

SUPERVISORY AGREEMENT

This Supervisory Agreement (Agreement) is made as of the Effective Date (defined below), by and between **Bayside Bank (Association)** (OTS No.14251), a federally chartered stock association, having its main office located in Minnetonka, Minnesota, and the Office of Thrift Supervision (OTS), an office within the United States Department of the Treasury, having its principal executive offices located at 1700 G Street, N.W., Washington, D.C., acting through its Midwest Regional Director or his designee (Regional Director).

WHEREAS, OTS is the Association's primary federal regulator; and

WHEREAS, based on the January 31, 2001 field visit, OTS is of the opinion the Association engaged in acts and practices: (i) resulting in violations of certain laws or regulations, and/or (ii) considered to be unsafe and unsound; and

WHEREAS, OTS believes grounds exist for the initiation of administrative proceedings against the Association; and

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

WHEREAS, the Association, acting through its Board of Directors (Board), without admitting or denying any violations of laws or regulations and/or unsafe and unsound practices, wishes to cooperate with OTS and evidence the intent to: (i) comply with all applicable laws and regulations, and (ii) engage in safe and sound practices.

NOW THEREFORE, in consideration of the above premises, the parties agree as follows:

COMPLIANCE WITH LAWS, REGULATIONS & SAFE AND SOUND PRACTICES

1. **Compliance With Regulations**

The Association shall comply with the following:

- A. Section 563.161 of the OTS Regulations, 12 C.F.R. § 563.161 (regarding financial and management policies);
- B. Section 565.3 of the OTS Regulations, 12 C.F.R. § 565.3 (regarding notification of capital requirements); and
- C. Section 567.2 of the OTS Regulations, 12 C.F.R. § 567.2 (regarding minimum capital requirements).

2. Business Plan

A. The Association shall comply with its Business Plan, dated April 12, 2001, and amended May 11, 2001 and June 21, 2001, and approved by the Midwest Regional Director or his designee (Business Plan), including any amendments thereto that receive a written nonobjection from the Regional Director or his designee.

B. In accordance with its Business Plan, the Association shall maintain, at a minimum, the following capital levels by July 31, 2001:

Total Risk-Based Capital Ratio	<u>8.53%</u>
Tier 1 Core Risk-Based Capital Ratio	<u>7.69%</u>
Leverage Ratio	<u>6.23%</u>

C. In accordance with its Business Plan, the Association shall achieve, at a minimum, the following capital levels by September 30, 2001:

Total Risk-Based Capital Ratio	<u>11.10%</u>
Tier 1 Core Risk-Based Capital Ratio	<u>10.19%</u>
Leverage Ratio	<u>7.80%</u>

D. The Association's management shall submit to the Board quarterly variance reports, which reports shall address all material variances from the Business Plan. The Board shall assess, on a monthly basis, (i) whether the Association can meet the projections in the Business Plan and (ii) whether the Board should revise the goals and projections of the Business Plan. The Association shall submit a copy of variance reports submitted to the Board and any revisions to the Business Plan by the Board to the Regional Director for review and a written notice of nonobjection by no later than 15 days after the Board meeting at which the variance reports were submitted to the Board and the revisions to the Business Plan were adopted, together with the minutes of that Board meeting.

E. The Association shall submit an amendment to the Business Plan to the Regional Director for a written notice of nonobjection at least 30 days prior to the occurrence of a material deviation.

F. For purposes of subparagraphs 2(B) and 2(C) of this Agreement, a material violation occurs whenever the level of leverage, core and risk-based capital is not within 25% of the quarterly projected improvement in the level of such capital or within 15% of the annual projected improvement of the level of such capital set forth in the Business Plan for four quarter(s). The two measures are not to be added.

3. Growth

The Association may not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding quarter unless (i) the increase in assets is consistent with the Business Plan, and (ii) the Association's ratio of leverage, core capital

and risk-based capital increases during the calendar quarter at a rate sufficient to maintain the capital levels in the Business Plan.

4. Office Expansion

- A. The Association may not, directly or indirectly, acquire any interest in any company or insured depository institution; establish or acquire any additional branch office, agency office, or loan production office; make any capital improvements in the Association's office facilities; or engage in any new line of business, unless (i) the Association is in compliance with its Business Plan, (ii) such action is consistent without and will further achievement of the Business Plan, and (iii) the Association receives prior written nonobjection of the Regional Director or his designee.
- B. The Association shall not enter into any commitment or undertaking to acquire or lease real estate for loan production offices, agency offices or branches with prior written nonobjection of the Regional Director or his designee.

5. Director and Management Responsibility

Notwithstanding this Agreement's requirements that the Board submit various matters to the Regional Director, regulatory oversight by the OTS (including the Regional Director) does not derogate or supplant the continuing fiduciary duty of each member of the Association's Board and management. The Board has the ultimate responsibility for overseeing the Association's safe and sound operation, including compliance with the Regional Director's determinations as required by this Agreement.

6. Compliance with Agreement

- A. The Board and the officers of the Association shall immediately, on the Effective Date, and thereafter, take all necessary and appropriate actions to ensure the Association's full compliance with this Agreement.
- B. The Board shall undertake diligent inquiries to confirm the Association's compliance with each provision of this Agreement.
- C. Each calendar quarter, the Board shall adopt a resolution (Compliance Resolution), following a diligent inquiry of relevant information, attesting to the Association's compliance with this Agreement, or specifying in reasonable detail all violations of the Agreement. If the Board determines the Association was not in full compliance, the Compliance Resolution shall include the reasons for noncompliance. The Compliance Resolution shall further note all notices of exemption or nonobjection issued by the Regional Director upon which the Board relies in making the Compliance Resolution.
- D. The Board's minutes shall set forth the following information regarding each Compliance Resolution: (i) the identity of each Director voting in favor of its adoption,

and (ii) the identity of each Director voting in opposition to its adoption or abstaining from voting thereon, setting forth each such Director's reasoning for opposing or abstaining.

- E. The Association shall provide to the Regional Director a certified true copy of the Compliance Resolution, for each quarter, no later than the 15th calendar day of the month following the end of each calendar month. The Board, by virtue of the Association's submission of a certified true copy of each such Compliance Resolution to the Regional Director, shall be deemed to have certified the accuracy of the statements set forth in each Compliance Resolution, except as provided below. If one or more Directors do not agree with the representations in the Compliance Resolution, the Board minutes shall reflect such disagreement.

7. Definitions

A. All technical words or terms used in this Agreement for which meanings are not specified or otherwise provided by this Agreement shall have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, Home Owners' Loan Act (HOLA), FDIA or OTS Memoranda. Any such technical words or terms used in this Agreement and undefined in the Code of Federal Regulations, HOLA, FDIA, or OTS Memoranda shall have meanings in accordance with the best custom and usage in the savings and loan industry.

B. The term "Effective Date" is the date of the Regional Director's execution of this Agreement, as reflected by the date under the designated signature line.

8. Successor Statutes, Regulations, Guidance, Amendments

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

9. Notices

Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by the Agreement to be made upon, given or furnished to, delivered to, or filed with OTS or the Association shall be in writing and mailed, first class or overnight courier, or submitted by means of electronic transmission, or physically delivered, and addressed as follows:

OTS: Midwest Regional Office
225 E. John Carpenter Fwy.
Suite 500
Irving, TX 75062-2326
(972) 277-9501 - Main Facsimile

Association: Board of Directors
Bayside Bank
14617 Highway 7
Minnetonka, Minnesota 55345

10. **Miscellaneous**

- A. Time limitations for compliance with the terms of this Agreement run from the Effective Date, unless otherwise noted.
- B. The Section headings herein are for convenience only and shall not affect the construction hereof.
- C. If any court of competent jurisdiction rules any provision in this Agreement to be invalid, illegal or unenforceable, that decision shall not affect or impair the validity, legality and enforceability of the remaining provisions, unless the Regional Director in his sole discretion determines otherwise.

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

Nothing in this Agreement: (i) allows the Association to violate any law, rule, regulation, or policy statement to which it is subject, or (ii) restricts OTS from taking such action(s) that are appropriate in fulfilling its responsibilities, including, without limitation, any type of supervisory, enforcement or resolution action that OTS determines to be appropriate.

12. **Successors in Interest/Benefit**

This Agreement's terms and provisions bind, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Agreement, express or implied, shall give to any person or entity, other than the parties hereto and the Federal Deposit Insurance Corporation and their successors, any benefit or any legal or equitable right, remedy, or claim under this Agreement.

13. **Integration Clause**

This Agreement represents the parties' final and sole written agreement with respect to the subject matter hereof, as of the Effective Date.

14. **Enforceability of Agreement**

- A. The Association represents and warrants that this Agreement has been duly authorized, executed, and delivered, and constitutes, a valid and binding obligation of the

Association. The Association acknowledges that this Agreement is a "written agreement" entered into with OTS within the meaning of Section 8 of the FDIA, 12 U.S.C. §1818.

- B. Each director signing this Agreement attests by such act that he or she voted in favor of the Board resolution (copy attached) authorizing the Association's execution of this Agreement.

15. Duration, Termination or Suspension of Agreement

- A. This Agreement shall: (i) become effective upon its execution by OTS, through its authorized representative whose signature appears below (Effective Date), and (ii) remain in effect until terminated, modified or suspended in writing by OTS, acting through its Director or the Regional Director (including any authorized designee thereof).
- B. The Regional Director, in his or her sole discretion, may, by written notice, suspend any or all provisions of this Agreement.
- C. The Midwest Regional Director hereby delegates to the Assistant Director assigned to the Association to (i) review all requests for approval of investments that do not require the filing of an application, (ii) review amendments to the Business Plan that do not require the filing of an application, (iii) review requests under Paragraph 4, and (iv) to take objection or issue a nonobjection as deemed appropriate.
- D. The Association shall include, in its requests for written notice of OTS's nonobjection to make investments or to amend the Business Plan, a resolution of the Board, signed by each individual member of the Board voting in favor of the resolution, finding as follows:
 - 1. management is capable of underwriting and administering the loans or investments in a safe and sound manner;
 - 2. the Board has adopted policies and procedures to ensure that the loans or investments are prudently underwritten and administered;
 - 3. internal controls measuring compliance with such policies and procedures are in place;
 - 4. during the preceding 12 months, the Association has not experienced significant losses in connection with similar loans or investments, where appropriate; and
 - 5. the loans or investments contemplated are necessary to preserve the Institution's franchise value.

IN WITNESS WHEREOF, OTS, acting by and through the Regional Director, and the Association, in accordance with a duly adopted resolution of its Board (copy attached hereto), execute this Agreement as of the Effective Date.

OFFICE OF THRIFT SUPERVISION

**Bayside Bank
Minnetonka, Minnesota**

By:

By:

F. R. Casteel
Frederick R. Casteel
Midwest Regional Director

R. R. Roberts
Robin R. Roberts
Chairman of the Board and
Chief Executive Officer

Effective Date: 8-2-01

Date: 7/26/01

DIRECTORS OF THE ASSOCIATION

Darlene B. Hancock
Darlene B. Hancock, Director

Henry C. Ervin
Henry C. Ervin, Director

Newton R. Fuller
Newton R. Fuller, Director

Thomas S. Maple
Thomas S. Maple, Director

R. R. Roberts
Robin R. Roberts, Director

**CERTIFIED COPY OF
RESOLUTION OF BOARD OF DIRECTORS**

I, the undersigned, being the duly appointed and qualified Secretary of Bayside Bank, Minnetonka, Minnesota (Association), hereby certify as follows:

1. A duly called meeting of the Association's Board of Directors was held on July 26, 2001;
2. A quorum was present and voting throughout that meeting;
3. The following is a true copy of resolutions duly adopted by the Association's Board of Directors, which resolutions have not been rescinded or modified and are now in full force and effect:

WHEREAS, the Association's Board of Directors wishes to cooperate with OTS and demonstrate that the Association and the Association's Board have the intent to: (1) comply with all applicable laws and regulations, and (2) engage in safe and sound practices; and

WHEREAS, the Association's Directors have read and considered the proposed Supervisory Agreement (Agreement) which shall be attached to the minutes of this meeting; and

WHEREAS, after due consideration, the Association's Directors have determined to cause the Association to enter into the proposed Agreement which is in the best interest of the Association;

NOW THEREFORE, BE IT RESOLVED, that the Association be and it hereby is authorized to enter into the Agreement in the form attached to the minutes of the meeting,

FURTHER RESOLVED, that the execution and delivery of, and performance of all of the Agreement's provisions be, and they hereby are, authorized and approved,

FURTHER RESOLVED, that the Association's Directors and Officers are authorized and directed to execute and deliver the Agreement and to take all steps necessary or appropriate to implement the Agreement's terms and to cause the Association to comply in all respects with the Agreement's terms.

4. All members of the Board of Directors were present and voted at the meeting
~~(except~~ N/A) and all members of the Board of Directors
~~(except~~ N/A) voted in favor of the resolution;

IN WITNESS WHEREOF, I have hereto subscribed my name and affixed the
Association's seal on this 26th day of July, 2001.


Name:
Secretary, Bayside Bank
Minnetonka, Minnesota

(SEAL)