

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made and entered into this 15th day of September, 2016, by and among (1) Plaintiff, Amy Morton (“Plaintiff”), individually and on behalf of the Settlement Class, and (2) Capital Bank Corporation, as successor in interest to GreenBank (“Capital Bank” or “Bank”),<sup>1</sup> subject to preliminary and final approval as required by Tennessee Rule of Civil Procedure 23.05. As provided herein, Plaintiff, Class Counsel and Capital Bank hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement, and upon entry by the Court of a Final Order and Judgment, all claims of the Settlement Class against GreenBank in the action titled *Amy Morton v. GreenBank*, Chancery Court for Davidson County, 20<sup>th</sup> Judicial Circuit Nashville, No. 11:135-IV (the “Action”), shall be settled and compromised upon the terms and conditions contained herein.

### **I. Recitals**

1. On February 1, 2011, Plaintiff filed her Class Action Complaint against GreenBank, Case No. 11-135-IV, in the Chancery Court for the State of Tennessee, Twentieth Judicial District in Nashville (“Action”), alleging improper assessment and collection of overdraft fees and seeking, inter alia, monetary damages, interest, attorney’s fees, restitution, and equitable relief. The case was initially assigned to Chancellor Ellen Hobbs Lyle but, as described below, Chancellor Lyle *sua sponte* recused herself and the

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<sup>1</sup> As used in herein, the term “Capital Bank” shall include “GreenBank” to the extent necessary to effectuate this Agreement.

case was reassigned to Chancellor Russell T. Perkins.

2. On March 2, 2011, the parties filed a Joint Motion for Entry of Agreed Scheduling Order, which the Court granted on March 8, 2011, setting deadlines related to motion to dismiss briefing and class certification proceedings.

3. On April 4, 2011, GreenBank filed its Motion to Dismiss and Memorandum in Support of Motion to Dismiss, in which it argued that Plaintiff lacked standing to pursue her claims, and that Plaintiff failed to state a claim upon which relief can be granted under any of the four claims set forth in the Class Action Complaint.

4. On May 2, 2011, Plaintiff filed her Memorandum of Law in Opposition to Defendant's Motion to Dismiss for Lack of Standing and Failure to State a Claim, following which GreenBank filed its Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss for Lack of Standing and Failure to State a Claim on May 16, 2011.

5. After hearing oral argument on May 27, 2011, the Court entered a Memorandum and Order on June 17, 2011 granting in part and denying in part Defendant's Motion to Dismiss. The Court denied the Motion to Dismiss as to Count I for breach of contract and breach of the covenant of good faith and fair dealing and Count II for unconscionability, but granted the Motion to Dismiss as to Count III for conversion and IV for unjust enrichment. Observing a lack of clarity as to whether the unconscionability count sought declaratory relief under Tennessee law, Plaintiff was granted leave to amend Count II.

6. On July 8, 2011, Plaintiff filed her Amended Class Action Complaint, which alleged claims for (1) breach of contract and breach of the covenant of good faith and fair dealing, and (2) unconscionability.

7. On August 8, 2011, GreenBank filed its Answer to Amended Complaint, which in addition to denying liability asserted numerous affirmative defenses. It also filed its Motion to Strike specific allegations claiming them to be redundant, immaterial, impertinent and scandalous such that they should be stricken. On August 11, 2011, GreenBank filed its Notice of Postponement of Hearing on GreenBank's Motion to Strike pursuant to Rule 26.09 of the Local Rules of Practice of Davidson County, indefinitely postponing a hearing on that motion based on the Parties' agreement.

8. On August 25, 2011, to facilitate discovery in the action, the Parties moved the Court for entry of a Stipulated Protective Order to govern the confidentiality and use of documents and information that would be the subject of discovery in the case. The Court entered the Stipulated Protective Order on August 31, 2011.

9. On November 29, 2011, the Parties filed their Joint Motion to Continue Local Rule 26.14 Class Determination Deadline, agreeing that additional time for discovery was needed prior to Plaintiff moving for class certification. In its December 1, 2011 Order granting that motion, the Court set a deadline of May 18, 2012 for a hearing on a class certification motion to take place.

10. On December 14, 2011, the Parties filed their Joint Motion to Extend Deadline to Complete Discover Related to Class Determination, which the Court granted on December 15, 2011, setting a March 2, 2012 class certification discovery deadline.

11. On February 10, 2012, the Parties filed their Joint Motion for Extension of Deadlines, seeking to adjust deadlines associated with class certification, which was granted on February 15, 2012.

12. On April 26, 2012, the Parties participated in mediation before Gayle

Malone, Jr. in Nashville, Tennessee, which resulted in an impasse.

13. On May 2, 2012, the Parties filed their Joint Motion to Extend Deadline to Complete Discovery Related to Class Determination, which was granted on May 2, 2012.

14. After reaching agreement to voluntary certification of a class action, Plaintiff filed her Unopposed Motion for Stipulated Class Certification on May 25, 2012, supported by a Declaration of Class Counsel, Jeffrey M. Ostrow. Following, GreenBank's response to that motion filed on July 11, 2012, the parties submitted an Agreed Order Granting Class Certification which was entered on August 2, 2012. The Court's Agreed Order Granting Class Certification appointed Plaintiff Amy Morton as the Class Representative and appointed the law firms of Kopelowitz Ostrow P.A. and Chitwood Harley Harnes LLP as Lead Counsel, and Barrett Johnston LLC as Local Counsel.

15. The Parties participated in class certification and merits discovery commencing in April 2012. Discovery consisted of Plaintiff's interrogatories, document requests, and requests for admissions served on GreenBank, as well as depositions of several current and former GreenBank representatives. Plaintiff also responded to document requests and interrogatories served by GreenBank.

16. GreenBank produced more than 10,000 pages of documents, in addition to voluminous electronic customer transactional data produced in native format. Plaintiff's counsel reviewed all of those documents, and thereafter, in February, 2013, Plaintiff deposed three GreenBank current and former employees individually as well as in their capacities as GreenBank's corporate representative pursuant to Tenn. R. Civ. P. 30.02(6).

17. On May 9, 2013, GreenBank filed its Motion for Summary Judgment

seeking summary judgment on the merits of Plaintiff's individual claims. That motion was supported by a memorandum of law, a statement of undisputed material facts, and the declarations of GreenBank's employee, Franklin Synder, its expert, Scott Moore, and its counsel, Brian Iverson.

18. The filing of that Motion for Summary Judgment prompted the parties to engage in further settlement negotiations and discovery related to the issues raised in that motion. Accordingly, the parties postponed further briefing and a hearing on the merits of that motion.

19. After conducting additional factual investigation and gathering additional data, GreenBank had its expert, Scott Moore, revise his analysis, and GreenBank produced an updated expert report to Plaintiff on December 16, 2013.

20. On May 22, 2014, the Court through predecessor Chancellor Ellen Hobbs Lyle issued an Order pursuant to Rule 18 of the Local Rules of Practice of Davidson County. In response to that Order, the parties filed their Joint Motion for Relief From Local Rule 18 and for Entry of Agreed Scheduling Order, which sought a deadline for GreenBank to file and serve an updated declaration of Scott Moore, and amended or supplemental summary judgment motion, brief, and statement of undisputed facts as GreenBank deemed necessary or advisable; a deadline for deposing GreenBank's expert; deadlines for Plaintiff to respond to the summary judgment motion and for GreenBank's reply in support of summary judgment; and a summary judgment hearing date. On July 14, 2014 the Court entered its Agreed Scheduling Order, imposed the requested deadlines and set the summary judgment hearing for October 24, 2014.

21. On July 18, 2014, GreenBank filed its Amended and Substituted Motion

for Summary Judgment, along with amended and substituted versions of the declarations of its expert, Scott Moore, and its counsel, Brian Iverson; an amended and substituted statement of undisputed facts; and an amended and substituted memorandum of law in support of summary judgment.

22. On August 5, 2014, Plaintiff deposed GreenBank's expert, Scott Moore, in preparation for responding to the summary judgment motion.

23. On September 9, 2014, the Parties filed their Joint Motion to Amend Scheduling Order seeking to adjust the briefing deadlines on the summary judgment motion, which the Court granted on September 18, 2014.

24. On September 22, 2014, Plaintiff filed her Memorandum of Law in Opposition to GreenBank's Amended and Substituted Motion for Summary Judgment, and her Response to GreenBank's Amended and Substituted Statement of Undisputed Material Facts and Statement of Additional Facts. The summary judgment opposition was further supported by excerpts of the depositions of GreenBank's employee, Franklin Synder, and its expert, Scott Moore.

25. On October 10, 2014, GreenBank filed its Reply Memorandum in Support of Its Amended and Substituted Motion for Summary Judgment, along with its Response to Plaintiff's Statement of Additional Facts.

26. On October 15, 2014, Chancellor Lyle *sua sponte* entered her Order of Recusal from the case, which prompted the reassignment of the Action to Chancellor Russell T. Perkins and the rescheduling of the summary judgment hearing for December 9, 2014.

27. On December 9, 2014, Chancellor Perkins heard arguments on the

summary judgment motion.

28. Thereafter, prompted by the Tennessee Supreme Court's decision in *Rye v. Women's Care Center of Memphis, M PLLC*, 477 S.W.3d 235 (Tenn. 2015), on October 30, 2015, GreenBank filed its Supplemental Memorandum in Further Support of Its Amended and Substituted Motion for Summary Judgment, arguing that the Tennessee Supreme Court's modification of the summary judgment standard for cases filed prior to July 1, 2011 in *Rye* should impact the Court's deliberations on the pending summary judgment motion.

29. On November 6, 2015, Plaintiff moved to strike GreenBank's Supplemental Memorandum in Further Support of Its Amended and Substituted Motion for Summary Judgment, arguing that GreenBank should have sought prior leave of court to file it. GreenBank opposed that Motion in a November 12, 2015 filing. The Parties ultimately agreed to allow the filing to remain of record and for each party to file a separate memorandum of law of seven pages or less on the application of *Rye* to the pending Amended and Substituted Motion for Summary Judgment. An Order was entered on December 1, 2015, denying Plaintiff's motion to strike and setting deadlines for the parties' respective memoranda. Pursuant to that Order, Plaintiff filed a memorandum of law on December 4, 2015 and GreenBank filed a memorandum of law on December 8, 2015.

30. On May 11, 2016, Plaintiff filed a Motion for Status Conference on GreenBank's pending Amended and Substituted Motion for Summary Judgment. GreenBank responded on May 23, 2016, requesting that a ruling on its Amended and Substituted Motion for Summary Judgment precede the setting of any further deadlines in

the case. The Parties appeared before the Court on May 27, 2016, at which time the Court advised that ruling on the Amended and Substituted Motion for Summary Judgment would be forthcoming.

31. On June 27, 2016, the Court entered a Memorandum and Order denying GreenBank's Amended and Substituted Motion for Summary Judgment.

32. The Court then issued an Order on July 13, 2016, setting a July 22, 2016 deadline for the submission of an agreed scheduling order setting a trial date, which deadline was extended at the parties' request until August 5, 2016.

33. On July 15, 2016, GreenBank filed a Motion and Supporting Memorandum to Revise the Court's June 27, 2016 Memorandum and Order, seeking review of the denial of summary judgment pursuant to Rule 54.02 of the Tennessee Rules of Civil Procedure. Plaintiff opposed that motion in a response filed on August 1, 2016. GreenBank filed a reply on August 3, 2016. The Court conducted a hearing on August 5, 2016, at which it took the motion under advisement.

34. After oral argument on GreenBank's Motion to Revise the Court's June 27, 2016 Memorandum and Order, the parties reinitiated settlement discussions in an effort to reach a class-wide settlement. Those negotiations resulted in an agreement in principle on August 19, 2016, to resolve the Action. The Parties filed their Notice of Settlement with this Court on August 22, 2016.

35. Following further negotiations and discussions, the Parties resolved all remaining issues, culminating in this Agreement.

36. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties. The

Parties intend this Agreement to bind Plaintiff, Capital Bank, and all Settlement Class Members who do not timely request to be excluded from the Settlement.

37. Defendant GreenBank, as of the filing of the Complaint in this action, was a Tennessee state-chartered bank and a wholly owned subsidiary of Green Bankshares, Inc. Effective September 7, 2011, GreenBank merged with and into Capital Bank, National Association, which, by September 21, 2012 became a wholly-owned subsidiary of Capital Bank Financial Corp. On November 17, 2015, Capital Bank, National Association converted from a national association to a North Carolina state-chartered bank and subsequently changed the Bank's name to Capital Bank Corporation.

**NOW, THEREFORE,** in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

## **II. Definitions**

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

40. "Account" means any consumer checking account maintained by GreenBank in the United States linked to and/or accessible by a Debit Card at any time during the Class Period.

41. "Account Holder" means any person who has or had any interest, whether legal or equitable, in an Account during the Class Period.

42. "GreenBank" means GreenBank, the Defendant in the Action.

43. “Class Counsel” means:

KOPELOWITZ OSTROW P.A.  
Jeffrey M. Ostrow, Esq.  
Jonathan M. Streisfeld, Esq.  
1 West Las Olas Blvd.  
Suite 500  
Fort Lauderdale, FL 33301

DARREN KAPLAN LAW FIRM, P.C.  
Darren T. Kaplan, Esq.  
1359 Broadway  
Suite 2001  
New York, NY 10018

and such other counsel as are identified in Class Counsel’s request for attorneys’ fees and costs.

44. “Class Period” means the period from February 1, 2005, through June 30, 2011.

45. “Class Representative” means Amy Morton.

46. “Court” means the Chancery Court of Davidson County for the 20<sup>th</sup> Judicial District in Nashville, Tennessee.

47. “Current Account” means an Account that was converted into an Account with Capital Bank and remains open as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

48. “Current Account Holder” means the holder of an Account, individually or jointly, at any time during the Class Period, who continues to hold the same Current Account, individually or jointly, as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

49. “Debit Card” means a card, sticker, tag, or other device issued or provided by GreenBank, including a debit card, check card, or automated teller machine (“ATM”) card that was or could have been used to debit funds from an Account by Point of Sale and/or ATM transactions.

50. “Debit Card Transaction” means any debit transaction effectuated with a

Debit Card, including Point of Sale transactions (whether by PIN or signature/PIN-less) and ATM transactions.

51. “Debit Re-sequencing” means GreenBank’s former practice of ordering an Account’s Debit Card Transactions during overnight processing in highest to lowest dollar amount.

52. “Effective Date” means the third business day after which all of the following events have occurred:

- a. All Parties and Class Counsel have executed this Agreement;
- b. The Court has entered without material change the Final Approval Order; and
- c. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available.

53. “Escrow Account” means the account to be established consistent with the terms and conditions described in Section X hereof.

54. “Escrow Agent” means Epiq Class Action & Claims Solutions, Inc. (“Epiq”). Class Counsel and Capital Bank may, by agreement, substitute a different Escrow Agent, subject to approval by the Court if the Court has previously approved the Settlement, preliminarily or finally. In the absence of agreement, either Class Counsel or Capital Bank may move the Court to substitute a different Escrow Agent, upon a showing

that the responsibilities of Escrow Agent have not been adequately executed by the incumbent. The Escrow Agent shall administer the Escrow Account.

55. “Federal Holiday” means the dates identified in 5 U.S.C. §6103(a) for New Year’s Day, Martin Luther King, Jr.’s Birthday, Washington’s Birthday (a/k/a Presidents Day), Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

56. “Final Approval” means the date that the Court enters an order granting final approval to the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of any Service Award to the Class Representative. The proposed Final Approval Order shall be in a form agreed upon by Settlement Class Counsel and Capital Bank. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

57. “Final Approval Order” means the final order that the Court enters upon Final Approval. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then the Final Approval Order includes all such orders.

58. “Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of the Mailed Notice, Published Notice, Long-Form Notice, and Settlement Website. The form of the Mailed, Published and Long-Form Notices have been agreed upon by Class Counsel and Capital Bank and are attached as Exhibits A-C. Additional description of the contemplated Notice Program is

provided in Section VIII hereof.

59. “Notice Administrator” means Hilsoft Notifications. Class Counsel and Capital Bank may, by agreement, substitute a different Notice Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Settlement Class Counsel or Capital Bank may move the Court to substitute a different Notice Administrator, upon a showing that the responsibilities of Notice Administrator have not been adequately executed by the incumbent.

60. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first mailed or published, and that ends no later than 35 days before the Final Approval Hearing. The deadline for the Opt-Out Period will be specified in the Notice.

61. “Overdraft Fee” means any fee or fees assessed to an Account resulting from item(s) paid because the Account had insufficient funds to cover the item(s). Fees charged to transfer balances from other accounts are excluded.

62. “Parties” means Plaintiff, the Settlement Class, GreenBank and Capital Bank.

63. “Past Account” means an Account that was not converted into an account with Capital Bank, or an Account that was converted into an account with Capital Bank but does not remain open as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

64. “Past Account Holder” means the holder of a Past Account, individually or jointly, during the Class Period.

65. “Point of Sale” or “POS” transaction means a transaction in which an Account Holder uses his or her Debit Card to purchase or make a payment on a product or service.

66. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement in the form jointly agreed upon by the Parties.

67. “Released Claims” means all claims to be released as specified in Section XIV hereof. The “Releases” means all of the releases contained in Section XIV hereof.

68. “Released Parties” means those persons released as specified in Section XIV hereof.

69. “Releasing Parties” means Plaintiff and all Settlement Class Members who do not timely and properly opt-out of the Settlement, as determined by the Court, and each of their respective executors, executrixes, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by the entirety, agents, attorneys, and any person who has or had any interest, whether legal or equitable, in an Account covered by the Settlement during the Class Period.

70. “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are in this Agreement.

71. “Settlement Administrator” means Epiq. Class Counsel and Capital Bank may, by agreement, substitute a different Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Class Counsel or Capital Bank may move the Court to

substitute a different Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

72. “Settlement Class” means the class described in Paragraph 80 hereof.

73. “Settlement Class Member” means any person included in the Settlement Class.

74. “Settlement Fund” means the fund established under Section X hereof.

75. “Settlement Website” means the website that the Settlement Administrator will use as a means for Settlement Class Members to obtain notice of and information about the Settlement, as set forth in Section VIII. The URL of the Settlement Website shall be [www.GreenBankOverdraftLitigation.com](http://www.GreenBankOverdraftLitigation.com) or such other URL as Class Counsel and Capital Bank agree upon in writing. The content of the Settlement Website shall be prepared by Class Counsel and shall be subject to approval from Capital Bank, which shall not be unreasonably withheld.

76. “Tax Administrator” means Epiq. Class Counsel and Capital Bank may, by agreement, substitute a different Tax Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Class Counsel or Capital Bank may move the Court to substitute a different Tax Administrator, upon a showing that the responsibilities of the Tax Administrator have not been adequately executed by the incumbent. The Tax Administrator will perform all tax-related services for the Escrow Account as provided in this Agreement.

77. “Weekend and Holiday High-to-Low Posting” means GreenBank’s former practice of Debit Re-sequencing all Debit Card Transactions received for settlement on

any Saturday, Sunday, federal holiday, or weekday after GreenBank was closed.

78. “Weekend and Holiday Batch Processing” means GreenBank’s former practice of processing together all Debit Card Transactions received for settlement on any Saturday, Sunday, federal holiday, or weekday after GreenBank was closed with all Debit Card Transactions received for settlement on the following business day, collectively in order from highest to lowest dollar amount.

### **III. Certification of the Settlement Class**

79. On August 2, 2012, the Court certified a class under Tennessee Rule of Civil Procedure 23.02(3).

80. For settlement purposes only, Plaintiff and Capital Bank agree to ask the Court to modify its August 2, 2012 Order and re-certify the following Settlement Class under Tennessee Rule of Civil Procedure 23.02(3):

All GreenBank customers in the United States who have one or more Accounts and who, between February 1, 2005 and June 30, 2011, inclusive, incurred an Overdraft Fee as a result of GreenBank’s Debit Card Transaction processing method, including Debit Re-sequencing.

The Class shall consist of two sub-classes, defined as follows:

**Weekend and Holiday High-to-Low Subclass:** All members of the Class who incurred an additional Overdraft Fee as a result of GreenBank’s practice of Debit Re-sequencing all Debit Card Transactions received for settlement on any Saturday, Sunday, federal holiday, or weekday after GreenBank was closed, where the additional Overdraft Fee would not have been incurred if GreenBank had processed such transactions either chronologically or in order from lowest to highest dollar amount.

**Weekend and Holiday Batch Processing Sub-class:** All members of the Class who incurred an additional overdraft fee as a result of GreenBank’s practice of processing together all Debit Card Transactions received for settlement on a Saturday, Sunday, federal holiday, or weekday after GreenBank was closed with all Debit Card Transactions received for settlement on the following business day, collectively in order from highest to lowest dollar amount, where the additional Overdraft Fee would

not have been incurred had GreenBank processed all such Debit Card Transactions, in order from highest to lowest dollar amount, separately in chronological date order based on the dates they were received for settlement.

81. Plaintiff and Capital Bank further agree to ask the Court to appoint Class Counsel, as defined herein, as counsel to the Class, in place of the class counsel defined in the Court's August 2, 2012 Order.

#### **IV. Settlement Consideration**

82. Subject to approval by the Court, the total cash consideration to be provided by Capital Bank pursuant to the Settlement shall be \$1,500,000.00, inclusive of the amount paid to the Settlement Class; any and all attorneys' fees, costs and expenses awarded to Class Counsel; any Service Award to the Class Representatives; and all costs and expenses incurred by the Escrow Agent, the Notice Administrator, the Settlement Administrator, and the Tax Administrator.

83. The monetary payment to be made by Capital Bank shall be strictly limited to \$1,500,000.00.

84. Capital Bank also agrees not to use Debit Re-Sequencing, Weekend and Holiday High-to-Low Posting, or Weekend and Holiday Batch Processing for a period of at least 36 months from the Effective Date; provided however, that nothing in this Agreement shall require Capital Bank to implement any practice, or to maintain any practice, if any newly-enacted or newly-issued statutes, regulations, regulatory guidance, regulatory staff interpretations, judicial decisions, or other pronouncements or opinions of any regulatory, legislative, administrative, or judicial body indicate that Debit Re-Sequencing, Weekend and Holiday High-to-Low Posting, and/or Weekend and Holiday Batch Processing, are proper, permissible, or recommended, nor shall anything in this

Agreement require Capital Bank to act contrary to the directives or recommendations of any regulatory authority or bank examiner.

**V. Settlement Approval**

85. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for an Order granting Preliminary Approval of this Settlement (“Preliminary Approval Order”). The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and Capital Bank. The motion for Preliminary Approval shall request that the Court: (1) approve the terms of the Settlement as within the range of fair, adequate and reasonable; (2) amend its August 2, 2012 Order and certify the Settlement Class pursuant to Tennessee Rules of Civil Procedure 23.02(3) and 23.05 for settlement purposes; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the procedures set forth in Section VIII hereof for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel and counsel for Capital Bank, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel’s application for attorneys’ fees, costs and expenses and for Service Award to the Class Representatives (“Final Approval Hearing”).

**VI. Discovery and Settlement Data**

86. The Parties already have engaged in significant discovery, including four

depositions of party and non-party witnesses and the production of more than 10,000 pages of documents, in addition to voluminous electronic customer transactional data produced in native format. In addition, and consistent with its contractual, statutory and regulatory obligations to protect its customers' private financial information, Capital Bank will use reasonable efforts to provide Class Counsel and its expert with (i) updated addresses for Current Account Holders and last known addresses for Past Account Holders, and (ii) information regarding whether an Account in the Settlement Class is a Current Account or a Past Account, to the extent the information is reasonably available to Capital Bank. For purposes of the Settlement of this Action, Capital Bank will provide additional electronic customer transactional data and information as reasonably may be agreed upon by the Parties to enable Class Counsel and its expert to calculate and distribute allocations of the Settlement Fund.

**VII. Settlement Administrator**

87. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph hereafter, and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including providing Mailed Notice to Settlement Class Members; working with the Notice Administrator to effectuate the Published Notice Program; distributing the Settlement Fund as provided herein; paying Capital Bank from the Settlement Fund the amount of account credits Capital Bank provides to Current Account Holder Settlement Class Members hereof; and repaying the Settlement Fund to Capital Bank in the event of a termination of the Settlement pursuant to the terms of the Agreement.

88. The duties of the Settlement Administrator, in addition to other

responsibilities that are described in the preceding paragraph and elsewhere in this Agreement, are as follows:

a. Use the name and address information for Settlement Class members provided by Capital Bank in connection with the notice process approved by the Court and verify and update the addresses received through the National Change of Address database, for the purpose of mailing the Mailed Notice, and later mailing distribution checks to Past Account Holder Settlement Class Members, and to Current Account Holder Settlement Class Members where it is not feasible or reasonable for Capital Bank to make the payment by a credit to the Settlement Class Members' Current Accounts;

b. Establish and maintain a Post Office box for requests for exclusion from the Settlement Class;

c. Establish and maintain the Settlement Website;

d. Establish and maintain an automated and a live operator toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries;

e. Respond to any mailed Settlement Class member inquiries;

f. Process all requests for exclusion from the Settlement Class;

g. Provide weekly reports and, no later than 5 days after the end of the Opt-Out Period, a final report to Class Counsel and Capital Bank that summarizes the number of requests for exclusion received that week, the total number of exclusion requests received to date, percentage of the Settlement Class that has requested exclusion

through that week, and other pertinent information;

h. At Class Counsel's request in advance of the Final Approval Hearing, prepare an affidavit to submit to the Court with the names of each Settlement Class Member who timely and properly requested exclusion from the Settlement Class.

i. Process and transmit distributions to Past Account Holder Settlement Class Members from the Settlement Fund; instruct Capital Bank as to the direct payments to be made to Current Account Holder Settlement Class Members (to the extent feasible); and pay Capital Bank from the Settlement Fund the aggregate amount of account credits to be provided to Current Account Holder Settlement Class Members;

j. Pay invoices, expenses and costs upon approval by Class Counsel and Capital Bank, as provided in this Agreement; and

k. Perform the duties of Escrow Agent and Tax Administrator as described in this Agreement, and any other Settlement administration-related function at the instruction of Class Counsel and Capital Bank, including verifying that Settlement Funds have been distributed as required by Section XII hereof.

#### **VIII. Notice to Settlement Class Members**

89. Upon Preliminary Approval of the Settlement, at the direction of Class Counsel, the Notice Administrator shall implement the Notice Program using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class members may exclude themselves from or "opt-out" of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date upon which the Final Approval Hearing is scheduled to occur; and

the address of the Settlement Website at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Capital Bank shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices and publications provided under or as part of the Notice Program shall not bear or include any GreenBank or Capital Bank logos or trademarks or the return address of GreenBank or Capital Bank, or otherwise be styled to appear to originate from GreenBank or Capital Bank. Ownership of the Settlement Website URL shall be transferred to Capital Bank within 10 days after the date on which operation of the Settlement Website ceases, which shall be one year and 30 days following the commencement of distribution of the Net Settlement Fund to Settlement Class Members as provided in Section XII, or such other date as Class Counsel and Capital Bank may agree upon in writing.

90. The Notice shall include a procedure for Settlement Class members to opt-out of the Settlement Class. A Settlement Class Member may opt-out of the Settlement Class at any time during the Opt-Out Period. Any Settlement Class Member who does not timely and validly request to opt out shall be bound by the terms of this Agreement.

91. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement, to Class Counsel's application for attorneys' fees, costs and expenses, and/or to the Service Award to the Class Representative. Objections to the Settlement, to the application for fees, costs, expenses, and/or to the Service Award must be mailed to the Clerk of the Court, Class Counsel, and Capital Bank's counsel. For an objection to be considered by the Court, the objection must be submitted no later than the

last day of the Opt-Out Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

92. For an objection to be considered by the Court, the objection must set forth:

- a. the name of the Action;
- b. the objector's full name, address and telephone number;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- e. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
- f. the identity of all counsel and law firm(s) who represent the objector, including any former or current counsel or law firm(s) who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- g. a copy of any orders related to or ruling upon the prior objections

of objector's counsel and/or law firm that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;

h. any and all agreements, written or oral, that relate to the objection or the process of objecting between objector or objector's counsel and any other person or entity;

i. the identity of all counsel representing the objector who will appear at the Final Approval Hearing;

j. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;

k. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

l. the objector's signature (an attorney's signature is not sufficient).

Class Counsel and/or Capital Bank may conduct limited discovery on any objector consistent with the Tennessee Rules of Civil Procedure.

93. If any objector intends to appear and/or testify at the Final Approval Hearing, the objector must also send a separate letter to the Settlement Administrator, Class Counsel, and Capital Bank's counsel, which contains:

a. the objector's name, address and telephone number;

b. a statement that this is the objector's "Notice of Intention to Appear" at the Final Approval Hearing for the GreenBank Settlement in *Amy Morton v. GreenBank*, Davidson County Chancery Court Docket No.: 11-135-IV;

c. the reasons the objector wants to be heard;

d. copies of any papers, exhibits, or other evidence or information that is to be presented to the Court at the Final Approval Hearing; and

e. the objector's signature.

94. Notice shall be provided to Settlement Class Members in three different ways: Mailed Notice (and email notice to the extent current email addresses are reasonably accessible to Capital Bank; Published Notice; and Long-Form Notice on the Settlement Website. Not all Settlement Class members will receive all three forms of Notice, as detailed herein. Notice shall be provided in a form to be agreed upon by Class Counsel and Capital Bank.

95. Capital Bank will provide reasonable assistance to Class Counsel and its expert in their efforts to determine Settlement Class membership. Capital Bank shall use reasonable good faith efforts to provide Class Counsel with available data for Class Counsel's expert to compile the Settlement Class membership list as soon as practicable. The Settlement Administrator shall run the addresses through the National Change of Address Database, and shall mail to all such Settlement Class Members postcards that contain the Mailed Notice (the "Initial Mailed Notice"). To coordinate the Mailed Notice Program with the Published Notice Program, following the Settlement Administrator's receipt of the data files described herein, the Settlement Administrator shall promptly inform the Notice Administrator by email that it has received the data files.

96. The Settlement Administrator shall perform reasonable address traces for all Initial Mailed Notice postcards that are returned as undeliverable. By way of example, a "reasonable" tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No

later than 70 days before the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Mailed Notice postcards to those Settlement Class Members whose new addresses were identified as of that time through address traces (“Notice Re-mailing Process”). Because the United States Postal Service sometimes returns undeliverable items beyond the typical time for returning such items, the Settlement Administrator may, at its discretion, perform the Notice Re-mailing Process up to 14 days before the Opt-Out Deadline. The Settlement Administrator’s continued efforts in connection with the Notice Re-mailing Process shall not affect or extend any Settlement Class Member’s deadlines for objecting or opting out.

97. The Mailed Notice Program (which is comprised of both the Initial Mailed Notice and the Notice Re-mailing Process) shall be completed no later than 70 days before the Final Approval Hearing. Within 7 days after the date the Settlement Administrator completes the Notice Re-mailing Process, the Settlement Administrator shall provide Class Counsel and Capital Bank an affidavit that confirms that the Mailed Notice Program was completed in a timely manner. Class Counsel shall file that affidavit with the Court as an exhibit to or in conjunction with Plaintiff’ motion for Final Approval of the Settlement.

98. The Notice Administrator shall administer the Published Notice Program, which shall include one-time insertions of one quarter page ads to be placed in the newspapers with the highest circulation in the major areas in which GreenBank maintained branches. The Published Notice Program shall be completed no later than 70 days before the Final Approval Hearing.

99. Within 7 days after the date the Notice Administrator completes the

Published Notice Program, the Notice Administrator shall provide Class Counsel and Capital Bank with one or more affidavits that confirm that Published Notice was given in accordance with the Published Notice Program. Class Counsel shall file that affidavit with the Court as an exhibit to or in conjunction with Plaintiff' Motion for Final Approval of the Settlement.

100. All costs of the Notice Program shall be paid out of the Settlement Fund.

101. Within the provisions set forth in this Section VIII, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and Capital Bank.

**IX. Final Approval Order and Judgment**

102. The Plaintiff's motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiff shall file her motion for Final Approval of the Settlement, and application for attorneys' fees, costs and expenses and for Service Award for the Class Representative, no later than 56 days before the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiff's motion for final approval of the Settlement, and on Class Counsel's application for attorneys' fees, costs, and expenses and for the Service Award for the Class Representative. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to Class Counsel's application for attorneys' fees, costs, expenses or the Service Award application, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement.

103. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and entering final judgment thereon, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses and Service Award. The proposed Final Approval Order shall be in a form agreed upon by Class Counsel and Capital Bank. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Determine that the Notice provided satisfies Due Process requirements;
- c. Enter judgment dismissing the Action with prejudice and with court costs to be assessed to Plaintiff;
- d. Bar and enjoin all Releasing Parties from asserting any of the Released Claims, as set forth in Section XIV hereof, bar and enjoin all Releasing Parties from pursuing any Released Claims against the Released Parties at any time, including during any appeal from the Final Approval Order, and retain jurisdiction over the enforcement of the Court's injunctions;
- e. Release Capital Bank, GreenBank, and the Released Parties from the Released Claims, as set forth in Section XIV hereof; and
- f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including all Settlement Class Members, to administer, supervise, construe and enforce this Agreement in accordance with its terms.

**X. Settlement Fund**

104. In exchange for the mutual promises and covenants in this Agreement,

including the Releases as set forth in Section XIV hereof and the dismissal of the Action upon Final Approval, Capital Bank shall deposit \$1,500,000.00 into the Escrow Account within 14 days after Preliminary Approval to create the Settlement Fund as set forth herein.

105. Upon the establishment of the Escrow Account, the Escrow Agent may, but shall not be required to, cause the funds in the Escrow Account to be invested, in whole or in part, in interest-bearing short-term instruments or accounts—to be agreed upon by Class Counsel and Capital Bank—that are backed by the full faith and credit of the United States Government or that are fully insured by the United States Government or an agency thereof (the “Instruments”). The Escrow Account shall be established and maintained at Branch Banking & Trust Company or such other FDIC-insured financial institution as Class Counsel and Capital Bank may agree. The Escrow Agent may thereafter re-invest the interest proceeds and the principal as they mature in similar Instruments, bearing in mind the liquidity requirements of the Escrow Account to ensure that it contains sufficient cash available to pay all invoices, taxes, fees, costs and expenses, and other required disbursements, in a timely manner. Notwithstanding the foregoing, that portion of the Settlement Fund that the Settlement Administrator reasonably estimates needs to be available on a liquid basis to pay on-going costs of settlement administration, as provided in this Agreement, may be placed in one or more insured accounts that may be non-interest-bearing. Except as otherwise specified herein, the Instruments at all times will remain in the Escrow Account and under the control of the Escrow Agent. The Escrow Agent shall communicate with Class Counsel and counsel for Capital Bank on at least a monthly basis to discuss potential cash needs for

the following month. All costs or fees incurred in connection with investment of the Settlement Fund in the Instruments shall be payable out of the Settlement Fund.

106. The Settlement Fund at all times shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed upon Capital Bank or its counsel, or Plaintiff or Class Counsel, with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the Settlement Fund. Plaintiff and Class Counsel, and Capital Bank and its counsel, shall have no liability or responsibility for any of the Taxes. The Settlement Fund shall indemnify and hold Plaintiff and Class Counsel, and Capital Bank and its counsel, harmless for all Taxes (including Taxes payable by reason of any such indemnification).

107. The Settlement Fund shall be used for the following purposes:

a. Payment of all costs of Class Notice and the settlement administration, including the fees and expenses of the Notice Administrator, Settlement Administrator, Tax Administrator, and Escrow Agent.

b. Automatic distribution of payments to the Settlement Class pursuant to Section XII hereof, including, without limitation, the payment to Capital Bank of all amounts automatically distributed by it through credits to Current Account Holder Settlement Class Members and direct payments to Past Account Holder

Settlement Class Members;

c. Payment of the Court-ordered award of Class Counsel's attorneys' fees, costs, and expenses;

d. Payment of the Court-ordered Service Award to the Class Representative;

e. Payment of any residual distribution as set forth herein, together with any administrative costs associated therewith;

f. Payment of all Taxes, including, without limitation, taxes owed as a result of accrued interest on the Escrow Account, in a timely manner consistent with the recommendation of the Tax Administrator, subject to approval by Class Counsel and Capital Bank;

g. Payment of additional fees, costs and expenses not specifically enumerated in subparagraphs a. through f. of this paragraph, only if approved by Class Counsel and counsel for Capital Bank.

**XI. Calculation of Automatic Distributions from Settlement Fund**

108. The calculation and implementation of allocations of the Settlement Fund contemplated by this Section XI shall be done by Class Counsel and its expert for the purpose of compensating Settlement Class members. The methodology provided for herein will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computations. Consistent with its contractual, statutory, and regulatory obligations to maintain bank security and protect its customers' private financial information, Capital Bank shall use reasonable efforts to

make available such additional data and information as may reasonably be needed by Class Counsel and its expert to confirm and/or effectuate the calculations and allocations contemplated by this Agreement. Class Counsel shall confer with Capital Bank's counsel concerning any such additional data and information.

109. The amount of the automatic distribution from the Settlement Fund to which each Settlement Class Member is entitled for the Class Period (subject to the availability of data) is to be determined using the following methodology or such other methodology as would have an equivalent result:

a. All Accounts are to be identified in which during the Class Period, GreenBank assessed two or more Overdraft Fees on such day or days during which the Account was subject to Weekend and Holiday High-to-Low Posting or Weekend and Holiday Batch Processing. If Class Counsel's expert cannot conclusively determine from the available data whether the account was subject to Weekend and Holiday High-to-Low Posting or Weekend and Holiday Batch Processing on a particular calendar day, it will be assumed for purposes of this paragraph that the account was subject to Weekend and Holiday High-to-Low Posting and Weekend and Holiday Batch Processing.

b. For each such day during the Class Period on which GreenBank assessed two or more Overdraft Fees, all transactions posted in such Accounts on that day will be ordered in the following posting order:

- i. All credits;
- ii. All high-priority debits in the order originally posted by the bank;
- iii. All Debit Card Transactions ordered by transaction amount, low-to-high;

iv. All other customer-initiated debits, including checks and ACH transactions, in the order originally posted by the Bank;

c. After ordering the transactions as set forth in subparagraph b. of this paragraph, each Account—on a daily basis for such days—will be identified in which the number of Overdraft Fees GreenBank actually assessed exceeded the number of Overdraft Fees that would have been assessed if the Account had been ordered as set forth in subparagraph b. (“Differential Overdraft Fees”).

d. The foregoing allocation formula will yield the identification of all Account holders whose Accounts experienced at least one Differential Overdraft Fee, as well as the respective dollar amounts of the Differential Overdraft Fees.

110. The Parties agree the foregoing allocation formula is exclusively for purposes of computing, in a reasonable and efficient fashion, the amount of any automatic distribution each Settlement Class Member should receive from the Settlement Fund. The fact that this allocation formula will be used is not intended and shall not be used for any other purpose or objective whatsoever.

## **XII. Distribution of Net Settlement Fund**

111. As soon as practicable but no later than 60 days from the Effective Date, Capital Bank and the Settlement Administrator shall distribute the Net Settlement Fund as set forth in this Section XII. Each Settlement Class Member who had a Differential Overdraft Fee and has not opted-out as provided herein shall receive a distribution in the amount of a pro rata share of the Net Settlement Fund. The Net Settlement Fund is equal to the Settlement Fund plus any interest earned from the Instruments, and less the following:

- a. all costs of Notice and settlement administration, including the fees and expenses of the Notice Administrator, Escrow Agent, Tax Administrator, and Settlement Administrator;
- b. the amount of the Court-awarded attorneys' fees, costs and expenses to Class Counsel;
- c. the amount of the Court-awarded Service Award to the Class Representative;
- d. a reservation of a reasonable amount of funds for prospective costs of Settlement administration, including tax administration as agreed upon by Class Counsel and Capital Bank; and
- e. all other costs and/or expenses incurred in connection with the Settlement not specifically enumerated in subparagraphs a. through d. of this paragraph that are expressly provided for in this Agreement or have been approved by Class Counsel and Capital Bank.

112. The Settlement Administrator shall divide the total amount of the Net Settlement Fund by the total amount of all Settlement Class Members' Differential Overdraft Fees calculated pursuant to Section XII hereof. This calculation shall yield the "Pro Rata Percentage."

113. The Settlement Administrator shall multiply each Settlement Class Member's total Differential Overdraft Fees by the Pro Rata Percentage. This calculation shall yield each Settlement Class Member's "Differential Overdraft Payment Amount." The Settlement Administrator shall communicate to Class Counsel, Capital Bank and its counsel the Differential Overdraft Payment Amount to be paid to Settlement Class

Members.

114. Every Settlement Class Member shall be paid from the Net Settlement Fund the total Differential Overdraft Payment Amount to which he or she is entitled, calculated as set forth herein (“Settlement Fund Payments”). In no event, however, shall Capital Bank ever be required to pay more than a total of \$1,500,000.00.

115. Settlement Fund Payments to Current Account Holders shall be made first by crediting those Current Account Holders’ Current Accounts. If feasible, Capital Bank shall notify Current Account Holders of any such credit on the account statement on which the credit is reflected and provide a brief explanation that the credit has been made as a payment in connection with the Settlement. Capital Bank will bear any costs associated with implementing the account credits and notification discussed in this paragraph. Capital Bank may determine the timeline for paying account credits to Current Account Holders, so long as such payments are completed by both the deadline set forth in this Agreement, and within 10 days after the Settlement Administrator mails the first check representing the Settlement Fund Payments to Past Account Holders.

116. Capital Bank shall be entitled to a payment from the Net Settlement Fund equal to the amount of account credits to be paid pursuant to the Agreement. Within 10 business days after receiving such payment from the Net Settlement Fund, Capital Bank shall complete paying the account credits to Current Account Holders as described herein. Within 10 business days after the completion of the payment of such account credits, Capital Bank shall provide written verification to Class Counsel and the Escrow Agent of the aggregate amount of account credits that were given and that such Settlement Fund Payments were given to the Settlement Class Members who are Current

Account Holders.

117. If it is not feasible or reasonable to credit Settlement Fund Payments to a Current Account Holders' Current Accounts, Capital Bank shall (1) so notify the Settlement Administrator in writing; and (2) return to the Settlement Administrator any portion of the Settlement Fund Payments that were transmitted from the Net Settlement Fund to Capital Bank for those Current Account Holders. Upon receipt of such notice and return of Settlement Fund Payments, the Settlement Administrator shall provide Settlement Fund Payments to such Current Account Holders by mailing a standard size check with an appropriate legend, in a form approved by Class Counsel and Capital Bank, to indicate that it is from the Settlement, and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for 180 days. For jointly held Accounts, checks will be payable to all Account Holders, and will be mailed to the first Account Holder listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of Settlement Funds whose check is returned by the Postal Service as undeliverable (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose), and will re-mail the check once to the updated address or, in the case of a jointly held Account, and in the Settlement Administrator's discretion, to an Account Holder other than the one listed first. All costs associated with the process of printing and mailing the checks and any accompanying communication to Current Account Holders shall be paid out of the Settlement Fund.

118. Settlement Fund Payments to Past Account Holders will be made by standard size check with an appropriate legend, in a form approved by Class Counsel and

Capital Bank, to indicate that it is from the Settlement Fund. Checks will be cut and mailed by the Settlement Administrator, and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for 180 days. For jointly held Accounts, checks will be payable to all Account Holders, and will be mailed to the first Account Holder listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of Settlement Funds whose check is returned by the Postal Service as undeliverable (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose), and will re-mail the check once to the updated address, or, in the case of a jointly held Account, and in the Settlement Administrator's discretion, to an Account Holder other than the one listed first. All costs associated with the process of printing and mailing the checks and any accompanying communication to Past Account Holders shall be borne solely by the Settlement Fund.

119. The amount of the Net Settlement Fund attributable to uncashed or returned checks sent by the Settlement Administrator shall remain in the Settlement Fund for one year from the date that the first distribution check is mailed by the Settlement Administrator. During this time the Settlement Administrator shall make a reasonable effort to locate intended recipients of Settlement Funds whose checks were returned (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose) to effectuate delivery of such checks. The Settlement Administrator shall make only one such additional attempt to identify updated addresses and re-mail or re-issue a distribution check to those for whom an updated address was obtained.

### **XIII. Disposition of Residual Funds**

120. Any funds remaining in the Settlement Fund after the period set forth in Paragraph 85 shall be distributed pursuant to Tennessee Rule of Civil Procedure 23.08. Pursuant to Rule 23.08, the Court has discretion to approve the timing and method of distribution of the residual funds and to approve the recipient(s) of the residual funds. The parties agree that the designated recipient of residual funds shall be the Tennessee Voluntary Fund for Indigent Civil Representation, which is identified as an authorized recipient of residual funds in Rule 23.08. If Tennessee Voluntary Fund for Indigent Civil Representation no longer exists, or if Rule 23.08 no longer authorizes distribution of residual funds to that fund, the Class Counsel and Capital Bank shall recommend a recipient(s) to receive the residual funds. The Court shall then have the discretion to approve, deny, amend or modify, in whole or in part, the proposed recommendations. The Parties agree that any residual funds shall not be used for any litigation purpose or to disparage any Party. The Parties further agree that the Court's approval, denial, amendment or modification, in whole or in part, of the recommendations for distribution of the residual funds pursuant to this paragraph shall not constitute grounds for termination of the Settlement pursuant to Section XVI of the Agreement.

121. All costs associated with the disposition of residual funds shall be borne solely by the Settlement Fund.

### **XIV. Release**

122. As of the Effective Date, each of the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged Capital Bank and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors,

successors and assigns, and the present and former directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors and assigns of each of them, including GreenBank, Green Bankshares, Inc., Capital Bank, N.A., Capital Bank Financial Corp., and North American Financial Holdings, Inc., of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were or could have been alleged in the Action, including, without limitation, any claims, actions, causes of action, demands, damages, losses, or remedies relating to, based upon, resulting from, or arising out of Weekend and Holiday High-to-Low Posting and/or Weekend and Holiday Batch Processing. The foregoing release includes, by way of example but not limitation, any and all of the following to the extent they involve, result in, or seek recovery or relief for Overdraft Fees, Debit Re-sequencing, debit sequencing or posting order: (1) the authorization, approval or handling of any Debit Card Transaction, (2) any failure to notify or to obtain advance approval when a Debit Card Transaction would or might cause a GreenBank Account to become overdrawn or further overdrawn or an Overdraft Fee to be assessed, (3) any failure to allow the holder of any GreenBank Account to opt-out of overdrafts, or to publicize or disclose the ability of the holder of any GreenBank Account to opt-out of overdrafts, (4) any failure to publicize or disclose GreenBank's Debit Transaction posting order, (5) any failure of a GreenBank Account

Holder to understand any disclosure of GreenBank's Debit Card Transaction posting order, (6) any failure to obtain effective authorization for a holder of any GreenBank Account to opt in to overdrafts, (7) any conduct or statements encouraging the use of GreenBank Debit Cards; (8) the assessment of any continuing Overdraft Fee; and (9) any advertisements relating to any of the foregoing.

123. Except for Settlement Class Members who have validly and timely elected to exclude themselves from or "opt-out" of the Settlement Class, each of the Releasing Parties is barred and permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims against any of the Released Parties in any forum, action, or proceeding of any kind.

124. As of the Effective Date, each of the Releasing Parties shall further automatically be deemed to have waived and released any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code or similar laws of any other state or jurisdiction. Section 1542 of the California Civil Code reads: "§1542. Certain Claims Not Affected By General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

125. Any of the Releasing Parties may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those Releasing Parties expressly agrees that, as of the Effective

Date, they shall have automatically and irrevocably waived, and fully, finally, and forever settled and released, any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Agreement. Further, each of those Releasing Parties agrees and acknowledges that they shall be bound by this Agreement, including by the Releases and that all of the Released Claims shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if they never receive actual notice of the Settlement and/or never receive a distribution of funds or credits from the Settlement.

126. Nothing in this Agreement shall operate or be construed to release any claims or rights that Capital Bank has to recover any past, present or future amounts that may be owed by Plaintiff or by any Settlement Class Member on their Capital Bank and/or GreenBank accounts, loans or any other debts with Capital Bank and/or GreenBank, pursuant to the terms and conditions of such accounts, loans, or any other debts. Likewise, nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that any Plaintiff or any Settlement Class Members has in the event Capital Bank and/or its assigns seeks to recover any past, present or future amounts that may be owed by Plaintiff or by any Settlement Class Member on their accounts, loans or any other debts with Capital Bank and/or GreenBank, pursuant to the terms and conditions of such accounts, loans, or any other debts, except as expressly set forth in the release in Section XIV.

**XV. Payment of Attorneys' Fees, Costs, and Service Award**

127. Capital Bank agrees not to oppose Class Counsel's request for attorneys' fees of up to 35% of the Settlement Fund, and not to oppose Class Counsel's request for reimbursement of reasonable costs and expenses. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Fund. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

128. Within 3 days after the Effective Date, the Escrow Agent shall pay from the Settlement Fund to Class Counsel all Court-approved attorneys' fees, costs, and expenses of Class Counsel, including interest accrued thereon; provided, however, that the Escrow Agent shall not pay any such fees, costs or expenses from the Settlement Fund to Class Counsel until such time as Class Counsel have jointly agreed upon a plan of allocation of fees, costs and expenses among all Class Counsel, and have jointly provided payment instructions to the Escrow Agent. In the event that the award of attorneys' fees, costs, and expenses of Class Counsel is reduced on appeal, the Escrow Agent shall only pay to Class Counsel from the Settlement Fund the reduced amount of such award, including interest accrued thereon. Class Counsel shall timely furnish to the Escrow Agent any required tax information or forms before the payment is made.

129. The payment of attorneys' fees, costs and expenses of Class Counsel shall be made through a deposit by the Escrow Agent into an account designed by Class Counsel. After the fees, costs and expenses have been deposited into this account, Class Counsel shall be solely responsible for distributing each Class Counsel firm's allocated

share of such fees, costs and expenses to that firm. Capital Bank shall have no responsibility for any allocation, and no liability to any person or entity claiming any share of the funds to be distributed for payment of attorneys' fees, costs, or expenses or any other payments from the Settlement Fund not specifically described herein.

130. Class Counsel will ask the Court to approve Service Award to the Class Representative in the amount of \$5,000.00 ("Service Award"). The Service Award is to be paid from the Settlement Fund. The Service Award shall be paid to Class Representative in addition to Class Representative's Settlement Class Member Payment. Capital Bank agrees not to oppose Class Counsel's request for the Service Award.

131. The Parties negotiated and reached agreement regarding attorneys' fees and costs, and the Service Award, only after reaching agreement on all other material terms of this Settlement.

#### **XVI. Termination of Settlement**

132. This Settlement may be terminated by either Class Counsel or Capital Bank by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 15 days (or such longer time as may be agreed in writing between Class Counsel and Capital Bank) after any of the following occurrences:

- a. Class Counsel and Capital Bank agree to termination;
- b. the Court fails to preliminarily approve the Settlement within 180 days after filing of the motion for preliminary approval, or fails to finally approve the Settlement within 360 days after Preliminary Approval by the Court;
- c. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;

d. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 270 days after such reversal;

e. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Class Counsel or Capital Bank reasonably considers material;

f. the Effective Date does not occur; or

g. any other ground for termination provided for elsewhere in this Agreement.

133. Capital Bank also shall have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within 14 days after its receipt from the Settlement Administrator of the final report, if the number of Settlement Class Members who timely request exclusion from the Settlement Class equals or exceeds the number or percentage specified in the separate letter executed concurrently with this Settlement by Class Counsel and Capital Bank. The number or percentage shall be confidential except to the Court, which shall upon request be provided with a copy of the letter for *in camera* review.

#### **XVII. Effect of a Termination**

134. The grounds upon which this Agreement may be terminated are set forth herein above. In the event of a termination as provided therein, this Agreement shall be considered null and void; all of Plaintiff's, Class Counsel's, and Capital Bank's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this

Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved.

135. In the event of a termination as provided in Section XVI of this Agreement, and after payment of any invoices or other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid from the Escrow Account to the extent any such fees or expenses have been incurred, the Escrow Agent shall return the balance of the Settlement Fund together with any interest accrued thereon to Capital Bank within 7 business days after termination.

136. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions hereof.

**XVIII. No Admission of Liability**

137. Capital Bank continues to dispute its liability for the claims alleged in the Action, and maintains that GreenBank's debit posting practices and representations concerning those practices complied at all times with applicable laws and regulations and the terms of the account agreements with its customers. Capital Bank does not by this Agreement or otherwise admit any liability or wrongdoing of any kind. Capital Bank has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or possibly could have been asserted in the Action.

138. Class Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly and time-consuming litigation, and the likelihood of

success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted extensive discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

139. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever.

140. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.

141. In addition to any other defenses Capital Bank may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.

## **XIX. Miscellaneous Provisions**

142. Gender, Possessives, and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, possessive pronouns, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

143. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of the Releasing Parties and the Released Parties.

144. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

145. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, counsel for the Parties shall consult with each other and certify to the Court that they have consulted.

146. Integration. This Agreement, including those provisions expressly incorporating other documents by reference, constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

147. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

148. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of

Tennessee, without regard to the principles thereof regarding choice of law.

149. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

150. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice program, the Settlement Administrator, the Notice Administrator, the Escrow Agent, and the Tax Administrator. As part of their respective agreements to render services in connection with this Settlement, the Settlement Administrator, the Notice Administrator, the Escrow Agent, and the Tax Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against any of the Released Parties at any time, including during any appeal from the Final Approval Order.

151. Notices. All notices provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

Jeffrey M. Ostrow  
KOPELOWITZ OSTROW P.A.  
1 West Las Olas Blvd., Suite 500  
Fort Lauderdale, Florida 33301  
Email: ostrow@kolawyers.com  
*Class Counsel*

Darren T. Kaplan, Esq.  
DARREN KAPLAN LAW FIRM, P.C.  
1359 Broadway  
Suite 2001  
New York, NY 10018  
*Class Counsel*

Anthony J. McFarland  
BASS BERRY & SIMS PLC  
150 3<sup>rd</sup> Avenue South, Suite 2800  
Nashville, Tennessee 37201  
Email: amcfarland@bassberry.com  
*Counsel for Capital Bank, as successor in interest to GreenBank*

The notice recipients and addresses designated above may be changed by written notice.

Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice program.

152. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and counsel for Capital Bank and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

153. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

154. Authority. Class Counsel (for the Plaintiff and the Settlement Class), and Capital Bank, represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiff, the Settlement Class, and Capital Bank, respectively, to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

155. Agreement Mutually Prepared. Neither Capital Bank nor Plaintiff, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

156. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that: (a) they have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. Capital Bank has provided and is providing information that Class Counsel reasonably requests to identify Settlement Class Members and the alleged damages they incurred. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now, and thus, in furtherance of those

intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

157. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the release contained in Section XIV hereof, received independent legal advice with respect to the advisability of entering into this Agreement and the Release and the legal effects of this Agreement and the Release, and fully understands the effect of this Agreement and the Release.

\_\_\_\_\_  
AMY MORTON  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey M. Ostrow, Esq.  
KOPELOWITZ OSTROW P.A.  
1 West Las Olas Blvd., Suite 500  
Fort Lauderdale, FL 33301  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Darren T. Kaplan  
DARREN KAPLAN LAW FIRM, P.C.  
1359 Broadway  
Suite 2001  
New York, NY 10018  
*Class Counsel*

Dated: \_\_\_\_\_

CAPITAL BANK, *as successor in interest to  
GreenBank*

\_\_\_\_\_  
By: \_\_\_\_\_  
ITS \_\_\_\_\_

\_\_\_\_\_  
*Defendant*

Dated: \_\_\_\_\_

# **EXHIBIT A**

POSTCARD NOTICE

**If You Paid Overdraft Fees to GreenBank, You May Be Eligible for a Payment from a Class Action Settlement.**

A \$1.5 million Settlement has been reached in a class action lawsuit about the order in which GreenBank posted Debit Card Transactions to customer Accounts and the alleged effect the posting order had on the number of Overdraft Fees charged to Account holders. GreenBank maintains that there was nothing wrong with either the posting process it used or the disclosures it made, and that it complied, at all times, with applicable laws and regulations and the terms of the account agreements with its customers.

**Who's Included?** The Settlement Class includes all GreenBank consumer Account Holders in the United States who, from February 1, 2005 to June 30, 2011, incurred an overdraft fee as a result of GreenBank's Debit Card Transaction processing method, including its former practice of Debit Re-Sequencing. There are two subclasses in the Settlement Class and they include individuals who incurred overdraft fees as a result of GreenBank's former practices of: (1) Weekend and Holiday High-to-Low posting; and/or (2) Weekend and Holiday Batch Processing.

**What Are the Settlement Terms?** GreenBank's successor in interest, Capital Bank, has agreed to establish a Settlement Fund of \$1.5 million from which Settlement Class Members will receive payments or Account credits. Once the Court approves the Settlement, each Settlement Class Member will automatically receive a payment by check or Account credit for his or her pro rata portion of the Settlement Fund based on the amount of eligible Overdraft Fees they paid as a result of GreenBank's Debit Card Transaction processing method during the period covered by the Settlement.

**Your Rights May Be Affected.** If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class by \_\_\_\_\_, 2016. If you do not timely exclude yourself, you will release your Overdraft Fee related claims against GreenBank and Capital Bank, and you will not be able to sue GreenBank or Capital Bank for any claim relating to the lawsuit. If you stay in the Settlement Class, you may object to the Settlement in writing by \_\_\_\_\_, 2016. The Detailed Notice available at the website below explains how to exclude yourself from or object to the Settlement. The Court will hold a hearing on \_\_\_\_\_, 2017, to consider whether to approve the Settlement and a request for attorneys' fees of up to 35% of the Settlement Fund, plus expenses and Class Representative Service Awards. You may appear at the hearing, but you are not required to attend. To speak at the hearing, you must first object to the Settlement in writing pursuant to the instructions in the Settlement Agreement. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

www.GreenBankOverdraftLitigation.com 1-800-XXX-XXXX

# **EXHIBIT B**

PUBLICATION NOTICE

**If You Paid Overdraft Fees to GreenBank, You May Be Eligible for a Payment from a Class Action Settlement.**

A \$1.5 million Settlement has been reached in a class action lawsuit about the order in which GreenBank posted Debit Card Transactions to customer Accounts and the alleged effect the posting order had on the number of Overdraft Fees charged to Account holders. GreenBank maintains that there was nothing wrong with either the posting process it used or the disclosures it made, and that it complied, at all times, with applicable laws and regulations and the terms of the account agreements with its customers.

**Who's Included?** The Settlement Class includes all GreenBank consumer Account Holders in the United States who, from February 1, 2005 to June 30, 2011, incurred an overdraft fee as a result of GreenBank's Debit Card Transaction processing method, including its former practice of Debit Re-Sequencing. There are two subclasses in the Settlement Class and they include individuals who incurred overdraft fees as a result of GreenBank's former practices of: (1) Weekend and Holiday High-to-Low posting; and/or (2) Weekend and Holiday Batch Processing.

**What Are the Settlement Terms?** GreenBank's successor in interest, Capital Bank, has agreed to establish a Settlement Fund of \$1.5 million from which Settlement Class Members will receive payments or Account credits. Distributions to Settlement Class Members from the Settlement Fund will be based on the number of Settlement Class Members and the amount of eligible Overdraft Fees each Settlement Class Member paid as a result of GreenBank's Debit Card Transaction processing method during the period covered by the Settlement.

**How do I get a Payment?** Once the Court approves the Settlement, each Settlement Class Member will automatically receive a payment by check or Account credit for his or her pro rata portion of the Settlement Fund based on the amount of eligible Overdraft Fees they paid as a result of GreenBank's Debit Card Transaction processing method during the period covered by the Settlement.

**Your Rights May Be Affected.** If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class by           , 2016. If you do not timely exclude yourself, you will release your Overdraft Fee related claims against GreenBank and Capital Bank and will not be able to sue GreenBank or Capital Bank for any claim relating to the lawsuit. If you stay in the Settlement Class, you may object to it by           , 2016. The Detailed Notice available at the website below explains how to exclude yourself from or object to the Settlement. The Court will hold a hearing on           , 2017, to consider whether to approve the Settlement and a request for attorneys' fees of up to 35% of the Settlement Fund, plus expenses and Class Representative's Service Award. You may appear at the hearing, but you are not required to attend. To speak at the hearing, you must first object to the Settlement in writing pursuant to the instructions in the Settlement Agreement. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

# **EXHIBIT C**

CHANCERY COURT OF DAVIDSION COUNTY, TENNESSEE  
FOR THE TWENTIEH JUDICIAL DISTRICT AT NASHVILLE

# **If You Paid Overdraft Fees to GreenBank, You May Be Eligible for a Payment from a Class Action Settlement.**

*A Tennessee state court authorized this notice. This is not a solicitation from a lawyer.*

- A \$1.5 million Settlement has been reached in a class action about the order in which GreenBank posted Debit Card and ATM transactions to consumer Accounts and the alleged effect the posting order had on the number of Overdraft Fees charged to Account holders. GreenBank maintains that there was nothing wrong with the posting process it used and that it complied, at all times, with applicable laws and regulations and the terms of the account agreements with its customers.
- Former holders of GreenBank consumer checking Accounts (whether or not those Accounts have been converted into Capital Bank accounts) are eligible for a payment or Account credit from the Settlement Fund.
- The Settlement Class includes all GreenBank consumer Account Holders in the United States who, from February 1, 2005 to June 30, 2011, incurred an overdraft fee as a result of GreenBank’s Debit Card Transaction processing method, including its former practice of Debit Re-Sequencing. There are two subclasses in the Settlement Class and they include individuals who incurred overdraft fees as a result of GreenBank’s former practices of: (1) Weekend and Holiday High-to-Low posting; and/or (2) Weekend and Holiday Batch Processing.
- Your legal rights are affected whether you act or don’t act. Read this notice carefully.

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>Receive a Payment or Account Credit</b>	If you are entitled under the Settlement to a payment or Account credit, you do not have to do anything to receive it. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, you will automatically receive a payment by check or Account credit.
<b>Exclude Yourself from the Settlement</b>	Receive no benefit from the Settlement. This is the only option that allows you to retain your right to bring any other lawsuit against GreenBank or its successor in interest, Capital Bank, about the claims in this case.
<b>Object</b>	Write to the Court if you do not like the terms of the Settlement.

Questions? Call **1-800-XXX-XXXX** or visit [www.GreenBankOverdraftLitigation.com](http://www.GreenBankOverdraftLitigation.com)

<b>Go to a Hearing</b>	Ask to speak in Court about the fairness of the Settlement.
<b>Do Nothing</b>	You will receive any payment or Account credit to which you are entitled, and will give up your right to bring your own lawsuit against GreenBank or Capital Bank about the claims in this case.

- These rights and options — **and the deadlines to exercise them** — are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments and Account credits will be provided if the Court approves the Settlement and after any appeals are resolved. Please be patient.

Questions? Call **1-800-XXX-XXXX** or visit [www.GreenBankOverdraftLitigation.com](http://www.GreenBankOverdraftLitigation.com)

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2. What is this lawsuit about?
3. What do “Account,” “Overdraft Fee,” “Debit Card,” “Debit Card Transaction,” “Weekend and Holiday High-to-Low Processing,” “Weekend and Holiday Batch Processing,” and “Debit Re-sequencing” mean?
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20. What happens if I do nothing at all?

**GETTING MORE INFORMATION ..... PAGE 9**

21. How do I get more information?

## BASIC INFORMATION

### 1. Why is there a notice?

A Court authorized this notice because you have a right to know about the proposed Settlement of this class action lawsuit, and about all of your options, before the Court decides whether to give Final Approval to the Settlement. This notice explains the lawsuit, the Settlement and your legal rights.

Chancellor Russell T. Perkins of the Tennessee Chancery Court for the Twentieth Judicial District at Nashville is overseeing this case. The case is known as *Amy Morton v. GreenBank*, Davidson County Chancery Court Docket No.: 11:135-IV, (the “Action”). The person who sued is called the “Plaintiff.” The Defendant is GreenBank.

### 2. What is this lawsuit about?

The lawsuit claims that GreenBank’s former Debit Card Transaction posting order practices of Debit Re-Sequencing, Weekend and Holiday High-to-Low Posting, and Weekend and Holiday Batch Processing resulted in an increased number of Overdraft Fees assessed to Account holders. The complaint is posted on the Settlement Website and contains all of the allegations and claims asserted against GreenBank. GreenBank maintains that there was nothing wrong with the posting orders it used, and that it complied, at all times, with applicable laws and regulations and the terms of the account agreements with its customers.

### 3. What do “Account,” “Overdraft Fee,” “Debit Card,” “Debit Card Transaction,” “Weekend and Holiday High-to-Low Processing,” “Weekend and Holiday Batch Processing,” and “Debit Re-sequencing” mean?

“**Account**” means any consumer checking account maintained by GreenBank in the United States linked to and/or accessible by a Debit Card during the Class Period.

“**Overdraft Fee**” means any fee or fees assessed to an Account resulting from item(s) paid because the Account had insufficient funds to cover the item(s). Fees charged to transfer balances from other accounts are excluded.

“**Debit Card**” means a card, sticker, tag, or device issued or provided by GreenBank, including a debit card, check card, or automated teller machine (“ATM”) card that was or could have been used to debit funds from an Account by Point of Sale and/or ATM transactions.

“**Debit Card Transaction**” means any debit transaction effectuated with a Debit Card, including Point of Sale transactions (whether by PIN or signature/PIN-less) and ATM transactions.

“**Weekend and Holiday High-to-Low Posting**” means GreenBank’s former practice of Debit Re-sequencing all Debit Card Transactions received for settlement on any Saturday, Sunday, federal holiday, or weekday after GreenBank was closed.

“**Weekend and Holiday Batch Processing**” means GreenBank’s former practice of processing together all Debit Card Transactions received for settlement on any Saturday, Sunday, federal holiday, or weekday after GreenBank was closed with all Debit Card Transactions received for settlement on the following business day, collectively in order from highest to lowest dollar amount.

Questions? Call **1-800-XXX-XXXX** or visit [www.GreenBankOverdraftLitigation.com](http://www.GreenBankOverdraftLitigation.com)

“**Debit Re-sequencing**” means GreenBank’s former practice of ordering an Account’s Debit Card Transactions during overnight processing in highest to lowest dollar amount.

#### 4. Why is this a class action?

In a class action, one or more people called class representatives (in this case, Plaintiff Amy Morton) sue on behalf of people who have similar claims. The people included in the class action are called the Settlement Class or Settlement Class members. One court resolves the issues for all Settlement Class members, except for those who timely exclude themselves from the Settlement Class.

#### 5. Why is there a Settlement?

The Court has not decided in favor of either the Plaintiff or GreenBank. Instead, both sides agreed to the Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class Members receive the benefits described in this notice. The Class Representatives and Class Counsel believe the Settlement is best for everyone who is affected.

### WHO IS IN THE SETTLEMENT?

To see if you will be affected by the Settlement or if you can get a payment or Account credit from it, you first have to determine if you are a Settlement Class member.

#### 6. Who is included in the Settlement?

The Settlement Class includes all GreenBank consumer Account Holders in the United States who, from February 1, 2005 to June 30, 2011, incurred an overdraft fee as a result of GreenBank’s Debit Card Transaction processing method, including its former practice of Debit Re-Sequencing. There are two subclasses in the Settlement Class and they include individuals who incurred overdraft fees as a result of GreenBank’s former practices of: (1) Weekend and Holiday High-to-Low posting; and/or (2) Weekend and Holiday Batch Processing.

The subclasses are defined as follows:

1. **Weekend and Holiday High-to-Low Subclass**: All members of the Class who incurred an additional Overdraft Fee as a result of GreenBank’s practice of Debit Re-sequencing all Debit Card Transactions received for settlement on any Saturday, Sunday, federal holiday, or weekday after GreenBank was closed, where the additional Overdraft Fee would not have been incurred if GreenBank had processed such transactions either chronologically or in order from lowest to highest dollar amount.
2. **Weekend and Holiday Batch Processing Sub-class**: All members of the Class who incurred an additional overdraft fee as a result of GreenBank’s practice of processing together all Debit Card Transactions received for settlement on a Saturday, Sunday, federal holiday, or weekday after GreenBank was closed with all Debit Card Transactions received for settlement on the following business day, collectively in order from highest to lowest dollar amount, where the

Questions? Call **1-800-XXX-XXXX** or visit [www.GreenBankOverdraftLitigation.com](http://www.GreenBankOverdraftLitigation.com)

additional Overdraft Fee would not have been incurred had GreenBank processed all such Debit Card Transactions, in order from highest to lowest dollar amount, separately in chronological date order based on the dates they were received for settlement.

In order to have incurred an Overdraft Fee as a result of GreenBank's former practices of Debit Re-sequencing, Weekend and Holiday High-to-Low Posting, or Weekend and Holiday Batch Processing, you must have had two or more Overdraft Fees assessed during the time period listed above as a result of Debit Card and ATM transactions that GreenBank received for settlement on a Saturday, Sunday, and/or weekday after GreenBank was closed. If this happened to you, you may be in the Settlement Class. If it did not happen to you, you are not a member of the Settlement Class. You may contact the Settlement Administrator if you have any questions as to whether you are in the Settlement Class.

## THE SETTLEMENT'S BENEFITS

### 7. What does the Settlement provide?

GreenBank's successor in interest, Capital Bank, has agreed to establish a Settlement Fund of \$1.5 million from which Settlement Class Members will receive payments or Account credits. The Settlement Fund will also pay all fees and expenses of Class Notice and Settlement Administration, attorneys' fees, costs and expenses awarded to Class Counsel, and any Service Award to the Class Representative. The exact amount of Settlement Class Members' payments or Account credits cannot be determined at this time. The exact amount cannot be determined until the notice process is complete and the Court makes a final decision on the amount of attorneys' fees, costs and expenses awarded to Class Counsel and any Service Award to the Class Representative. Additionally, GreenBank discontinued Debit Re-Sequencing, Weekend and Holiday High-to-Low Posting, and Weekend and Holiday Batch Processing, and its successor in interest, Capital Bank, has agreed not to use either processing method for a period of at least 36 months from the Effective Date under the Settlement Agreement; provided however, that nothing in the Settlement Agreement shall require Capital Bank to implement any practices, or to maintain any practice, if any newly-enacted or newly-issued statutes, regulations, regulatory guidance, regulatory staff interpretations, judicial decisions, or other pronouncements or opinions of any regulatory, legislative, administrative, or judicial body indicate that Debit Re-Sequencing, Weekend and Holiday High-to-Low Posting, or Weekend and Holiday Batch Processing, or both, are proper, permissible, or recommended, nor shall anything in this Agreement require Capital Bank to act contrary to the directives or recommendations of any regulatory authority or bank examiner.

### 8. How do I receive a payment or Account credit?

If you are in the Settlement Class and entitled to receive a cash benefit, you do not need to do anything to receive a payment or Account credit. If the Court approves the Settlement and it becomes final and effective, you will automatically receive a payment by check or Account credit for your *pro rata* portion of the Settlement Fund based on the amount of eligible Overdraft Fees you paid as a

Questions? Call **1-800-XXX-XXXX** or visit [www.GreenBankOverdraftLitigation.com](http://www.GreenBankOverdraftLitigation.com)

result of GreenBank’s Debit Card Transaction processing methods during the period covered by the Settlement.

### 9. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement Class, you cannot sue or be part of any other lawsuit against GreenBank or its successor in interest, Capital Bank, about the legal issues in this Action. It also means that all of the decisions by the Court will bind you. The “Release” included in the Settlement Agreement describes the precise legal claims that you give up if you remain in the Settlement. The Settlement Agreement is available at [www.GreenBankOverdraftLitigation.com](http://www.GreenBankOverdraftLitigation.com).

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep the right to sue GreenBank or Capital Bank on your own about the legal issues in this Action, then you must take steps to get out of the Settlement. This is called excluding yourself — or it is sometimes referred to as “opting-out” of the Settlement Class.

### 10. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter that includes the following:

- Your printed or typed name, address and telephone number;
- A short statement that you want to be excluded from the GreenBank Overdraft Settlement; and
- Your signature.

You must mail your exclusion request, postmarked no later than **\_\_\_\_\_, 2016**, to:

GreenBank Overdraft Settlement  
P.O. Box 3719  
Portland, OR 97208-3719

### 11. If I do not exclude myself, can I sue GreenBank or Capital Bank for the same thing later?

No. Unless you exclude yourself, you give up the right to sue GreenBank or Capital Bank for the claims that the Settlement resolves. You must exclude yourself from this Settlement Class in order to try to pursue your own lawsuit.

### 12. If I exclude myself from the Settlement, can I still receive a payment?

No. You will not receive a payment or Account credit if you exclude yourself from the Settlement.

## THE LAWYERS REPRESENTING YOU

### 13. Do I have a lawyer in this case?

The Court has appointed a number of lawyers to represent you and others in the Settlement Class as “Class Counsel,” including:

**Questions? Call 1-800-XXX-XXXX or visit [www.GreenBankOverdraftLitigation.com](http://www.GreenBankOverdraftLitigation.com)**

Jeffrey M. Ostrow Jonathan M. Streisfeld Kopelowitz Ostrow P.A. 1 West Las Olas Blvd, Suite 500 Ft. Lauderdale, FL 33301	Darren T. Kaplan Darren Kaplan Law Firm, P.C. 1359 Broadway, Suite 2001 New York, NY 10018
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Class Counsel will represent you and others in the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**14. How will the lawyers be paid?**

Class Counsel intends to request up to 35% of the money in the Settlement Fund for attorneys’ fees, plus reimbursement of their expenses incurred in connection with prosecuting this Action. The fees and expenses awarded by the Court will be paid out of the Settlement Fund. The Court will determine the amount of fees and expenses to award. Class Counsel will also request that \$5,000.00 for the Class Representative be paid from the Settlement Fund for his service to the entire Settlement Class.

**OBJECTING TO THE SETTLEMENT**

**15. How do I tell the Court that I don’t like the Settlement?**

If you are a Settlement Class Member, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel’s requests for fees and expenses and/or Class Counsel’s request for a Service Award for the Class Representative. To object, you must submit a letter that includes the following:

- The name of this Action, which is GreenBank Overdraft Litigation;
- Your printed or typed full name, address and telephone number;
- An explanation of why you claim to be a Settlement Class Member;
- All grounds for your objection, accompanied by any legal support for the objection known to you or your counsel;
- The number of times you have objected to a class action settlement within the last 5 years, the caption of each case in which you have made such objection and a copy of any orders or opinions related to or ruling upon the prior objections that were issued by the trial and appellate courts in each listed case;
- The identity of all counsel and law firm(s) who represent you, including any former or current counsel or law firm(s) who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- A copy of any orders related to or ruling upon prior objections of your counsel or law firm(s) that were issued by the trial and appellate courts in each listed case in which your counsel and/or counsel’s law firm have objected to a class action settlement within the preceding 5 years;
- Any and all agreements that relate to the objection or the process of objecting—whether written or oral—between you or your counsel and any other person or entity;
- The identity of all counsel (if any) representing you who will appear at the Final Approval Hearing;

**Questions? Call 1-800-XXX-XXXX or visit [www.GreenBankOverdraftLitigation.com](http://www.GreenBankOverdraftLitigation.com)**

- A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and
- Your signature (an attorney’s signature is not sufficient).

You must submit your objection to all the people listed below, postmarked no later than **\_\_\_\_, 2016**.

<p style="text-align: center;">Clerk of the Court Davidson County Chancery Court 1 Public Square, Suite 308 Nashville, Tennessee 37201</p>	<p style="text-align: center;">GreenBank Overdraft Settlement P.O. Box 3719 Portland, OR 97208-3719</p>
<p style="text-align: center;">Jeffrey M. Ostrow Kopelowitz Ostrow P.A. 1 West Las Olas Boulevard, Suite 500 Fort Lauderdale, Florida 33301</p>	<p style="text-align: center;">Anthony J. McFarland Bass Berry &amp; Sims PLC 150 Third Avenue South, Suite 2800 Nashville, Tennessee 37201</p>

Note that, if you object, you may be subject to discovery requests, such as answering questions in writing, producing documents, or providing testimony, consistent with the Tennessee Rules of Civil Procedure.

**16. What’s the difference between objecting and excluding?**

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don’t want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

**THE COURT’S FINAL APPROVAL HEARING**

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement, and the request for attorneys’ fees, expenses and Service Awards for the Class Representative. You may attend and you may ask to speak, but you don’t have to do so.

**17. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at **\_\_\_\_\_**, on **\_\_\_\_, 2017**, at the Davidson County Courthouse, located at 1 Public Square, Suite 308, **Room \_\_\_\_\_**, Nashville, Tennessee 37201. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.GreenBankOverdraftLitigation.com](http://www.GreenBankOverdraftLitigation.com) for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also consider any

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request by Class Counsel for attorneys' fees and expenses and for Service Awards for the Class Representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know when the Court will make its decision. It is a good idea to check [www.GreenBankOverdraftLitigation.com](http://www.GreenBankOverdraftLitigation.com) for updates.

#### 18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But, you may come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you submit your written objection on time, to the proper address and it complies with the requirements set forth previously, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

#### 19. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must submit a timely objection to the Settlement and send a letter saying that you intend to appear and wish to speak. Your Notice of Intention to Appear must include the following:

- Your name, address and telephone number;
- A statement that this is your "Notice of Intention to Appear" at the Final Approval Hearing for the GreenBank Settlement in *Amy Morton v. GreenBank*, Davidson County Chancery Court Docket No.: 11-135-IV
- The reasons you want to be heard;
- Copies of any papers, exhibits, or other evidence or information that is to be presented to the Court at the Final Approval Hearing; and
- Your signature.

You must submit your Notice of Intention to Appear so that it is postmarked no later than **\_\_\_\_\_ , 2017**, to all of the addresses in Question 15.

### IF YOU DO NOTHING

#### 20. What happens if I do nothing at all?

If you do nothing, you will still receive the benefits to which you are entitled under the Settlement Agreement. Unless you exclude yourself, you will not be able to start a lawsuit or be part of any other lawsuit against GreenBank or Capital Bank relating to the issues in this Action.

### GETTING MORE INFORMATION

#### 21. How do I get more information?

This Detailed Notice summarizes the proposed Settlement. More details can be found in the Settlement Agreement. You can obtain a copy of the Settlement Agreement at [www.GreenBankOverdraftLitigation.com](http://www.GreenBankOverdraftLitigation.com). You may also write with questions to GreenBank

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Overdraft Settlement, P.O. Box 3719, Portland, OR 97208-3719, or call the toll-free number, 1-800-XXX-XXXX. Do not contact GreenBank, Capital Bank, or the Court for information.

Questions? Call 1-800-XXX-XXXX or visit [www.GreenBankOverdraftLitigation.com](http://www.GreenBankOverdraftLitigation.com)