be greater than \$100,000.

(b) *Option Price.* The price at which shares of Common Stock shall be purchased under an Option shall not be less than the Fair Market Value of such shares on the Grant Date, except that if the Optionee owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company, than (i) the price at which shares of Common Stock shall be purchased under an Option shall not be less than 110% of the Fair Market Value of such shares on the Grant Date and (ii) the Options shall not be exercisable after the expiration of 5 years from the grant date. For purposes of determining 10% ownership, (1) an officer will be considered to own stock owned directly or indirectly by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants, and (2) stock owned directly or indirectly by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

(c) *Exercise of Options.* Unless the Committee establishes otherwise or except as provided by Sections 7 and 9, each Option shall be exercisable in annual installments. No Option shall be exercisable for six months after the Grant Date. Thereafter, during the first year after an Option is granted, it may be exercised as to not more than 20% of the shares covered thereby. During the first two years after an Option is granted, it may be exercised as to not more than 40% of the shares covered thereby. During the first three years after an Option is granted, it may be exercised as to not more than 60% of the shares covered thereby. During the first four years after an Option is granted, it may be exercised as to not more than 80% of their shares covered thereby. An Option may be exercised at any time and from time to time as to all or any part of the shares covered thereby following the first four years after it has been granted; but no Option shall be exercised after the expiration of ten (10) years from the date on which it was granted.

(d) *Method of Exercise.* To the extent permitted by subparagraph (c) above, Optionees may exercise their Options from time to time by giving written notice to the Company. The date of exercise shall be the date on which the Company receives an exercise notice. Such notice shall state the number of shares to be purchased and the desired closing date, which date shall be at least fifteen days after the giving of such notice unless an earlier date shall have been mutually agreed upon. At the closing, the Company shall deliver to the Optionee (or other person entitled to exercise the Option) at the principal office of the Company, or such other place as shall be mutually acceptable, a certificate or certificates for such shares against either (1) payment in full of the Option price for the number of share to be delivered, by certified or bank cashier's check, or (2) with the prior consent of the Committee, tender of a number of shares of the Common Stock to the Company having a Fair Market Value equal to the Option price times the number of shares being purchased. The Committee shall have no obligation to permit the tender of shares in payment of the Option price. If the Optionee (or other person entitled to exercise the Option) shall fail to accept delivery of and pay for all or any part of the shares specified in his notice when the Company shall tender such shares to him, his right to exercise the Option with respect to such unpurchased shares may be terminated.

7. *Termination of Employment.* If the Company shall terminate the employment of an Optionee for any reason other than for cause, all such Optionee's Options shall terminate three months after the date upon which such employment shall cease, but in any event, not later than the dates upon which the respective Options shall expire. If the Optionee shall voluntarily terminate his employment with the Company, or if the Company shall terminate the employment of an Optionee for cause, all such Optionee's Options shall terminate upon the date on which such employment shall cease. If the Company shall Suspend the employment of an Optionee, the Company shall not be obligated to issue any shares upon the exercise by the Optionee of any Options held by him if the exercise occurs during the Suspension Period. Any documents tendered by the Optionee to the Company during the Suspension Period pursuant to an exercise will not be deemed to be accepted by the Company during such Suspension Period, and any such exercise shall be governed by the provisions set forth in the following two sentences. If, at the conclusion of the Suspension Period the Company shall terminate the employment of the Suspended Optionee, all such exercises shall be deemed void and the company shall return to the Optionee any documents tendered to effect an exercise, including the purchase price, without interest. If, at the conclusion of the Suspension Period, the Company shall determine to continue the employment of the Suspended Optionee, the Company shall deliver share certificates to the Optionee with respect to all Options which were properly exercised (but for the Suspension) by the Optionee during the Suspension Period as promptly as practicable after the date the Suspension Period ends. If the Optionee shall die or become disabled while he is employed by the Company, all such Optionee's Options (except as otherwise determined by the Committee) shall terminate one year after the date of death or disability of the Optionee, but in any event, not later than the dates upon which the respective Options shall expire. During such period, the Options may be exercised by the Optionee or his personal representatives, next of kin, executors or legatees, as the case may be. No exercise permitted by this Section 7 shall entitle an Optionee or his personal representatives, next of kin, executors or legatees to exercise any portion of any Option beyond the extent to which such Option is exercisable pursuant to Section 6(c) hereof on the date such Optionee's employment with the company terminates.

*8. Changes in Capital Structure.* In the event that there is a change in the capitalization of the Company, such as by reason of a stock dividend, recapitalization, extraordinary dividend of cash or property, stock split-up, combination of shares, or other event which the Committee determines is dilutive to the holder of Options, then appropriate adjustments shall be made by the Committee to the number and kind of shares reserved for issuance under the Plan upon the grant and exercise of Options. In addition, the Committee shall make appropriate adjustments to the number and kind of shares subject to outstanding Options, and the purchase price per share thereunder shall be appropriately adjusted consistent with such change. In no event shall fractional shares be issued or issuable pursuant to any adjustment made under this Section 8. The determination of the Committee as to any adjustment shall be final and conclusive. Notwithstanding anything contained in this Section 8, no adjustments shall be made by the Committee if such adjustments constitute the adoption of a new incentive stock option plan with the meaning of Section 422A of the Code.

*9. Mandatory Exercise.* Notwithstanding anything to the contrary set forth in the Plan, in the event that the Company should adopt a plan of reorganization pursuant to which it shall merge into, consolidate with, or sell its assets to, any other corporation or entity or if the Company should adopt a plan of complete liquidation, the Company may give an Optionee written notice thereof requiring such Optionee either (a) to exercise the Option within thirty days after receipt of such notice, including all installments whether or not they would otherwise be exercisable at that date, or (b) to surrender such Option or any unexercised portion thereof. Any portion of such Option which shall not have been exercised in accordance with the provisions of the Plan by the end of such 30-day period shall automatically lapse irrevocably and the Optionee shall have no further rights thereunder.

*10. Option Agreement.* Each grant of an Option under the Plan will be evidenced by an agreement in such form as the Committee may from time to time approve. Such agreement will contain such provisions as the Committee may in its discretion deem advisable, including without limitation additional restrictions or conditions upon the exercise of an Option. The Committee may require an Optionee, as a condition to the grant or exercise of an Option or the issuance or delivery of shares upon the exercise of an Option or the payment therefor, to make such representations and warranties and to execute and deliver such notices of exercise and other documents as the committee may deem consistent with the Plan or the terms and conditions of the Option agreement. Not in limitation of any of the foregoing, in any such case referred to in the preceding sentence the Committee may also require the Optionee to execute and deliver documents containing such representations, warranties and agreements as the Committee or counsel to the Company shall deem necessary or advisable to comply with any applicable Federal or State securities laws, and any other applicable law, regulation or rule.

*11. Listing; Registration.* If at any time the Board determines, in its discretion, that the listing, registration or qualification of any of the stock subject to Options under the Plan upon any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition of or in connection with granting Options under the Plan or the purchase or issue of stock thereunder, no further Options

need be granted, the exercise of outstanding Options may be deferred, and the Company shall not be obligated to issue or deliver any shares, until such action can be taken or consent or approval can be obtained at the Company's expense, free of any condition unacceptable to the Board.

12. *Tax Withholding.* The Company, as and when appropriate, shall have the right to require each Optionee purchasing or receiving shares of Common Stock under the Plan to pay any federal, state, or local taxes required by law to be withheld with respect to the receipt of Common Stock.

13. *Non-assignability.* No Option shall be assignable or transferable by the Optionee except by will or the laws of descent and distribution, in which events the terms of this Plan, including all restrictions and limitations set forth herein, shall continue to apply to the transferee. Each Option shall be exercisable only by the Optionee during his lifetime.

14. *Optionee's Rights as Shareholder.* An Optionee shall have no rights as a shareholder of the Company with respect to any shares subject to an Option until the Option has been exercised and the certificate with respect to the shares purchased upon exercise of the Option has been duly issued and registered to the name of the Optionee.

15. *Term.* No Option shall be granted under the Plan more than ten (10) years after the date of the last meeting of the shareholders of the Company at which they adopted or approved the Plan or the date on which the Board adopted the Plan, whichever is earlier; the Plan may be resubmitted to the shareholders for their approval at any time during or at the end of any such ten-year period.

16. *Adoption and Ratification.* This Plan has been adopted by the Board subject to ratification by the shareholders of the Company and filing with the Commissioner of the Department of Banking of the State of New Jersey. The effective date of the Plan may also be delayed pending satisfaction of the requirements of Section 11. This Plan shall terminate unless ratified by the shareholders within one year of adoption by the Board.

17. *Termination and Amendment.* The Board may at any time terminate or amend the Plan or any Option then outstanding as it may deem advisable; *provided, however,* that no such amendment may be made without shareholder approval if such approval is required by Rule 16b-3 under the Securities Exchange Act of 1934.

18. *Indemnification of Committee.* In addition to such other rights of indemnification as they may have as directors or as members of the Committee, the members of the Committee shall be indemnified by the Company against and reimbursed for the reasonable expenses, including attorney's fees, actually and necessarily incurred in connection with the defense of any action, suit or proceeding or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan or any option granted thereunder, and against and for all amounts paid by them in settlement thereof (provided such settlement is approved by independent legal counsel selected by the Company) or paid by them in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding, or (in the event of settlement) by a disinterested majority of the Board or of any disinterested group of

persons to whom the question may be referred by the Board, that such Committee member is guilty of bad faith in the performance of his duties; provided that within 60 days after institution of any such action, suit or proceeding, the Committee member seeking indemnification shall have offered the Company in writing the opportunity, at its own expense, to handle and defend the same.

19. *Governing Law.* The option agreements authorized under the Plan shall be governed by and construed under the laws of the State of New Jersey.



**THE TRUST COMPANY OF NEW JERSEY**  
**2002 STOCK OPTION PLAN**

1. *Purpose of the Plan.* The purpose of this 2002 Stock Option Plan (the "Plan") is to encourage stock ownership by selected officers, other key employees and key consultants of The Trust Company of New Jersey (the "Company"), to provide additional incentive for them to promote the successful business operations of the Company, to encourage them to remain in the employ of, or to continue to provide services to, the Company and to attract new officers, employees and consultants.

2. *Definitions.* As used in the Plan, unless the context requires otherwise, the following terms shall have the meanings specified below:

(a) "Board" shall mean the Board of Directors of the Company.

(b) "Change in Control Event" shall have the meaning set forth in Section 9 of the Plan.

(c) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(d) "Committee" shall mean the stock option committee of the Board provided in Section 4 of the Plan.

(e) "Common Stock" shall mean the Common Stock, par value \$2.00 per share, of the Company, or, if another security is substituted for the Common Stock pursuant to the adjustment provisions of Section 8, such other security.

(f) "Consultant" shall mean any non-employee of the Company who renders consulting services to the Company, as determined by the Committee.

(g) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

(h) "Fair Market Value" shall mean the greater of (i) \$2.00 per share and (ii) if the Common Stock is listed on a stock exchange or is quoted on Nasdaq, the closing sale price (or, if such price is unavailable, the average of the high bid price and the low asked price) of a share of Common Stock on the Grant Date or other relevant date; provided, that if in the opinion of the Committee the trading activity of the Common Stock is deemed not to constitute a representative market price, the Committee shall have the discretion to engage an independent party to determine Fair Market Value for this purpose.

(i) "Grant Date" shall mean the date on which an Option is granted.

(j) "Officer" shall mean any officer or other key employee of the Company, as determined by the Committee.

(k) "Option" shall mean the right to purchase one or more shares of Common Stock granted under Section 6 of the Plan.

(l) "Optionee" shall mean an Officer or Consultant to whom an Option has been 'granted under the Plan.

(m) "Suspend," "Suspended" or "Suspension," when referring to the employment of an Officer, shall mean the reasonable determination by the Board or the President of the Company that the Officer's performance of his or her duties or such Officer's conduct warrants an investigation by management in order to determine whether or not the Officer's employment should be terminated. The duties of an Officer may, but need not, be limited by management while the Officer's employment is so Suspended, and the Officer will be deemed by management to be an employee who is not in good standing.

(n) "Suspended Officer" shall mean an Officer whose employment has been Suspended.

(o) "Suspension Period" shall mean the time period beginning with the date on which the Board or President of the Company makes its determination that the investigation of the Officer is warranted and ending on the date the Company (i) terminates the employment of a Suspended Officer or (ii) determines to continue the employment of a Suspended Officer and terminate any investigation of such Officer.

3. *Stock Subject to the Plan.* There will be reserved for issuance upon the exercise of Options granted from time to time under the Plan an aggregate of 750,000 authorized but unissued shares of Common Stock (of which not more than 50,000 may be used to grant non-incentive stock options), subject to adjustment as provided in Section 8 hereof. If any Option granted under the Plan should expire or terminate for any reason without having been exercised in full, the unpurchased shares shall again become available for the grant of Options under the Plan.

4. *Administration of the Plan.* The Board shall appoint a committee (the "Committee") to administer the Plan. To the extent that the Board determines it to be desirable to qualify the Options granted hereunder as "performance-based compensation" within the meaning of Section 162(m) of the Code, the Plan shall be administered by a Committee of two (2) or more "outside directors" within the meaning of Section 162(m) of the Code and the regulations promulgated thereunder. Other than as provided in the preceding sentence, the Committee which administers the Plan shall consist of three (3) members of the Board, none of whom shall be employed by the Company. Subject to the provisions of the Plan, the Committee shall have full discretion:

(a) To designate the Officers and Consultants of the Company to whom Options shall be granted, the number of shares to be covered by each of the Options, and the time or times at which Options shall be granted;

(b) To interpret the Plan;

(c) To promulgate, amend and rescind rules and regulations relating to the Plan;

(d) To subject any Option to such terms and conditions as the Committee may specify when granting the Option, including, without limitation, additional restrictions or conditions on the exercise of an Option;

(e) To modify at any time and for any reason the vesting schedule set forth in Section 6(c) of the Plan for any or all outstanding Options or for any or all Options to be granted in the future; provided, however, that the Committee shall not lengthen the vesting schedule for any outstanding Option; and

(f) To make all other determinations in connection with the administration of the Plan.

The Board may, from time to time, appoint members of the Committee in substitution for members previously appointed and may fill vacancies, however caused, in the Committee. The Board shall designate one of the members of the Committee as its chairman. The Committee shall hold its meetings at such times and places as it shall deem advisable. A majority of its members shall constitute a quorum. All action of the Committee may be taken by a written instrument signed by a majority of the members and action so taken shall be fully effective as if it had been taken by a vote of the majority of the members at a meeting duly called and held. The Committee shall make such rules and regulations for the conduct of its business as it shall deem advisable. The Committee shall also appoint a secretary, who may be the secretary of the Company, to keep minutes of the meetings of the Committee.

The Plan shall be so administered as to qualify the Options granted under it to Officers as “incentive stock options” to the maximum extent possible pursuant to Section 422 or a successor section of the Code.

5. *Eligibility.* All Officers and Consultants of the Company, as defined above, shall be eligible to receive Options under the Plan. In selecting Officers and Consultants to whom Options shall be granted, and in determining the number of shares to be covered by each Option, the Committee may take into consideration any factors it may deem relevant, including its estimate of the Officer’s or Consultant’s present and potential contribution to the success of the Company.

#### 6. *Options.*

(a) *Option Grant.* The Committee shall, from time to time, select the Officers and Consultants to whom Options will be granted and shall determine the number of shares to be covered by each Option. Unless otherwise indicated by the Committee at the time of grant, all Options granted to Officers are intended to qualify as “incentive stock options” under Section 422 of the Code. To the extent an Option granted to an Officer fails to satisfy the requirements of Section 422 of the Code, it shall be deemed a non-incentive stock option. All Options granted to Consultants under the Plan shall be non-incentive stock options. The Fair Market Value (determined at the time the Options are granted) of Common Stock with respect to which Options intended to qualify as incentive stock options are exercisable for the first time by any person during any calendar year (under this Plan and all other plans of the Company) cannot be greater than \$100,000. No Officer or Consultant shall be granted, in any fiscal year of the Company, Options to purchase more than 100,000 shares of Common Stock.

(b) *Option Price.* The price at which shares of Common Stock shall be purchased under an Option shall not be less than the Fair Market Value of such shares on the Grant Date, except that if the Option is intended to qualify as an incentive stock option, and the Optionee owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company, then (i) the price at which shares of Common Stock shall be purchased under the Option shall not be less than 110% of the Fair Market Value of such shares on the Grant Date and (ii) the Options shall not be exercisable after the expiration of five (5) years from the Grant Date. For purposes of determining 10% ownership, (1) an Officer will be considered to own stock owned directly or indirectly by or for such Officer's brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants, and (2) stock owned directly or indirectly by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by or for its shareholders, partners or beneficiaries.

(c) *Exercise of Options.* Unless the Committee establishes otherwise or except as provided by Sections 7 and 9 of the Plan, each Option shall be exercisable in annual installments as described in this Section 6(c), provided however, that no Option shall be exercisable for six months after the Grant Date. Thereafter, during the first year after an Option is granted, it may be exercised as to not more than 20% of the shares covered thereby. During the first two years after an Option is granted, it may be exercised as to not more than 40% of the shares covered thereby. During the first three years after an Option is granted, it may be exercised as to not more than 60% of the shares covered thereby. During the first four years after an Option is granted, it may be exercised as to not more than 80% of the shares covered thereby. An Option may be exercised at any time and from time to time as to all or any part of the shares covered thereby following the first four years after it has been granted; but no Option shall be exercised after the expiration of ten years from the date on which it was granted.

(d) *Method of Exercise.* To the extent permitted by subparagraph (c) above, Optionees may exercise their Options from time to time by giving written notice to the Company. The date of exercise shall be the date on which the Company receives an exercise notice. Such notice shall state the number of shares to be purchased and the desired closing date, which date shall be at least fifteen days after the giving of such notice unless an earlier date shall have been mutually agreed upon. At the closing, the Company shall deliver to the Optionee (or other person entitled to exercise the Option) at the principal office of the Company, or such other place as shall be mutually acceptable, a certificate or certificates for such shares against either (1) payment in full of the Option price for the number of shares to be delivered, by certified or bank cashier's check, or (2) with the prior consent of the Committee, tender of a number of shares of the Common Stock to the Company having a Fair Market Value equal to the Option price times the number of shares being purchased, provided such shares have been owned by the Optionee for more than six months on the date of surrender to the Company, or (3) a combination of the above. The Committee shall have no obligation to permit the tender of shares in payment of the Option price. The Committee shall have the discretion, but not the obligation, to implement a cashless exercise program and to accept consideration received by the Company under such program as payment of the Option price. If the Optionee (or other person entitled to exercise the Option) shall fail to accept delivery of and pay for all or any part of the shares specified in his or her notice when the Company shall tender such shares, his or her right to exercise the Option with respect to such unpurchased shares may be terminated.

7. *Termination of Employment.* If the Company shall terminate the employment or services of an Optionee for any reason other than for cause, all such Optionee's Options shall terminate three months after the date upon which such employment shall cease, but in any event, not later than the dates upon which the respective Options shall expire. If the Optionee shall voluntarily terminate his employment with the Company, or if the Company shall terminate the employment of an Optionee for cause, all such Optionee's Options shall terminate upon the date on which such employment shall cease. If the Company shall suspend the employment of an Optionee, the Company shall not be obligated to issue any shares upon the exercise by the Optionee of any Options held by him or her if the exercise occurs during the Suspension Period. Any documents tendered by the Optionee to the Company during the Suspension Period pursuant to an exercise will not be deemed to be accepted by the Company during such Suspension Period, and any such exercise shall be governed by the provisions set forth in the following two sentences. If, at the conclusion of the Suspension Period, the Company shall terminate the employment of the Suspended Optionee, all such exercises shall be deemed void, and the Company shall return to the Optionee any documents tendered to effect an exercise, including the purchase price, without interest. If, at the conclusion of the Suspension Period, the Company shall determine to continue the employment of the Suspended Optionee, the Company shall deliver share certificates to the Optionee with respect to all Options which were properly exercised (but for the Suspension) by the Optionee during the Suspension Period as promptly as practicable after the date the Suspension Period ends. If the Optionee shall die or become disabled while employed by the Company, all such Optionee's Options (except as otherwise determined by the Committee) shall terminate one year after the date of death or disability of the Optionee, but in any event, not later than the dates upon which the respective Options shall expire; provided that if the Optionee was a Suspended Optionee at the date of death or disability, and at the end of the Suspension Period the Company shall determine that such person's employment should have been terminated, then all of such Optionee's Options shall be deemed to have terminated on the date of death or disability. During such period, the Options may be exercised by the Optionee or his or her personal representatives, next of kin, executors or legatees, as the case may be. No exercise permitted by this Section 7 shall entitle an Optionee or his or her personal representatives, next of kin, executors or legatees to exercise any portion of any Option beyond the extent to which such Option is exercisable pursuant to Section 6(c) hereof on the date such Optionee's employment with the Company terminates.

8. *Changes in Capital Structure.* In the event that there is a change in the capitalization of the Company, such as by reason of a stock dividend, recapitalization, extraordinary dividend of cash or property, stock split-up, combination of shares, or other event which the Committee determines is dilutive to the holder of Options, then appropriate adjustments shall be made by the Committee to the number and kind of shares reserved for issuance under the Plan upon the grant and exercise of Options. In addition, the Committee shall make appropriate adjustments to the number and kind of shares subject to outstanding Options, and the purchase price per share thereunder shall be appropriately adjusted consistent with such change. In no event shall fractional shares be issued or issuable pursuant to any adjustment made under this Section 8. The determination of the Committee as to any adjustment shall be final and conclusive. Notwithstanding anything contained in this Section 8, no adjustments shall be made by the Committee if such adjustments would constitute the adoption of a new incentive stock option plan with the meaning of Section 422 of the Code.

9. *Change in Control.* All options granted pursuant to the Plan shall become fully exercisable upon the occurrence of a Change in Control Event. As used in the Plan, a “Change in Control Event” shall be deemed to have occurred if any of the following events occur:

(a) the consummation of any consolidation or merger of the Company in which the Company is not the continuing or surviving Company or pursuant to which shares of Common Stock would be converted into cash, securities or other property, other than a merger of the Company in which the holders of the shares of the Company’s Common Stock immediately prior to the merger have the same proportionate ownership of common stock of the surviving Company immediately after the merger; or

(b) the consummation of any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all, or substantially all, of the assets of the Company, other than to a subsidiary or affiliate; or

(c) an approval by the shareholders of the Company of any plan or proposal for the liquidation or dissolution of the Company; or

(d) any action pursuant to which any person (as such term is defined in Section 13(d) of the Exchange Act), company or other entity (other than any person who owns more than ten percent (10%) of the outstanding Common Stock on the date of adoption of this Plan by the Board of Directors, the Company or any benefit plan sponsored by the Company or any of its subsidiaries) shall become the “beneficial owner” (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of shares of capital stock entitled to vote generally for the election of directors of the Company (“Voting Securities”) representing more than fifty (50%) percent of the combined voting power of the Company’s then outstanding Voting Securities (calculated as provided in Rule 13d-3(d) in the case of rights to acquire any such securities), unless, prior to such person so becoming such beneficial owner, the Board shall determine that such person so becoming such beneficial owner shall not constitute a Change in Control Event; or

(e) the individuals (A) who, as of the date on which the Plan is first adopted by the Board of Directors, constitute the Board (the “Original Directors”) and (B) who thereafter are elected to the Board and whose election, or nomination for election, to the Board was approved by a vote of at least two thirds of the Original Directors then still in office (such Directors being called “Additional Original Directors”) and (C) who thereafter are elected to the Board and whose election or nomination for election to the Board was approved by a vote of at least two thirds of the Original Directors and Additional Original Directors then still in office, cease for any reason to constitute a majority of the members of the Board.

10. *Merger or Asset Sale.* For purposes of the Plan, a merger or consolidation which would constitute a Change in Control Event pursuant to Section 9 and a sale of assets which would constitute a Change in Control Event pursuant to Section 9 are hereinafter referred to as “Section 10 Events”. In the event of a Section 10 Event, each outstanding Option shall be

assumed or an equivalent benefit shall be substituted by the entity determined by the Board of the Company to be the successor company. However, in the event that any such successor company does not agree in writing, at least 15 days prior to the anticipated date of consummation of such Section 10 Event, to assume or so substitute each such Option, then each Option not so assumed or substituted shall be deemed to be fully vested and exercisable. If an Option becomes fully vested and exercisable pursuant to the terms of this Section 10, the Committee shall notify the holder thereof in writing or electronically that (a) such holder's Option shall be fully exercisable until immediately prior to the consummation of such Section 10 Event and (b) such holder's Option shall terminate upon the consummation of such Section 10 Event. For purposes of this Section 10, an Option shall be considered assumed if, following consummation of the applicable Section 10 Event, the Option confers the right to purchase or receive, for each share of Common Stock subject to the Option immediately prior to the consummation of such Section 10 Event, the consideration (whether stock, cash or other securities or property) received in such Section 10 Event by holders of Common Stock for each share of Common Stock held on the effective date of such Section 10 Event (and, if holders of Common Stock are offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares of Common Stock); provided, however, that if such consideration received in such Section 10 Event is not solely common stock of such successor, the Committee may, with the consent of such successor company, provide for the consideration to be received in connection with such Option to be solely common stock of such successor equal in fair market value to the per share consideration received by holders of Common Stock in the Section 10 Event.

11. *Option Agreement.* Each grant of an Option under the Plan will be evidenced by an agreement in such form as the Committee may from time to time approve. Such agreement will contain such provisions as the Committee may in its discretion deem advisable, including without limitation, additional restrictions or conditions upon the exercise of an Option. The Committee may require an Optionee, as a condition to the grant or exercise of an Option or the issuance or delivery of shares upon the exercise of an Option or the payment therefor, to make such representations and warranties and to execute and deliver such notices of exercise and other documents as the Committee may deem consistent with the Plan or the terms and conditions of the Option agreement. Not in limitation of any of the foregoing, in any such case referred to in the preceding sentence, the Committee may also require the Optionee to execute and deliver documents containing such representations, warranties and agreements as the Committee or counsel to the Company shall deem necessary or advisable to comply with any applicable federal or state securities laws, and any other applicable law, regulation or rule. The Committee shall have the right to condition the grant of an Option to an Officer or Consultant upon such person's execution and delivery to the Company of an agreement not to compete with the Company or its subsidiaries, in a form satisfactory to the Committee, for such period of time as the Committee shall determine.

12. *Listing; Registration.* If at any time the Board determines, in its discretion, that the listing, registration or qualification of any of the stock subject to Options under the Plan upon any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition of or in connection with granting Options under the Plan or the purchase or issue of stock thereunder, no further Options need be granted, the exercise of outstanding Options may be deferred, and the Company shall not be obligated to issue or deliver any shares, until such action can be taken or consent or approval can be obtained at the Company's expense, free of any condition unacceptable to the Board.

13. *Tax Withholding.* The Company, as and when appropriate, shall have the right to require each Optionee purchasing or receiving shares of Common Stock under the Plan to pay any federal, state, or local taxes required by law to be withheld with respect to the receipt of Common Stock.

14. *Non Assignability.* No Option shall be assignable or transferable by the Optionee except by will or the laws of descent and distribution, in which events the terms of this Plan, including all restrictions and limitations set forth herein, shall continue to apply to the transferee. Each Option shall be exercisable only by the Optionee during his or her lifetime. Notwithstanding the above, the Committee may permit an Optionee who has received a non-incentive stock Option to transfer such Option to a family member or a trust or partnership created for the benefit of family members. In the case of such a transfer, the transferee's rights and obligations with respect to the applicable Options shall be determined by reference to the transferor and the transferor's rights and obligations with respect to the applicable Options had no transfer been made. The transferor shall remain obligated pursuant to Sections 12 and 13 hereunder if required by applicable law.

15. *Optionee's Rights as Shareholder.* An Optionee shall have no rights as a shareholder of the Company with respect to any shares subject to an Option until the Option has been exercised and the certificate with respect to the shares purchased upon exercise of the Option has been duly issued and registered to the name of the Optionee.

16. *Term.* No Option shall be granted under the Plan more than ten years after the date of the last meeting of the shareholders of the Company at which they adopted or approved the Plan or the date on which the Board adopted the Plan, whichever is earlier; the Plan may be resubmitted to the shareholders for their approval at any time during or at the end of any such ten year period.

17. *Adoption and Ratification.* This Plan has been adopted by the Board subject to ratification by the shareholders of the Company and filing with the Commissioner of the Department of Banking of the State of New Jersey. The effective date of the Plan may also be delayed pending satisfaction of the requirements of Section 12. This Plan shall terminate unless ratified by the shareholders within one year of adoption by the Board.

18. *Termination and Amendment.* The Board may at any time terminate or amend the Plan or any Option then outstanding as it may deem advisable; provided, however, that no such amendment may be made without shareholder approval if such approval is required by Rule 16b-3 under the Exchange Act or Section 422 or a successor section of the Code.

19. *Indemnification of Committee.* In addition to such other rights of indemnification as they may have as directors or as members of the Committee, the members of the Committee shall be indemnified by the Company against and reimbursed for the reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with the defense of any action, suit or proceeding or in connection with any appeal, to which they or any of them may be



a party by reason of any action taken or failure to act under or in connection with the Plan or any Option granted thereunder, and against and for all amounts paid by them in settlement thereof (provided such settlement is approved by independent legal counsel selected by the Company) or paid by them in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding, or (in the event of settlement) by a disinterested majority of the Board or of any disinterested group of persons to whom the question may be referred by the Board, that such Committee member is guilty of bad faith in the performance of his or her duties; provided that within sixty days after institution of any such action, suit or proceeding, the Committee member seeking indemnification shall have offered the Company in writing the opportunity, at its own expense, to handle and defend the same.

20. *Governing Law.* The Option agreements authorized under the Plan shall be governed by and construed under the laws of the State of New Jersey.

**NORTH FORK BANCORPORATION, INC.  
401(k) RETIREMENT SAVINGS PLAN**

**As Amended and Restated Generally Effective as of  
January 1, 2002**

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## **FOREWORD**

North Fork Bancorporation, Inc. has established the North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan (“the Plan”), effective as of October 1, 1992, to enable eligible employees to defer a part of their current income to provide for their retirement, death or disability. The purpose of the Plan is to afford tax-favorable treatment to such deferrals and the Plan is to be construed in a manner consistent with the provisions of Sections 401(a), 401(k) and 401(m) of the Internal Revenue Code and Treasury Regulations thereunder. It is intended that the Plan and its associated trust constitute a tax-qualified “profit-sharing” plan within the meaning of the Internal Revenue Code of 1986, as at any time amended, and the regulations thereunder; provided that a portion of the Plan shall constitute an employee stock ownership plan as provided in Article XIX.

This amendment and restatement of the Plan is generally effective as of January 1, 2002, except where otherwise specified. This amendment and restatement reflects several significant changes effective as of January 1, 2002, which include its conversion to a “safe-harbor” design under Internal Revenue Code Section 401(k)(12) and the addition of an employee stock ownership plan feature. The Plan has also been amended to comply, on a good faith basis, with the Economic Growth and Tax Relief Reconciliation Act of 2001, also generally effective as of January 1, 2002. This amendment and restatement of the Plan also incorporates the amendments that were made after its last full restatement (May 1, 2001).

This restated Plan document is effective for Participants who have an Hour of Service with North Fork Bancorporation, Inc. on or after January 1, 2002. For Participants who terminated employment on or before December 31, 2001, their benefits and rights under the Plan shall be determined under the Plan (including all amendments) in effect on their date of termination except as otherwise specifically provided in the Plan or as required by law.



## ARTICLE I

### DEFINITIONS

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meanings indicated. Some of the words and phrases used in the Plan are not defined in this Article I, but, for convenience, are defined as they are introduced into the text.

- 1.1 “Account” means a Participant’s (a) Before-tax Contribution Account, (b) Company Matching Contribution Account, (c) Rollover Account, (d) Qualified Nonelective Contribution Account or (d) any or all of such Accounts.
- 1.2 “Appropriate Form” means the form prescribed by the Committee for a particular purpose, which form may be paper or electronic, as determined by the Committee.
- 1.3 “Bank” means North Fork Bancorporation, Inc.
- 1.4 “Bank Matching Contributions” means the Employer contributions made to the Trust Fund pursuant to Article IV.
- 1.5 “Bank Matching Contribution Account” means the separate Account maintained for a Participant to record the Participant’s share of the Trust Fund attributable to Company Matching Contributions made on the Participant’s behalf.
- 1.6 “Bank Stock” means the Class A common stock of North Fork Bancorporation, Inc.
- 1.7 “Before-tax Contributions” means contributions made by an Employer pursuant to an election by the Participant to reduce the cash Compensation otherwise currently payable by an equivalent amount, in accordance with the provisions of Section 3.1.
- 1.8 “Before-tax Contribution Account” means the separate Account maintained for a Participant to record the Participant’s share of the Trust Fund attributable to Before-tax Contributions made on the Participant’s behalf.
- 1.9 “Beneficiary” means the person or persons so designated in accordance with Section 2.5 to receive benefits payable under the Plan as a result of the Participant’s death.
- 1.10 “Board” or “Board of Directors” means the Board of Directors of the Bank.
- 1.11 “Break in Service” means a Plan Year during which an Employee does not complete more than 500 Hours of Service.
- 1.12 “Code” means the Internal Revenue Code of 1986, as amended from time to time.

- 1.13 “Committee” means the committee constituted to administer the Plan in accordance with Section 12.1. The members of the Committee shall constitute “named fiduciaries” for the purposes of Section 402(a)(1) of ERISA, responsible for administration, operation and interpretation of the Plan.
- 1.14 “Compensation” means, with respect to any Participant, such Participant’s basic salary and wages, but excluding overtime and bonuses and increased by the amount of: (i) any Before-tax Contributions made to the Plan on the Participant’s behalf; (ii) any amount by which the Employee’s current pay is reduced pursuant to the Employee’s election of benefits or coverage under a “cafeteria” plan as described in Section 125 of the Code and (iii) the amount by which the Employee’s current pay is reduced pursuant to the Employee’s election under a qualified transportation fringe benefit arrangement under Section 132(f) of the Code. Notwithstanding the foregoing, Compensation in a Plan Year in excess of \$170,000, as adjusted by the Commissioner for increases in the cost of living as provided in Section 401(a)(17)(B) of the Code and the regulations thereunder, shall be disregarded for all purposes under the Plan. If the period for determining compensation used in calculating a Participant’s allocation for a determination period is a Plan Year shorter than 12 months, the annual Compensations limit is an amount equal to the otherwise applicable Compensation limit multiplied by a fraction, the numerator of which is the number of months in the short Plan Year and the denominator of which is 12.
- Compensation shall mean W-2 compensation for Financial Consultants and Senior Financial Consultants who are licensed with the National Association of Security Dealers and/or the New York State Insurance Department to sell or assist in the sales of Alternative Investment Products, as defined by the Inter-Agency Guidelines for non-deposit investment products.
- 1.15 “Controlled Group” means any corporation or unincorporated business controlled by, or under common control with, an Employer within the meaning of Sections 414(b), (c) and (o) of the Code and any organization which is a member of an affiliated service group within the meaning of Section 414(m) of the Code that includes an Employer *provided, however* that for purposes of the limitations upon benefits contained in Article XIV, “Controlled Group” status shall be determined in accordance with section of 415(h) or the Code. A corporation or unincorporated business shall not be deemed part of the Controlled Group for any purpose under the Plan with respect to any period before it became part of the Controlled Group.
- 1.16 “Deferred Retirement Date” means the first day of the month following the later of the Participant’s Normal Retirement Date and his or her actual retirement date.
- 1.17 “Disability” means the total and permanent disability that qualifies the Participant to receive disability benefits under the Federal Social Security Act.

- 1.18 “Disability Retirement Date” means the first of the month coincident with or next following the date the Participant is deemed to have a Disability.
- 1.19 “Early Retirement Date” means the first day in any month after the Participant has attained age 55.
- 1.20 “Effective Date” means October 1, 1992.
- 1.21 “Employee” means an individual described in Section 3121(d)(1) or (2) of the Code who is employed by an Employer or any member of the Controlled Group.  
  
Notwithstanding the foregoing, for purposes of this Plan, the term “Employee” for purposes of eligibility to participate in the Plan includes only persons treated as such on the Employer’s payroll and personnel records at the time such determination is made. Persons treated by the Employer as independent contractors and persons serving the Employer through third-party payroll providers, consulting firms and temporary help agencies at the time of the determination of the person’s status are specifically excluded, regardless of whether they are leased employees within the meaning of Section 414(n)(2) of the Code. Eligibility status at the time of a determination of a person’s employment status shall not be changed as a result of a retroactive reclassification of the person’s employment status by the Internal Revenue Service, another governmental agency or a court of competent jurisdiction. Therefore, notwithstanding anything else herein to the contrary, any person not treated as an Employee on the payroll and personnel records of the Employer at the time the determination is made shall in no event be retroactively eligible for participation in the Plan during the period covered by such determination.
- 1.22 “Employer” means the Bank and any member of the Controlled Group which with the consent of the Board of Directors, has adopted the Plan as a Participant herein and any successors to such Employer.
- 1.23 “Employment Commencement Date” means:
  - (a) the first day in respect of which an Employee receives compensation from an Employer or any member of the Controlled Group for the performance of services;
  - (b) in the case of an Employee who has incurred a Termination of Employment the first day, after such Termination of Employment, he receives Compensation from any Employer or any member of the Controlled Group for the performance of services.
- 1.24 “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

1.25 “Highly Compensated Employee” means an individual determined in accordance with Section 414(q) of the Code, and with such rules and regulations as shall be promulgated by the Internal Revenue Service pursuant to such Section, and shall mean an Employee who performs service for the Employer during the determination year and who, during the look-back year, received compensation (as defined in Code Section 414(q)(7)) from an Employer in excess of \$80,000 (as adjusted in accordance with Code Section 414(q)(1) and Code Section 415(d)). The term Highly Compensated Employee also includes Employees who are 5 percent owners within the meaning of Section 416(i)(1) of the Code at any time during the look-back year or determination year.

For this purpose, the determination year shall be the calendar year. The look-back year shall be the twelve-month period immediately preceding the determination year. For this purpose, Employers aggregated under Section 414(b), (c), (m) or (o) of the Code are treated as a single employer.

A former employee shall be treated as a Highly Compensated Employee if (i) such employee was a Highly Compensated Employee when such employee separated from service, or (ii) such employee was a Highly Compensated Employee at any time after attaining age 55.

1.26 “Hour of Service” means (i) each hour for which a person is paid or entitled to payment for the performance of duties with an Employer or any member of the Controlled Group or other entity required to be aggregated with the Employer pursuant to Section 414(o) of the Code, (ii) each hour for which a person is paid, or entitled to payment, on account of a period of time during which no duties are performed with an Employer or any member of the Controlled Group irrespective of whether the employment relationship has terminated due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence and (iii) each hour for which back pay, irrespective of mitigation of damages, has either been awarded or agreed to by the Employer or any member of the Controlled Group.

A person who is compensated for a period during which no services are performed for the Employer shall be credited with such number of Hours of Service as are required to be so credited pursuant to the provisions of 29 CFR § 2530.200b-2(b). Hours of Service which are credited to a person pursuant to this Section shall be credited to the computation period described in 29 CFR § 2530.200b-2(c).

Solely for purposes of determining whether a Break in Service has occurred, an individual who is absent from work for maternity or paternity reasons shall receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, eight (8) Hours of Service per day of such absence. Such hours shall not exceed 500. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (i) by reason of the pregnancy of the individual, (ii) by reason of a birth of a child of the individual, (iii) by reason of the placement of a child with

the individual in connection with the adoption of such child by such individual, or (iv) for purposes of caring for such child for a period beginning immediately following such birth or placement. The Hours of Service credited under this paragraph shall be credited in the Plan Year in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or in all other cases, in the following Plan Year.

Hours of Service shall be credited for a leave of absence that qualifies as FMLA leave under the Family and Medical Leave Act to the extent required under such Act.

- 1.27 “Leased Employee” means any person (other than an employee of the Employer) who pursuant to an agreement between the Employer and any other person (“leasing organization”) has performed services for the Employer (or for the Employer and related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full-time basis for a period of at least one year and such services are performed under primary direction or control by the Employer.
- 1.28 “Normal Retirement Age” means the 65th birthday of the Participant.
- 1.29 “Normal Retirement Date” means the first of the month coincident with or next following the date the Participant attains Normal Retirement Age.
- 1.30 “Participant” means an Employee who has become a participant of the Plan in accordance with Article II and whose participation has not terminated pursuant to such Article.
- 1.31 “Plan” means the North Fork Bancorporation 401(k) Retirement Savings Plan as set forth herein or as amended from time to time thereafter.
- 1.32 “Plan Year” means the calendar year *provided, however*, that the first Plan Year shall be a short Plan Year beginning on the Effective Date (October 1, 1992) and ending on December 31, 1992.
- 1.33 “Qualified Nonelective Contributions” means contributions made by the Bank, in its sole discretion, in order to correct excess Before-tax Contributions, pursuant to Section 3.4 herein.
- 1.34 “Restatement Date” means January 1, 2002, the general effective date of this amended and restated Plan. Certain provisions have special effective dates and such provisions are an amendment to the Plan as in effect on such special effective date. See Article XVIII for special effective date rules.
- 1.35 “Rollover Account” means the separate Account maintained for a Participant to record the Participant’s share of the Trust Fund attributable to contributions as described in Section 10.1 of the Plan.
- 1.36 “Termination of Employment” means the date on which an Employee ceases to be employed by an Employer or a member of the Controlled Group for any reason; *provided, however*, that no

Termination of Employment shall occur if an Employee is transferred from the employ of one Employer or member of the Controlled Group to another Employer or member of the Controlled Group.

- 1.37 “Transaction Date” means each business day of the Plan Year.
- 1.38 “Trustee” means the individual or individuals or entity or entities appointed from time to time by the Board to administer the Trust Fund in accordance with Section 7.1.
- 1.39 “Trust Agreement” means the agreement entered into between the Bank and the Trustee, as provided for in Section 7.1, as the same may be amended from time to time.
- 1.40 “Trust Fund” means the trust fund established in accordance with Section 7.1 from which benefits provided under this Plan will be paid.
- 1.41 “Valuation Date” means the close of each business day.
- 1.42 “Year of Service” means the period of 12 consecutive months measured from the Participant’s Employment Date and each Plan Year (commencing with the Plan Year following the Plan Year in which such Employment Date occurs) during which an Employee completes at least one thousand (1,000) Hours of Service.
- 1.43 “Year of Vesting Service” means a Plan Year after the Effective Date in which an Employee completes at least one thousand (1,000) Hours of Service. Employees who complete two hundred-fifty (250) Hours of Service in the Short Plan Year beginning on the Effective Date shall be credited with one Year of Vesting Service.

ARTICLE II

ELIGIBILITY AND PARTICIPATION

**2.1 Eligibility**

- (a) Each Employee who was a Participant on December 31, 2001 shall continue to participate on January 1, 2002.
- (b) Effective as of May 1, 2001, all Employees classified by the Employer as hourly employees shall become eligible to participate on the first day of the month coincident with or next following their completion of one Year of Service and attainment of age 21.
- (c) Effective as of May 1, 2001, all Employees classified by the Employer as salaried employees shall become eligible to participate in the Plan on the first day of the month coincident with or next following the day they complete three months of service and attain age 21.

Months of service, for this purpose, shall be measured based on the number of months of elapsed time of employment, beginning with the Employee's employment commencement date, and without regard to the number of Hours of Service actually rendered.

**2.2 Participation**

An Employee who satisfies the eligibility requirements of Section 2.1 who wants to participate in the Plan shall complete the Appropriate Form and submit it to the Committee pursuant to Section 3.1. Deferrals of Compensation shall commence as soon as administratively feasible. An Employee shall become a Participant as soon as deferrals of such Employee's Compensation shall commence under the Plan.

**2.3 Cessation of Participation**

A Participant shall cease to be a Participant as of the date of his Termination of Employment; *provided, however*, an individual who is no longer an Employee but for whom an Account is maintained under the Plan shall continue to be a Participant for all purposes of the Plan except Sections 3.1, 3.3, 4.1, 9.1, 9.2, 10.1 and as otherwise specifically set forth in the Plan.

**2.4 Re-Employment of Former Participants**

A former Participant who is re-employed by an Employer shall again become eligible to participate as of his most recent Employment Commencement Date and shall complete the Appropriate Form and submit it to the Committee pursuant to Section 3.1.

## **2.5 Beneficiary Designation**

Each Participant shall designate a Beneficiary on the Appropriate Form provided by the Committee. The designated Beneficiary may be one or more individuals or an estate or trust; *provided, however*, that if the Participant is married at the time of death, the surviving spouse shall automatically be the sole Beneficiary unless the spouse had consented, in writing, to a designation of a different Beneficiary. Such consent must be witnessed by a notary public and must acknowledge the effect of the designation. Any such consent shall be irrevocable with respect to the Beneficiary so designated. If more than one individual or trust is named, the Participant shall indicate the shares and/or precedence of each individual or trust so named. Any Beneficiary so designated may be changed by the Participant at any time (subject to the spouse's consent, if applicable) by signing and filing the Appropriate Form with the Committee.

In the event that no Beneficiary had been designated or that no designated Beneficiary survives the Participant, the following Beneficiaries (if then living) shall be deemed to have been designated in the following priority: (1) spouse, (2) children, including adopted children, in equal shares, per stirpes, (3) parents, in equal shares, (4) the person(s) designated as beneficiary under any group life insurance maintained by the Employer, and (5) the Participant's estate.

## **2.6 Former Employees of Bayside Federal Savings Bank**

Former employees of Bayside Federal Savings Bank whose employment with North Fork Bank began between July 1, 1994 and December 1, 1994 shall be eligible to participate in the Plan on December 1, 1994 and shall receive service credit from their date of employment with Bayside Federal Savings Bank for purposes of eligibility in the Plan.

## **2.7 Former Employees of Eastern Federal Savings and Loan Association**

Former employees of Eastern Federal Savings and Loan Association employed by Bayside Federal Savings Bank on January 1, 1992 and subsequently employed by North Fork Bank between July 1, 1994 and December 1, 1994 shall be eligible to participate in the Plan on December 1, 1994 and shall receive service credit from their date of employment with Eastern Federal Savings and Loan Association for purposes of eligibility in the Plan.

## **2.8 Former Employees of The Bank of Great Neck**

Former employees of The Bank of Great Neck employed by The Bank of Great Neck on June 30, 1995 and subsequently employed by North Fork Bank on July 1, 1995 shall be eligible to participate in the Plan on July 1, 1995 and shall receive service credit from their date of employment with The Bank of Great Neck for purposes of eligibility in the Plan.



**2.9 Former Employees of Extebank**

Former employees of Extebank whose employment with North Fork Bank began between November 1, 1995 and March 15, 1996 shall be eligible to participate in the Plan April 1, 1996 and shall receive service credit from their date of employment with Extebank for purposes of eligibility in the Plan.

**2.10 Former Employees of First Nationwide Bank**

Former employees of the ten Long Island branches of First Nationwide Bank whose employment with North Fork Bank began on March 22, 1996 shall be eligible to participate in the Plan on April 1, 1996 and shall receive service credit from their date of employment with First Nationwide Bank for purposes of eligibility in the Plan.

**2.11 Former Employees of North Side Savings Bank**

Former employees of North Side Savings Bank who are eligible to participate in the North Side Savings Bank 401(k) Savings Plan on December 31, 1996, and are subsequently employed by North Fork Bank on January 1, 1997, shall be eligible to participate in the Plan on January 1, 1997 and shall receive service credit from their date of employment with North Side Savings Bank for purposes of eligibility in the Plan.

**2.12 Employees of Branford Savings Bank**

Employees of Branford Savings Bank who are eligible to participate in the Branford Savings Bank 401(k) Savings and Retirement Plan on December 31, 1997, and are employed by a subsidiary of North Fork Bancorporation, Inc. on January 1, 1998, shall be eligible to participate in the Plan on January 1, 1998. All other employees of Branford Savings Bank shall be eligible to participate pursuant to Section 2.1(b) herein. Service from their date of employment with Branford Savings Bank will be credited for purposes of eligibility in the Plan.

**2.13 Certain Employees of New York Bancorporation, Inc.**

Employees of New York Bancorporation, Inc., employed by North Fork Bank during the period of January 1, 1998 through March 28, 1998 who were eligible to participate in the Home Federal Savings Bank Tax Deferral Savings Plan shall be eligible to participate in the Plan at the beginning of the next payroll period following the date of employment with the Bank. Employees of New York Bancorporation employed by North Fork Bank on May 1, 1998 who were eligible to participate in the Home Federal Savings Bank Tax Deferral Savings Plan on April 30, 1998 shall become Participants in the Plan on May 1, 1998. All other employees of New York Bancorporation, Inc. employed by North Fork Bank shall be eligible to participate in the Plan once they have completed the eligibility requirements pursuant to Section 2.1 herein. Service from date of employment with New York Bancorporation, Inc. or Hamilton Bancorp, Inc. will be credited to employees for the purposes of satisfying such eligibility requirements of Section 2.1.

**2.14 Employees of Amivest Corporation**

Employees of Amivest Corporation employed by a subsidiary of North Fork Bancorporation, Inc. on December 31, 1998 who were eligible to participate in the Amivest Corporation 401(k) Plan on December 31, 1998 shall become Participants in the Plan on January 1, 1999. All other employees of Amivest Corporation employed by a subsidiary of North Fork Bancorporation, Inc. shall be eligible to participate in the Plan once they have completed the eligibility requirements pursuant to Section 2.1 herein. Service from the date of employment with Amivest Corporation will be credited to employees for the purposes of satisfying such eligibility requirements of Section 2.1

**2.15 Former Employees of Reliance Federal Savings Bank**

Former employees of Reliance Federal Savings Bank or any of its affiliates who were eligible to participate in the Reliance Federal Savings Bank 401(k) Retirement Savings Plan on the date of execution of the merger agreement between North Fork Bancorporation, Inc. and Reliance Federal Savings Bank who became employees of the Employer on such date or any subsequent date through and including February 18, 2000, on account of the merger of North Fork Bancorporation, Inc. and Reliance Federal Savings Bank, shall be eligible to participate in the Plan as soon as administratively practicable following their employment by the Employer. All other such former employees shall be eligible to participate pursuant to Section 2.1(b) herein. Service from the date of such employees' initial employment with Reliance Federal Savings Bank or any of its affiliates will be credited to such employees for purposes of satisfying the eligibility requirements of this Article II.

**2.16 Former Employees of Jamaica Savings Bank FSB**

Former employees of Jamaica Savings Bank FSB or any of its affiliates who were eligible to participate in the Incentive Savings Plan of Jamaica Savings Bank FSB on the date of execution of the merger agreement between North Fork Bancorporation, Inc. and Jamaica Savings Bank FSB who became employees of the Employer on such date or any subsequent date through and including February 29, 2000, on account of the merger of North Fork Bancorporation, Inc. and Jamaica Savings Bank FSB, shall be eligible to participate in the Plan as soon as administratively practicable following their employment by the Employer. All other such former employees shall be eligible to participate pursuant to Section 2.1(b) herein. Service from the date of such employees' initial employment with Jamaica Savings Bank FSB or any of its affiliates will be credited to such employees for purposes of satisfying the eligibility requirements of this Article II.

**2.17 Former Employees of I&A Check Cashing Corporation**

Former employees of I&A Check Cashing Corporation who became employees of CBMC, Inc. a subsidiary of North Fork Bank, on March 16, 2001, shall be eligible to participate in the Plan pursuant to Section 2.1 herein. Service from the date of such employees' initial employment with I&A Check Cashing Corporation will be credited to such employees for purposes of satisfying the eligibility requirements of Article II.

**2.18 Former Employees of Commercial Bank of New York**

Former employees of Commercial Bank of New York or any of its affiliates who were eligible to participate in the 401(k) Plan of Commercial Bank of New York on the date of execution of the merger agreement between North Fork Bancorporation, Inc. and Commercial Bank of New York, who became employees of the Employer on such date or on any subsequent date through and including November 9, 2001, on account of the merger of North Fork Bancorporation, Inc. and Commercial Bank of New York, shall be eligible to participate in the Plan as soon as administratively practicable following their employment by the Employer. All other such former employees shall be eligible to participate pursuant to Section 2.1 herein. Service from the date of such employees' initial employment with Commercial Bank of New York or any of its affiliates will be credited to such employees for purposes of satisfying the eligibility requirements of this Article II.

**2.19 Former Employees of RS Maritime Corp.**

Former employees of RS Maritime Corp. who became employees of NFB Maritime Inc., a subsidiary of North Fork Bank on October 30, 2002, shall be eligible to participate in the Plan pursuant to Section 2.1 herein, effective as of November 1, 2002. Service from the date of such employees' initial employment with RS Maritime Corp. will be credited to such employees for purposes of satisfying the eligibility requirements of Article II.

**2.20 Former Employees of Certain Acquired Money Center Companies**

Former employees of the following money center companies: SMA Check Cashing, LIC Check Cashing, AMR Check Cashing, Sam Money Shops and Joco Check Cashing ("former employers"), who became employees of the Employer as a result of the acquisition of their respective former employer by the Employer, shall be eligible to participate in the Plan pursuant to Section 2.1 herein, effective as of the first day of the calendar month following the closing date of the Employer's acquisition of their respective former employer. Service from the date of such employees' initial employment with their former employer will be credited to such employees for purposes of satisfying the eligibility requirements of Article II.

## ARTICLE III

### BEFORE-TAX CONTRIBUTIONS

#### 3.1 Before-tax Contributions

- (a) Except as hereinafter provided, each Employee who is eligible to participate in the Plan may elect to reduce his Compensation for each payroll period by an amount, in any whole percentages of 1% to 12% of his Compensation for such period and direct his Employer to contribute such amount to the Plan in cash as a Before-tax Contribution. Effective as of January 1, 2002, the percentage range referenced in the preceding sentence shall be increased to any whole percentage of 1% to 20% of Compensation. Notwithstanding the foregoing, no Before-tax Contributions will be made on behalf of a Participant for any payroll period or part thereof after the Participant's Compensation has reached the dollar limit specified in Section 1.14. A Participant's Before-tax Contribution shall be credited to his Before-tax Contribution Account.
- (b) An election by an Employee pursuant to this Section 3.1 shall be made in writing on an Appropriate Form, no later than thirty (30) days (or such lesser number of days as is acceptable to the Committee) prior to the date he or she becomes eligible to participate in the Plan. The Participant shall specify on the Appropriate Form, the percentage of his Compensation to be deducted each payroll period and contributed to the Plan as a Before-tax Contribution.
- (c) Before-tax Contributions shall be forwarded to the Trustee by the Employer as soon as administratively practicable after such amounts have been withheld from the Participant's Compensation but in no event later than the 15th business day of the month following the month in which such amounts would otherwise have been payable to the Participant in cash (except as otherwise permitted by U.S. Department of Labor regulations).
- (d) In addition to the Before-tax Contributions provided under this Section 3.1, an eligible Employee shall be eligible to make Catch-up Contributions as provided in Section 3.10.

#### 3.2 Limitation on Before-tax Contributions

Notwithstanding any provision in the Plan to the contrary, in no event shall the aggregate of Before-tax Contributions (and such other "elective deferrals", as defined in Section 402(g)(3) of the Code and Treasury Regulation Section 1.402(g)-1(b)) made on a Participant's behalf with respect to any year of the Participant exceed \$10,500 (or such higher dollar limit as may be in effect with respect to such year in accordance with Section 402(g)(5) of the Code and Treasury Regulation Section 1.402(g)-1(d) (hereinafter referred to as the "applicable dollar limit")). Any amount in excess of the "applicable dollar limit" shall be distributed in accordance with Section 3.6 of this Plan.

### **3.3 Change in Contribution Rate**

- (a) A Participant may elect to increase (but not if completely suspended) or decrease (but not completely suspend) the amount contributed to the Plan, within the limits specified in Sections 3.1, as of the first payroll period in any calendar month, or any such date authorized by the Committee for the benefit of Plan Participant, by giving written notice on the Appropriate Form to the Committee at least thirty (30) days before such Transaction Date (or such lesser period as the Committee may prescribe).
- (b) A Participant may elect to completely suspend the amount contributed to the Plan, as of any date by giving written notice on the Appropriate Form to the Committee at least thirty (30) days before such date (or such lesser period as the Committee may prescribe).
- (c) A Participant (other than a Participant on an Authorized Leave as defined below) who elected to completely suspend his Before-tax Contributions may not elect to resume such contributions for one year after the Participant elected to suspend such contributions. Such a Participant may elect to resume contributions to the Plan by giving written notice on the Appropriate Form to the Committee at least thirty (30) days before such date (or such lesser period as the Committee may prescribe).
- (d) A Participant on an Authorized Leave (as defined below) or who returns from an Authorized Leave may resume his Before-tax Contributions.
- (e) For purposes of this Section 3.3, an Authorized Leave means any leave of absence authorized by the Committee, including, but not limited to, a leave of absence because of disability, layoff, or maternity, which results in a reduction in (but not an elimination of) the Participant's Compensation.
- (f) Contribution rate changes also may be made at such times as are necessary to comply with the provisions of Section 3.2, Section 3.4 or Section 4.2.

### **3.4 Limitations on Before-tax Contributions**

For each Plan Year in which the "safe harbor" requirements set forth in Section 3.9 are not met and notwithstanding the foregoing provisions of this Article III, the Committee shall limit the amount of Before-tax Contributions made on behalf of each Highly Compensated Employee for each Plan Year to the extent necessary to ensure that either of the following tests is satisfied:

- (a) the “Actual Deferral Percentage” (as hereinafter defined) for the group of Highly Compensated Employees who are eligible to participate in the Plan is not more than the Actual Deferral Percentage of all other Employees who are eligible to participate in the Plan multiplied by 1.25; or
- (b) the excess of the Actual Deferral Percentage for the group of Highly Compensated Employees who are eligible to participate in the Plan over that of all other Employees who are eligible to participate in the Plan is not more than two percentage points, and the Actual Deferral Percentage for the group of Highly Compensated Employees eligible to participate in the Plan is not more than the Actual Deferral Percentage of all other Employees eligible to participate in the Plan multiplied by 2.0.

For purposes of this Section 3.4, the term “Actual Deferral Percentage” shall mean, for a specified group of Employees (or any Employee) eligible to participate in the Plan for a Plan Year (as determined pursuant to Treasury Regulation Section 1.401(k)-1(g)(4)), the average of the ratios (or the ratio) calculated to the nearest one-hundredth of a percentage point (calculated separately for each person in such group and to the nearest one-hundredth of a percentage point) of

- (c) the aggregate of the Before-tax Contributions which, in accordance with the rules set forth in Treasury Regulation Section 1.401(k)-1(b)(4), are taken into account with respect to such Plan Year, to
- (d) such employee’s “Section 414(s) compensation” (as determined under Section 414(s) of the Code and the regulations thereunder) for such Plan Year. For this purpose, Section 414(s) compensation shall mean compensation as described under Section 415(c)(3) of the Code and the regulations thereunder. Before and after January 1, 1998, Compensation shall include all amounts currently not included in the Employee’s gross income by reason of Sections 125 and 402(a)(8) of the Code and, effective as of January 1, 1998, shall also include all amounts not included currently in the Employee’s gross income at his election pursuant to a qualified transportation fringe benefit arrangement under Section 132(f) of the Code. Compensation shall be limited to that portion of the Plan Year in which the Employee was an eligible Employee (as determined pursuant to Treasury Regulation Section 1.401(k)-1(g)(4)).

The Actual Deferral Percentage for any Employee who is a Highly Compensated Employee for the Plan Year and who is eligible to have Before-tax Contributions made on his behalf under two or more arrangements described in Section 401(k) of the Code that are maintained by an Employer or any member of the Controlled Group shall be determined as if such Before-tax Contributions were made under a single arrangement.

If the Plan is permissibly aggregated or is required to be aggregated with other plans, as provided under Treasury Regulation Section 1.401(k)-1(b)(3) for purposes of determining whether or not such plans satisfy Section 410(b) of the Code (other than for purposes of the average benefit percentage test), then the provisions of this Section 3.4 shall be applied by determining the Actual Deferral Percentage of eligible Employees as if all such plans were a single plan. A plan may not be aggregated with another plan having a different plan year.

If the Plan covers both Employees who are included in a unit of employees covered by a collective bargaining agreement and Employees who are not so covered it must be treated as two separate plans (one for each group of eligible Employees) for purposes of Section 401(k) of the Code.

Solely for the purpose of this Section 3.4, the term "Before-tax Contributions" shall, to the extent elected by the Committee in accordance with applicable law, include such other contributions which, in accordance with Treasury Regulation Section 1.401(k)-1(b)(5), may be aggregated with such Before-tax Contributions for purposes of demonstrating compliance with the requirements of Section 401(k)(3) of the Code.

In the event it is determined prior to any payroll period that the amount of Before-tax Contributions elected to be made thereafter would cause the limitation prescribed in this Section 3.4 to be exceeded, the amount of Before-tax Contributions allowed to be made on behalf of Highly Compensated Employees (and/or such other Participants as the Committee may prescribe) may be reduced, notwithstanding the limitations on contribution rate changes in Section 3.3. Except as is hereinafter provided, the Participants to whom such reduction is applicable and the amount of such reduction shall be determined pursuant to such uniform and nondiscriminatory rules as the Committee shall prescribe.

Notwithstanding the foregoing paragraph, with respect to any Plan Year in which Before-tax Contributions on behalf of Highly Compensated Employees exceed the applicable limit set forth in this Section 3.4, the Committee shall reduce the amount of the excess Before-tax Contributions made on behalf of the Highly Compensated Employees by reducing such excess Before-tax Contributions (along with earnings) attributable to such excess Before-tax Contributions, as determined pursuant to Treasury Regulation Section 1.401(k)-1(f)(4)(ii). The Committee shall instruct the Trustee to distribute such excess Before-tax Contributions (along with earnings (including gap period earnings) attributable to such Before-tax Contributions as determined pursuant to Treasury Regulation Section 1.401(k)-1(f)(4)(ii)) to the affected Highly Compensated Employees as soon as practicable after the end of such Plan Year, and in all events prior to the end of the next following Plan Year. The amount of such reduction for a Highly Compensated Employee for a Plan Year is the amount (if any) determined in the following manner:

- (i) The Committee shall determine the amount of the excess Before-tax Contributions attributable to each Highly Compensated Employee as the amount (if any) by which the Employee's Before-tax Contributions must be reduced for the Employee's Actual Deferral Percentage to equal the highest permitted Actual Deferral Percentage under the Plan. To calculate the highest permitted Actual Deferral Percentage under the Plan, the Actual Deferral Percentage of the Highly Compensated Employee with the highest Actual Deferral Percentage is reduced by the amount required to cause the Employee's Actual Deferral Percentage to equal the Actual Deferral Percentage of the Highly Compensated Employee with the next highest Actual Deferral Percentage. If a lesser reduction would enable the Plan to satisfy the Actual Deferral Percentage test, only this lesser reduction may be made. This process must be repeated under the Plan would satisfy the Actual Deferral Percentage test.
- (ii) The Committee shall calculate the dollar amount of the excess Before-tax Contributions attributable to all Highly Compensated Employees, in the aggregate.
- (iii) The Committee shall distribute the aggregate excess Before-tax Contributions, adjusted for any income or loss up to the date of distribution in the manner described above, to the Highly Compensated Employees, so that the Before-tax Contributions of the Highly Compensated Employees with the highest dollar amount of Before-tax Contributions are reduced by the amount required to cause the Participant's Before-tax Contributions to equal the amount contributed by the Highly Compensated Employee having the next highest dollar amount of Before-tax Contributions. If a lesser reduction would enable the Plan to satisfy the Actual Deferral Percentage test for the Plan Year, only this lesser reduction need be made. This process must be repeated until the excess Before-tax Contributions for the Plan Year are fully distributed. When the excess Before-tax Contributions for the Plan Year are fully distributed, the Actual Deferral Percentage test is deemed to be satisfied for the Plan Year.

To the extent that excess Before-tax Contributions are refunded, Matching Bank Contributions attributable to such excess contributions must be forfeited as of the date of determination that such excess exists.

Notwithstanding distributions pursuant to the foregoing provisions, excess Before-tax Contributions shall be treated as Annual Additions for purposes of Article XV.

If any Before-tax Contribution made on behalf of a Participant in excess of the maximum permitted is paid to the Trustee before discovering the fact that the amount exceeds the limitations of this Section 3.4, such amount shall be deemed to have been contributed to the Plan by way of a mistake of fact.



An elective contribution will be taken into account under the Actual Deferral Percentage test of Code Section 401(k)(3)(A) for a Plan Year only if it relates to Compensation that either would have been received by the Employee in the Plan Year and would have been received by the Employee within 2 1/2 months after the close of the Plan Year.

An elective contribution will be taken into account under the Actual Deferral Percentage test for a Plan Year only if it is allocated to the Employee as of a date within the Plan Year. For this purpose, an elective contribution is considered allocated as of a date within a Plan Year if the allocation is not contingent on participation or performance of services after such date and the elective contribution is actually paid to the Trust no later than 12 months after the Plan Year to which the contribution relates.

### **3.5 Qualified Nonelective Contributions**

Notwithstanding anything to the contrary herein, for any Plan Year in which Before-tax Contributions on behalf of Highly Compensated Employees exceed the applicable limit set forth in Section 3.4, the Bank, in its sole discretion, may make Qualified Nonelective Contributions to the accounts of active non-Highly Compensated Employees. Any such contributions shall be allocated, as of the last day of the Plan Year to the Qualified Nonelective Contribution Accounts of such Participants as are entitled thereto, in the same ratio as each such Participant's Compensation bears to the aggregate Compensation of all active non-Highly Compensated Employees. Qualified Nonelective Contributions shall be nonforfeitable and subject to the same distribution restrictions that apply to elective contributions.

### **3.6 Distribution of Excess Deferrals**

- (a) Notwithstanding any other provision of the Plan, Excess Before-tax Amounts (as hereinafter defined) plus any income and minus any loss allocable thereto for both the calendar year and the period between the end of the calendar year and the date the distribution is made, as determined pursuant to Treasury Regulation Section 1.402(g)-1(e)(5)(iii), shall be distributed no later than each April 15, to Participants who claim such allocable Excess Before-tax Amounts for the preceding calendar year.
- (b) For purposes of this Section 3.5, "Excess Before-tax Amount" shall mean the amount of a Participant's Before-tax Contributions (and other "elective deferrals" within the meaning of Section 402(g)(3)(A) of the Code) for a calendar year that the Participant allocates to this Plan pursuant to the claim procedure set forth in subsection 3.5(c) of this Plan.

- (c) The Participant's claim shall be in writing; shall be submitted to the Committee no later than March 1 of the calendar year following the calendar year that the Excess Before-tax Amount occurred; shall specify the Participant's Excess Before-tax Amount for the preceding calendar year; and shall be accompanied by the Participant's written statement that if such amounts are not distributed, such Excess Before-tax Amount, when added to amounts deferred under other plans or arrangements described in Section 401(k), 408(k), 403(b), or 501(c)(18) of the Code, exceeds the limit imposed on the Participant in accordance with the applicable provisions of the Code for the year in which the deferral of the Excess Before-tax Amount occurred. If a Participant has Excess Before-tax Amounts, taking into account only elective deferrals under the Plan and other plans of the Employer, the Participant is deemed to have notified the Plan of such Excess Before-tax Amounts in accordance with the terms of this subsection (c), and such Excess Before-tax Amounts shall be distributed in accordance with the terms of this subsection (c).

Excess Before-tax Amounts are not to be disregarded for the purposes of applying the requirements of Code Section 401(a)(4) and 401(k)(3) to the Plan merely because they are Excess Before-tax Amounts or are distributed. Notwithstanding the foregoing, Excess Before-tax Amounts by Non-Highly Compensated Employees are not to be taken into account under Code Section 401(k)(3) to the extent such deferrals are prohibited under Section 401(a)(30) of the Code.

Excess Before-tax Amounts are treated as Employer contributions for purposes of Section 415 of the Code unless distributed pursuant to this Section 3.5 of the Plan.

### 3.7 **Distribution Requirements Applicable to Before-tax Contributions**

Before-tax Contributions and Qualified Nonelective Contributions and the income allocable thereto shall in no event be distributed to a Participant or Beneficiary, as the case may be, earlier than such Participant's retirement, death, Disability, termination of employment, or upon the occurrence of one of the following events:

- (a) Termination of the Plan without the establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in Section 4975(e)(7) of the Code).
- (b) The disposition by an Employer to an unrelated corporation of substantially all of the assets (within the meaning of Section 409(d)(2) of the Code) used in a trade or business of an Employer, but only with respect to Employees who continue employment with the corporation acquiring such assets, provided that the Employer continues to maintain the Plan after the disposition.

- (c) The disposition by an Employer to an unrelated entity of such Employer's interest in a subsidiary (within the meaning of Section 409(d)(3) of the Code), but only with respect to Employees who continue employment with such subsidiary, provided that the Employer continues to maintain the Plan after the disposition.
- (d) A hardship distribution, as described in Section 9.1 of the Plan.

With respect to a distribution to a Participant on account of an event described in subparagraphs (a), (b), or (c) above, such distribution shall be paid in the form of a lump sum (as defined in Section 402(e)(4) of the Code, without regard to clauses (i), (ii), (iii), and (iv) of subparagraph (A), subparagraph (B), or subparagraph (H) thereof).

### **3.8 Veterans**

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

### **3.9 Satisfaction of Safe Harbor Requirements**

Effective for Plan Years beginning on and after January 1, 2002 and notwithstanding the terms of Section 3.4, the test provided in Code Section 401(k) (3) shall be met and the limitations in Section 3.4 shall not apply if the Plan meets the Notice Requirement, Contribution Requirement, Vesting Requirement and Withdrawal Restriction of subsections (a), (b), (c) and (d), respectively.

- (a) The Notice Requirement is met if each Employee eligible to participate in the Plan is, within a reasonable period before any Plan Year, given written notice of the Employee's rights and obligations under the Plan as prescribed by Code Section 401(k)(12) and the regulations thereunder. The notice must be sufficiently accurate and comprehensive to apprise the Employee of such rights and obligations, and be written in a manner calculated to be understood by the average Employee eligible to participate in the Plan. A notice provided to Participants within thirty (30) days (but not more than ninety (90) days before the beginning of each Plan Year will be deemed to be provided within a reasonable period.
- (b) The Contribution Requirement is met if (A) the Matching Contribution Requirement is met, or (B) the Employer is required to make a nonelective contribution of at least three percent (3%) of the Employee's Compensation to a defined contribution plan on behalf of each Non-Highly Compensated Employee who is eligible to participate in the Plan without regard to whether such Employee makes Before-tax Contributions. The Matching Contribution Requirement is met if the Employer makes a Bank Matching Contribution on behalf of each Non-Highly Compensated Employee in an amount equal to one

hundred percent (100%) of the Before-Tax Contribution of the Employee to the extent such Before-tax Contributions do not exceed three percent (3%) of the Employee's Compensation, and 50% of the Before-tax Contributions to the extent such Before Tax Contributions exceed three percent (3%) of Compensation, but do not exceed five percent (5%) of Compensation. The rate of Bank Matching Contributions for Highly Compensated Employees cannot be greater than the rate of Bank Matching Contributions for Non-Highly Compensated Employees at any rate of Before-tax Contributions. If the rate of Bank Matching Contributions is not equal to the percentage required under the Matching Contribution Requirement, the Plan will nevertheless meet the Matching Contribution Requirement if the rate of Bank Matching Contributions does not increase as an Employee's rate of Before-tax Contributions increases, and the aggregate amount of Bank Matching Contributions at such rate is equal to or greater than the aggregate amount of Bank Matching Contributions which would be made if Bank Matching Contributions were made on the basis of the percentages specified above.

- (c) The Vesting Requirements is met if a Participant shall have an immediate and nonforfeitable vested right in amounts contributed to his Bank Matching Contribution Account attributable to Plan Years beginning on and after January 1, 2002.
- (d) The Withdrawal Restriction is met if a Participant shall not be able to make hardship withdrawals under Section 9.1 from the portion of his Bank Matching Contribution Account attributable to amounts contributed under subsection (b), and earnings thereon.

### **3.10 Catch-up Contributions**

Effective as of April 1, 2002, an eligible Employee shall be entitled to make additional contributions to his Before-tax Contribution Account in accordance with the following requirements which are intended to comply with the provisions of Code Section 414(v).

- (a) An Employee shall be eligible under this Section 3.10 if he will attain age fifty (50) by the end of the Plan Year;
- (b) Catch-up Contributions shall be contributions made at the election of the Participant provided that the Participant's Before-tax Contributions for the Plan Year have been or will otherwise be limited due to the limitations under Section 3.1 or under Code Sections 415, 401(a)(30), 404(a) or 401(k)(3). To the extent that the Participant's Before-tax Contributions for the Plan Year are not restricted due to the limitations in the preceding sentence, any Catch-up Contributions made for the Plan Year shall be treated as regular Before-tax Contributions.

- (c) The Participant's election to make Catch-up Contributions shall be made in accordance with the election procedures established by the Committee.
- (d) The maximum Catch-up Contribution for a Plan Year shall be limited as follows provided that effective for the Plan Years commencing on or after January 1, 2007, the limit shall be adjusted in accordance with Code Section 414(v)(3)(c).

<b>Plan Year</b>	<b>Maximum Amount</b>
2002	\$ 1,000
2003	\$ 2,000
2004	\$ 3,000
2005	\$ 4,000
2006	\$ 5,000

- (e) No Bank Matching Contribution shall be made with regard to a Participant's Catch-up Contributions.

The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of section 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416 of the Code, as applicable, by reason of the making of such catch-up contributions.

ARTICLE IV

BANK MATCHING CONTRIBUTIONS

**4.1 Bank Matching Contributions**

Effective for Plan Years beginning on and after January 1, 2002, the Employer shall make a Bank Matching Contribution equal to one hundred percent (100%) of the Employee's Before-tax Contribution on amounts that do not exceed three percent (3%) of the Employee's Compensation, and fifty percent (50%) of the Employee's Before-tax Contribution on amounts between four percent (4%) and six percent (6%) of Compensation.

The Employer may designate the Bank Matching Contributions described above as "qualified matching contributions" (to the extent permitted under Treasury Regulation Section 1.401(k)-1(g)(13)) on behalf of Participants.

Any other provision of the Plan notwithstanding, in no event shall the Bank Matching Contribution for any Plan Year exceed the amount deductible for such Plan Year for income tax purposes as a contribution to the Trust Fund under Section 404 of the Code.

Bank Matching Contributions, for any Plan Year, shall be made at the end of each calendar quarter.

The Employer shall make a one-time Bank Matching Contribution with respect to Before-tax Contributions made in the first two payrolls during the month of October 1998 by Participants employed at the branches of Branford Savings Bank acquired by Citizens Savings Bank on October 16, 1998.

**4.2 Limitations on Bank Matching Contributions**

For each Plan Year in which the "safe harbor" requirements set forth in Section 4.3 are not met and notwithstanding the foregoing provisions of this Article IV, the Committee shall limit the amount of Bank Matching Contributions made on behalf of each Highly Compensated Employee for each Plan Year to the extent necessary to ensure that either of the following tests is satisfied:

- (a) the "Actual Matching Contribution Percentage" (as hereinafter defined) for the group of Highly Compensated Employees who are eligible to participate in the Plan is not more than the Actual Matching Contribution Percentage of all other Employees who are eligible to participate in the Plan multiplied by 1.25; or
- (b) the excess of the Actual Matching Contribution Percentage for the group of Highly Compensated Employees who are eligible to participate in the Plan over that of all other Employees who are eligible to participate in the Plan is not more than two percentage

points, and the Actual Matching Contribution Percentage for the group of Highly Compensated Employees eligible to participate in the Plan is not more than the Actual Matching Contribution Percentage of all other Employees eligible to participate in the Plan multiplied by 2.0.

For purposes of this Section 4.2, the term “Actual Matching Contribution Percentage” shall mean, for a specified group of Employees (or any Employee) eligible to participate (as determined pursuant to Treasury Regulation Section 1.401(m)-1(f)(4)) in the Plan for each Plan Year, the average of the ratios (or the ratio) calculated to the nearest one-hundredth of a percentage point (calculated separately for each person in such group and to the nearest one-hundredth of a percentage point) of

- (A) the aggregate of the Bank Matching Contributions which, in accordance with the rules set forth in Treasury Regulation Section 1.401(m)-1(b)(4), are taken into account with respect to such Plan Year, to
- (B) such Employee’s Section 414(s) compensation (as determined under Section 3.4 of the Plan) for such Plan Year.

The Actual Matching Contribution Percentage for a Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to make contributions, or to have matching employer contributions (within the meaning of Section 401(m)(4)(A) of the Code) made on his behalf under two or more plans described in Section 401(a) of the Code that are maintained by an Employer or any member of the Controlled Group, shall be determined as if the total of such matching contributions were made under a single plan.

If the Plan is permissibly aggregated or is required to be aggregated with other plans, as provided under Treasury Regulation Section 1.401(m)-1(b)(3) for purposes of Section 410(b) of the Code (other than the average benefit percentage test), then the provisions of this Section 4.2 shall be applied by determining the Actual Matching Contribution Percentage of eligible Employees as if all such plans were a single plan. A plan may not be aggregated with another plan having a different plan year.

If the Plan covers both Employees who are included in a unit of Employees covered by a collective bargaining agreement and Employees who are not so covered it must be treated as two separate plans (one for each group of eligible Employees) for purposes of Section 401(m) of the Code.

Solely for the purpose of this Section 4.2, the term “Bank Matching Contributions” shall, to the extent elected by the Committee in accordance with applicable law, include such other contributions which, in accordance with Treasury Regulation Section 1.401(m)-1(b)(5), may be

aggregated with such Bank Matching Contributions for purposes of demonstrating compliance with the requirements of Section 401(m)(2) of the Code. Notwithstanding the preceding sentence, to the extent that Bank Matching Contributions are treated as Before-tax Contributions pursuant to Section 3.4, such Bank Matching Contributions shall be disregarded for purposes of this Section 4.2.

In the event it is determined prior to any payroll period that the amount of Bank Matching Contributions to be made thereafter would cause the limitation prescribed in this Section 4.2 to be exceeded, the amount of such contributions (and any Before-tax Contributions, if necessary) allowed to be made by or on behalf of Highly Compensated Employees (and/or such other Participants as the Committee may prescribe) shall be reduced. Except as hereinafter provided, the Participants to whom such reduction is applicable and the amount of such reduction shall be determined pursuant to such uniform and nondiscriminatory rules as the Committee shall prescribe.

Notwithstanding the foregoing paragraph, with respect to any Plan Year in which Bank Matching Contributions made on behalf of Highly Compensated Employees exceed the applicable limit set forth in this Section 4.2, the Committee shall reduce the amount of the excess Bank Matching Contributions on behalf of the Highly Compensated Employees by reducing such contributions as hereinafter provided. The Committee shall instruct the Trustees to distribute such excess Bank Matching Contributions (along with earnings) attributable to such excess contributions, as determined pursuant to Treasury Regulation Section 1.401(m)-1(e)(3)(ii), to the affected Highly Compensated Employees as soon as practicable after the end of such Plan Year, and in all events prior to the end of the next following Plan Year. The amount of such reduction for a Highly Compensated Employee for a Plan Year is the amount (if any) determined in the following manner:

- (ii) The Committee shall determine the amount of the excess Bank Matching Contributions attributable to each Highly Compensated Employee as the amount (if any) by which the Employee's Bank Matching Contributions must be reduced for the Employee's Actual Contribution Percentage to equal the highest permitted Actual Contribution Percentage under the Plan. To calculate the highest permitted Actual Contribution Percentage under the Plan, the Actual Contribution Percentage of the Highly Compensated Employee with the highest Actual Contribution Percentage is reduced by the amount required to cause the Employee's Actual Contribution Percentage to equal the Actual Contribution Percentage of the Highly Compensated Employee with the next highest Actual Contribution Percentage. If a lesser reduction would enable the Plan to satisfy the Actual Contribution Percentage test, only this lesser reduction may be made. This process must be repeated under the Plan would satisfy the Actual Contribution Percentage test.



- (iii) The Committee shall calculate the dollar amount of the excess Bank Matching Contributions attributable to all Highly Compensated Employees, in the aggregate.
- (iv) The Committee shall distribute the aggregate excess Bank Matching Contributions, adjusted for any income or loss up to the date of distribution in the manner described above, to the Highly Compensated Employees, so that the Bank Matching Contributions of the Highly Compensated Employees with the highest dollar amount of Bank Matching Contributions are reduced by the amount required to cause the Participant's Bank Matching Contributions to equal the amount contributed by the Highly Compensated Employee having the next highest dollar amount of Bank Matching Contributions. If a lesser reduction would enable the Plan to satisfy the Actual Contribution Percentage test for the Plan Year, only this lesser reduction need be made. This process must be repeated until the excess Bank Matching Contributions for the Plan Year are fully distributed. When the excess Bank Matching Contributions are fully distributed, the Actual Contribution Percentage test is deemed to be satisfied for the Plan Year.

Notwithstanding distributions pursuant to the foregoing provisions, excess Bank Matching Contributions shall be treated as Annual Additions for purposes of Article XIV. If any Bank Matching Contribution on behalf of a Participant in excess of the maximum permitted is paid to the Trustee before discovering the fact that the amount exceeds the limitation provided for under this Section 4.2, such amount shall be deemed to have been contributed to the Plan by way of a mistake of fact.

#### **4.3 Satisfaction of Safe Harbor Match Requirements**

Effective for Plan Years beginning on and after January 1, 2002 and notwithstanding the terms of Section 4.2, the nondiscrimination test provided in Section 401(m)(2) of the Code will be met if the Plan meets the Notice Requirement, the Contribution Requirement, Vesting Requirement and Withdrawal Restriction described in Section 3.9, and the Special Limitation on Matching Contributions. The Special Limitation on Matching Contributions is met if (i) Bank Matching Contributions on behalf of any Employee may not be made with respect to an Employee's Before-tax Contributions in excess of six percent (6%) of the Employee's Compensation, (ii) the rate of Bank Matching Contributions does not increase as the rate of an Employee's Before-tax Contributions increases, and (iii) the Bank Matching Contributions with respect to any Highly Compensated Employee at any rate of Employee Before-tax Contributions is not greater than that with respect to a Non-Highly Compensated Employee.

ARTICLE V

ADMINISTRATION OF FUNDS

**5.1 Establishment of Accounts**

The Committee shall cause to be established and maintained on behalf of each Participant a Before-tax Contribution Account, a Bank Matching Contribution Account, a Qualified Nonelective Contribution Account, and a Rollover Account, if applicable.

**5.2 Investment Direction by Participant**

The Participant may elect to have his deferrals and contributions, whether to the Before-tax Contribution Account, Bank Matching Contribution Account, Qualified Nonelective Contribution Account, or Rollover Account, invested in multiples of 5% in each or a combination of such investment funds as shall be selected by the Committee from time to time. The Employee shall determine which of the investment funds he wishes to invest in and the Trustee shall invest all funds received from the Employer, and any earnings therein, in the investment funds as directed from time to time in writing by the Employer.

**5.3 Reinvestment in Same Investment Fund**

Any dividends, interests, property or increments of any sort deriving from any of the above funds shall be held and reinvested in the same fund.

**5.4 Investment of Future Contributions**

A Participant may change his investment in any of the funds as to future contributions on a daily basis.

**5.5 Transfers Between Investment Funds**

A Participant may elect to transfer all or any part of his Account among the available investment fund(s) on a daily basis; *provided however*, that any transfers must be in multiples of 5%.

**5.6 Valuation of Bank Common Stock**

The value of the shares of the Bank's Common Stock will be based on the price of the shares of stock at the close of each business day.

**5.7 Allocation of Investment Fund Earnings**

As of each Valuation Date the Trustee shall determine the earnings of each investment fund and the individual. Account of each Participant shall be credited or charged with his respective share

of the earnings of such investment fund since the last preceding Valuation Date. Each Participant's share shall be determined individually with respect to the portion of his individual Account that is invested in each investment fund, and shall be in the same proportion to the fund earnings of each such investment fund that the balance of his Account invested therein as of the preceding Valuation Date, less distributions or withdrawals therefrom since such prior Valuation Date.

#### **5.8 Administrative Expenses**

The Investment Manager's fees shall be charged to the Participants' Account. All administrative recordkeeping expenses except for loan fees and distribution fees shall be paid by the Bank.

#### **5.9 Self-Directed Brokerage Account**

The Committee may establish, in its discretion, a self-directed brokerage investment account for Plan Participants that may permit Participants to invest their Accounts in a wide array of investment vehicles, as may be permitted by Committee or as may be permitted under arrangements with a third party administration agent or the Plan's Trustee. Any such self-directed brokerage account ("SDA") may contain the following limitations, or any additional limitations or restrictions as the Committee may deem appropriate:

- Participants may not transfer more than 10% of their Account balances to the SDA;
- the minimum initial transfer to the SDA is \$2,500, with a \$1,000 minimum dollar investment in selected funds;
- subsequent transfers of all or portions of the Participant's Account to SDA must total at least \$1,000
- the Participant may be required to complete an application or other forms to open the SDA.

ARTICLE VI

VESTING OF ACCOUNTS

6.1 Vesting in Certain Accounts

A Participant shall always be 100% vested in the value of his Before-tax Contribution Account, Rollover Account and Qualified Nonelective Contribution Account.

6.2 Vesting Schedule

Each Employee who enrolled in the Plan on October 1, 1992 shall be 100% vested in his Bank Matching Contribution Account. Effective January 1, 2002, Employees with an hour of service on or after such date shall be 100% vested in his Bank Matching Contribution Account. Each other Participant shall have a nonforfeitable interest in that portion of his Bank Matching Contribution Account as provided in the following vesting schedule:

<u>Years of Vesting Service</u>	<u>Vesting Percentage</u>
2	25%
3	50%
4	75%
5 or more	100%

Each eligible former employee of Bayside Federal Savings Bank and Eastern Federal Savings and Loan Association who enrolled in the Plan on December 1, 1994 shall be 100% vested in his Bank Matching Contribution Account.

Each eligible former Employee of the Bank of Great Neck who enrolled in the Plan on July 1, 1995 shall be 100% vested in his Bank Matching Contribution Account.

Each former employee of the ten Long Island branches of First Nationwide Bank who enrolled in the Plan on April 1, 1996 shall be 100% vested in his Bank Matching Contribution Account.

Each eligible former employee of Extebank who enrolled in the Plan on April 1, 1996 shall be 100% vested in his Bank Matching Contribution Account.

Each eligible former employee of North Side Savings Bank who enrolls in the Plan on January 1, 1997 shall be 100% vested in his Bank Matching Contribution Account.

Each eligible former employee of Branford Savings Bank who enrolls in the Plan on January 1, 1998 shall be 100% vested in his Bank Matching Contribution Account.

Each eligible former employee of New York Bancorporation, Inc. who enrolls in the Plan on May 1, 1998 shall be 100% vested in his Bank Matching Contribution Account.

Each eligible employee of Aminvest Corporation who enrolls in the Plan by January 1, 1999 shall be 100% vested in his Bank Matching Contribution Account.

Each eligible former employee of Jamaica Savings Bank FSB who enrolls in the Plan as of the earliest permissible date under Section 2.16 shall immediately be 100% vested in his or her Bank Matching Contribution Account.

Each eligible former employee of Reliance Federal Savings Bank or any of its affiliates who enrolls in the Plan as of the earliest permissible date under Section 2.15 shall immediately be 100% vested in his or her Bank Matching Contribution Account.

Each eligible former employee of Commercial Bank of New York or any of its affiliates who enrolls in the Plan as of the earliest permissible date under Section 2.18 shall immediately be 100% vested in his or her Bank Matching Contributions.

### **6.3 Reemployment**

In the case of a Participant who separates from service without a nonforfeitable interest in his Bank Matching Contribution and who is reemployed after having five (5) consecutive one-year Breaks-in-Service, all Years of Vesting Service after such Breaks-in-Service will be disregarded for the purpose of vesting the Bank Matching Contributions that accrued before such breaks, but both pre-break and post-break service will count for the purposes of vesting the Bank Matching Contributions that accrue after such breaks. Both accounts will share in the earnings and losses of the fund.

In the case of a Participant who separates from service without a nonforfeitable interest in his Bank Matching Contribution who is reemployed but does not have five (5) consecutive one-year Breaks-in-Service, both the pre-break and post-break service will count in vesting both the pre-break and post-break Bank Matching Contribution Account.

### **6.4 Forfeitures**

- (a) With respect to Participants separating from service with the Bank other than by reason of retirement, disability or death, amounts in a Participant's Bank Matching Contribution Account which are not vested in whole or in part pursuant to Section 6.2 above, shall be forfeited as of the date the Participant receives a distribution provided that the Participant (i) voluntarily elected to receive such distribution or (ii) received a distribution of his entire vested Account and the amount of such distribution did not exceed \$5,000.

- (b) Notwithstanding the foregoing, the Participant's entire Account shall be restored if:
  - (i) the Participant is reemployed prior to incurring five (5) consecutive one-year Breaks-in-Service,
  - (ii) the Participant received a distribution which was less than his entire Account balance, and
  - (iii) the Participant repays the full amount of the distribution no later than the earlier of five (5) years after the date of reemployment or before incurring five (5) consecutive one-year Breaks-in-Service commencing after the distribution.

The amount restored shall be equal to the Participant's Bank Matching Contribution Account, both distributed and forfeited, as of the date of distribution, unadjusted for any subsequent gains or losses. Acceptable sources of such restoration include income to the Plan, forfeitures of Bank Matching Contributions and Employer Contributions. Rules regarding the order of sources from which restoration is made shall be determined by the Committee and applied in a uniform and nondiscriminatory manner. The forfeited amounts shall be restored to the Participant no later than the end of the Plan Year following the year in which repayment occurs.

- (c) For Participants separating from service who do not receive a distribution, forfeitures will occur on the earlier of (i) the date the vested Account balance is distributed or (ii) after he incurs five (5) consecutive one-year Breaks-in-Service.
- (d) Forfeitures shall be used to reduce Bank Matching Contributions.

#### **6.5 Former Employees of Bayside Federal Savings Bank**

Former employees of Bayside Federal Savings Bank employed by North Fork Bank between July 1, 1994 and December 1, 1994 shall be eligible to enroll in the Plan on December 1, 1994. When they become Participants, they shall receive service credit with Bayside Federal Savings from the later of October 1, 1992 or their date of employment for purposes of vesting in the Plan.

#### **6.6 Former Employees of Eastern Federal Savings and Loan Association**

Former employees of Eastern Federal Savings and Loan Association employed by Bayside Federal Savings Bank on January 1, 1992 and subsequently employed by North Fork Bank between July 1, 1994 and December 1, 1994 shall be eligible to enroll in the Plan on December 1, 1994. When they become Participants, they shall receive service credit from the later of their date of employment with Eastern Federal Savings and Loan Association, or October 1, 1992 for purposes of vesting in the Plan.

**6.7 Former Employees of The Bank of Great Neck**

Former employees of The Bank of Great Neck employed by The Bank of Great Neck on June 30, 1995 and subsequently employed by North Fork Bank on July 1, 1995 shall be eligible to enroll in the Plan on July 1, 1995. When they become Participants, they shall receive service credit from the later of their date of employment with The Bank of Great Neck, or October 1, 1992 for purposes of vesting in the Plan.

**6.8 Former Employees of Extebank**

Former employees of Extebank employed by North Fork Bank between November 15, 1995 and March 15, 1996 shall be eligible to enroll in the Plan on April 1, 1996. When they become Participants, they shall receive service credit with Extebank from the later of October 1, 1992 or their date of employment with Extebank for purposes of vesting in the Plan.

**6.9 Former Employees of First Nationwide Bank**

Former employees of First Nationwide Bank employed by First Nationwide Bank as of . the effective date of the purchase of the ten Long Island branches and subsequently employed by North Fork Bank shall be eligible to enroll in the Plan on April 1, 1996. When they become Participants, they shall receive service credit with First Nationwide Bank from the later of October 1, 1992 or their date of employment with First Nationwide Bank for purposes of vesting in the Plan.

**6.10 Employees of North Side Savings Bank**

Employees of North Side Savings Bank employed by the North Side Savings Bank on December 31, 1996 and subsequently employed by North Fork Bank on January 1, 1997 shall be eligible to enroll in the Plan on January 1, 1997. When they become Participants, they shall receive credit from the later of October 1, 1992 or their date of employment with North Side Savings Bank for purposes of vesting in the Plan.

**6.11 Employees of Branford Savings Bank**

Eligible employees of Branford Savings Bank employed by Branford Savings Bank on December 31, 1997 shall be eligible to enroll in the Plan on January 1, 1998. Participants who elect to join the Plan after January 1, 1998 shall receive credit from the later of October 1, 1992 or their date of employment with Branford Savings Bank for purposes of vesting in the Plan.

**6.12 Certain Employees of New York Bancorporation, Inc.**

Employees of New York Bancorporation, Inc. subsequently employed by North Fork Bank on January 1, 1998 and thereafter, who enroll in the Plan, will receive service credit from the later of October 1, 1992 or their date of employment with New York Bancorporation, Inc. or Hamilton Bancorp, Inc. for purposes of vesting in the Plan.

**6.13 Employees of Amivest Corporation**

Employees of Amivest Corporation subsequently employed by a subsidiary of North Fork Bancorporation, Inc. on January 1, 1999 and thereafter, who enroll in the Plan, will receive service credit from the later of October 1, 1992 or their date of employment with Amivest Corporation for purposes of vesting in the Plan.

**6.14 Former Employees of Reliance Federal Savings Bank**

Former employees of Reliance Federal Savings Bank or any of its affiliates who became employees of the Employer on the date of execution of the merger agreement between North Fork Bancorporation, Inc. and Reliance Federal Savings Bank or on any subsequent date through and including February 18, 2000, on account of the merger of North Fork Bancorporation, Inc. and Reliance Federal Savings Bank, will receive service credit from the date of such employees' initial employment with Reliance Federal Savings Bank or any of its affiliates for purposes of vesting under this Article VI.

**6.15 Former Employees of Jamaica Savings Bank FSB**

Former employees of Jamaica Savings Bank FSB or any of its affiliates who became employees of the Employer on the date of execution of the merger agreement between North Fork Bancorporation, Inc. and Jamaica Savings Bank FSB or on any subsequent date through and including February 29, 2000, on account of the merger of North Fork Bancorporation, Inc. and Jamaica Savings Bank FSB, will receive service credit from the date of such employees' initial employment with Jamaica Savings Bank FSB or any of its affiliates for purposes of vesting under this Article VI.

**6.16 Employees of I&A Check Cashing Corporation**

Former employees of I&A Check Cashing Corporation who became employees of CBMC, Inc. a subsidiary of North Fork Bank, on March 16, 2001, will receive service credit from the date of such employees' initial employment with I&A Check Cashing Corporation for purposes of vesting under this Article VI.

**6.17 Former Employees of Commercial Bank of New York**

Former employees of Commercial Bank of New York or any of its affiliates who became employees of the Employer on the date of execution of the merger agreement between North Fork Bancorporation, Inc. and Commercial Bank of New York or on any subsequent date through and



including November 9, 2001, on account of the merger of North Fork Bancorporation, Inc. and Commercial Bank of New York, will receive service credit from the date of such employees' initial employment with Commercial Bank of New York or any of its affiliates for purposes of vesting under this Article VI.

**6.18 Former Employees of RS Maritime Corp.**

Former employees of RS Maritime Corp. who became employees of NFB Maritime Inc., a subsidiary of North Fork Bank, on October 30, 2002, will receive service credit from the date of such employees' initial employment with RS Maritime Corp. for purposes of vesting under this Article VI.

**6.19 Former Employees of Certain Acquired Money Center Companies**

Former employees of the following money center companies: SMA Check Cashing, LIC Check Cashing, AMR Check Cashing, Sam Money Shops and Joco Check Cashing ("former employers"), who became employees of the Employer as a result of the Employer's acquisition of their former employer, will, effective as of the closing date of the Employer's acquisition of their respective former employer, receive service credit from the date of such employees' initial employment with their respective former employer for purposes of vesting under this Article VI.

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**ARTICLE VII**

**OPERATION OF THE TRUST FUND**

**7.1 Trust Fund; Trustee**

All the funds of the Plan shall be held by a Trustee or Trustees appointed from time to time by the Board of Directors, in trust under a Trust Agreement adopted, or as amended, by such Board for use in providing the benefits of the Plan; and no part of the corpus or income of the Trust Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants or their Beneficiaries under the Plan. No person shall have any interest in or right to any part of the earnings of the Trust Fund or any rights in, or to, or under the Trust Fund or any part of the assets thereof, except as and to the extent expressly provided in the Plan and in the Trust Agreement.

**7.2 Funds Maintained by Trustee**

Contributions to the Plan by Employers for each calendar month shall be transmitted to the Trustee no later than thirty days (30) after the end of such calendar month and, with respect to Before-tax Contributions, not later than the date specified in Section 3.1(c). The Trustee shall invest such contributions only as provided in the Plan and the Trust Agreement.

**7.3 Cash**

The Trustee shall maintain in cash, such part of the Trust Fund as the Committee specifies for the proper administration of the Plan. At the Committee's direction, the Trustee shall invest such cash in high quality short-term money market instruments as determined by the Trustee, which shall be treated as cash for purposes of the Plan.

ARTICLE VIII

VOTING RIGHTS

**8.1 Participant Voting and Tendering Rights**

- (a) Each Participant shall be entitled to instruct the Trustee with respect to voting and/or giving of proxies to vote the number of shares of Bank Stock in the Accounts of the Participant on the applicable record date in accordance with the provisions of this Article.
- (b) Each Participant (or, in the event of his or her death, his or her Beneficiary) is, for purposes of this Section 8.1(b), hereby designated a “named fiduciary,” within the meaning of Section 403(a)(1) of ERISA with respect to (i) the shares of Bank Stock held in or allocated to his or her Accounts and (ii) his or her proportionate share (as determined pursuant to subparagraph (c) below, of that portion of the shares of Bank Stock held in or allocated to all Participants’ Accounts for which Participants do not give timely instructions as described in such Section 8.1(c) (such proportionate share being determined at the respective times such fiduciary rights are exercisable as set forth below).
- (c) Each Participant (or, in the event of his or her death, his or her Beneficiary) shall have the right to instruct the Trustee in writing as to the manner in which to vote (1) the shares of Bank Stock held in or allocated to his or her Accounts and (2) his or her proportionate share (as determined in clause (i) below, as applicable) of that portion of the shares of Bank Stock allocated to all Participants’ Accounts for which Participants do not give timely instructions to the Trustee, at any shareholders’ meeting of North Fork Bancorporation, Inc.

An individual’s proportionate share of shares of Bank Stock held in or allocated to all Participants’ Accounts for which timely instructions are not received by the Trustee, shall be a fraction, the numerator of which shall be the number of shares which are held in or allocated to such individual’s Accounts for which he or she provides instructions to the Trustee and the denominator of which shall be the number of shares in all Accounts for which instructions are provided to the Trustee.

- (d) Each Participant (or, in the event of his or her death, his or her Beneficiary) shall have the right to instruct the Trustee in writing as to the manner in which to respond to a tender or exchange offer with respect to shares of Bank Stock held in or allocated to his or her Accounts.

## **8.2 Distribution of Information and Voting**

The Bank shall use its best efforts to timely distribute or cause to be distributed to each Participant (or Beneficiary) the information distributed to shareholders' of North Fork Bancorporation, Inc. in connection with any shareholders' meeting, together with a form requesting confidential instructions to the Trustee on how such shares of Bank Stock shall be voted on each such matter. Upon timely receipt of such instructions, the Trustee shall, on each such matter, vote as directed, the appropriate number of shares (including fractional shares) of Bank Stock. The instructions received by the Trustee from individual Participants (or Beneficiaries) shall be held by the Trustee in strict confidence and shall not be divulged to any person, including employees, officers and directors of the Bank or any affiliate; *provided, however*, that, to the extent necessary for the operation of the Plan, such instructions may be relayed by or to the Trustee to or from a recordkeeper, auditor or other person providing services to the Plan if such person (1) is not the Bank, an affiliate or any employee, officer or director thereof, and (2) agrees not to divulge such directions to any other person, including Employees, officers and directors of the Bank and its affiliates.

## **8.3 Distribution Information-Tendering**

The Bank shall use its best efforts to timely distribute or cause to be distributed to each Participant (or Beneficiary) the information distributed to shareholders of North Fork Bancorporation, Inc. in connection with any tender or exchange offer, together with a form requesting confidential instructions to the Trustee on whether such shares of Bank Stock are to be tendered. Upon timely receipt of such instructions, the Trustee shall respond as instructed with respect to such shares of such Bank Stock. If, and to the extent that, the Trustee shall not have received timely instructions from any individual given a right to instruct the Trustee with respect to certain shares by Section 8.1(d), such individual shall be deemed to have timely instructed the Trustee not to tender or exchange such shares. The instructions received by the Trustee from individual Participants (or Beneficiaries) shall be held by the Trustee in strict confidence and shall not be divulged or released to any person, including employees, officers and directors of the Bank or any affiliate; *provided, however*, that, to the extent necessary for the operation of the Plan, such instructions may be relayed to or by the Trustee to or from a recordkeeper, auditor or other person providing services to the Plan if such person (i) is not the Bank, an affiliate or any employee, officer or director thereof, and (ii) agrees not to divulge such instructions to any other person, including employees, officers and directors of the Bank and its affiliates.

ARTICLE IX

WITHDRAWALS AND LOANS DURING EMPLOYMENT

9.1 Hardship Withdrawals

A Participant may, upon thirty (30) days prior written notice (or such lesser period as the Committee may from time to time prescribe), by filing the Appropriate Form with the Committee, elect to withdraw amounts during employment, as of the Valuation Date coincident with or next following the filing of the Appropriate Form, as set forth below:

In the event of "Hardship" (as hereinafter defined), any dollar amount up to 100% of the value, as of the last Valuation Date coincident with the Participant's filing of the Appropriate Form, of the value of the Before-tax Contribution Account (excluding any earnings thereon) and the vested Bank Matching Contribution Account (excluding earnings thereon);

*provided, however*, that with respect to Bank Matching Contributions made on and after January 1, 2002 (and earnings thereon), no hardship withdrawals shall be permitted.

For purposes of this Section 9.1, the term "Hardship" means a circumstance resulting from an immediate and heavy financial need of the Participant attributable to:

- (a) costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments).
- (b) Payment of tuition and related educational fees for the next 12 months of postsecondary education for the Participant, his or her spouse, children or dependents (as defined in Section 152 of the Code).
- (c) Medical expenses described in Section 213(d) of the Code previously incurred by the Participant, his or her spouse, or any dependents of the Participant (as defined in Section 152 of the Code) or necessary for these persons to obtain medical care described in Section 213(d) of the Code.
- (d) The need to prevent the eviction of the Participant from his or her principal residence or foreclosure on the mortgage of the Participant's principal residence.

A withdrawal will not be made unless such withdrawal is necessary to satisfy the financial need created by the Hardship. A distribution will be deemed to be necessary to satisfy an immediate and heavy financial need of a Participant if all of the following requirements are satisfied:

- (1) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant. The amount of an

immediate and heavy financial need may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution.

- (2) The Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans currently available under all plans maintained by the Employer, or any member of the Controlled Group.
- (3) The Participant's Before-tax Contributions will be suspended for at least 12 months after receipt of the Hardship distribution, and all other plans (as defined in Treasury Regulation Section 1.401(k)-1(d)(2)(iv)(B)(2)) maintained by the Employer, or any member of the Controlled Group, in which the Participant participates, must also provide for this suspension with respect to hardships under such other plans.
- (4) The Participant may not make Before-tax Contributions for the Participant's taxable year immediately following the taxable year of the Hardship distribution in excess of the applicable limit under Section 402(g) for such next taxable year less the amount of such Participant's Before-tax Contributions for the taxable year of the Hardship distribution. All other plans maintained by the Employer or any member of the Controlled Group, in which the Participant participates, must also provide for this limitation with respect to the Participant's elective contributions under such other plans.

Any amounts withdrawn under this Section 9.1 shall be paid to a Participant in a lump sum in cash, as soon as practicable and in accordance with applicable law after the Valuation Date as of which the withdrawal election is effective. Hardship withdrawals shall be charged to the investment funds in which Participant's Accounts are invested according to administrative procedures established by the Committee.

## **9.2 Loans to Participants**

Upon proper written application of a Participant or Beneficiary, the Committee in its sole discretion may make a loan to such Participant or Beneficiary from the vested portion of his Accounts. The application, and the resulting loan, must meet the terms and conditions specified in the following provisions of this Section 9.2. In granting or refusing any request for a loan, the Committee shall apply uniform standards consistently and such discretionary power shall not be

applied so as to discriminate in favor of Participants who are Highly Compensated Employees. Only one general purpose loan may be outstanding to a Participant at any time. In addition to one general purpose loan, effective as of May 1, 2002, a Participant may have one additional loan outstanding at the same time if it is for the purchase of a primary residence. Although Participants may prepay loans in accordance with Subsection (f) hereof, refinancing of existing loans is not permitted. Notwithstanding any other provision herein to the contrary, the Committee or its delegate may provide that loan application forms, disclosures, promissory notes and other related materials may be provided in electronic format in addition to, or in lieu of paper format.

(a) Request for Loan

An application by a Participant for a loan shall be made in writing (or by electronic means, as may be permitted by the Committee or its delegate) to the Committee at least thirty (30) days in advance of the desired date of the loan, in such form as the Committee may specify. The Committee may shorten the thirty (30) day notice if it finds it administratively feasible. The Committee may require loan applications to be submitted to and processed by its designee, including a third party administrator.

(b) Loan Amount

The maximum loan available to any Participant at any point in time shall not exceed the lesser of (i) 50% of the vested portion of his Accounts or (ii) \$50,000 reduced by the difference between the highest outstanding Plan loan balance during the 12-month period ending on the day before the day on which the new loan is made and the outstanding balance of all Plan loans other than the new loan on the day the new loan is made. In no case, however, shall the loan amount exceed the value of the Participant's Accounts at the date the loan is granted.

For purposes of determining the available loan amount, the vested portion of the Participant's Accounts shall be determined as of the date the loan is requested.

The minimum loan amount shall be \$1,000.

(c) Repayment Terms

The term for repayment of the loan shall be determined at the choice of the Participant to be 12 months, 24 months, 36 months, 48 months or 60 months. Loans for the purchase of a primary residence may be extended to up to 25 years. Such term shall be fixed and may not be extended.

To repay the loan, the Participant shall authorize the Employer to deduct approximately equal payments from his Compensation each regular pay period. The Employer shall transfer such payroll deductions to the Trustee within a reasonable time following the end of each pay period.

Loan repayments other than by payroll deduction will not be permitted except that payment by scheduled installments may be otherwise made by a Participant or Beneficiary in the case of a loan made to (i) a Participant who is a "party in interest" as defined in Section 3(14) of the Act or (ii) a Participant on an authorized leave of absence. Loan repayments other than by payroll deduction will also be permitted by a Participant who elects to prepay his loan in full as set forth in Subsection (f) hereof.

(d) Interest Rate, Costs

Each loan shall bear interest at a fixed rate based on the prime rate as published in the Wall Street Journal on the Monday of each week (or on the first business day thereafter if Monday is not a business day), that precedes the loan effective date, plus an additional 1%.

(e) Loan Security

Each loan shall be secured by the borrower's assignment of 50% of his entire right, title and interest in and to his Account(s) in the Plan, supported by the borrower's collateral promissory note for the amount of the loan, including interest. When the loan is completed the Participant will receive a Loan Disclosure Statement which outlines the terms of the loan.

(f) Advance Repayment

Except as specifically provided herein, all unpaid loans, including accrued interest, shall become immediately due and payable upon death, termination of employment or a distribution to a Participant after age 70Y2 under Section 9.3. Such Participant or Beneficiary shall have the amount of the outstanding loan deducted from the distribution payable in accordance with Article XI herein.

A Participant may repay, at any time, all of the then outstanding principal balance of any loan, together with interest due to the date of the prepaid portion. Any such prepayments shall be made directly to the Trustee. Except as otherwise provided above, such right of prepayment shall be entirely in the discretion of the Participant and shall be without premium or penalty.



(g) Default

Default shall occur when there is nonpayment of a regularly scheduled loan payment. After the Participant misses three consecutive monthly payments, he will be deemed to have received a taxable distribution in the amount of the loan plus unpaid accrued interest. However, exercise on the collateral shall not be made until the occurrence of an otherwise distributable event. Between the date of default and the date of distribution of benefits under Section XI herein, interest shall accrue on any unpaid principal loan amounts..

(h) Continued Contributions

A Participant who has received a loan may continue to contribute to the Plan and the Company will continue to match those contributions pursuant to Section 4.1 herein.

(i) Miscellaneous

Any loans made pursuant to this Section 9.2 shall be made under such rules and regulations as the Committee shall adopt.

Any questions regarding the loan provisions of the Plan should be directed to:

The 401(k) Retirement Savings Plan Committee  
North Fork Bancorporation, Inc.  
275 Broad Hollow Road  
Melville, NY 11747

**9.3 Withdrawal of Bank Stock Dividends**

Upon thirty (30) days notice (or such other lesser period as the Committee may from time to time prescribe) prior to receipt of such amounts by the Trust Fund, a Participant may elect to withdraw from his Account dividends received on Bank Stock which is held as an investment in an investment fund selected by the Participant subject to the procedures described below which are intended to be consistent with the requirements of Section 404(k) of the Code.

- (a) Dividends shall be distributed within a reasonable period of time following receipt by the Trustee, but in no event later than ninety (90) days following the end of the Plan Year in which they are received.
- (b) To the extent the Participant has not made an effective election to withdraw applicable dividends, they shall be reinvested in the investment fund which includes the Bank Stock for which the dividend was received.

- (c) A Participant's election shall be made on the Appropriate Form or through electronic medium as prescribed by the Committee and shall remain in full force and effect until changed by the Participant.

**9.4 In-Service withdrawals at Age 59 1/2**

A Participant shall be entitled to withdraw all or any portion of his Account while in service at any time on or after attaining age 59 1/2. The number of withdrawals under this Section shall be limited to two per calendar year, or such other limit as the Committee may prescribe by uniform and nondiscriminatory rules. The Committee may also establish a minimum withdrawal amount.

ARTICLE X

ROLLOVERS TO THE PLAN

**10.1 Rollovers**

With the consent of the Committee, a Participant (or, effective as of August 1, 2002, an Employee who is eligible for Plan participation, prior to becoming a Participant) may, upon written notice to the Committee on the Appropriate Form prior to any Valuation Date contribute in cash to the Plan, amounts which were received from a qualified pension, profit sharing or stock bonus plan in which a Participant previously participated and which is permitted to be contributed to the Plan in accordance with Sections 402(a)(5), 403(a)(4), 403(b)(8) or 408(d)(3)(A)(ii) of the Code (a "Rollover Contribution"). Any such Rollover Contribution shall be received by the Trustees upon the Committee's determination that the contribution complies in all respects with the requirements of Sections 402(a)(5), 403(a)(4), 403(b)(8) or 408(d)(3)(A)(ii), whichever is applicable, and, upon any discovery that any such contribution does not so comply, the Committee shall direct that the entire amount of the Rollover Contribution, together with all changes in the value of the Trust Fund allocated thereto, shall be returned as soon as practicable to the individual by or on whose behalf it is made.

**10.2 Direct Rollovers from North Fork Bancorporation Cash Balance Retirement Plan**

A Participant who retires on or before December 31, 1997 may transfer to the Plan his account balance from the North Fork Bancorporation Cash Balance Retirement Plan under the following conditions.

- (a) On the date of transfer, the retiree must have an Account in the Plan.
- (b) The transfer must be a direct rollover in one lump sum.
- (c) A reasonable administrative fee will be charged directly to the Account.

**10.3 Direct Rollovers from the Bayside Federal Savings Bank Employee Stock Ownership Plan**

Employees who were actively employed by the Bank on January 1, 1996 who were participants in the Bayside Federal Savings Bank Employee Stock Ownership Plan (the "ESOP") may make a one-time direct rollover to the Plan of Company Stock they receive as a distribution from the ESOP. Such stock shall be subject to the provisions of Article VIII herein.

**10.4 Direct Rollovers from the Reliance Federal Savings Bank Employee Stock Ownership Plan or the Jamaica Savings Bank FSB Employee Stock Ownership Plan**

- (a) Former employees of Reliance Federal Savings Bank or any of its affiliates who were participants in the Reliance Federal Savings Bank Employee Stock Ownership Plan (“Reliance ESOP”) who became employees of the Employer on the date of execution of the merger agreement between North Fork Bancorporation, Inc. and Reliance Federal Savings Bank or on any subsequent date through and including February 18, 2000, on account of the merger of North Fork Bancorporation, Inc. and Reliance Federal Savings Bank, shall be eligible to make a one-time direct rollover to the Plan of the company stock they receive as a distribution from the Reliance ESOP. Such stock shall be subject to the provisions of Article VIII herein.
- (b) Former employees of Jamaica Savings Bank FSB or any of its affiliates who were eligible to participate in the Jamaica Savings Bank FSB Employee Stock Ownership Plan (“Jamaica ESOP”) who became employees of the Employer on the date of execution of the merger agreement between North Fork Bancorporation, Inc. and Jamaica Savings Bank FSB or on any subsequent date through and including February 29, 2000, on account of the merger of North Fork Bancorporation, Inc. and Jamaica Savings Bank FSB, shall be eligible to make a one-time direct rollover to the Plan of the company stock they receive as a distribution from the Jamaica ESOP. Such stock shall be subject to the provisions of Article VIII herein.

**10.5 In-Service Withdrawals from Rollover Accounts**

Effective as of August 1, 2002, Participants who have Rollover Accounts established pursuant to the provisions of this Article X may withdraw all or a portion of their Rollover Account (and earnings thereon) at any time while in service. The Committee may in its discretion, prescribe reasonable limitations on the number of such withdrawals that may be allowed by a Participant during the Plan Year and a minimum dollar amount for such withdrawals.

**ARTICLE XI**

**DISTRIBUTION UPON TERMINATION OF EMPLOYMENT**

**11.1 Amount of Distribution**

Upon a Participant's retirement, death, Disability or other termination of employment with the Bank or member of the Controlled Group, the Participant or the Beneficiary, as the case may be, shall be entitled to a distribution of the vested value of his Accounts, subject to the following provisions of this Article XI.

A Participant shall be 100% vested in his Accounts on his Early Retirement Date, Normal Retirement Date, Disability Retirement Date or Deferred Retirement Date.

**11.2 Methods of Distribution**

All distributions provided pursuant to this Article XI shall be made, except as otherwise provided, in one lump sum as soon as practicable after the applicable Valuation Date. The portion of such lump sum attributable to Bank Stock shall be paid in Bank Stock, except that any fractional shares shall be paid in cash, unless the Participant or his Beneficiary, as the case may be elects to receive the entire amount in cash.

**11.3 Termination Other Than By Reason of Death**

A Participant who terminates employment other than by reason of death shall be given the right to elect to receive a distribution of the vested value of the Participant's Accounts following Termination of Employment. The Participant must be notified of this right no less than 30 days before the date the distribution is made. If the Participant makes such affirmative election by completing the Appropriate Form, then the vested value of the Accounts shall be determined as of the Valuation Date following such election (or such other Valuation Date occurring after such election as the Committee determines in accordance with uniform and nondiscriminatory rules as it shall prescribe). The non-vested portion, if any, of the Accounts shall be forfeited in accordance with Section 6.4(a) herein. Distribution shall be made in a lump sum pursuant to Section 11.2.

If the distribution is one which Section 401(a)(11) and 417 of the Code do not apply, such distribution may commence less than 30 days after the notice required under Section 1.411(a)-11(c) of the Income Tax Regulations is given provided that:

- (1) the Plan Administrator clearly informs the Participant that the participant has the right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution, and

(2) the Participant, after receiving the notice affirmatively elects a distribution.

If the vested value of such Accounts as of Valuation Date on the date of the Participant's Termination of Employment does not exceed \$5,000, distribution of such vested value shall be made as soon as practicable thereafter in a lump sum in cash; *provided however*, that the Participant shall first be permitted to elect to receive such distribution in the form of stock, if all or a portion of his Account was invested in Employer stock, and if no such election is made within the time prescribed by the Committee, then the distribution shall be made in cash. If the vested value of such Accounts as of such Valuation Date exceeds \$5,000 and the Participant has not yet made an election to receive a distribution, such vested value shall, subject to the provisions of Section 11.5, remain in the Trust Fund and be valued as of the Valuation Date coincident with or next following the attainment of age 65. Distribution of the Accounts shall be made as soon as practicable thereafter in a lump sum pursuant to Section 11.2.

#### **11.4 Termination by Reason of Death**

In the event a Participant's Termination of Employment is by reason of death (including, for this purpose, death after Termination of Employment but before distribution), the Accounts will be valued as of the Valuation Date next following such death (or such later date as the Committee determines in accordance with such uniform and nondiscriminatory rules as it shall prescribe), and the total amount so distributable from the Plan shall be paid to the Beneficiary, in a lump sum, pursuant to Section 11.2, as soon as practicable after such Valuation Date, and in all events within 60 days after the end of the Plan Year in which such death occurs.

#### **11.5 Deferred Accounts**

In any case in which a Participant has terminated employment but distribution of the vested value of the Accounts has not yet occurred, such Accounts shall be retained and administered under the Plan until such Accounts are distributed. Except as may otherwise be required by applicable law, the Committee may establish and change from time to time rules and restrictions applicable to the administration of any Accounts held on behalf of any such Participants (which rules and restrictions may differ from those generally applicable to active Participants), and the Committee may assess against the Accounts of any such Participant any reasonable costs of administering the same.

Notwithstanding the foregoing, subject to such uniform and nondiscriminatory rules which the Committee may prescribe, a Participant who has failed to make an affirmative election for distribution of the Accounts in accordance with Section 11.3 may elect to have such Accounts valued for purposes of determining the amount distributable as of any Valuation Date preceding the attainment of age 65, in which case distribution shall be made as soon as practicable thereafter in a lump sum pursuant to Section 11.2.

## 11.6 Alienation of Benefits

Except as otherwise provided by law, no benefit, interest, or payment under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, whether voluntary or involuntary, and no attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be valid nor shall any such benefit, interest, or payment be in any way liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit, interest, or payment or subject to attachment, garnishment, levy, execution or other legal or equitable process.

Notwithstanding the foregoing, the creation, assignment or recognition of a right to any benefit payable with respect to a Participant pursuant to a "qualified domestic relations order" (as defined in Section 414(p) of the Code) shall not be treated as an assignment or alienation prohibited by this Section 11.6. Any other provision of the Plan to the contrary notwithstanding, if a qualified domestic relations order requires the distribution of all or part of a Participant's benefits under the Plan, the establishment or acknowledgment of the alternate payee's right to benefits under the Plan in accordance with the terms of such qualified domestic relations order shall in all events be applied in a manner consistent with the terms of the Plan. Notwithstanding the foregoing, in no event shall the recognition of an alternate payee's rights in accordance with this Section 11.6 be deemed to include the right to make a withdrawal pursuant to the provisions of Article IX.

Any other provision of the Plan to the contrary notwithstanding, the Committee is authorized, pursuant to such uniform and nondiscriminatory rules as it shall establish which shall be consistent with applicable law and the terms of the applicable qualified domestic relations order, to pay out benefits to which alternate payees may be entitled prior to the date such benefits would otherwise become payable in accordance with the applicable provisions of the Plan.

Furthermore, with respect to judgments, orders, decrees issued and settlement agreements entered into on or after August 5, 1997, a Participant's benefit may be reduced if a court order or requirement to pay arises from: (1) a judgment of conviction for a crime involving the Plan; (2) a civil judgment (or consent order or decree) that is entered by a court in an action brought in connection with a breach (or alleged breach) of fiduciary duty under Part 4 of ERISA; or (3) a settlement agreement entered into between the Participant and either the Secretary of Labor or the Pension Benefit Guaranty Corporation in connection with a breach of fiduciary duty under Part 4 of ERISA by a fiduciary or any other person. The court order, judgment, decree, or settlement agreement must specifically require that all or part of the amount to be paid to the Plan be offset against the Participant's Plan benefits.

### 11.7 Commencement of Benefits

Payment of a Participant's benefits under the Plan shall begin not later than the 60th day after the close of the Plan Year in which the latest of the following events occur:

- (a) the Participant attains age 65;
- (b) the 10th anniversary of the date the Participant's participation in the Plan commences;
- (c) the Participant's employment with the Company and all members of the Controlled Group is terminated.

### 11.8 Distribution Restrictions

Notwithstanding anything to the contrary contained in this Plan, the entire interest of each Participant must be paid to him not later than the April 1st of the calendar year following the calendar year in which he attains age seventy and one-half (70 1/2). Any payments made pursuant to this Section shall be adjusted as necessary to the extent required by Section 401(a)(9) of the Code and the regulations thereunder. Notwithstanding the foregoing, effective as of April 2, 2002, and in accordance with the requirements of Section 401(a)(9) of the Code, no Participant shall be required to receive a distribution of his Account earlier than his "Required Beginning Date," which shall be the later of the April 1st of the calendar year following the calendar year in which he: (i) attains age seventy and one-half (70 1/2) or (ii) actually retires from service with the Bank. A Participant's entire interest in his Account must be paid to him on or before his Required Beginning Date.

### 11.9 Direct Rollovers From The Plan

This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(a) Definitions

- (i) *Eligible rollover distribution*: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary,



or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income. Pursuant to Internal Revenue Service Notice 99-5, a hardship distribution (as described in Section 401(k)(2)(B)(iv) of the Code) of Before-tax Contributions, qualified nonelective contributions and qualified matching contributions shall be treated as an eligible rollover distribution for the Plan Year beginning January 1, 1999 and all prior Plan Years, but not for Plan Years beginning after December 31, 1999.

- (ii) *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- (iii) *Distributee:* A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- (iv) *Direct rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

#### **11.10 Distribution from Prior Plans**

Notwithstanding any other provision set forth in this Section XI, a Participant's Account which accrued prior to the date of transfer of assets from a prior plan to the Plan shall be payable in such optional forms and at such times to the extent required to comply with Section 411(d)(6) of the Code and regulation promulgated thereunder. Notwithstanding the foregoing, effective on and after August 1, 2002, all distributions hereunder shall be made in the form of a lump sum only, including distributions attributable to transfers of assets from prior plans.

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**ARTICLE XII**

**ADMINISTRATION OF THE PLAN**

**12.1 Committee Appointment by Board**

The Committee shall consist of at least one member, as may be appointed by the Board, or any officer of the Bank designated by the Board, from time to time, to provide for the administration of the Plan.

**12.2 Term of Appointment**

Each Committee member shall serve until he shall die, resign, be unable to perform his duties as a result of disability (as solely determined by the Board) or shall be removed by the Board with or without cause.

**12.3 Written Notice of Appointment or Removal**

An appointment to or removal from the Committee shall be by written notice specifying the effective date thereof, and served by the Board, or any officer of the Bank designated by the Board, upon the person to be appointed or the member to be removed and upon the other Committee members and the Trustee.

**12.4 Resignation by Committee Member**

A Committee member may resign at any time by serving written notice on the Board, or any officer of the Company designated by the Board, the other Committee members, and the Trustee, no more than thirty (30) days or less than ten (10) days prior to the effective date of such resignation.

**12.5 Committee President**

If the Committee is comprised of more than one member, one Committee member shall be selected as chairman by the Committee or the Board.

**12.6 Quorum**

If the Committee is comprised of more than one member, a quorum shall consist of a majority of the Committee members. A determination of a majority of the Committee members present at a meeting where a quorum is present shall be valid and binding upon all Committee members. If the Committee is comprised of one member his or her determination shall be binding.

**12.7 Tie Vote**

In the event a tie vote on any matter shall occur when a quorum is present, the vote of the chairman shall decide the action or determination to be taken.

**12.8 Recordkeeping**

The Committee shall initiate and maintain the records and shall submit annually reports on the Plan and its administration, and such other reports as shall be required under applicable law. The Committee shall give each Participant annually a written statement of his Account Balance as of the end of a Plan Year.

**12.9 Reimbursement for Expenses**

The Committee member or members shall serve without compensation but shall be entitled to be paid such reasonable expenses by the Bank or any Employer as may be incurred by them in the administration of the Plan. The Committee shall direct the Trustee concerning all payments which shall be made from the Trust. Any direction to the Trustee shall be in writing and may be signed by any member of the Committee, or the Plan Administrator and a secretary or assistant secretary of the Bank. Any expenses not paid from the Trust shall be paid by the Bank or any Employer.

**12.10 Administrative Office**

The Committee may establish an administrative office which shall be the principal office of the Plan.

**12.11 Action Without a Meeting**

Any action required or permitted to be taken at any meeting of the Committee may be taken without a meeting by all members or by the member of the Committee signing a written consent thereto, which written consent shall be filed with the minutes of the proceedings of the Committee.

**12.12 Responsibilities of the Committee**

- (a) The Bank is hereby designated as the “administrator” of the Plan within the meaning of Section 3(16)(A) of ERISA. The members of the Committee are hereby designated as “named fiduciaries” within the meaning of Section 402(a)(2) of ERISA, and shall, unless otherwise provided pursuant to Subsection (b), jointly administer the Plan as agents of the Company in accordance with its terms and shall have all powers necessary to carry out the provisions of the Plan, including, but not limited to, the power to exercise in good faith, its sole discretion in the interpretation, construction and administration of the Plan. In carrying out their duties with respect to the general administration of the Plan, the Committee shall have, in addition to any other lawful powers and not by way of limitation, the following powers:

- (i) to decide any and all matters arising in connection with the administration of the Plan, including using discretionary authority to determine eligibility for benefits or to construe the terms of the Plan;
  - (ii) to compute the amount and kind of benefits payable to the Participants and their Beneficiaries;
  - (iii) to authorize disbursements from the Trust Fund in accordance with the provisions of the Plan;
  - (iv) to maintain all records necessary for the administration of the Plan which are not maintained by the Trustees;
  - (v) to interpret the provisions of the Plan and to make and publish such rules and regulations as are not inconsistent with the terms hereof;
  - (vi) to adopt and modify the method of accounting for the Plan; and
  - (vii) to appoint an investment manager, as defined in Section 3(38) of ERISA, in which case no member of the Committee shall be liable for the acts or omissions of such investment manager or be under any obligation to invest or otherwise manage any asset of the Trust Fund which is subject to the management of such investment manager.
- (b) (i) The Committee may establish procedures for (A) the allocation of fiduciary responsibilities (other than “trustee responsibilities” as defined in Section 405(c)(3) of ERISA) under the Plan among themselves and (B) the designation of persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the Plan.
- (ii) If any fiduciary responsibility is allocated or if any person is designated to carry out any responsibility pursuant to Paragraph (i), no named fiduciary shall be liable for any act or omission of such person on carrying out such responsibility, except as provided in Section 405(c)(2) of ERISA.
- (c) The Committee shall establish a funding policy and method consistent with the objectives of the Plan and the requirements of Title I or ERISA. The Committee shall meet at least annually to review such funding policy and method. In establishing and reviewing such funding policy and method, the Committee shall endeavor to determine the Plan’s short- term and long-term financial needs, taking into account the need for liquidity to pay benefits and the need for investment growth.

**12.13 Direction to Trustee**

The Committee or the Plan Administrator shall direct the Trustee concerning all payments which shall be made out of the Trust pursuant to the provisions of the Plan. Any direction to the Trustee shall be in writing and may be signed by any member of the Committee, or the Plan Administrator and a Secretary or Assistant Secretary of the Bank. Any directions as to the amount and manner of payment of any benefits under the Plan shall require two signatures.

**12.14 Committee to Provide Forms**

The Committee may require a Participant to complete and file with the Committee all forms approved by the Committee, and to furnish all pertinent information requested by such Committee. The Committee may rely upon all such information so furnished to it, including the Participant's current mailing address.

**12.15 Appointment of Agents**

The Committee may appoint such independent accountants, enrolled actuaries, legal counsel, investment advisors, and other agents or specialists as they deem necessary or desirable in connection with the performance of their duties thereunder. The Committee shall be entitled to rely conclusively upon, and shall be fully protected in any action taken by them in good faith in relying upon, any opinions or reports which shall be furnished to them by any such independent accountant, enrolled actuary, legal counsel investment advisor or other specialist.

**12.16 Exclusive Benefit**

The members of the Committee shall discharge their duties with respect to the Plan solely in the interests of the Participants and their Beneficiaries and

- (a) for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan;
- (b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man, acting in like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims;
- (c) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of ERISA.

The prudence requirement, only to the extent that it requires diversification, is not violated by the Plan's acquisition or holding qualifying employer securities as defined in Section 407(d)(5) of ERISA.

#### 12.17 Claims Procedures

- (a) For purposes of the Plan, a claim for benefits is a written application for benefits filed with the Committee. The Committee shall act upon a claim within ninety (90) days of the date on which the claim is filed, unless special circumstances require a longer period for adjudication and the claimant is notified in writing of the reasons for an extension of time; *provided, however*, that no extensions shall be permitted beyond ninety (90) days after the date on which the claimant received notice of the extension of time from the Committee. If the Committee fails to notify the claimant of its decision to grant or deny such claim within the time specified by this subsection (a), such claim shall be deemed to have been denied by the Committee and the review procedure described in subsection (b) shall become available to the claimant.
- (b) (i) Whenever a claim for benefits is denied, written notice, prepared in a manner calculated to be understood by the claimant, shall be provided to him, setting forth the specific reasons for the denial and explaining the procedure for review of the decision made by the Committee. If the denial is based upon submission of information insufficient to support a decision, the Committee shall specify the information which is necessary to perfect the claim and its reasons for requiring such additional information.
- (ii) Any claimant whose claim is denied may, within sixty (60) days after his receipt of written notice of such denial, request in writing a review by the Board, the members of which shall be "named fiduciaries", within the meaning of Section 402(a) of ERISA for the purpose of adjudicating such appeals. Such claimant or his representative may examine any Plan documents relevant to his claim and may submit issues and comments in writing. The Board shall adjudicate the claimant's appeal within sixty (60) days after its receipt of his written request for review, unless special circumstances require a longer period for adjudication and the claimant is notified in writing of the reasons for an extension of time; *provided, however*, that such adjudication shall be made no later than one hundred twenty (120) days after the Board's receipt of the claimant's written request for review.
- (iii) If the Board fails to notify the claimant of its decision with respect to his request for review within the time specified by this subsection (b), such claim shall be deemed to have been denied on review.

- (c) If the claim is denied by the Board, such decision shall be in writing, shall state specifically the reasons for the decision, shall be written in a manner calculated to be understood by the claimant, shall make specific reference to the pertinent Plan provisions upon which it is based and shall include such other information as may be required by United States Department of Labor regulations.
- (d) The procedure set forth in this Section 12.15 shall be interpreted in accordance with regulations promulgated by the United States Department of Labor or any successor authority regulating claims procedures for employee benefit plans.

**12.18 Appointment of Agents**

The Committee may appoint such independent accountants, enrolled actuaries, legal counsel, investment advisors, and other agents or specialists as they deem necessary or desirable in connection with the performance of their duties thereunder. The Committee shall be entitled to rely conclusively upon, and shall be fully protected in any action taken by them in good faith in relying upon, any opinions or reports which shall be furnished to them by any such independent accountant, enrolled actuary, legal counsel investment advisor or other specialist.

**12.19 Personal Liability**

No member of the Committee shall be liable for any act or omission of any other member of the Committee nor for any act or omission on such member's own part, excepting only such member's own willful misconduct or gross negligence or except as otherwise expressly provided by ERISA. To the extent permitted by applicable law, the Bank shall indemnify and save harmless the members of the Committee against any and all claims, demands, suits or proceedings in connection with the Plan and Trust Fund that may be brought by Participants or their beneficiaries, Employees of Employers, or by any other person, corporation, entity, government or agency thereof; *provided, however*, that such indemnification shall not apply with respect to acts or omissions of willful misconduct or gross negligence. The Board of Directors, at the Bank's or any Employer's expense, may settle any such claim or demand asserted, or suit or proceeding brought, against any member of the Committee when such settlement appears to be in the best interest of the Bank.

**ARTICLE XIII**

**ADOPTION, AMENDMENT, TERMINATION AND MERGER**

**13.1 Amendment of the Plan**

The adoption of any amendments to this Plan shall be conditioned on qualification of the Plan under Section 401(a) of the Code.

**13.2 Right to Amend**

Both the Board of Directors and the Compensation Committee of the Board of Directors shall have the right, at any time and from time to time, to amend in whole or in part any of the provisions of this Plan, and any such amendment shall be binding upon the Participants and their Beneficiaries, the Trustees, the Committee any Employer who has joined in the Plan, and all parties in interest. Any such amendment shall become effective as of the date specified therein.

The Executive Vice President and Chief Financial Officer of the Bank shall also have the right, at any time, and from time to time, to amend any of the provisions of this Plan relative to purchase and sale agreements, mergers, acquisitions or other corporate transactions involving the Bank, to the extent he or she deems necessary, appropriate or desirable, in order to effectuate the terms of any such purchase and sale agreements, mergers, acquisitions or other corporate transactions involving the Bank.

Notwithstanding anything to the contrary contained in Section 13.2, no amendment may be made which shall retroactively deprive the Participant of any benefit accrued prior to the date such amendment was executed. Except as otherwise provided in regulations prescribed by the Secretary of the Treasury, a Plan amendment which has the effect of -

- (i) eliminating or reducing an early retirement benefit; or
- (ii) eliminating an optional form of benefit,

with respect to benefits attributable to service prior to such amendment shall be treated as reducing accrued benefits for purposes of this Section 13.2.

No amendment which affects the Trustee's rights, powers, responsibilities or liabilities shall be effected without the Trustee's written consent to the adoption of such amendment.

**13.3 Suspension or Termination**

- (a) The Bank may, solely by action of its Board of Directors, and by appropriate notice to the Trustees, terminate the Plan in its entirety or withdraw from the Plan and terminate it with respect to itself. Any Employer may voluntarily withdraw from the Plan, and, upon any such withdrawal, the Plan shall be terminated in respect of such Employer.



- (b) Upon the termination of the Plan with respect to an Employer, the Committee shall allocate and segregate for the benefit of the Participants then or theretofore employed by such Employer their proportionate interest in the Trust Fund.
- (c) Any termination or partial termination shall be effective as of the date specified in the resolution providing therefor, if any, and shall be binding upon all Employers, all Participants and their Beneficiaries, the Trustees and all parties in interest.
- (d) Upon the termination of the Plan in its entirety or upon the complete discontinuance of contributions thereto, whether or not the Bank has given formal notice of such termination or discontinuance, each Participant shall be fully (100%) vested in his Account balances, determined as of the date of such termination or complete discontinuance of contributions.
- (e) Upon the partial termination of the Plan within the meaning of Section 411(d)(3)(A) of the Code, the rights of each affected Participant to his Account balance, determined as of the date of such partial termination, shall, insofar as is required by applicable regulations issued by the Internal Revenue Service, be fully (100%) vested.
- (f) Upon the termination of the Plan in its entirety, the Trustee shall, after the determination of the balance in each Participant's Account -
  - (i) pay any and all expenses chargeable against the Trust Fund, and
  - (ii) pay over to appropriate Employers the balance of any Suspense Account created under Section 14.3 which remains in existence at the time of termination of the Plan.

#### **13.4 Merger**

If the Plan shall merge or consolidate with, or transfer its assets or liabilities to, any other "pension plan", as defined in Section 3(2) of ERISA, each Participant shall be entitled to receive a benefit immediately after such merger, consolidation or transfer (assuming that the Plan had then terminated) which is equal to or greater than the benefit which he would have been entitled to receive immediately before such merger, consolidation or transfer (assuming that the Plan had then terminated).

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**13.5 Amendment to Vesting Schedule**

If any time the vesting provisions of Article VI are amended in such manner as to decrease, as of any future date, the vested interest in a Participant's Account balance which any Participant would have as of such date, each such Participant who has completed at least three (3) Years of Service as of the effective date of such amendment shall have the right to elect to have his or her Account balance continue to vest in accordance with the vesting provisions in effect immediately prior to such effective date.

ARTICLE XIV

LIMITATIONS ON BENEFITS AND CONTRIBUTIONS

14.1 Definitions

As used in this Article XIV -

- (a) "Annual Addition", for a Limitation Year, means, in the case of this Plan and any other Retirement Plan, the aggregate of -
  - (i) the amount of a Participant's contributions for the Limitation Year,
  - (ii) Employer contributions and forfeitures allocated to the Participant's accounts for the Limitation Year, and
  - (iii) Amounts allocated to an individual medical account, as defined in Section 415(1)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer. Also, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post retirement medical benefits allocated to the separate account of a key employee, as defined in Section 419A(d)(3) of the Code, under a welfare benefit fund, as defined in Section 419(e) of the Code, maintained by the Employer.
- (b) "Defined Benefit Plan" means any Retirement Plan that is not a Defined Contribution Plan.
- (c) "Defined Benefit Plan Fraction", for a Limitation Year, means a fraction,
  - (i) the numerator of which is the aggregate Projected Annual Benefit (determined as of the last day of the Limitation Year) of the Participant under all Defined Benefit Plans, and
  - (ii) the denominator of which is an amount equal to the lesser of -
    - (A) the product of 1.25 multiplied by the dollar limitation in effect under Section 415(b)(1)(A) of the Code for such Limitation Year (adjusted as described herein)
    - (B) the product of 1.4 and the aggregate Projected Annual Benefit (determined as of such last day of the Limitation Year) which the Participant would receive under all such plans if the plans, in the aggregate, provided the benefit described in Section 415(b)(1)(B) of the Code.

- (iii) (A) In the case of an annual retirement benefit that begins before a Participant's Social Security Retirement Age, the dollar amount described in Section 415(b)(1)(A) of the Code for such Limitation Year shall be adjusted (in accordance with regulations prescribed by the Secretary) so that such limitation equals an annual benefit, beginning at the age at which the Participant's benefit commences, which is equivalent to the dollar amount specified under Section 415(b)(1)(A) of the Code beginning at the Social Security Retirement Age on the basis of the actuarial assumptions specified in the respective Defined Benefit Plan for such adjustment. The reduction under this subparagraph shall be made in a manner consistent with the Code and the regulations promulgated thereunder.
  - (B) In the case of an annual retirement benefit that begins after the Participant's Social Security Retirement Age, the dollar limitation contained in Section 415(b)(1)(A) of the Code shall be adjusted (in accordance with regulations prescribed by the Secretary) so that such limitation equals an annual benefit beginning at the age at which the Participant's benefit commences, which is the actuarial equivalent (based on the actuarial assumptions specified in the respective Defined Benefit Plan for such adjustment) of a benefit equal to the dollar amount specified in Section 415(b)(1)(A) of the Code beginning at the Social Security Retirement Age.
- (d) "Defined Contribution Plan" means this Plan and any other Retirement Plan which provides for an individual account for each Participant and for benefits based solely on the amount contributed to such account and any income, expense, gains and losses, and forfeitures of accounts of other participants which may be allocated to such account.
- (e) "Defined Contribution Plan Fraction", for a Limitation Year, means a fraction.
  - (i) the numerator of which is the sum of the Annual Additions to a Participant's Accounts under this Plan and all other Defined Contribution Plans, as of the close of the Limitation Year and for all prior Limitation Years, and
  - (ii) the denominator of which is the sum of the lesser of the following amounts, determined for such Limitation Year and for each prior year of the Participant's service with an Employer or any member of the Controlled Group:

- (A) the product of 1.25 multiplied by the dollar limitation in effect under Section 415(c)(1)(A) of the Code, or
  - (B) the product of 1.4 multiplied by the amount which may be taken into account under Section 415(c)(1)(B) of the Code.
- (f) “Limitation Year” means the Plan Year.
- (g) (i) A Participant’s “Projected Annual Benefit” under a Defined Benefit Plan shall be equal to the annual retirement benefit to which he would be entitled under such Plan if he were to continue employment until his normal retirement age under such plan (or until his current age, if later), his Section 415 Compensation for the Limitation Year under consideration remains the same until the date he attains the age described above, and all other relevant factors used to determine benefits under the plan were to remain the same as in the current Limitation Year for all future Limitation Years.
- (ii) For purposes of this Subsection (g),
- Except as provided below, a benefit payable in a form other than a straight life annuity must be adjusted to an actuarially equivalent straight life annuity before applying the limitation of this article. The actuarial assumptions used to determine actuarial equivalence will be those specified in the respective Defined Benefit Plan for such adjustment. The annual benefit does not include any benefits attributable to employee contributions or rollover contributions, or the assets transferred from a qualified plan that were not maintained by the Employer. No actuarial adjustment to the benefit is required for (a) the value of a qualified joint and survivor annuity, (b) the value of benefits that are not directly related to retirement (such as the qualified disability benefit, pre-retirement death benefits, and post-retirement medical benefits, and (c) the value of post-retirement cost-of-living increases made in accordance with Section 415(d) of the Code and Section 1.415-3(c)(2)(iii) of the Federal Income Tax Regulations.
- (h) “Retirement Plan” means any Plan maintained by an Employer or any member of the Controlled Group that is (i) a pension, profit sharing or stock bonus plan, described in Section 401(a) and 501(a) of the Code, (ii) an annuity plan or annuity contract described in Section 403(a) of the Code, or (iii) a simplified employee pension plan described in Section 408(k) of the Code. In addition, “Retirement Plan” shall include (A) an individual retirement account or an individual retirement annuity described in Section 408(a) or 408(b) of the Code, or any annuity contract described in Section 403(b) of the Code, if such account or annuity is considered to be maintained by an Employer or any

member of the Controlled Group under Section 1.415-7(h) or (i) of the Federal Income Tax Regulations and (B) a program of voluntary contributions under a Defined Benefit Plan.

- (i) "Section 415 Compensation", for any period, means an individual's current compensation from an Employer or any member of the Controlled Group required to be reported on Form W-2 for such period including those items listed in Paragraph (1) of Treasury Regulation 1.415-2(d) but excluding those items listed in Paragraph (2) thereof; *provided, however*, for Limitations Years beginning on and after January 1, 1998, Section 415 Compensation shall include any elective deferral as defined in Section 402(g)(3) of the Code and amounts contributed or deferred by the Employer at the election of the Employee and not includable in income by reason of Section 125 or Section 132(0(4) of the Code.
- (j) "Social Security Retirement Age" means the age used as the retirement age under Section 216(1) of the Social Security Act, except that such section shall be applied in accordance with Section 415(b)(8) of the Code, (i) without regard to the age increase factor and (ii) as if the early retirement age under Section 216(1)(2) of the Social Security Act were 62.

#### **14.2 Limitation**

Notwithstanding anything in this Plan to the contrary and except as otherwise provided in this Article XIV, a Participant's Annual Addition under this Plan, for a Limitation Year, may not exceed the lesser of -

- (a) \$35,000 or such other amount as may be prescribed pursuant to Section 415(d) of the Code, or
- (b) twenty-five percent (25%) of his Section 415 Compensation for the Limitation Year.

#### **14.3 Suspension**

If the Annual Additions otherwise made to the Accounts of a Participant would cause the limitations of Section 415 applicable to that Participant for the Limitation Year to be exceeded, such excess shall be eliminated by making reductions in such Annual Additions in the following order:

- (a) First, the Participant's Before-tax Contributions for that Limitation Year to the extent they constitute Annual Additions, and gains attributable to such contributions, shall be returned to the Participant.

- (b) Second, the excess amounts in the Participant's Account shall be held unallocated in a Suspense Account to be established by the Trustees and shall be allocated and reallocated in the next Limitation Year (and succeeding Limitation Years, as necessary), subject to the limitations of Section 415 of the Code, to the respective Accounts of all the participants in the Plan. If the Suspense Account has a balance at any time during a particular Limitation Year, other than the Limitation Year in which the excess amount initially arose, all amounts in the Suspense Account must be allocated and reallocated to Participants' Accounts (subject to the limitations of Section 415) before any contributions which would constitute Annual Additions may be made to the Plan for that Limitation Year.

**14.4 1.0 Limitation**

Notwithstanding the provisions of Section 14.2 and 14.3, for each Participant who is also a participant in a Defined Benefit Plan, the Committee will compute such Participant's Defined Benefit Plan Fraction and Defined Contribution Plan Fraction and will adjust his Annual Additions and his Projected Annual Benefit, so that the sum of such fractions, for any Limitation Year, will not exceed (1.0).

The limitation on aggregate benefits from a Defined Benefit Plan and a Defined Contribution Plan which is contained in Section 2004 of ERISA, shall be complied with by a reduction (if necessary) in the Participant's benefits under a Defined Benefit Plan before a reduction in this Plan.

Notwithstanding the foregoing, this Section 14.4 shall be null and void for Limitation Years beginning on and after January 1, 2001.

**14.5 Miscellaneous**

The limitation imposed by this Article XIV shall be administered in accordance with the final regulations and rulings issued by the Secretary of the Treasury under Section 415 of the Code.

ARTICLE XV

TOP HEAVY PLAN YEARS

15.1 Definitions

For purposes of this Article XV:

- (a) "Key Employee" means any Employee or former Employee (including beneficiaries of such Employee) who, at any time during the Plan Year or any of the four (4) preceding Plan Years, is -
- (A) one of the ten (10) Employees whose annual 416 Compensation is more than the limitation in effect under Section 415(c)(1)(A) and owning (or considered as owning within the meaning of Section 318 of the Code) the largest interest in the Employer or any member of the Controlled Group;
  - (B) an owner (within the meaning of Section 318 of the Code) of (1) more than five percent (5%) of the outstanding stock, or of stock possessing more than five percent (5%) of the total combined voting power, of the Employer or (2) more than five percent (5%) of the capital or profits interest in the Employer which is not a corporation;
  - (C) an owner of (1) more than one percent (1%) of the outstanding stock or of stock possessing more than one percent (1%) of the total combined voting power of the Employer or (2) more than one percent (1%) of the capital or profits interest in the Employer which is not a corporation, in either case if and only if the 416 Compensation of such owner from all Employers and members of the Controlled Group combined exceeds \$150,000; or
  - (D) an officer of an Employer or any member of the Controlled Group whose 416 Compensation exceeds 50% of the dollar limit in effect under Section 415(b)(1)(A) of the Code for any such Plan Year.

The determination of who is a Key Employee will be made in accordance with Code Section 416(i)(1) and the regulations thereunder.

- (b) "Non-key Employee" means an Employee who is not a Key Employee.
- (c) "Determination Date" means with respect to any Plan Year the last day of the immediately preceding Plan Year.



- (d) "Aggregation Group" means
  - (i) each plan of an Employer or any member of the Controlled Group, which -
    - (A) has one or more Participants who are Key Employees, and/or
    - (B) enables any plan described in Subparagraph (A) to meet the requirements of Section 401(a)(4) or Section 410 of the Code,
  - plus, at the Bank's election,
  - (ii) any other plan or plans which, when considered together with the plan or plans described in Paragraph (i), satisfy the requirements of Section 401(a)(4) and Section 410 of the Code.
- (e) the terms "Employee" and "Key Employee" include former Employees and the beneficiaries of present and former Employees.
- (f) "Top-Heavy Plan Year" means any Plan Year with respect to which the Plan is a Top-Heavy Plan described in Section 15.3, such Section 15.3 to be read as incorporating the definitions supplied by Section 416 of the Code and the regulations promulgated thereunder, and those of any successor statute thereto.
- (g) "416 Compensation" has the meaning given the term compensation by Section 414(q)(4) of the Code.

## 15.2 Top-Heavy Minimum Governs

To the extent required under Section 401(a)(10)(B) and/or Section 416 of the Code (or any successor statute(s) thereto), for any Top-Heavy Plan Year, the provisions of Section 15.4 shall apply to the Plan, notwithstanding any other provision in the Plan.

## 15.3 Top-Heavy Determination

- (a) The Plan is a Top-Heavy Plan with respect to a Plan Year, if, as of the Determination Date of such Plan Year -
  - (i) the aggregate of the Account balances of Key Employees under the Plan exceeds sixty percent (60%) of the aggregate of the Account balances of all Employees under the Plan unless the Plan is a member of an Aggregation Group with respect to which the percentage test of Subparagraph (ii)(B) is not met; or

- (ii) the Plan is a member of an Aggregation Group -
  - (A) which is described in Section 15.1(d)(i), and
  - (B) with respect to which the sum of -
    - (1) the present value of the cumulative accrued benefits, of all Key Employees under all defined benefit plans in the Aggregation Group, and
    - (2) the aggregate of the account balances of all Key Employees under all defined contribution plans in the Aggregation Group -  
exceeds sixty percent (60%) of the sum of -
    - (3) the present value of the cumulative accrued benefits, of all Employees under all defined benefit plans included in the Aggregation Group, and
    - (4) the aggregate of the account balances of all Employees under all defined contribution plans in the Aggregate Group.
- (b) For purposes of this Section 15.3:
  - (i) the accrued benefit and/or account balances of any Employee who is not a Key Employee during the Plan Year but who was a Key Employee during any prior Plan Year shall be disregarded;
  - (ii) the present value of an Employee's accrued benefit under a defined benefit plan as of a Determination Date shall be determined as of that valuation date which occurs within the twelve (12) month period ending on such Determination Date and is used by the enrolled actuary for computing Plan costs for minimum funding, as if the Employee's separation from service occurred on such valuation date.
  - (iii) the account balance of an Employee in a defined contribution plan as of any Determination Date shall be equal to the account balance of the Employee on the valuation date which occurs within the twelve (12) month period ending on such Determination Date including an adjustment for contributions made or which are due as of such Determination Date.

- (iv) for any Plan Year the present value of the accrued benefit or the account balance of any Employee who has not performed service for an Employer during the five (5) year period ending on the Determination Date shall be disregarded.
- (v) the account balance of an Employee in a defined contribution plan or the present value of the accrued benefit of an Employee in a defined benefit plan, as of a Determination Date -
  - (A) excludes any rollover contribution or similar transfer to such plan and attributable to the Participant's interest in a plan other than a plan maintained by an Employer or any member of the Controlled Group, and
  - (B) includes any amount distributed with respect to the Employee under the plan within the five (5) year period ending on the Determination Date, except to the extent that such amount is included in such Employee's account balance or the present value of his accrued benefit pursuant to Paragraph (ii) or (iii). This Subparagraph (B) shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an Aggregation Group.
- (vi) the present value of Employees' accrued benefit shall be determined using the actuarial assumptions specified in the respective Defined Benefit Plans under which such benefits accrued. The accrued benefit or any Employee (other than a Key Employee) shall be determined
  - (A) under the method which is used for accrual purposes for all plans of the employer or any member of the Controlled Group, or
  - (B) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under Section 411(b)(1)(C) of the Code.

#### **15.4 Minimum Benefit**

- (a) Except as provided in Subsection (b), the amount of the Employer contribution made on behalf of each Participant who is not a Key Employee for any Plan Year for which the Plan is a Top-Heavy Plan shall be at least equal to the lesser of:
  - (i) three percent (3%) of such Participant's Section 415 Compensation if the Non-Key Employee has not separated from service at the end of the Plan Year, regardless of whether the Non-Key Employee had 1,000 Hours of Service, less any amount contributed on behalf of the Participant under any other defined contribution plan maintained by an Employer or an Affiliate; or

- (ii) the percentage of Section 415 Compensation represented by the Employer contribution made on behalf of the Key Employee for whom such percentage is the highest for such Plan Year, determined by dividing the Employer contribution made on behalf of each such key Employee by so much of his Section 415 Compensation as does not exceed \$150,000.
- (b) Where the inclusion of this Plan in an Aggregation Group pursuant to Section 15.1(d)(i) enables a defined benefit plan described in Section 15.1(d)(i) to meet the requirements of Section 401(a)(4) or Section 410 of the Code, the minimum contribution required under this Section 15.4 shall be the amount specified in Section 15.4(a)(i).
- (c) The above provisions shall not apply to any Participant to the extent that he is covered under any other plan or plans of the Employer or any member of the Controlled Group and such plan or plans have provided the minimum allocation or benefit requirement applicable to this Top-Heavy Plan will be met in such other plan or plans.
- (d) Matching contributions and elective contributions on behalf of Key Employees are taken into account in determining the minimum required contribution requirement of Section 416(c)(2) of the Code. Elective and matching contributions on behalf of Employees other than Key Employees shall not be treated as Employer contributions for purposes of the minimum contribution requirements of Section 416 of the Code.

#### **15.5 Miscellaneous**

For any Top-Heavy Plan Year, the limitations contained in Article XIV of the Plan shall be applied by substituting "1.0" for "1.25" in Section 14.1(c)(ii) and 14.1(e)(ii) of the Plan, unless for such Plan Year -

- (a) the requirements of Section 15.4 would be satisfied if "four percent (4%)" were substituted for "three percent (3%)" in Subsection (a)(i) thereof; and
- (b) the Plan would not be a Plan described in Section 15.3 if "ninety percent (90%)" were substituted for "sixty percent (60%)" whenever the latter figure appears in Section 15.3.

Notwithstanding the foregoing, this Section 15.5 shall be null and void for Plan Years beginning on and after January 1, 2001.

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**15.6 Top-Heavy Minimum Provided Under Defined Benefit Plan**

For any Plan Year in which the Plan is Top Heavy, non-key Employees participating in this Plan and the Bank's defined benefit plan will receive the Top-Heavy minimum benefit under the defined benefit plan.

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**ARTICLE XVI**

**MISCELLANEOUS**

**16.1 Uniform Administration**

Whenever, in the administration of the Plan, any action is required to be taken by an Employer or the Committee, including, but not by way of limitation, action with respect to eligibility or classification of employees, contributions or benefits, such action shall be uniform in nature as applied to all persons similarly situated and no such action shall be taken which will discriminate in favor of Participants who are officers or significant shareholders of an Employer or persons whose principal duties consist of supervising the work of other employees or Highly Compensated Employees.

**16.2 Payment Due an Incompetent**

If the Committee determines that any person to whom a payment is due thereunder is incompetent by reason of physical or mental disability, the Committee shall have power to cause the payments becoming due to such person to be made to another for the benefit of the incompetent, without responsibility of the Committee or the Trustee to see to the application of such payment. Payments made in accordance with such power shall operate as a complete discharge of all obligations on account of such payment of the Committee, the Trustee and the Trust Fund.

**16.3 Source of Payments**

All benefits under the Plan shall be paid or provided solely from the Trust Fund and the Employers assume no liability or responsibility therefor, except to the extent required by law.

**16.4 Plan Not a Contract of Employment**

Nothing herein contained shall be deemed to give any Employee or Participant the right to be retained in the employ of an Employer or any member of the Controlled Group or to interfere with the right of the Employer to discharge any Employee or Participant at any time.

**16.5 Applicable Law**

Except to the extent governed by Federal law the Plan shall be administered and interpreted in accordance with the laws of the State of Delaware.

**16.6 Unclaimed Amounts**

It shall be the sole duty and responsibility of a Participant or Beneficiary to keep the Committee apprised of the most current mailing address. If any benefit to be paid under the Plan is unclaimed, within such reasonable time period in accordance with applicable law, as the

Committee shall prescribe, it shall be forfeited and applied to reduce Company Matching Contributions; *provided, however*, that such forfeiture shall be reinstated if a claim is made by the Participant or Beneficiary for the forfeited benefit.

**16.7 No Liabilities**

No liability shall attach to any Employer for payment of any benefits or claims thereunder, and all Participants and Beneficiaries, and all persons claiming under or through them, shall have recourse only to the Trust Fund for payment or any such benefit or claim.

**16.8 Refund of Employer Contribution**

In the event of (a) initial disqualification of the Plan in accordance with Section 403(c)(2)(B) of ERISA, (b) disallowance of a deduction, or (c) mistake of fact, the Employer contributions shall be returned to the Employer which made said contribution to the extent permitted under Section 403(c) of ERISA and Section 401(a)(2) of the Code. Return of contributions pursuant to (a), (b) or (c) of this Section shall be made within one (1) year of the date of adverse determination, disallowance of deduction, or date of payment of the mistaken portion of the contribution, as the case may be only after timely written demand has been made therefor by the Employer.

**16.9 Illegality or Invalidity**

If any provision in this Plan shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan, which shall be construed and enforced as if such illegal or invalid provision had never been included herein.

**16.10 Gender**

Whenever any words are used herein in the masculine gender, they shall be construed as though they were also used in the feminine gender in all cases where they would so apply, and vice versa, and wherever any words are used herein in the singular form, they shall be construed as though they were also used in the plural form in all cases where they would so apply; and vice versa.

ARTICLE XVII

SPECIAL RULES FOR TRANSFERRED ACCOUNTS

**17.1 Accounts Transferred from California Federal Employees' Investment Plan**

The following provisions shall apply to the Accounts transferred into the Plan from California Federal Employees' Investment Plan (formerly known as the "First Nationwide Employees' Investment Plan").

- (a) All transferred funds shall be accounted for separately and all optional forms of benefits protected under Section 411(d)(6) of the Code shall be preserved with respect to the transferred funds.
- (b) All transferred funds shall be available for in-service distribution once each Plan Year for:
  - (i) withdrawal upon the Participant's attainment of age 59 <sup>1</sup>/<sub>2</sub>, and
  - (ii) loans under the provisions of the Plan.
- (c) All transferred funds shall be available for hardship withdrawals under the provisions of the Plan.
- (d) Transferred funds shall not be distributed without the consent of the Participant or the Participant's Beneficiary (if the Participant is deceased and the Beneficiary is his or her surviving spouse) prior to April 1 of the year following the year in which the Participant attains (or in the event of his or her death would have attained) age 70 <sup>1</sup>/<sub>2</sub>. The previous sentence shall not apply to Account balances of \$5,000 or less.

**17.2 Merger of North Side Savings Bank 401(k) Savings Plan**

Effective as soon as reasonably practicable after the receipt of a favorable determination letter from the Internal Revenue Service, North Side Savings Bank 401(k) Savings Plan ("Northside Plan") will be merged into the Plan. All assets and liabilities of the North Side Plan will be transferred into the Plan. The following shall apply to transferred Participant Accounts.

- (a) All transferred funds shall be accounted for separately and all benefits protected under Section 411(d) of the Code shall be preserved.
- (b) All transferred funds shall be available for in-service distributions twice each Plan Year for withdrawal upon the Participant's attainment of age 59 <sup>1</sup>/<sub>2</sub>.



- (c) All transferred funds shall be available for in-service distributions once each Plan Year for loans under the provisions of the Plan.
- (d) All transferred funds shall be available for hardship withdrawals under the provisions of the Plan.
- (e) Promissory notes for outstanding loans in the Northside Plan will be accepted by the Trustee. The loans will amortize for the same period of time and at the same interest rate as previously agreed to under the Northside Plan, modified wherever necessary.
- (f) Transferred funds shall not be distributed without the consent of the Participant or the Participant's Beneficiary (if the Participant is deceased and the Beneficiary is his or her surviving spouse) prior to April 1 of the year following the year in which the Participant attains (or in the event of his or her death would have attained) age 70<sup>1/2</sup>. The previous sentence shall not apply to Account balances of \$5,000 or less.

**17.3 Transfer of Assets and Liabilities of Bank of Great Neck 401(k) Savings and Profit Sharing Plan**

Effective August 1, 1997, the assets and liabilities of the Bank of Great Neck 401(k) Savings and Profit Sharing Plan shall be transferred into the Plan. The following shall apply to transferred Participant Accounts.

- (a) All transferred funds shall be accounted for separately and all benefits protected under Section 411(d) of the Code shall be preserved.
- (b) All transferred funds shall be available for in-service distributions for
  - (i) withdrawal upon the Participant's attainment of age 59<sup>1/2</sup>,
  - (ii) loans under the provisions of the Plan; and
  - (iii) hardship withdrawals under the provisions of the Plan.
- (c) Transferred funds shall not be distributed without the consent of the Participant or the Participant's Beneficiary (if the Participant is deceased and the Beneficiary is his or her surviving spouse) prior to April 1 of the year following the year in which the Participant attains (or in the event of his or her death would have attained) age 70<sup>1/2</sup>. The previous sentence shall not apply to Account balances of \$5,000 or less.

#### **17.4 Transfer of Assets and Liabilities of Extebank 401(k) Plan**

Effective as soon as practicable after the receipt of a Compliance Statement from the Internal Revenue Service, the assets and liabilities of the Extebank 401(k) Plan will be transferred with the Plan. The following shall apply to the transferred Participant Accounts.

- (a) All transferred funds shall be accounted for separately and all benefits protected under Section 411(d) of the Code shall be preserved.
- (b) All transferred funds shall be available for in-service distributions for
  - (i) loans under the provisions of the Plan; and
  - (ii) hardship withdrawals under the provisions of the Plan.
- (c) Transferred funds shall not be distributed without the consent of the Participant or the Participant's Beneficiary (if the Participant is deceased and the Beneficiary is his or her surviving spouse) prior to April 1 of the year following the year in which the Participant attains (or in the event of his or her death would have attained) age 70 <sup>1</sup>/<sub>2</sub>. The previous sentence shall not apply to Account balances of \$5,000 or less.

#### **17.5 Transfer of Assets and Liabilities from Bayside Federal Savings Bank Tax Deferral Plan**

Effective December 31, 1997, the assets and liabilities of the Bayside Federal Savings Bank Tax Deferral Plan (the "Bayside Plan") shall be transferred into the Plan. The following shall apply to transferred Participant Accounts.

- (a) All transferred funds shall be accounted for separately and all benefits protected under Section 411(d) of the Code shall be preserved.
- (b) All transferred funds shall be available for in-service distributions for
  - (i) withdrawal upon the Participant's attainment of age 59 <sup>1</sup>/<sub>2</sub>,
  - (ii) loans under the provisions of the Plan; and
  - (iii) (hardship withdrawals under the provisions of the Plan.
- (c) Transferred funds shall not be distributed without the consent of the Participant or the Participant's Beneficiary (if the Participant is deceased and the Beneficiary is his or her surviving spouse) prior to April 1 of the year following the year in which the Participant attains (or in the event of his or her death would have attained) age 70 <sup>1</sup>/<sub>2</sub>. The previous sentence shall not apply to Account balances of \$5,000 or less.

- (d) Promissory Notes for outstanding loans in the Bayside Plan will be accepted by the Trustee. The loans will amortize for the same period of time and at the same interest rate as previously agreed to under the provisions of the Bayside Plan, modified wherever necessary.

**17.6 Transfer of Assets and Liabilities from Home Federal Savings Bank Tax Deferral Savings Plan**

Effective December 31, 1998, the assets and liabilities of the Home Federal Savings Bank Tax Deferral Savings Plan will be transferred into the Plan. The following shall apply to transferred Participant Accounts.

- (a) All transferred funds shall be accounted for separately. Separate accounts shall be set up for transferred voluntary after-tax contributions.
- (b) All benefits protected under Section 411(d) of the Code shall be preserved.
- (c) All transferred funds shall be available for in-service distributions for:
  - (i) withdrawal upon the Participant's attainment of age 59 <sup>1</sup>/<sub>2</sub>;
  - (ii) loans under the provisions of the Plan; and
  - (iii) hardship withdrawals under the provisions of the Plan.
- (d) Transferred funds shall not be distributed without the consent of the Participant or the Participant's Beneficiary (if the Participant is deceased and the Beneficiary is his or her surviving spouse) prior to April 1 of the year following the year in which the Participant attains (or in the event of his or her death would have attained) age 70 <sup>1</sup>/<sub>2</sub>. The previous sentence shall not apply to Account balances of \$5,000 or less.

**17.7 Transfer of Assets and Liabilities from the Branford Savings Bank 401(k) Savings and Retirement Plan**

Effective December 31, 1998, the assets and liabilities of the Branford Savings Bank 401(k) Savings and Retirement Plan will be transferred into the Plan.

The following shall apply to transferred Participant Accounts.

- (a) All transferred funds shall be accounted for separately and all benefits protected under Section 411(d) of the Code shall be preserved.

- (b) All transferred funds shall be available for in-service distributions for:
  - (i) loans under the provisions of the Plan and
  - (ii) hardship withdrawals under the provisions of the Plan.
- (c) Transferred funds shall not be distributed without the consent of the Participant or the Participant's Beneficiary (if the Participant is deceased and the Beneficiary is his or her surviving spouse) prior to April 1 of the year following the year in which the Participant attains (or in the event of his or her death would have attained) age 70 <sup>1</sup>/<sub>2</sub>. The previous sentence shall not apply to Account balances of \$5,000 or less.

**17.8 Transfer of Assets and Liabilities of Reliance Federal Savings Bank 401(k) Retirement Savings Plan**

Effective December 31, 2000, the assets and liabilities of the Reliance Federal Savings Bank 401(k) Retirement Savings Plan (the "Reliance Federal Plan") shall be transferred into the Plan. The following shall apply to transferred Participant Accounts.

- (a) All transferred funds shall be accounted for separately and all benefits protected under Section 411(d) of the Code shall be preserved.
- (b) All transferred funds shall be available for in-service distributions for
  - (i) withdrawal upon the Participant's attainment of age 59 <sup>1</sup>/<sub>2</sub>,
  - (ii) loans under the provisions of the Plan; and
  - (iii) hardship withdrawals under the provisions of the Plan.
- (c) Transferred funds shall not be distributed without the consent of the Participant or the Participant's Beneficiary (if the Participant is deceased and the Beneficiary is his or her surviving spouse) prior to April 1 of the year following the year in which the Participant attains (or in the event of his or her death would have attained) age 70 <sup>1</sup>/<sub>2</sub>. The previous sentence shall not apply to Account balances of \$5,000 or less.
- (d) Promissory Notes for outstanding loans in the Reliance Federal Plan will be accepted by the Trustee. The loans will amortize for the same period of time and at the same interest rate as previously agreed to under the provisions of the Reliance Federal Plan, modified wherever necessary.

**ARTICLE XVIII**

**SPECIAL EFFECTIVE DATES**

**18.1 General Effective Date**

This amended and restated Plan is generally effective as of January 1, 2002 and states the terms of the Plan as of that date. Notwithstanding the foregoing, certain provisions of the Plan are effective prior to January 1, 2002, as stated in Section 18.2 and in other Sections of the Plan, and certain provisions are effective later than January 1, 2002, as specified.

**18.2 Special Effective Dates**

It is the intent of the Bank in adopting this restated Plan that any provision of the Plan which must be retroactively effective as of a date (a "Remedial Amendment Date") earlier than January 1, 2002 for the Plan to continue to be tax-qualified under Section 401(a) of the Code shall be effective as of such Remedial Amendment Date. The following provisions of this amended and restated Plan shall be effective as follows:

- (a) Section 2.18, Section 6.2 (last sentence), and Section 6.17 are effective as of November 9, 2001.
- (b) Section 3.1(d) and Section 3.10 are effective as of April 1, 2002.
- (c) Section 11.8 (last two sentences) is effective as of April 2, 2002.
- (d) Section 9.2 (5th and 6th sentences) is effective as of May 1, 2002.
- (e) Sections 10.1 (parenthetical in 1st sentence) and 10.5 are effective as of August 1, 2002.
- (f) Section 11.10 (last sentence) is effective as of August 1, 2002.
- (g) Sections 2.19 and 6.18 are effective as of November 1, 2002.
- (h) Sections 2.20 and 6.19 are effective as of the dates described therein.
- (i) Appendix A and its articles and subsections are effective as of the dates specified therein.

## ARTICLE XIX

### ESOP PROVISIONS

#### 19.1 ESOP Feature

Effective January 1, 2002, this Article XIX adds an ESOP Feature to the Plan, which ESOP is both a profit sharing and an employee stock ownership plan intended to qualify under Sections 401(a) and 4975(e)(7) of the Code, and as such is designed to invest primarily in employer securities described in Section 409(1) of the Code. Additional definitions governing this ESOP Feature are found in Section 19.11 below. ESOP Contributions shall be wholly invested in Stock (unless otherwise directed by the Bank or the Committee) and the ESOP Feature shall (unless otherwise directed by the Company or the Committee) include the portion of a Participant's Before-tax Contribution Account, Bank Matching Contribution Account, Qualified Nonelective Contribution Account and Rollover Account allocated to the investment fund comprised of Bank Stock.

#### 19.2 Acquisition Loans

The Bank may direct the ESOP Trustee to incur Acquisition Loans from time to time to finance the acquisition of Leveraged Shares or to repay a prior Acquisition Loan. Any Acquisition Loan shall be primarily for the benefit of Participants and their Beneficiaries. The proceeds of any Acquisition Loan shall be used within a reasonable time only to finance the acquisition of Leveraged Shares or to repay a prior Acquisition Loan. Any Acquisition Loan shall be an obligation of the ESOP Feature of the Plan and shall be for a specific term, shall bear a reasonable rate of interest, and shall not be payable on demand except in the event of default. In the event of default under an Acquisition Loan, the value of Trust assets transferred in satisfaction of any Acquisition Loan shall not exceed the amount of the default. Any Acquisition Loan may be secured by collateral pledge of the Leveraged Shares so acquired. No other Trust assets may be pledged as collateral for an Acquisition Loan, and no lender shall have recourse against Trust assets other than any Leveraged Shares remaining subject to pledge. Any pledge of Leveraged Shares must provide for the release of shares so pledged on a pro rata basis as principal and interest on the Acquisition Loan is repaid by the ESOP Trustee and such Leveraged Shares are allocated to Participants' Accounts as provided under Article IV. Except upon termination of the Plan or the ESOP Feature of the Plan, repayments of principal and interest on any Acquisition Loan shall be made by the ESOP Trustee (as directed by the Bank) only from ESOP Contributions paid in cash to enable the ESOP Trustee to repay such Acquisition Loan, from earnings attributable to such contributions, from any collateral given for the Acquisition Loan, and from any cash dividends paid on Bank Stock (whether or not allocated to the Participants' Accounts). In acquiring Leveraged Shares, the ESOP Trustee shall pay no more than "adequate consideration" (as defined in ERISA Section 3(18)).

### 19.3 Release of Leveraged Shares

- (a) For each ESOP Allocation Period during which there are Leveraged Shares in a Loan Suspense Account, the Employer shall make contributions in an amount sufficient to enable the ESOP Trustee to pay any currently maturing obligation under the related Acquisition Loan, without regard to the accumulated earnings and profits of the Employer.
- (b) Any Leveraged Shares shall initially be credited to a Loan Suspense Account and shall be allocated to Participants' Accounts for each ESOP Allocation Period only as payments of principal and interest on the Acquisition Loan used to purchase such Leveraged Shares are made by the ESOP Trustee. The number of Leveraged Shares to be released from the Loan Suspense Account as soon as practicable following any amortization of an Acquisition Loan shall equal the number of Leveraged Shares in the Loan Suspense Account immediately before release multiplied by a fraction. The numerator of the fraction shall be the amount of ESOP Contributions and any dividends on Stock which are applied to the payment of principal and interest on the Acquisition Loan during the ESOP Allocation Period(s). The denominator of the fraction shall be the sum of the numerator plus the principal and interest to be paid for all future periods over the duration of the Acquisition Loan repayment period. For purposes of computing the denominator of the fraction referred to above, if the interest rate on the Acquisition Loan is variable, the interest to be paid in subsequent ESOP Allocation Periods shall be calculated by assuming that the interest rate in effect as of the date of amortization and release from the Loan Suspense Account will be the interest rate in effect for the remainder of the term of the Acquisition Loan. Notwithstanding the foregoing, in the event such Acquisition Loan shall be repaid with the proceeds of a subsequent Acquisition Loan ("Substitute Loan"), such repayment shall not operate to release all such shares from the Loan Suspense Account, but, rather, such release shall be effected pursuant to the foregoing provisions of this Section on the basis of payments of principal and interest on such Substitute Loan.
- (c) If permitted by the Bank pursuant to a one-time irrevocable designation (which shall be made, if at all, upon the making of an Acquisition Loan) by the Board, then, in lieu of applying the provisions of subsection (b) with respect to an Acquisition Loan, Shares shall be released from the Loan Suspense Account as the principal amount of such Acquisition Loan is repaid (without regard to interest payments) provided the following three conditions are satisfied.
- (1) The Acquisition Loan shall provide for annual payments of principal and interest at a cumulative rate that is not less rapid at any time than level annual payments of such amounts for ten years;

- (2) The interest portion of any payment shall be disregarded only to the extent it would be treated as interest under standard loan amortization tables; and
  - (3) If the Acquisition Loan is renewed, extended or refinanced, the sum of the expired duration of the Acquisition Loan and the renewal, extension or new Acquisition Loan shall not exceed ten years.
- (d) If at any time there is more than one Acquisition Loan outstanding, then separate accounts shall be established under the Loan Suspense Account for each such Acquisition Loan. Each Acquisition Loan for which a separate account is maintained shall be treated separately for purposes of the provisions governing the release of Shares from the Loan Suspense Account under this Section 19.3 (including for purposes of determining whether Section 19.3(b) or Section 19.3(c) governs the release of Shares from any particular Loan Suspense Account).
- (e) As soon as practicable following the release of Leveraged Shares from a Loan Suspense Account as a result of a loan amortization payment, a portion of the total number of Shares so released shall be allocated to Participants' Accounts based on the amounts of any dividends on Stock used to make the loan amortization payment. The portion so released shall be separately calculated with respect to:
  - (1) cash dividends on Stock held in Participants' Accounts (the "Allocated Dividends") and
  - (2) dividends on Stock held in the Loan Suspense Account (the "Unallocated Dividends").

The number of released shares with respect to Allocated Dividends shall be determined and allocated as earnings in accordance with the provisions of Section 19.6. The number of released shares with respect to Unallocated Dividends shall be allocated among Participants' Accounts pursuant to subsection (f) below.

- (f) As soon as practicable following each ESOP Allocation Period, all Leveraged Shares that have been released from the Loan Suspense Account as a result of loan amortization payments made during such ESOP Allocation Period that have not and will not be allocated pursuant to Subsection 19.6 shall be allocated to Participants' Accounts pursuant to this subsection (f).



- (1) For any ESOP Allocation Period such Leveraged Shares shall be allocated to a Participant's Account in the manner provided in Article IV. Any such allocation shall be considered "matching contributions" for purposes of Code Section 401(m).
- (2) The amount, if any, by which Bank Matching Contributions to be made for any ESOP Allocation Period exceeds the value of Shares released from the Loan Suspense Account and allocated to Participants' Accounts in accordance with Article IV, will be paid to the ESOP Trustee in cash, shares or any other property acceptable to the ESOP Trustee as an ESOP Contribution including forfeitures or, in the discretion of the Employer, may be made to the ESOP Trustee or Trustees in cash or other property acceptable to such trustee as a non-ESOP Contribution to be allocated to the Accounts of Participants in accordance with Article IV.
- (3) If the amount of Bank Matching Contribution to be made for a Plan Year is less than the value of Shares released from the Loan Suspense Account and allocated to Participants' Accounts in accordance with Article IV such excess value shall be allocated among Participants' Accounts as an additional Bank Matching Contribution that is an ESOP Contribution.

#### **19.4 Put Option**

If at the time of distribution, Bank Stock distributed from the ESOP Fund is not readily tradable on an established market within the meaning of Section 409(h) of the Code and the Regulations, such Bank Stock shall be subject to a put option in the hands of a Qualified Holder by which such Qualified Holder may sell all or any part of the Stock distributed to him by the ESOP Fund to the ESOP Trustee. Should the ESOP Trustee decline to purchase all or any part of the Stock put to it by the Qualified Holder, the Employer shall purchase the Stock that the ESOP Trustee declines to purchase. The put option shall be subject to the following conditions:

- (a) The term "Qualified Holder" shall mean the Participant or Beneficiary receiving the distribution of such Stock, any other party to whom the Stock is transferred by gift or by reason of death, and also any trustee of an individual retirement account (as defined under Code Section 408) to which all or any portion of the distributed Stock is transferred pursuant to a tax-free "rollover" transaction satisfying the requirements of Sections 402 and 408 of the Code.

- (b) During the 60-day period following any distribution of such Stock, a Qualified Holder shall have the right to require the Employer to purchase all or a portion of the distributed Stock held by the Qualified Holder. The purchase price to be paid for any such Stock shall be their fair market value determined as of the Valuation Date coinciding with or next preceding the exercise of the put option under this Section 19.4 or, in the case of a transaction between the Plan and a “disqualified person” within the meaning of Section 4975(e)(2) of the Code or a “party in interest” within the meaning of ERISA Section 3(14), as of the date of the transaction.
- (c) If a Qualified Holder shall fail to exercise his put option right, the option right shall temporarily lapse upon the expiration of the sixty (60) day period. As soon as practicable following the last day of the Plan Year in which the sixty (60) day option period expires, the Company shall notify the non-electing Qualified Holder (if he is then a shareholder of record) of the valuation of the Stock as of that date. During the sixty (60) day period following receipt of such valuation notice, the Qualified Holder shall again have the right to require the Company to purchase all or any portion of the distributed Bank Stock. The purchase price to be paid therefor shall be fair market value determined as of the Valuation Date coinciding with or next preceding the exercise of the put option under this Section 19.4, or, in the case of a transaction between the Plan and a “disqualify person” within the meaning of Section 4975(e)(2) of the Code, be a “party in interest” within the meaning of ERISA Section 3, as of the date of the transaction.
- (d) The foregoing put options hereof shall be effective solely against the Employer and shall not obligate the Plan or Trust in any manner.
- (e) In making the determination of fair market value, the Bank shall consider, to the extent permitted by law, the same methodology used to value the Bank Stock at the time of its initial purchase by the ESOP Trustee and shall, to the extent permitted by law, include as a valuation factor at least the same proportionate share of enterprise value as was taken into account at the time of such purchase of Bank Stock.
- (f) The period during which the put option is exercisable does not include any time when a Qualified Holder is unable to exercise it because the Company is prohibited from honoring it by applicable Federal or State laws.
- (g) Except as otherwise required or permitted by the Code, the put options under this Section 19.4 shall satisfy the requirements of Section 54.4975-7(b) of the Treasury Regulations to the extent, if any, that such requirements apply to such put options.
- (h) A Qualified Holder must exercise his put option in writing. If a Qualified Holder. exercises his put option under this Section 19.4, payment for the Stock repurchased shall

be made, in the case of a distribution of a Participant's Account within one taxable year, in substantially equal annual payments over a period beginning not later than thirty (30) days after the exercise of the put option and not exceeding five (5) years (provided that adequate security and reasonable interest are provided with respect to unpaid amounts) or, in the case of other distributions, not later than thirty (30) days after such exercise.

**19.5 Investment Diversification**

Notwithstanding other the provisions of the Plan, the portion of a Participant's Account invested in the ESOP Fund shall be subject to the diversification rights set forth in Code Section 401(a)(28).

**19.6 Use of Dividends**

All cash dividends on Stock allocated to Participants' Accounts from a Loan Suspense Account may, as determined by the Committee, be used in whole or in part, consistent with Section 404(k) of the Code to make principal or interest payments on the Acquisition Loan giving rise to such Loan Suspense Account, or may be retained in the Participant's Account or paid out to the Participant. The Committee may determine how such dividends may be applied for any Plan Year up to the time when such dividends are finally allocated to the Accounts of Participants as of the last day of the Plan Year. Such dividends may not be used for payment of such Acquisition Loan unless Stock released for the benefit of Participants who would have otherwise been credited with the value of such dividends has a fair market value not less than the amount of such dividends which would have been otherwise allocated for the benefit of the Participant for the Plan Year. The allocation under Section 19.3(e) of the value of Stock released pursuant to this Section 19.6 shall be made to Participants in the same proportion that the value of dividends used for payment of the Acquisition Loan would have been allocated for the benefit of such Participants. All cash dividends on Leveraged Shares that are not allocated to any Participant's Account shall be used to repay an Acquisition Loan.

**19.7 Stock Valuations**

Stock held in Participants' Accounts shall be valued as of each Valuation Date, or at the discretion of the Committee, more frequently. All valuations of Stock which is not readily tradable on an established securities market shall be made by an independent appraiser meeting requirements similar to those contained in Treasury Regulations under Section 170(a)(1) of the Code.

## **19.8 Voting and Tendering of Unallocated Shares**

All voting and tendering decisions with respect to Stock held by the ESOP Trustee shall be made in accordance with Article VIII, provided that with respect to unallocated Stock the following shall apply:

- (a) Each Participant who has ESOP Match Stock allocated to his Participant's Account and who is entitled to direct the ESOP Trustee whether or not to tender or exchange Shares allocated to his Participant's Account shall separately direct the ESOP Trustee, as a Named Fiduciary, with respect to the tender or exchange of a portion of the Shares that are unallocated to any Participant's Account. Such direction (treating non-receipt of directions as a direction not to tender or exchange) shall be with respect to such number of unallocated Shares multiplied by a fraction, the numerator of which is the number of Shares of ESOP Match Stock allocated to the Participant's Account and the denominator of which is the total number of Shares of ESOP Match Stock allocated to the Accounts of all Participants. Fractional Shares shall be rounded to the nearest 1/1000th of a Share.
- (b) Each Participant who has ESOP Match Stock allocated to his Participant's Account and who is entitled to vote on any matter presented for a vote by the stockholders shall separately direct the ESOP Trustee with respect to the vote of a portion of the Shares that are unallocated to any Participant's Account. Such direction shall be with respect to such number of votes equal to the total number of votes attributable to Shares not allocated to Participants' Accounts multiplied by a fraction, the numerator of which is the number of votes attributable to ESOP Match Stock allocated to the Participant's Account and the denominator of which is the total number of votes attributable to the Accounts of all Participants. Any unallocated Shares for which no instructions have been received by the ESOP Trustee shall be voted by the ESOP Trustee in proportion to the unallocated Shares as to which instructions have been received. Fractional Shares shall be rounded to the nearest 1/1000th of a Share.

## **19.9 Exclusive Benefit**

In no event shall any part of the Plan, including the ESOP Feature, be used for, or diverted to, any purpose other than for the exclusive benefit of Participants and their Beneficiaries. Notwithstanding the foregoing, in the event that an ESOP Contribution is conditioned upon initial qualification of the ESOP Feature under Section 401(a) of the Code, and the ESOP Feature does not so qualify, the contribution may, to the extent permitted by law, be returned to the Company within one year after the denial of qualification.

#### **19.10 Termination of ESOP Feature**

Upon a complete termination of the Plan, or of the ESOP Feature, any unallocated Leveraged Shares shall be sold to the Company or on the open market. The proceeds of such sale shall be used to satisfy any outstanding Acquisition Loan and the balance of any funds remaining shall be allocated to the Accounts of all Participants on the date of termination based on the proportion that each Participant's Compensation for the next preceding Plan Year bears to the total of all Participant Compensation as so defined for such Plan Year.

#### **19.11 Definitions**

For purposes of this Article IX the following special definitions shall apply:

- (a) "Acquisition Loan" shall mean a loan or other extension of credit described in Code Section 4975(d)(3) which is used to finance the purchase of Stock by the ESOP Trustee.
- (b) "ESOP Allocation Period" shall mean such calendar quarter.
- (c) "ESOP Contributions" shall mean the contributions described in Article IV.
- (d) "ESOP Feature" shall mean that portion of the Plan consisting of the ESOP Fund which constitutes an employee stock ownership plan as defined in Code Section 4975(e)(7).
- (e) "ESOP Fund" shall mean that portion of the Plan which consists of Bank Stock, and any income thereon. The ESOP Fund shall include all Bank Stock in the Plan whether or not such Stock constitutes Leveraged Shares.
- (f) "ESOP Match Stock" shall mean with respect to any Acquisition Loan all Stock in the Plan allocated to Participant Accounts which is attributable to ESOP Contributions which are used to pay principal or interest on such Acquisition Loan.
- (g) "ESOP Trustee" shall mean the Trustee of the ESOP Fund.
- (h) "Leveraged Shares" shall mean shares of Stock acquired by the ESOP Trustee with the proceeds of an Acquisition Loan, pursuant to Section 19.2. Except as required by Code Section 409(h) and by Treasury Regulation Sections 54.4975-7(b)(9), (10), or as otherwise required by applicable law, no Leveraged Shares may be subject to a put, call or other option, or buy-sell or similar arrangement while held by, and when distributed from, the Plan, whether or not the Plan is an employee stock ownership plan, within the meaning of Code Section 4975(e)(7), at that time.
- (i) "Loan Suspense Account" shall mean an account under which Leveraged Shares are held until released for allocation pursuant to Section 19.3.

- (j) "Shares" shall mean shares of Bank Stock.
- (k) "Stock" shall mean Common Stock.
- (l) "Termination of Employment" shall mean the date an Employee ceases to be an Employee.

**19.12 Annual Additions**

For purposes of Section 14.1(a) of the Plan, the amount of any contribution to the Plan made by an Employer during a Plan Year that is (1) used to repay principal and interest on an Acquisition Loan or (2) used to fund Employer Matching Contributions shall be considered an Annual Addition for the Plan Year. Annual Additions shall not include the value of any Leveraged Shares that are allocated to Participants' Accounts for the Plan Year. Moreover, if in any Plan Year no more than one-third of ESOP Contributions are allocated to Participants who are Highly Compensated Employees, the twenty five percent (25%) and dollar limitations of Code Section 415(c) shall not apply to ESOP Contributions which are used to make interest payments under an Acquisition Loan or to reallocated forfeitures of Stock acquired with the proceeds of an Acquisition Loan.

**19.13 Governing Provisions**

With respect to matters not covered specifically by this Article XIX, such matters shall be governed by the other terms and provision of this Plan.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this \_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
North Fork Bancorporation, Inc.

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

APPENDIX A

EGTRRA AND OTHER AMENDMENTS

\* \* \*

ARTICLE A-I

GOOD FAITH COMPLIANCE AMENDMENT FOR THE

ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001

**SECTION 1. PREAMBLE**

1. *Adoption and Effective Date of Amendment.* This Amendment of the Plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) that are applicable to the Plan. This Amendment is intended as “good faith” compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder by the Internal Revenue Service. Except as otherwise provided herein, this Amendment shall be effective as of the first day of the first Plan Year beginning after December 31, 2001.
2. *Supersession of Inconsistent Provisions.* This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
3. *Capitalized Terms.* Capitalized terms which are not otherwise defined herein shall have the meaning ascribed to such terms in the Plan document.

**SECTION 2. INCREASE IN COMPENSATION LIMIT**

The annual compensation of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within that calendar year.

**SECTION 3. ELECTIVE DEFERRALS — CONTRIBUTION LIMITATION**

No Participant shall be permitted to have Salary Deferral Contributions made under this Plan, or any other qualified Plan maintained by the Employer during any taxable year, in excess of the dollar limitation contained in section 402(g) of the Code in effect for such taxable year, except to the extent permitted under section 3.10 of the Plan and section 414(v) of the Code, if applicable.

**SECTION 4. LIMITATIONS ON CONTRIBUTIONS**

1. *Effective Date.* This Section shall be effective for Limitation Years beginning after December 31, 2001.



2. *Maximum Annual Additions.* The Annual Additions that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:
- (a) \$40,000, as adjusted for increases in the cost of living under section 415(d) of the Code, or
  - (b) 100 percent of the Participant's compensation, within the meaning of section 415(c)(3) of the Code,
- for the Limitation Year. The compensation limit referred to in subsection (b) above shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or 419A(f)(2) of the Code) which is otherwise treated as an Annual Addition.

#### **SECTION 5. REPEAL OF MULTIPLE USE TEST**

The multiple use test described in Treasury Regulation section 1.401(m)-2 and Section 7.10 of the Plan shall not apply for Plan Years beginning after December 31, 2001.

#### **SECTION 6. SUSPENSION PERIOD FOR HARDSHIP**

A participant who receives a distribution of elective deferrals on account of hardship after December 31, 2001, shall be prohibited from making elective deferrals and employee contributions under this and all other plans of the Employer for six months after receipt of the distribution. A participant who receives a distribution of elective deferrals on account of hardship in calendar year 2001 shall be prohibited from making elective deferrals and employee contributions under this and all other plans of the Employer for the period specified below in this section.

A participant who receives a distribution of elective deferrals on account of hardship in calendar year 2001 shall be prohibited from making elective deferrals and employee contributions under this and all other plans of the Employer for the period specified in the provisions of the Plan relating to suspension of elective deferrals that were in effect before this amendment.

In addition, the limit in subparagraph (4) of section 9.1 shall be inapplicable for a Participant who receives a distribution on account of hardship on or after January 1, 2002.

#### **SECTION 7. DISTRIBUTION UPON SEVERANCE FROM EMPLOYMENT**

1. *Effective date.* This section shall be effective as of January 1, 2002, and shall apply with respect to distributions and severances from employment occurring on and after that date.
2. *New distributable event.* A Participant's Salary Deferral Contributions, qualified nonelective contributions, qualified matching contributions, and earnings attributable to these contributions shall be distributed on account of the Participant's severance from employment. However, such a distribution shall be subject to the other provisions of the Plan regarding distributions, other than provisions that require a separation from service before such amounts may be distributed.

#### **SECTION 8. MODIFICATION OF TOP-HEAVY RULES**

The top-heavy requirements of section 416 of the Code and Article XV of the Plan shall not apply in any year beginning after December 31, 2001, in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of section 401(k)(12) of the Code, and matching contributions with respect to which the requirements of section 401(m)(11) of the Code are met.

## SECTION 9. DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS

1. *Effective date.* This section shall apply to distributions made after December 31, 2001.
2. *Modification of definition of eligible retirement plan.* For purposes of the direct rollover provisions in section 11.9 of the Plan, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible Plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such Plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.
3. *Modification of definition of eligible rollover distribution to exclude hardship distributions.* For purposes of the direct rollover provisions in section 11.9 of the Plan, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement Plan.
4. *Modification of definition of eligible rollover distribution to include after-tax Contributions.* For purposes of the direct rollover provisions in section 11.9 of the Plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution Plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

## SECTION 10. ROLLOVERS FROM OTHER PLANS

1. *Effective date.* The Plan will accept participant rollover contributions and/or direct rollovers of distributions made after December 31, 2001, from the types of plans specified below.
2. *Types of rollovers accepted:*
  - 2.1 *Direct rollovers.* The Plan will accept a direct rollover of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the Code, excluding after-tax employee contributions.
  - 2.2 *Participant rollover contributions from other plans.* The Plan will accept a participant contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the Code, excluding after-tax employee contributions.
  - 2.3 *Participant rollover contributions from IRAs.* The Plan will not accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

**SECTION 11. TOTAL (SECTION 415) COMPENSATION – AUTOMATIC CAFETERIA PLAN ENROLLMENTS**

1. *Effective date.* This Section 11 shall apply to Plan Years and Limitation Years beginning on and after January 1, 1998.
2. For purposes of the definition of the term “Section 415 Compensation” under Section 14.1(i) of the Plan, amounts under Section 125 of the Code include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he has other health coverage. An amount will be treated as an amount under Section 125 of the Code only if the Employer does not request or collect information regarding the Member’s other health coverage as part of the enrollment process for the health plan.

## ARTICLE A-II

### MINIMUM DISTRIBUTION REQUIREMENTS

#### SECTION 1. GENERAL RULES

1. *Effective date.* The provisions of this Article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
2. *Precedence.* The requirements of this Article will take precedence over any inconsistent provisions of the Plan. Notwithstanding the foregoing, this Article A-II is not intended to defer the timing of distributions beyond the date otherwise required under the Plan or to create any benefits (including, but not limited to death benefits) or distribution forms that are not otherwise offered under the Plan.
3. *Requirements of Treasury regulations incorporated.* All distributions required under this Article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Code.
4. *TEFRA section 242(b)(2) elections.* Notwithstanding the other provisions of this Article, other than section 1.3, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to section 242(b)(2) of TEFRA.

#### SECTION 2. TIME AND MANNER OF DISTRIBUTION

1. *Required beginning date.* The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
2. *Death of Participant before distributions begin.* If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (a) the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 <sup>1</sup>/<sub>2</sub>, if later.
  - (b) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (c) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (d) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this section 2.2, other than 2.2(a), will apply as if the surviving spouse were the Participant.

For purposes of this section 2.2 and section 4, unless section 2.2(d) applies, distributions are considered to begin on the Participant's required beginning date. If section 2.2(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 2.2(a).

3. *Forms of distribution.* Unless the Participant's interest is distributed in the form of a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 3 and 4 of this Article.

### **SECTION 3. REQUIRED MINIMUM DISTRIBUTIONS DURING PARTICIPANT'S LIFETIME**

1. *Amount of required minimum distribution for each distribution calendar year.* During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
  - (a) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
  - (b) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
2. *Lifetime required minimum distributions continue through year of Participant's death.* Required minimum distributions will be determined under this section 3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

### **SECTION 4. REQUIRED MINIMUM DISTRIBUTIONS AFTER PARTICIPANT'S DEATH**

1. *Death on or after date distributions begin.*
  - (a) *Participant survived by designated beneficiary.* If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:
    - (1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
    - (2) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(3) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(b) *No designated beneficiary.* If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

2. *Death before date distributions begin.*

(a) *Participant survived by designated beneficiary.* Except as provided in section 2.2(b), if the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in section 4.1.

(b) *No designated beneficiary.* If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(c) *Death of surviving spouse before distributions to surviving spouse are required to begin.* If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under section 2.2(a), this section 4.2 will apply as if the surviving spouse were the Participant.

## SECTION 5. DEFINITIONS

1. *Designated beneficiary.* The individual who is designated as the beneficiary under section 2.5 of the Plan and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

2. *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under section 2.2. The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

3. *Life expectancy.* Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
4. *Participant's account balance.* The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year), increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date, and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
5. *Required beginning date.* The date specified in section 11.9 of the Plan.

**Amendment Number One to the  
North Fork Bancorporation, Inc.  
401(k) Retirement Savings Plan**

The North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan as Amended and Restated Generally Effective as of January 1, 2002 (the "Plan") is hereby amended in the following respects:

The following amendment is effective as of June 1, 2003:

1. A new Section 17.9 is added to the Plan to read in its entirety as follows:

"17.9 Transfer of Assets and Liabilities of the 401(k) Profit-Sharing Plan of Commercial Bank of New York

Effective June 1, 2003, the assets and liabilities of the 401(k) Profit-Sharing Plan of Commercial Bank of New York (the "CBNY Plan") shall be transferred into the Plan. The following shall apply to transferred Participant Accounts:

(a) All transferred funds shall be accounted for separately and all benefits protected under Section 411(d)(6) of the Code shall be preserved.

(b) All transferred funds shall be available for in-service distributions for:

- (i) withdrawal upon the Participant's attainment of age 59Y2,
- (ii) loans under the provisions of the Plan,
- (iii) hardship withdrawals under the provisions of the Plan, and
- (iv) any other circumstances under which in-service withdrawal was available under the terms of the CBNY Plan, but only with respect to the particular funds to which those in-service withdrawal rights applied.

(c) Promissory Notes for outstanding loans in the CBNY Plan will be accepted by the Plan Trustee. The loans will amortize for the same period of time and at the same interest rate as previously agreed to under the provisions of the CBNY Plan."

**IN WITNESS WHEREOF, NORTH FORK BANCORPORATION, INC.** has caused this Amendment to be executed by its duly authorized officer effective as of the date above referenced.

**NORTH FORK BANCORPORATION, INC.**

By: /s/ Daniel Healy

Daniel Healy  
Executive Vice President and  
Chief Financial Officer



**Amendment Number Two to the  
North Fork Bancorporation, Inc.  
401(k) Retirement Savings Plan**

The North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan (as amended and restated, generally effective as of January 1, 2002) (the "Plan") is hereby amended in the following respects:

The following amendment is effective as of October 1, 2003:

1. A new Section 17.10 is added to the Plan to read in its entirety as follows:

"17.10 Transfer of Assets and Liabilities of the Omni Commercial, LLC 401(k) Profit-Sharing Plan

Effective October 1, 2003, the assets and liabilities of the Omni Commercial, LLC 401(k) Profit-Sharing Plan (the "Omni Plan") shall be transferred into the Plan. The following shall apply to transferred Participant Accounts:

(a) All transferred funds shall be accounted for separately and all benefits protected under Section 411(d)(6) of the Code shall be preserved.

(b) All transferred funds shall be available for in-service distributions for:

- (i) withdrawal upon the Participant's attainment of age 59 <sup>1</sup>/<sub>2</sub>,
- (ii) loans under the provisions of the Plan,
- (iii) hardship withdrawals under the provisions of the Plan, and
- (iv) any other circumstances under which in-service withdrawal was available under the terms of the Omni Plan, but only with respect to the particular funds to which those in-service withdrawal rights applied."

**IN WITNESS WHEREOF, NORTH FORK BANCORPORATION, INC.** has caused this Amendment to be executed by its duly authorized officer effective as of the date above referenced.

**NORTH FORK BANCORPORATION, INC.**

By: /s/ Daniel Healy

Daniel Healy  
Executive Vice President and  
Chief Financial Officer

**Amendment Number Three to the  
North Fork Bancorporation, Inc.  
401(k) Retirement Savings Plan**

The North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan as Amended and Restated Generally Effective as of January 1, 2002 ("Plan") is hereby amended in the following respects:

The following Amendments are effective as of May 15, 2004 (or if later, the date that North Fork Bancorporation, Inc. acquires The Trust Company of New Jersey):

1. A new Section 2.21 is added to the Plan to read in its entirety as follows:

**"2.21 Former Employees of The Trust Company of New Jersey**

Former employees of The Trust Company of New Jersey who became employees of the Employer on account of the Bank's acquisition of The Trust Company of New Jersey on May 15, 2004 (or such later date of closing of such acquisition (the "Closing Date")), and who, as of the day prior to the Closing Date were non-union employees, shall be eligible to participate in the Plan at the beginning of the next payroll period following the date they become employees of the Employer, or as soon as administratively practicable following their employment by the Employer. All former employees of The Trust Company of New Jersey who became employees of the Employer on account of the Bank's acquisition of The Trust Company of New Jersey on May 15, 2004 (or the Closing Date, if later), and who, as of the day prior to the Closing Date were union employees, shall be eligible to participate in the Plan pursuant to the eligibility requirements of Section 2.1 above; *provided however*, that the service they rendered as employees of Trust Company of New Jersey in the 12 months preceding May 15, 2004 (or the Closing Date, if later) will be considered for purposes of satisfaction of the eligibility requirements of Section 2.1.

**IN WITNESS WHEREOF, NORTH FORK BANCORPORATION, INC.** has caused this Amendment to be executed by its duly authorized officer effective as of the dates above referenced.

**NORTH FORK BANCORPORATION, INC.**

By: /s/ Daniel Healy

Daniel Healy  
Executive Vice President and  
Chief Financial Officer

**Amendment Number Four to the  
North Fork Bancorporation, Inc.  
401(k) Retirement Savings Plan**

The North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan as Amended and Restated Generally Effective as of January 1, 2002 (the "Plan") is hereby amended in the following respects, effective as of the dates specified:

1. Effective as of October 1, 2004, or, if later, the date that GreenPoint Financial Corp. merges with North Fork Bancorporation, Inc., a new Section 2.22 is added to the Plan to read in its entirety as follows:

**"2.22 Employees of GreenPoint Financial Corp.**

Notwithstanding anything in this Plan to the contrary, (i) all service credited to an Employee under the GreenPoint Employee Stock Ownership Plan (the "GreenPoint ESOP") shall be treated for all purposes as service under this Plan and (ii) before January 1, 2005, any Employee who is classified by the Bank as an Employee covered by the "GreenPoint payroll" will be ineligible to participate in the Plan (except as may be permitted under Section 17.12). Beginning on January 1, 2005, all Employees who are (or were) classified by the Bank as Employees covered by the "GreenPoint payroll" will be eligible to participate in the Plan for all purposes; provided that on that date, they satisfied the eligibility conditions set forth in Section 2.1(b) or (c), as applicable. If an individual who was employed by GreenPoint Financial Corp. or any of its affiliates at any time during the period beginning on the Merger Closing Date (as defined in Section 17.12) and ending on December 31, 2004 is classified by the Bank as covered by the "North Fork payroll" before January 1, 2005, (i) that individual will be eligible to participate in the Plan for all purposes; provided, that, on the date such individual is so classified, the individual satisfied the eligibility conditions set forth in Section 2.1(b) or (c), as applicable and (ii) notwithstanding anything in this Plan to the contrary, all service credited to such individual under the GreenPoint ESOP shall be treated for all purposes as service under this Plan."

2. Effective as of September 30, 2004, a new Section 17.11 is added to the Plan to read in its entirety as follows:

**"17.11 Transfer of Assets and Liabilities of the Trust Company of New Jersey 401(k) Plan**

Effective September 30, 2004, the assets and liabilities of the Trust Company of New Jersey 401(k) Plan (the "TCNJ Plan") will be transferred into the Plan. The following will apply to Participant accounts transferred under this Section:

- (a) All benefits protected under Section 411(d)(6) of the Code with respect to any transferred funds will be preserved as required by law, and all transferred funds will be accounted for separately as may be required to preserve such benefits or as may be required to preserve participants' tax basis with respect to such transferred funds, if any.
  - (b) To the extent such rights are not already provided under the terms of the Plan, all transferred funds will be available for in-service distributions for:
    - (i) withdrawal upon the Participant's attainment of age 59 <sup>1</sup>/<sub>2</sub>,
    - (ii) loans under the provisions of the Plan,
    - (iii) hardship withdrawals under the provisions of the Plan, and
    - (iv) any other circumstances under which in-service withdrawal was available under the terms of the TCNJ Plan, but only with respect to the particular funds to which those in-service withdrawal rights applied.
  - (c) Promissory notes for outstanding loans in the TCNJ Plan will be transferred to the Plan and accepted by the Plan Trustee. The loans will amortize for the same period of time and at the same interest rate as previously agreed to under the provisions of the TCNJ Plan."
3. Effective as of October 1, 2004, or, if later, the date that GreenPoint Financial Corp. merges with North Fork Bancorporation, Inc., a new Section 17.12 is added to the Plan to read in its entirety as follows:

**"17.12 Transfer of Accounts from the GreenPoint Employee Stock Ownership Plan**

As soon as administratively practicable after the date on which the merger between GreenPoint Financial Corp. and North Fork Bancorporation, Inc. closes (the "Merger Closing Date"), there will be a transfer of certain accounts from the GreenPoint ESOP to the Plan, pursuant to Section 414(1) of the Code and Section 11.03A of the GreenPoint ESOP, in connection with the termination of the GreenPoint ESOP immediately prior to the Merger Closing Date. Such accounts may consist of Bank Stock, cash, or such other property as may have been held in these accounts under the GreenPoint ESOP at the time that they are transferred to the Plan pursuant to this Section. The following additional rules will apply with respect to GreenPoint ESOP accounts that are transferred pursuant to this Section:

- (a) Individuals for whom GreenPoint ESOP accounts are transferred pursuant to this Section will become Participants in the Plan solely with respect to their transferred accounts and, for all purposes under the Plan, shall have the same rights as other Participants including, but not limited to, those set forth below in Sections 17.12(b) through 17.12(e), except that these individuals will not be eligible to participate with respect to Before-tax Contributions under Article III or Bank Matching Contributions under Article IV until they are eligible to participate under the terms of Articles II and III of the Plan.
- (b) All benefits protected under Section 411(d)(6) of the Code with respect to any GreenPoint ESOP accounts transferred pursuant to this Section will be preserved as required by law, and all such transferred accounts will be accounted for separately with respect to each such individual for whom a GreenPoint ESOP account was so transferred as may be required to preserve such benefits or as may be required to preserve Participants' cost basis with respect to such transferred accounts, particularly with regard to the net unrealized appreciation attributable to Bank Stock so transferred.
- (c) Individuals for whom GreenPoint ESOP accounts are transferred pursuant to this Section will be 100% vested in their account so transferred and may diversify and direct the investment of their accounts in the same manner as other Participants, pursuant to Article V of the Plan.
- (d) Individuals for whom GreenPoint ESOP accounts are transferred pursuant to this Section will be eligible to elect the withdrawal or reinvestment of Bank Stock dividends pursuant to Section 9.3 of the Plan.
- (e) Individuals for whom GreenPoint ESOP accounts are transferred pursuant to this Section will be eligible to receive a distribution under the terms of Article XI under the Plan upon termination of employment with the Bank or any of its affiliates, or on account of termination of employment with GreenPoint Financial Corp. or any of its affiliates and to elect in-service distributions for withdrawal upon the Participant's attainment of age 59 <sup>1</sup>/<sub>2</sub> and hardship withdrawals under the provisions of the Plan, but will not be eligible to receive a loan under the provisions of the Plan until such time as the individual becomes eligible to participate in the Plan for purposes of Before-tax Contributions under Article II and III of the Plan."

IN WITNESS WHEREOF, NORTH FORK BANCORPORATION, INC. has caused this Amendment to be executed by its duly authorized officer effective as of the dates above referenced.

NORTH FORK BANCORPORATION, INC.

Date Signed: September 30, 2004

By /s/ Daniel Healy

Daniel Healy  
Executive Vice President and  
Chief Financial Officer

**Amendment Number Five to the  
North Fork Bancorporation, Inc.  
401(k) Retirement Savings Plan**

The North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan (as amended and restated generally effective as of January 1, 2002) (the "Plan") is hereby amended in the following respects, effective as of the dates specified.

1. Effective January 1, 2005, Section 1.14 of the Plan is hereby amended to add the following new paragraphs to the end of Section 1.14, "Compensation" to read as follows:

"Notwithstanding the foregoing, effective January 1, 2005, for all Participants who are Employees of the following entities:

(a) GreenPoint Mortgage Funding, Inc. who are classified by GreenPoint Mortgage Funding, Inc. as Account Executives, Mortgage Specialists, Area Managers, National Account Managers, Loan Advisors, Regional Managers, Branch Sales Managers, Retail Sales Managers, Manager - Correspondent Lending, GRPT Express Sales Manager, Loan Production Managers, GPX Branch Manager, Correspondent Account Representatives, or any successor job classification; and

(b) GreenPoint Mortgage Funding, Inc. who are classified by GreenPoint Mortgage Funding, Inc. as Management – Secondary Marketing, or any successor job classification,

"Compensation" means a Participant's draw/base pay plus commissions/incentive compensation to the extent includible in the Participant's wages as defined in Section 3401(a) of the Code, subject to the following inclusions and exclusions:

- (i) including Employer contributions made pursuant to a compensation reduction agreement which are not includible in the gross income of a Participant under Sections 125, 132(f)(4), 402(a)(8), 402(h) or 403(b) of the Code;
- (ii) excluding the value of any qualified or non-qualified stock option granted to the Participant by his or her Employer to the extent such value is includible in the Participant's taxable income;
- (iii) excluding reimbursements or other expense allowances, fringe benefits, moving expenses, deferred compensation, employer-provided incentive compensation (except as provided above), and welfare benefits;
- (iv) excluding any amount in excess of \$100,000 for Plan Years beginning on and after January 1, 2005 except that with respect to Employees of GreenPoint Mortgage Funding, Inc. described in (b) above who are classified by GreenPoint Mortgage Funding, Inc. as Management – Secondary Marketing, or any successor job classification, the foregoing limitation shall be \$150,000 for Plan Years beginning on or after January 1, 2005."

2. Effective January 1, 2005, Article II of the Plan is hereby amended to add the following sentence to the end of Section 2.22 to read as follows:

“Service from the date of such Employees’ initial employment with GreenPoint Financial Corp. or any of its affiliates will be credited to such Employees for purposes of satisfying the eligibility requirements of Article II.”

3. Effective January 1, 2005, Section 9.2(b) of the Plan is hereby amended to add the following new sentence immediately following the first paragraph to read as follows:

“For purposes of determining the maximum amount that a Participant may borrow from the Plan under subsection (b)(ii) above, the amount of any outstanding loans under any plans maintained by the Employer or any member of the Controlled Group, including the GreenPoint 401(k) Savings Plan, shall be aggregated with the amount of any outstanding loan(s) that the Participant may take under this Plan.”

IN WITNESS WHEREOF, NORTH FORK BANCORPORATION, Inc. has caused this Amendment to be executed by its duly authorized officer effective as of the dates above referenced.

**NORTH FORK BANCORPORATION, INC.**

Date Signed: December 31, 2004

By: /s/ Daniel Healy

Daniel Healy  
Executive Vice President and Chief  
Financial Officer



**Amendment Number Six to the  
North Fork Bancorporation, Inc.  
401(k) Retirement Savings Plan**

The North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan (as amended and restated generally effective as of January 1, 2002) (the "Plan") is hereby amended in the following respects, effective as of January 1, 2002.

1. Section 3.4 of the Plan is hereby amended to change the first sentence to read as follows:

"For each Plan Year in which the Plan is not a "safe-harbor plan" within the meaning of Section 401(k)(12) of the Code, notwithstanding the foregoing provisions of this Article III, the Committee shall limit the amount of Before-tax Contributions made on behalf of each Highly Compensated Employee for each Plan Year to the extent necessary to ensure that either of the following tests is satisfied:"

2. Section 3.9 of the Plan is hereby amended to delete the first sentence in its entirety and to insert the following two new sentences in lieu thereof to read as follows:

"Effective for Plan Years beginning on and after January 1, 2002, (until otherwise amended) the Plan shall constitute a "safe-harbor plan" within the meaning of Section 401(k)(12) of the Code. The Plan shall comply with the Notice Requirement, the Contribution Requirement, Vesting Requirement and Withdrawal Restriction in subsections (a), (b), (c) and (d) as set forth below."

3. Section 4.2 of the Plan is hereby amended to change the first sentence to read as follows:

"For each Plan Year in which the Plan is not a "safe-harbor plan" within the meaning of Section 401(m)(11) of the Code, notwithstanding the foregoing provisions of this Article IV, the Committee shall limit the amount of Bank Matching Contributions made on behalf of each Highly Compensated Employee for each Plan Year to the extent necessary to ensure that either of the following tests is satisfied:"

4. Section 4.3 of the Plan is hereby amended to delete the first sentence in its entirety and to insert the following two new sentences in lieu thereof to read as follows:

"Effective for Plan Years beginning on and after January 1, 2002, (until otherwise amended) the Plan shall constitute a "safe-harbor plan" within the meaning of Section 401(m)(11) of the Code. The Plan shall comply with the Notice Requirement, the Contribution Requirement, Vesting Requirement and Withdrawal Restriction described in Section 3.9, and the Special Limitation on Matching Contributions set forth below."

IN WITNESS WHEREOF, NORTH FORK BANCORPORATION, INC. has caused this Amendment to be executed by its duly authorized officer effective as of the dates above referenced.

**NORTH FORK BANCORPORATION, INC.**

Date Signed: \_\_\_\_\_, 2005

By: /s/ Daniel Healy  
Daniel Healy  
Executive Vice President and  
Chief Financial Officer

**Amendment Number Seven to the  
North Fork Bancorporation, Inc.  
401(k) Retirement Savings Plan**

The North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan (as amended and restated generally effective as of January 1, 2002) the ('Plan') is hereby amended in the following respects, effective as indicated below.

1. Effective January 1, 2006, Section 1.14 of the Plan is hereby amended to restate the definition of 'Compensation' as a separate new paragraph added to the end of existing Section 1.14, to read as follows:

"Effective January 1, 2006, "Compensation" means, with respect to all Participants, base pay, bonuses and overtime, increased by the amount of (i) any Before-tax Contributions made to the Plan on the Participant's behalf; (ii) any amount by which the Participant's current pay is reduced pursuant to the Participant's election for benefits or coverage under a "cafeteria" plan as described in Section 125 of the Code and (iii) the amount by which the Participant's current pay is reduced pursuant to the Participant's election under a qualified transportation fringe benefit arrangement under Section 132(f) of the Code; and decreased by the amount of (i) severance pay received by the Participant; (ii) any contributions made on behalf of a Participant to a Supplemental Executive Retirement Plan; (iii) any amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Participant either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; and (iv) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option. Compensation to be taken into account under the Plan in any Plan Year shall not exceed \$200,000, adjusted for changes in cost of living as provided in Section 401(a)(17)(B) of the Code."

2. Effective as of the second payroll period in November of 2005, Section 3.1(a) of the Plan is hereby amended to read as follows:

"(a) Effective as of the second payroll period in November 2005, each Employee who is eligible to participate in the Plan may direct the Employer to contribute an amount on his behalf to the Plan as a Before-tax Contribution, by designating the amount of such Before-tax Contribution on the Appropriate Form in accordance with the election and deduction procedures applicable to the Appropriate Form. Such Before-tax Contribution shall be deducted from an Employee's pay each payroll period, and shall be credited to his Before-tax Contribution Account. Each such Employee may elect on the Appropriate Form, Before-tax Contributions in any whole percentage, but in no event may the percentage elected be less than 1% or more than 20%. Effective January 1, 2006, in no event may the percentage elected by the Employee on the Appropriate Form exceed 50%."

3. Effective as of January 1, 2005, Section 4.1 of the Plan is hereby amended to add the following new paragraph to the end thereof to read as follows:

“Effective January 1, 2005, in addition to the quarterly Bank Matching Contributions described above, the Employer shall contribute to the Plan as of the end of each Plan Year, an additional Bank Matching Contribution, which shall be known as a “True-up Bank Matching Contribution.” The True-up Bank Matching Contribution pursuant to this paragraph is intended to provide a Participant whose Before-tax Contribution was not made ratably over the year with the maximum amount of Bank Matching Contribution applicable to his Before-tax Contribution for the Plan Year that would apply had his Before-tax Contribution been contributed ratably over the Plan Year. Such True-up Bank Matching Contribution shall be equal to the difference between (i) 100% of the Participant’s Before-tax Contribution on amounts that do not exceed three percent (3%) of the Participant’s Compensation for the entire Plan Year plus fifty percent (50%) of the Participant’s Before-tax Contribution on amounts between four percent (4%) and six percent (6%) of Compensation for the entire Plan Year; and (ii) the amount of Bank Matching Contributions already contributed by the Employer through the last day of the Plan Year based on the quarterly allocation of Bank Matching Contributions described above. True-up Bank Matching Contributions may be contributed by the Bank on or before the last day of the Plan Year, but no later than the time limits permitted by law for contributing employer contributions with respect to the Plan Year to which they relate. A Participant need not be employed on the last day of the Plan Year to be entitled to a True-up Bank Matching Contribution.”

4. Effective March 28, 2005, Section 11.3 of the Plan is hereby amended to add the following new provisions to the end thereof to read as follows:

“Effective March 28, 2005, if the amount of a Participant’s Accounts does not exceed \$1,000 at the time of distribution, it shall be distributed to the Participant in a lump sum as soon as practicable following his Termination of Employment. If the Participant does not elect, in accordance with procedures established by the Committee, to have such distribution paid directly to an Eligible Retirement Plan (as defined in Section 11.9) specified by the Participant in a direct rollover, or to receive the distribution directly in cash as a taxable distribution, it shall be automatically distributed in cash to the Participant. If the vested value of a Participant’s Accounts exceeds \$1,000, but does not exceed \$5,000, it shall be distributed to the Participant in a lump sum as soon as practicable following his Termination of Employment; provided, however, that if the Participant does not elect, in accordance with procedures established by the Committee, to have such distribution paid directly to an Eligible Retirement Plan (as defined in Section 11.9) specified by the Participant in a direct rollover, or to receive the distribution directly in cash as a taxable distribution, then the Committee shall make the distribution in a direct rollover to an individual retirement plan designated by the Committee as soon as practicable after his Termination of Employment, pursuant to Code Section 401(a)(31) (B). This paragraph shall not apply to Participants whose Termination of Employment occurs on or after Normal Retirement Age; in any such case, the distribution of such Participant’s benefit shall be subject to the involuntary lump sum distribution requirements of the preceding paragraph.”

5. Effective December 1, 2005, Article XVII of the Plan is hereby amended to add the following new Section 17.13 to the end thereof to read as follows:

**“17.13 Transfer of Assets and Liabilities of GreenPoint 401(k) Savings Plan**

Effective as of December 1, 2005, the GreenPoint 401(k) Savings Plan (the “GreenPoint Plan”) will be merged with and into the Plan. Accordingly, all assets and liabilities of the GreenPoint Plan will be transferred into the Plan.

The following shall apply to Participant funds transferred from the GreenPoint Plan:

- (a) All benefits protected under section 411(d)(6) of the Code with respect to any transferred funds and any related vesting schedules will be preserved as required by law, and all transferred funds will be accounted for separately as may be required to preserve such benefits and vesting rights or as may be required to preserve Participants’ tax basis with respect to such transferred funds, if any.
- (b) Any written beneficiary designations under the GreenPoint Plan with respect to any transferred funds will continue in effect with respect to such transferred funds until the Participant executes a new beneficiary designation form with respect to the Participant’s entire Plan interest, upon execution of which, the prior written beneficiary designation under the GreenPoint Plan shall become invalid. If no beneficiary designation with respect to funds transferred from the GreenPoint Plan has been previously filed, and no new beneficiary designation with respect to the Participant’s entire Plan interest is filed, then effective December 1, 2005, the default beneficiary provisions of Section 2.5 shall apply to such transferred funds. If a Participant has executed a beneficiary designation form with respect to funds transferred from the GreenPoint Plan, but has not executed a new beneficiary designation form with respect to his or her entire Plan interest, then the beneficiary designation form executed with respect to his or her funds transferred from the GreenPoint Plan shall apply to his or her entire Plan interest. All beneficiary designations shall be subject to the spousal consent requirements described in Section 2.5.
- (c) All loans that were initiated by Participants under the terms of the GreenPoint Plan prior to the merger shall continue to be administered in accordance with the terms and conditions applicable to the promissory note, loan application and loan rules that applied to the loan. All new loans initiated by a Participant whose accounts include assets attributable to the GreenPoint Plan shall be subject to the rules pertaining to loans applicable to the Plan.
- (d) To the extent such rights are not already provided under the terms of the Plan, all transferred funds will be available for in-service distributions for:
  - (i) withdrawals upon the Participant’s attainment of age 59<sup>1/2</sup> in any frequency,
  - (ii) withdrawal at any time with respect to transferred funds from the Transferred Employer Contribution Sub-Account and Transferred After-Tax Contribution Sub-Account of the Barclays/American Mortgage Restated Thrift Plan,

(iii) withdrawal at any time with respect to amounts transferred from the Transferred Employer Contribution Sub-Account and Transferred After-Tax Contribution Sub-Account of the GreenPoint Bank Incentive Savings Plan, at any time, and

(iv) any other circumstances under which in-service withdrawal was available under the terms of the GreenPoint Plan, but only with respect to the particular funds to which those in-service withdrawal rights applied.”

IN WITNESS WHEREOF, NORTH FORK BANCORPORATION, INC. has caused this Amendment to be executed by its duly authorized officer effective as of the dates above referenced.

NORTH FORK BANCORPORATION, INC.

Date Signed: \_\_\_\_\_, 2005

By /s/ Daniel Healy  
Daniel Healy  
Executive Vice President and  
Chief Financial Office

## [Wachtell, Lipton, Rosen &amp; Katz Letterhead]

December 1, 2006

North Fork Bancorporation, Inc.  
275 Broadhollow Road  
Melville, New York 11747

Ladies and Gentlemen:

We have acted as special counsel to North Fork Bancorporation, Inc., a Delaware corporation ("North Fork"), in connection with the proposed merger (the "Merger") of North Fork with and into Capital One Financial Corporation, a Delaware corporation ("Capital One"), pursuant to the Agreement and Plan of Merger (the "Agreement"), dated as of March 12, 2006, by and between Capital One and North Fork. At your request, and pursuant to Section 7.3(c) of the Agreement, we are rendering our opinion concerning certain federal income tax consequences of the Merger. Any capitalized term used and not defined herein has the meaning given to it in the Agreement.

For purposes of the opinion set forth below, we have relied, with the consent of Capital One and the consent of North Fork, upon the accuracy and completeness of the statements and representations (which statements and representations we have neither investigated nor verified) contained, respectively, in certain letters to us from the officers of Capital One and North Fork dated the date hereof, and have assumed that such statements and representations will be accurate and complete as of the Effective Time (as if made as of such time) and that all such statements and representations made to the knowledge of any person or entity or with similar qualification are and will be true and correct as if made without such qualification. We have also relied upon the accuracy of the Registration Statement on Form S-4 filed with the Securities and Exchange Commission in connection with the Merger (as amended through the date hereof, the "Registration Statement") and the joint proxy statement/prospectus (the "Proxy Statement/Prospectus") contained therein, each as amended or supplemented through the date hereof.

We have also assumed that: (i) the transactions contemplated by the Agreement will be consummated in accordance therewith and as described in the Proxy Statement/Prospectus (and no transaction or condition described therein and affecting this opinion will be waived by any party), (ii) the Merger will qualify as a statutory merger under the applicable laws of the State of Delaware and (iii) the Merger will be reported by Capital One and North Fork on their respective federal income tax returns in a manner consistent with the opinion set forth below.

Based upon and subject to the foregoing, it is our opinion, under currently applicable U.S. federal income tax law, that the Merger will be treated as a reorganization within the meaning of Section 368(a) of the Code.

We hereby consent to the filing of this opinion with the Securities and Exchange Commission as a post-effective amendment to the Registration Statement, and to the references therein to us. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended. This opinion relates solely to certain U.S. federal income tax consequences of the Merger and no opinion is expressed as to the tax consequences under any foreign, state or local tax law or under any federal tax laws other than those pertaining to the income tax. We are furnishing this opinion to you solely in connection with the Merger, and this opinion is not to be relied upon by any other person or for any other purpose.

Very truly yours,

/s/ Wachtell, Lipton, Rosen & Katz



## Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Post-Effective Amendment No. 1 of the Registration Statement (Form S-8 No. 333-133665) of our report dated February 15, 2006, except for Note 27, as to which the date is February 27, 2006, with respect to the consolidated financial statements of Capital One Financial Corporation, and our report dated February 15, 2006, with respect to Capital One Financial Corporation management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Capital One Financial Corporation, included in Capital One Financial Corporation's Annual Report (Form 10-K) for the year ended December 31, 2005, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

McLean, Virginia

November 30, 2006

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
North Fork Bancorporation, Inc.:

We consent to the incorporation by reference in Post-Effective Amendment No. 1 on Form S-8 to the registration statement (No. 333-133665) on Form S-4 of Capital One Financial Corporation of our report dated June 23, 2006 with respect to the statements of assets available for benefits of the North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan as of December 31, 2005 and 2004, and the related statements of changes in assets available for benefits for the years then ended, and the related supplemental schedule H, line 4i - - schedule of assets (held at end of year), which report appears in the December 31, 2005 Annual Report on Form 11-K of the North Fork Bancorporation, Inc. 401(k) Retirement Savings Plan.

/s/ KPMG LLP

New York, New York  
December 1, 2006

[Cleary Gottlieb Steen & Hamilton LPP Letterhead]

Writer's Direct Dial: (212) 225-2434  
E-Mail: CAustin@cgsh.com

December 4, 2006

Capital One Financial Corporation  
1680 Capital One Drive  
McLean, Virginia 22102

Re: Capital One Financial Corporation Post-Effective Amendment No. 1 on Form S-8 to the Registration Statement of Capital One Financial Corporation on Form S-4 (the "Registration Statement")

Ladies and Gentlemen:

We hereby consent to the filing of our opinion letter dated July 7, 2006 as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are "experts" within the meaning of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission issued thereunder with respect to any part of the Registration Statement, including our opinion letter.

CLEARY GOTTlieb STEEN & HAMILTON LPP

By: /s/ Christopher E. Austin  
Christopher E. Austin, a Partner