Section 1: 8-K (FORM 8-K)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): September 23, 2019

SELECT BANCORP, INC.
(Exact Name of Registrant as Specified in Charter)

North Carolina	**000-50400**	**20-0218264**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

700 W. Cumberland Street, Dunn, North Carolina	**28334**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's Telephone Number, Including Area Code: **(910) 892-7080**

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of class	Trading Symbol	Name of exchange on which registered
Common Stock, par value $1.00 per share	SLCT	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(e) On September 23, 2019, Select Bank & Trust Company (the "Bank"), which is a wholly owned subsidiary of the registrant, entered into a supplemental executive retirement plan agreement with each of the following named executive officers:

Officer Name	Position with Bank
William L. Hedgepeth II	President and Chief Executive Officer
Lynn H. Johnson	Executive Vice President and Chief Operating Officer

Subject to its terms and conditions, each agreement is an unfunded promise intended to provide the officer with certain supplemental retirement benefits upon retirement, or if earlier, upon the officer's separation from service for certain qualifying terminations of the officer's employment. The amount and timing of payment of the supplemental retirement benefits vary based on a number of factors, including, among others, the age of the officer, the reason for any separation from service, and whether the officer has met the vesting requirements set forth in the agreement at the time of any payment triggering event.

Set forth below is a table summarizing the benefit amount and timing of such payment that would be due to the officer upon certain events resulting in a separation from service of the officer from the employ of the Bank:

Triggering Event	**Benefit Amount[(1)]**	**Timing of Benefit Payments[(2)]**	**Acceleration of Benefit Vesting**
Termination of employment on or after reaching normal retirement age of 67	Vested Annual Benefit Amount on date of termination of employment	For 15 years, with first payment occurring on first day of year following termination of employment	n/a
Termination of employment by the officer without good reason (as defined in the agreement) before reaching normal retirement age of 67	Vested Annual Benefit Amount on date of termination of employment	For 15 years, with first payment occurring on first day of year following the year individual reaches normal retirement age of 67	No
Termination of employment by the Bank without cause (as defined in the agreement) or by the officer with good reason before reaching normal retirement age of 67	Projected Vested Annual Benefit Amount existing at age 67	For 15 years, with first payment occurring on first day of year following the year individual reaches normal retirement age of 67	No

Officer dies prior to terminating employment	Cash amount equal to the present value of projected Vested Annual Benefit Amount on date of death	Single lump-sum payment within 60 days of the date of officer's death	Yes
Officer dies after termination of employment	Cash amount equal to the present value of Vested Annual Benefit Amount remaining at the officer's death	Single lump-sum payment within 60 days of the date of officer's death	n/a
Termination of employment due to disability before reaching normal retirement age of 67	Cash amount equal to the present value of the projected Vested Annual Benefit Amount as of date of termination of employment	Single lump-sum payment within 60 days of termination of employment	Yes
Termination of employment without cause or by officer for good reason within 12 months of a change in control of the Bank	Cash amount equal to the present value of projected Vested Annual Benefit Amount as of date of termination of employment	Single lump-sum payment within 30 days of termination of employment	Yes

(1) The benefit amount is subject to reduction in the event that the applicable payments would constitute "parachute payments" (within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code")). The benefit amount would be reduced so that no payments to be made or benefit to be provided to the officer would be subject to the excise tax imposed under Code Section 4999.

(2) Payment may be delayed as required by Code Section 409A if officer is a "specified employee" (as defined in Section 409A).

Additionally, if an officer is already receiving payments under the agreement at the time a change in control (as defined in the agreement) of the Bank occurs, the benefit payments otherwise payable would generally be accelerated to a single lump-sum payment, with such lump-sum payment being equal to the present value of the benefit the officer is receiving at the time the change in control occurs, applying a five percent (5%) discount rate.

Each agreement provides that the applicable officer would not be entitled to any benefit under the agreement if the officer's separation from service is due to a termination with cause (as defined in the agreement).

The annual benefit amount to which an officer is entitled under the agreement is calculated based on a formula (as more particularly set forth in Section 1.1 of the agreement), which is generally designed for the officer to receive for a period of 15 years an annual benefit equal to a percentage of the officer's average salary over the officer's last sixty months of employment prior to the date that the officer either terminates employment or reaches normal retirement age (or, if later, the date that the officer terminates employment after reaching normal retirement age), subject to certain offsets and assumptions. The percentage of the salary to be received is generally based off of how many years of an assumed full 40-year working career the officer was employed at the Bank.

Subject to earlier acceleration as shown in the table above, the officer becomes vested, assuming continued employment, in the benefit amount over a five-year period, with the officer becoming 20% vested in the benefit upon reaching the age of 63. The remaining 80% vests on each subsequent anniversary thereafter at a rate of 20% per year, such that the officer would be fully vested at the normal retirement age of 67.

The foregoing description of the 2019 supplemental executive retirement plan agreements is a summary and does not purport to be complete and is qualified in its entirety by reference to the full text of the agreements, which are filed as Exhibits 10.1 and 10.2 to this current report and are incorporated into this item by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	2019 Supplemental Executive Retirement Plan Agreement dated September 23, 2019, with William L. Hedgepeth II.
10.2	2019 Supplemental Executive Retirement Plan Agreement dated September 23, 2019, with Lynn H. Johnson.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

SELECT BANCORP, INC.

Date: September 24, 2019

By: /s/ Mark A. Jeffries
Mark A. Jeffries
Executive Vice President and Chief Financial Officer

(Back To Top)

Section 2: EX-10.1 (EXHIBIT 10.1)

Exhibit 10.1

2019 SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN AGREEMENT

This **2019 SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN AGREEMENT** (this "**Agreement**") is entered into as of this 23rd day of September 2019, by and between Select Bank & Trust Company (the "**Bank**"), a North Carolina banking corporation, and William L. Hedgepeth II, President and Chief Executive Officer of the Bank (the "**Executive**").

WHEREAS, the Executive has contributed substantially to the success of the Bank and the Bank desires that the Executive continue in its employ;

WHEREAS, to encourage the Executive to remain an employee, the Bank is willing to provide to the Executive supplemental retirement benefits payable from the Bank's general assets;

WHEREAS, none of the conditions or events included in the definition of the term "golden parachute payment" that is set forth in section 18(k)(4)(A)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1828(k)(4)(A)(ii)) and in Federal Deposit Insurance Corporation Rule 359.1(f)(1)(ii) (12 CFR 359.1(f)(1)(ii)) currently exists or, to the best knowledge of the Bank, is contemplated insofar as the Bank is concerned;

WHEREAS, the Bank is a participating employer in the Pentegra Defined Contribution Plan for Financial Institutions, a defined contribution retirement plan which is intended to meet the requirements of Code Section 401(k) (the "**Qualified Retirement Plan**");

WHEREAS, this Agreement is designed to supplement, for the Executive and the Executive's beneficiaries, the benefits provided in the Qualified Retirement Plan and a portion of the Executive's Social Security benefit; and

WHEREAS, the parties hereto intend this Agreement to be an unfunded arrangement maintained primarily to provide supplemental retirement benefits for the Executive (who is a key employee and member of a select group of management), and to be considered a top hat plan for purposes of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), and the Executive is fully advised of the Bank's financial status.

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 **"Annual Benefit Amount"** means an annual amount calculated on the basis of the following formula:

[(a x b%) – (c + d)]

(a) represents the Executive's Final Average Pay;

(b) represents the proportion, expressed as a percentage, of the number of years and months of service the Executive provided to the Bank divided by forty (40) years (not to exceed one hundred percent (100%));

(c) represents the Qualified Retirement Plan Offset; and

(d) represents the Social Security Offset.

1.2 "**Base Salary**" means the gross annual salary paid to the Executive relating to services performed by the Executive during a calendar year, whether or not paid to the Executive in such calendar year, not including any before-tax basic and supplemental contributions to any qualified retirement plan, Bank sponsored health and welfare plan, or the amount of any other deferrals from gross salary under any nonqualified deferred compensation plans which may be maintained by the Bank from time to time. For the avoidance of doubt, Base Salary will not include any bonus or other incentive compensation payments made to the Executive during such calendar year.

1.3 "**Beneficiary**" means each designated person, or the estate of the deceased Executive, entitled to benefits, if any, upon the death of the Executive, determined according to Article 4.

1.4 "**Beneficiary Designation Form**" means the form established from time to time by the Plan Administrator that the Executive completes, signs, and returns to the Plan Administrator to designate one or more Beneficiaries.

1.5 "**Board of Directors**" or "**Board**" means the Board of Directors of the Bank.

1.6 "**Change in Control**" shall mean the occurrence of any one of the following events, provided, for avoidance of doubt, that such occurrence must also constitute a "change in control event" within the meaning of Treasury Regulation § 1.409A-3(i)(5):

(a) *Change in ownership*: any one person, or more than one person acting as a group, accumulates ownership of the Bank's common stock constituting more than fifty percent (50%) of the total fair market value or total voting power of the Bank's common stock, or

(b) *Change in effective control*: (*x*) any one person or more than one person acting as a group acquires within a twelve (12)-month period ownership of the Bank's common stock possessing thirty percent (30%) or more of the total voting power of the Bank, as the case may be, or (*y*) a majority of the Bank's board of directors is replaced during any twelve (12)-month period by directors whose appointment or election is not endorsed in advance by a majority of the Bank's board of directors, or

(c) *Change in ownership of a substantial portion of assets*: any one person or more than one person acting as a group acquires (or has acquired in the twelve (12)-month period ending with the last acquisition by such person or group) from the Bank, as the case may be, assets having a total gross fair market value equal to or exceeding forty percent (40%) of the total gross fair market value of all of the Bank's assets immediately before the acquisition or acquisitions. For this purpose, gross fair market value means the value of the Bank's assets, or the value of the assets being disposed of, determined without regard to any liabilities associated with the assets.

1.7 “**Code**” means the Internal Revenue Code of 1986, as amended, and rules, regulations, and guidance of general application issued by the U.S. Department of the Treasury pursuant thereto.

1.8 “**Disability**” means, because of a medically determinable physical or mental impairment that can be expected to result in death or that can be expected to last for a continuous period of at least twelve (12) months, (*x*) the Executive is unable to engage in any substantial gainful activity, or (*y*) the Executive is receiving income replacement benefits for a period of at least three (3) months under a disability insurance plan of the Bank. Medical determination of disability will be made by the Plan Administrator in its sole discretion. Upon reasonable request by the Plan Administrator, Executive will submit to an examination by a physician selected and paid by the Bank for purposes of determining whether a Disability exists, and Executive will authorize the disclosure of the results of such examination by the physician to the Plan Administrator.

1.9 “**Early Termination**” means Separation from Service before Normal Retirement Age for reasons other than death, Disability, or Termination with Cause.

1.10 “**Effective Date**” means July 1, 2019.

1.11 “**Final Average Pay**” means (a) with respect to the benefits paid under section 2.1 of this Agreement, the average of the Executive’s Base Salary over the sixty-month period ending on the last day of the month prior to month in which the Executive’s Retirement Date occurs; (b) with respect to the benefits paid under section 2.2 of this Agreement, the average of the Executive’s Base Salary over the sixty-month period ending on the last day of the month prior to month in which the Executive Separates from Service; or (c) with respect to the benefits paid under sections 2.3, 2.4, or 2.5 of this Agreement, the average of the Executive’s Base Salary over the sixty-month period ending on the last day of the month prior to month in which the Executive’s Retirement Date occurs, but, for purposes of the calculation under this subclause (c), with respect to any years prior to the Executive’s Retirement Date during which the Executive is Separated from Service, the Base Salary used to compute Final Average Pay shall be the Executive’s last Base Salary paid by the Bank and increased at a rate of three percent (3%) per year for each year after the Executive’s Separation from Service through the Executive’s Retirement Date.

1.12 “**Good Reason**” shall have the same meaning specified in any effective employment agreement existing on the date hereof or hereafter entered into between the Executive and the Bank. If the Executive is not a party to a then-effective employment agreement containing a definition of Good Reason, Good Reason means the occurrence of any of the following events without Executive’s consent: (i) a material reduction of Executive’s Base Salary (except in connection with a Bank-wide decrease in executive compensation) (ii) a material diminution of Executive’s authority, duties, or responsibilities, or (iii) the Bank’s material breach of this Agreement. In order for Executive to resign for Good Reason, Executive must provide written notice to the Bank of the existence of the Good Reason condition within thirty (30) days of the date on which Executive discovers, or reasonably should have discovered, the existence of such Good Reason condition. Upon receipt of such notice, the Bank will have thirty (30) days during which it may remedy the Good Reason condition and not be required to provide for the benefits described in sections 2.3 or 2.5 as a result of such proposed resignation. If the Good Reason condition is not remedied within such thirty (30)-day period, Executive may resign based on the Good Reason condition specified in the notice effective immediately upon the expiration of the thirty (30)-day cure period.

1.13 "**Normal Retirement Age**" means age 67.

1.14 "**Plan Administrator**" or "**Administrator**" means the plan administrator described in Article 7.

1.15 "**Plan Year**" means a twelve-month period commencing on January 1 and ending on December 31 of each year. The initial Plan Year shall commence on the Effective Date of this Agreement.

1.16 "**Qualified Retirement Plan Offset**" means the annual benefit which could be provided based on the actuarially determined annuity value of the Executive's vested account attributable to employer contributions under the Qualified Retirement Plan.

1.17 "**Retirement Date**" means the later of the date the Executive Separates from Service after the Executive attains Normal Retirement Age or the date the Executive attains Normal Retirement Age.

1.18 "**Section 409A**" means Section 409A of the Code, the regulations and guidance promulgated by the U.S. Department of the Treasury thereunder, and any state law of similar effect.

1.19 "**Separation from Service**" or **"Separates from Service"** means separation from service as defined in Section 409A and rules, regulations, and guidance of general application thereunder issued by the U.S. Department of the Treasury, including termination for any reason of the Executive's service as an executive and independent contractor to the Bank and any member of a controlled group, as defined in Section 414 of the Code, other than because of a leave of absence approved by the Bank or the Executive's death. For purposes of this Agreement, the Bank shall have sole discretion to determine any question as to the employment status of the Executive or the date of the Executive's Separation from Service. In determining whether a Separation from Service for purposes of this Agreement has occurred, service on the board of directors of the Bank shall be disregarded to the extent allowed pursuant to Section 409A.

1.20 “**Social Security Offset**” means fifty percent (50%) of the annual primary Social Security benefit the Executive is entitled, or upon application, would be entitled, to receive under the Social Security Act as of the Executive’s Retirement Date , and which Social Security benefit the Executive does, or would, assuming proper and timely application therefor were made, in fact receive for such year pursuant to the payment procedures of the Social Security Administration then in effect. The amount of such Social Security Benefit shall be determined as of the Retirement Date under the provisions of the Social Security Act in effect at that time by assuming that (i) the Executive receives no earnings covered by the Social Security Act in any year following the Retirement Date, and (ii) the Executive received wages in excess of the Social Security taxable wage base for each year preceding the Retirement Date.

1.21 “**Termination with Cause**” and “**Cause**” shall have the same meaning specified in any effective severance or employment agreement existing on the date hereof or hereafter entered into between the Executive and the Bank. If the Executive is not a party to a then-effective severance or employment agreement containing a definition of termination with cause, Termination with Cause means the Bank terminates the Executive’s employment because of:

(a) Executive’s substantial failure to perform or material neglect of the material duties of his or her employment with the Employer, or

(b) the conviction of Executive of, or the guilty or nolo contendere plea of Executive with respect to, any crime or offense involving property of the Bank (other than a *de minimis* offense) or involving moral turpitude, or

(c) the conviction of Executive of, or the guilty or nolo contendere plea of Executive with respect to, or any crime or offense (A) constituting a felony, or (B) which has a material adverse impact on the Bank’s reputation or financial condition, or

(d) the breach by Executive of any material provision of Executive’s employment agreement with the Employer, or

(e) Executive’s dishonesty in connection with the Bank or appropriating assets or opportunities of the Bank for his or her own benefit, or

(f) violation of a generally recognized lawful material policy of the Bank, of which Executive is provided a copy or is otherwise made aware, (after written notice thereof and a reasonable opportunity to cure if the violation is an issue which reasonably is curable), or

(g) removal of the Executive from office or permanent prohibition of the Executive from participating in the Bank’s affairs by an order issued under section 8(e)(4) or (g)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1818(e)(4) or (g)(1), or

(h) the occurrence of any event that results in the Executive being excluded from coverage, or having coverage limited for the Executive as compared to other executives of the Employer, under the Employer’s blanket bond or other fidelity or insurance policy covering its directors, officers, or employees.

1.22 "Vested Annual Benefit Amount" means:

(a) that portion of the Executive's Annual Benefit Amount that has vested in accordance with the following schedule: twenty percent (20%) of the Executive's Annual Benefit Amount shall vest on the date the Executive attains age 63 and the remaining eighty percent (80%) shall vest on each subsequent anniversary thereafter at a rate of twenty percent (20%) per year, or

(b) in the event of: (i) a Change in Control before the Executive attains Normal Retirement Age and before the Executive Separates from Service, (ii) the Executive's Separation from Service due to Disability before Normal Retirement Age, or (iii) the Executive's death before Separation from Service, the Executive's full Annual Benefit Amount without regard to the vesting schedule set forth in section 1.22(a).

Any portion of the Executive's Annual Benefit Amount that is not vested upon the Executive's Separation from Service shall be forfeited. For the avoidance of doubt, any portion the Executive's Annual Benefit Amount that is forfeited in accordance with the previous sentence shall not form any part of the Executive's Vested Annual Benefit Amount.

ARTICLE 2 RETIREMENT BENEFITS

2.1 Normal Retirement. Unless Separation from Service or a Change in Control occurs before Normal Retirement Age, when the Executive Separates from Service on or after the Executive attains Normal Retirement Age the Bank shall pay to the Executive the benefit described in this section 2.1 instead of any other benefit under this Agreement.

2.1.1 *Amount of benefit*. The benefit under this section 2.1 is the Executive's Vested Annual Benefit Amount existing on the Executive's Retirement Date.

2.1.2 *Payment of benefit*. The Bank shall pay the benefit under this section 2.1 to the Executive for fifteen (15) years beginning with the first day of the Plan Year immediately following the Retirement Date, provided that if the Executive is a "specified employee" (as defined in Section 409A), the Bank shall commence paying the benefit under this section 2.1 to the Executive on the first day of each Plan Year beginning with the later of: (*x*) the first day of the Plan Year immediately following the Executive's Retirement Date, or (*y*) the seventh month after the month in which the Executive's Retirement Date occurs.

2.2 Early Termination Benefit for Voluntary Resignation without Good Reason. Unless the Executive shall have received the benefit under section 2.5 after a Change in Control, upon Early Termination by the Executive without Good Reason the Bank shall pay to the Executive the benefit described in this section 2.2 instead of any other benefit under this Agreement.

2.2.1 *Amount of benefit*. The benefit under this section 2.2 is the Executive's Vested Annual Benefit Amount existing on the date the Executive Separates from Service.

2.2.2 *Payment of benefit*. The Bank shall pay the benefit under this section 2.2 to the Executive for fifteen (15) years beginning with the first day of the Plan Year immediately following the Executive's Retirement Date, provided that if the Executive is a "specified employee" (as defined in Section 409A), the Bank shall commence paying the benefit under this section 2.2 to the Executive on the first day of each Plan Year beginning with the later of: (*x*) the first day of the Plan Year immediately following the Executive's Retirement Date, or (*y*) the seventh month after the month in which the Executive's Separation from Service occurs.

2.3 Early Termination Benefit for Termination without Cause or Voluntary Resignation for Good Reason. Unless the Executive shall have received the benefit under section 2.5 after a Change in Control, upon Early Termination by the Bank without Cause or by the Executive for Good Reason the Bank shall pay to the Executive the benefit described in this section 2.3 instead of any other benefit under this Agreement.

2.3.1 *Amount of benefit*. The benefit under this section 2.3 is the Executive's projected Vested Annual Benefit Amount existing on the Executive's Retirement Date.

2.3.2 *Payment of benefit*. The Bank shall pay the benefit under this section 2.3 to the Executive for fifteen (15) years beginning with the first day of the Plan Year immediately following the Executive's Retirement Date, provided that if the Executive is a "specified employee" (as defined in Section 409A), the Bank shall commence paying the benefit under this section 2.3 to the Executive on the first day of each Plan Year beginning with the later of: (*x*) the first day of the Plan Year immediately following the Executive's Retirement Date, or (*y*) the seventh month after the month in which the Executive's Retirement Date occurs.

2.4 Disability Benefit. Unless the Executive shall have received the benefit under section 2.5 after a Change in Control, upon Separation from Service due to the Executive's Disability before Normal Retirement Age the Bank shall pay to the Executive the benefit described in this section 2.4 instead of any other benefit under this Agreement.

2.4.1 *Amount of benefit*. The benefit under this section 2.4 is the present value of the Executive's projected Vested Annual Benefit Amount on the date the Separation from Service due to the Executive's Disability occurs calculated by applying a five percent (5%) discount rate.

2.4.2 *Payment of benefit*. The Bank shall pay the benefit under this section 2.4 to the Executive in a single lump sum within sixty (60) days after the date on which Separation from Service due to the Executive's Disability occurs, provided that if the Executive is a "specified employee" (as defined in Section 409A), the Bank shall pay the benefit under this section 2.4 to the Executive on the first day of the seventh month after the month in which the Separation from Service due to the Executive's Disability occurs.

2.5 Change in Control. If a Change in Control occurs both before Normal Retirement Age and before Separation from Service, and within twelve (12) months following the Change in Control, the Executive has a Separation from Service by the Bank without Cause or by the Executive for Good Reason, the Bank shall pay to the Executive the benefit described in this section 2.5 instead of any other benefit under this Agreement.

2.5.1 *Amount of benefit*. The benefit under this section 2.5 is the present value of the Executive's projected Vested Annual Benefit Amount on the date the Executive Separates from Service without Cause or for Good Reason after a Change in Control occurs calculated by applying a five percent (5%) discount rate.

2.5.2 *Payment of benefit*. Within thirty (30) days immediately following the date the Executive Separates from Service without Cause or for Good Reason after a Change in Control occurs, the Bank shall pay the benefit under this section 2.5 to the Executive in a single lump sum.

2.6 Lump-Sum Payout of Remaining Normal Retirement Benefit or Early Termination Benefit When a Change in Control Occurs. If a Change in Control occurs while the Executive is receiving the Normal Retirement benefit under section 2.1, the Bank shall pay the remaining Normal Retirement benefit under such section to the Executive in a single lump sum on the day of the Change in Control. If a Change in Control occurs after Separation from Service but while the Executive is receiving or is entitled to receive the Early Termination benefit under sections 2.2 or 2.3, the Bank shall pay the remaining Early Termination benefit under such section to the Executive in a single lump sum within thirty (30) days after the later of (*x*) the effective date of the Change in Control or (*y*) if the Executive is a "specified employee" (as defined in Section 409A), the first day of the seventh month after the month in which the Separation from Service occurs. The lump-sum payment due to the Executive as a result of a Change in Control shall be an amount equal to the present value of the amount of benefit (determined in accordance with sections 2.1.1, 2.2.1, or 2.3.1 as applicable) corresponding to the particular benefit when the Change in Control occurs applying a five percent (5%) discount rate.

2.7 Payment Reduction. Notwithstanding anything contained in this Agreement to the contrary, (i) to the extent that any payment or distribution of any type to or for Executive by the Bank or any successor to the Bank after a Change in Control, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (the "Payments") constitute "parachute payments" (within the meaning of Section 280G of the Code), such Payments will be reduced (but not below zero) if and to the extent necessary so that no Payments to be made or benefit to be provided to Executive will be subject to the excise tax imposed under Code Section 4999. If the Payments are so reduced, then unless Executive will have given prior written notice to the Bank or its successor specifying a different order by which to effectuate the reduction, the Bank or its successor will reduce or eliminate the Payments (x) by first reducing or eliminating the portion of the Payments which are not payable in cash (other than that portion of the Payments subject to clause (z) hereof), (y) then by reducing or eliminating cash payments (other than that portion of the Payments subject to clause (z) hereof) and (z) then by reducing or eliminating the portion of the Payments (whether payable in cash or not payable in cash) to which Treasury Regulation § 1.280G-1 Q/A 24(c) (or successor thereto) applies, in each case in reverse order beginning with payments or benefits which are to be paid the farthest in time. Any notice given by Executive pursuant to the preceding sentence will take precedence over the provisions of any other plan, arrangement or agreement governing his or her rights and entitlements to any benefits or compensation

2.8 Compliance with Section 409A. The Agreement is intended to comply with Section 409A. Notwithstanding anything to the contrary, this Agreement shall be interpreted, operated and administered in a manner consistent with this intention. If any provision of this Agreement would subject the Executive to additional tax or interest under Section 409A, then the parties agree that this Agreement shall be amended so as to avoid the imposition of additional tax pursuant to Section 409A, while maintaining to the maximum extent practicable the original intent of the applicable provision without requiring the Bank to incur any additional compensation expense as a result of the reformed provision. Each payment pursuant to this Agreement is a separate "payment" for purposes of Treasury Regulation § 1.409A-2(b)(2)(i). Notwithstanding anything above, in no event will the Bank be liable for any additional tax, interest or penalties that may be imposed on Executive by Section 409A or any damages for failing to comply with Section 409A.

2.9 One Benefit Only. Despite anything to the contrary in this Agreement, the Executive and Beneficiary are entitled to one benefit only under this Agreement, which shall be determined by the first event to occur that is dealt with by this Agreement. Except as provided in section 2.6 or Article 3, subsequent occurrence of events dealt with by this Agreement shall not entitle the Executive or Beneficiary to other or additional benefits under this Agreement.

ARTICLE 3 DEATH BENEFITS

3.1 Death Before Separation from Service. If the Executive dies before Separation from Service, at the Executive's death the Bank shall pay to the Executive's Beneficiary the benefit described in this section 3.1 instead of any other benefit under this Agreement.

3.1.1 *Amount of benefit*. The benefit under this section 3.1 is the present value of the Executive's projected Vested Annual Benefit Amount on the date of the Executive's death calculated by applying a five percent (5%) discount rate.

3.1.2 *Payment of benefit*. Within sixty (60) days immediately following the date of the Executive's death, the Bank shall pay the benefit under this section 3.1 to the Executive's Beneficiary in a single lump sum.

3.2 Death after Separation from Service. If the Executive dies after Separation from Service, if Separation from Service was not a Termination with Cause, and if at death the Executive was receiving the benefit under section 2.1 or was receiving or was entitled at Normal Retirement Age to receive the benefit under sections 2.2 or 2.3, at the Executive's death the Executive's Beneficiary shall be entitled to an amount in cash equal to the present value of Vested Annual Benefit Amount remaining at the Executive's death calculated by applying a five percent (5%) discount rate, unless the Change-in-Control benefit shall have been paid to the Executive under section 2.5 or unless a Change-in-Control payout shall have occurred under section 2.6. No benefit shall be paid under this Article 3 after the Change-in-Control benefit is paid under section 2.5 or after a Change-in-Control payout occurs under section 2.6. If a benefit is payable to the Executive's Beneficiary, the benefit shall be paid in a single lump sum within sixty (60) days after the Executive's death. However, no benefits under this Agreement shall be paid or payable to the Executive or the Executive's Beneficiary if this Agreement is terminated under Article 5.

ARTICLE 4 BENEFICIARIES

4.1 Beneficiary Designations. The Executive shall have the right to designate at any time a Beneficiary to receive any benefits payable under this Agreement after the Executive's death. The Beneficiary designated under this Agreement may be the same as or different from the beneficiary designation under any other benefit plan of the Bank in which the Executive participates.

4.2 Beneficiary Designation: Change. The Executive shall designate a Beneficiary by completing and signing the Beneficiary Designation Form and delivering it to the Plan Administrator or its designated agent. The Executive's Beneficiary designation shall be deemed automatically revoked if the Beneficiary predeceases the Executive or if the Executive names a spouse as Beneficiary and the marriage is subsequently dissolved. The Executive shall have the right to change a Beneficiary by completing, signing, and otherwise complying with the terms of the Beneficiary Designation Form and the Plan Administrator's rules and procedures, as in effect from time to time. Upon acceptance by the Plan Administrator of a new Beneficiary Designation Form, all Beneficiary designations previously filed shall be cancelled. The Plan Administrator shall be entitled to rely on the last Beneficiary Designation Form filed by the Executive and accepted by the Plan Administrator before the Executive's death.

4.3 Acknowledgment. No designation or change in designation of a Beneficiary shall be effective until received, accepted, and acknowledged in writing by the Plan Administrator or its designated agent.

4.4 No Beneficiary Designation. If the Executive dies without a valid beneficiary designation or if all designated Beneficiaries predecease the Executive, the Executive's spouse shall be the designated Beneficiary. If the Executive has no surviving spouse, the benefits shall be made to the personal representative of the Executive's estate.

4.5 Facility of Payment. If a benefit is payable to a minor, to a person declared incapacitated, or to a person incapable of handling the disposition of his or her property, the Bank may pay the benefit to the guardian, legal representative, or person having the care or custody of the minor, incapacitated person, or incapable person. The Bank may require proof of incapacity, minority, or guardianship as it may deem appropriate before distribution of the benefit. Distribution shall completely discharge the Bank from all liability for the benefit.

ARTICLE 5 GENERAL LIMITATIONS

5.1 Termination with Cause. Despite any contrary provision of this Agreement, the Bank will not pay any benefit under this Agreement and this Agreement will immediately terminate if Executive's Separation from Service is a Termination with Cause.

5.2 Removal. If the Executive is removed from office or permanently prohibited from participating in the Bank's affairs by an order issued under section 8(e)(4) or (g)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1818(e)(4) or (g)(1), all obligations of the Bank under this Agreement shall terminate as of the effective date of the order.

5.3 Default. Despite any contrary provision of this Agreement, if the Bank is in "default" or "in danger of default," as those terms are defined in section 3(x) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(x), all obligations under this Agreement shall terminate.

5.4 FDIC Open-Bank Assistance. All obligations under this Agreement shall terminate, except to the extent determined that continuation of the contract is necessary for the continued operation of the Bank, if the Federal Deposit Insurance Corporation enters into an agreement to provide assistance to or on behalf of the Bank under the authority contained in section 13(c) of the Federal Deposit Insurance Act. 12 U.S.C. 1823(c). Any rights of the parties that have already vested shall not be affected by such action, however.

ARTICLE 6
CLAIMS AND REVIEW PROCEDURES

6.1 Claims Procedure for other than Disability benefits. Other than with respect to a claim for Disability benefits under section 2.4 hereunder, the Bank will notify any person or entity that makes a claim for benefits under this Agreement (the "**Claimant**") in writing, within 90 days after receiving Claimant's written application for benefits, of his or her eligibility or non-eligibility for benefits under the Agreement. If the Plan Administrator determines that the Claimant is not eligible for benefits or full benefits, the notice will state (*w*) the specific reasons for denial, (*x*) a specific reference to the provisions of the Agreement on which the denial is based, (*y*) a description of any additional information or material necessary for the Claimant to perfect his or her claim, and a description of why it is needed, and (*z*) an explanation of the Agreement's claims review procedure and other appropriate information concerning steps to be taken if the Claimant wishes to have the claim reviewed.

6.1.1 *Extension*. If the Plan Administrator determines that there are special circumstances requiring additional time to make a decision, the Bank will notify the Claimant of the special circumstances and the date by which a decision is expected to be made, and may extend the time for up to an additional ninety (90) days.

6.2 Claims Procedure for Disability benefits. With respect to a claim for Disability benefits under section 2.4 hereunder, the Bank will notify the Claimant in writing (in a culturally and linguistically appropriate manner), within forty-five (45) days after receiving Claimant's written application for benefits, of his or her eligibility or non-eligibility for benefits under the Agreement. If the Plan Administrator determines that the Claimant is not eligible for partial or full benefits, the notice will state (*s*) the specific reasons for denial, (*t*) a specific reference to the provisions of the Agreement on which the denial is based, (*u*) a description of any additional information or material necessary for the Claimant to perfect his or her claim, and a description of why it is needed, (*v*) an explanation of the Agreement's claims review procedure and other appropriate information concerning steps to be taken if the Claimant wishes to have the claim reviewed, (*w*) a discussion of the decision including an explanation of the Plan Administrator's basis for disagreeing with or not following: (1) the views presented by the Claimant of health care professionals treating the Claimant and vocational professionals who evaluated the Claimant; (2) the views of medical or vocational experts whose advice was obtained on behalf of the Plan Administrator in connection with a Claimant's denial of benefits, without regard to whether the advice was relied upon in making the benefit determination; and *(*3*)* a disability determination regarding the Claimant made by the Social Security Administration, (*x*) if the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, an explanation of the clinical or scientific judgment for the denial or a statement that such an explanation will be provided free of charge upon request, (*y*) the specific internal rules, guidelines, protocols, standards or other similar criteria of the relied upon in making the adverse determination or, alternatively, a statement that such rules, guidelines, protocols, standards or other similar criteria do not exist; and (*z*) that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim for Disability benefits.

6.2.1 *Extension*. If the Plan Administrator determines that there are matters beyond the Plan Administrator's control requiring an extension of time to make a decision, the Bank will notify the Claimant, before the end of the initial forty-five (45)-day period, of the circumstances requiring the extension of time and the date by which a decision is expected to be made, and may extend the time for up to an additional thirty (30) days. If, before the end of the first thirty (30)-day extension period, the Plan Administrator determines that there are still matters beyond the Plan Administrator's control requiring an additional extension of time to make a decision, the Bank will notify the Claimant, before the end of the first thirty (30)-day extension period, of the circumstances requiring the extension of time and the date by which a decision is expected to be made, and may extend the time for up to an additional thirty (30) days. If the Plan Administrator extends the time to make a decision under this section 6.2.1, the notice of extension will specifically explain to the Claimant, (*a*) the standards on which entitlement to a benefit is based, (*b*) the unresolved issues that prevent a decision on the claim, and (*c)* the additional information needed to resolve those issues. The Claimant will then be given at least forty-five (45) days within which to provide the specified information.

6.3 Review Procedure. If the Claimant is determined by the Plan Administrator not to be eligible for benefits, or if the Claimant believes that he or she is entitled to greater or different benefits, the Claimant will have the opportunity to have his or her claim reviewed by the Bank by filing a petition for review with the Bank within sixty (60) days after receipt of the notice issued by the Bank. The Claimant's petition must state the specific reasons the Claimant believes entitle him or her to benefits or to greater or different benefits. Within sixty (60) days after receipt by the Bank of the petition (forty-five (45) days for claims for Disability benefits), the Plan Administrator will give the Claimant (and counsel, if any) an opportunity to (*x*) present his or her position verbally or in writing, (*y*) review the pertinent documents relevant to the Claimant's claim for benefits, and (*z*) have the claim reviewed, taking into account all comments, documents, records, and other information submitted by the Claimant relating to the claim, whether or not such information was submitted or considered in the initial benefit determination. In addition, with respect to claims for Disability benefits, before the Plan Administrator can issue a full or partial denial of benefits on review, the Plan Administrator will provide the Claimant (and counsel, if any), as soon as possible and sufficiently in advance of the end of the forty-five (45)-day review period, with (*a*) any new or additional evidence considered, relied upon, or generated by the Plan Administrator or other person making the benefit determination in connection with the claim, and (*b*) its rationale for the denial. The Plan Administrator will notify the Claimant of the Plan Administrator's decision in writing within the sixty (60)-day period (forty-five (45)-day period for Disability benefit claims), stating specifically the basis of its decision, written in a manner to be understood by the Claimant, and the specific provisions of the Agreement on which the decision is based. If, because of special circumstances (such as the need for a hearing), the sixty (60)-day period (forty-five (45)-day period for Disability benefit claims) is not sufficient, the decision may be deferred for up to another sixty (60) days or forty-five (45) days (as applicable) at the election of the Plan Administrator, but notice of this deferral will be given to the Claimant.

6.4 Denial of Claims. The decision of the Plan Administrator made under this Article will be final, subject only to the Executive's rights to file a lawsuit under ERISA. Failure of the Executive to follow the Claims and Review Procedures of this Article, including meeting the deadlines set forth in those procedures, will result in a complete waiver by the Executive of the claim and forfeiture of the right to bring a lawsuit to enforce the claim under ERISA or state law.

ARTICLE 7
ADMINISTRATION OF AGREEMENT

7.1 Plan Administrator Duties. This Agreement shall be administered by a Plan Administrator consisting of the Board of Directors, or such committee or person as the Board of Directors of the Bank shall appoint. The Executive may not be a member of the Plan Administrator. The Plan Administrator shall have the discretion and authority to (*x*) make, amend, interpret, and enforce all appropriate rules and regulations for the administration of this Agreement and (*y*) decide or resolve any and all questions that may arise, including interpretations of this Agreement.

7.2 Agents. In the administration of this Agreement, the Plan Administrator may employ agents and delegate to them such administrative duties as it sees fit (including acting through a duly appointed representative) and may from time to time consult with counsel, who may be counsel to the Bank.

7.3 Binding Effect of Decisions. The decision or action of the Plan Administrator about any question arising out of the administration, interpretation, and application of the Agreement and the rules and regulations promulgated hereunder shall be final and conclusive and binding upon all persons having any interest in the Agreement. No Executive or Beneficiary shall be deemed to have any right, vested or nonvested, regarding the continued use of any previously adopted assumptions, including but not limited to the interest rate and calculation method employed in the determination of the Annual Benefit Amount.

7.4 Indemnity of Plan Administrator. The Bank shall indemnify and hold harmless the members of the Plan Administrator against any and all claims, losses, damages, expenses, or liabilities arising from any action or failure to act with respect to this Agreement, except in the case of willful misconduct by the Plan Administrator or any of its members.

7.5 Bank Information. To enable the Plan Administrator to perform its functions, the Bank shall supply full and timely information to the Plan Administrator on all matters relating to the date and circumstances of the retirement, Disability, death, or Separation from Service of the Executive, and such other pertinent information as the Plan Administrator may reasonably require.

ARTICLE 8 MISCELLANEOUS

8.1 Amendments and Termination. This Agreement may be amended solely by a written agreement signed by the Bank and the Executive. This Agreement may be terminated by the Bank without the Executive's consent as described below. Unless Article 5 provides that the Executive is not entitled to payment, the Bank must pay the present value of the Vested Annual Benefit Amount, calculated by applying a five percent (5%) discount rate, in a single lump sum to the Executive if the Bank terminates this Agreement but only if the termination and payment are carried out consistent with the terms of the Section 409A plan-termination exception to the prohibition against accelerated payment. This Agreement may be terminated within the thirty (30) days preceding or the twelve (12) months following a Change in Control. This Agreement will then be treated as terminated only if all substantially similar arrangements sponsored by the Bank are also terminated so that all participants in similar arrangements are required to receive all amounts of compensation deferred under the terminated arrangements within twelve (12) months of the date of termination of the arrangements. The lump-sum termination payment will be made to the Executive within thirty (30) days of the date on which the Bank terminates this Agreement.

8.2 Binding Effect. This Agreement shall bind the Executive and the Bank and their beneficiaries, survivors, executors, successors, administrators, and transferees.

8.3 No Guarantee of Employment. This Agreement is not an employment policy or contract. It does not give the Executive the right to remain an employee of the Bank nor does it interfere with the Bank's right to discharge the Executive. It also does not require the Executive to remain an employee or interfere with the Executive's right to terminate employment at any time.

8.4 Non-Transferability. Benefits under this Agreement may not be sold, transferred, assigned, pledged, attached, or encumbered by the Executive.

8.5 Successors; Binding Agreement. By an assumption agreement in form and substance satisfactory to the Executive, the Bank shall require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the Bank's business or assets to expressly assume and agree to perform this Agreement in the same manner and to the same extent the Bank would be required to perform this Agreement had no succession occurred.

8.6 Tax Withholding. The Bank shall withhold any taxes that are required to be withheld from the benefits provided under this Agreement.

8.7 Applicable Law. The Agreement and all rights hereunder shall be governed by the laws of the State of North Carolina, except to the extent preempted by the laws of the United States of America.

8.8 Unfunded Arrangement. The Executive and beneficiary are general unsecured creditors of the Bank for the payment of benefits under this Agreement. The benefits represent the mere promise by the Bank to pay benefits. The rights to benefits are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, or garnishment by creditors. Any insurance on the Executive's life is a general asset of the Bank to which the Executive and beneficiary have no preferred or secured claim.

8.9 Entire Agreement. This Agreement constitutes the entire agreement between the Bank and the Executive concerning the subject matter. No rights are granted to the Executive under this Agreement other than those specifically set forth.

8.10 Severability. If any provision of this Agreement is held invalid, such invalidity shall not affect any other provision of this Agreement not held invalid, and to the full extent consistent with law each such other provision shall continue in full force and effect. If any provision of this Agreement is held invalid in part, such invalidity shall not affect the remainder of such provision not held invalid, and to the full extent consistent with law the remainder of such provision, together with all other provisions of this Agreement, shall continue in full force and effect.

8.11 Headings. Headings are included herein solely for convenience of reference and shall not affect the meaning or interpretation of any provision of this Agreement.

8.12 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed, certified or registered mail, return receipt requested, with postage prepaid, to the following addresses or to such other address as either party may designate by like notice. If to the Bank, notice shall be given to the Bank's Board of Directors, 700 W. Cumberland Street, Dunn, NC 28334, or to such other or additional person or persons as the Bank shall have designated to the Executive in writing. If to the Executive, notice shall be given to the Executive at the Executive's address appearing on the Bank's records, or to such other or additional person or persons as the Executive shall have designated to the Bank in writing.

8.13 Payment of Legal Fees. In the event any dispute shall arise between Executive and the Bank, or a successor thereto, as to the terms or interpretation of this Agreement, whether instituted by formal legal proceedings or otherwise, including any action taken by Executive to enforce the terms of sections 2.5 and 2.6, or in defending against any action taken by the Bank, the Bank shall reimburse Executive for all costs and expenses of such proceedings or actions, in the event Executive prevails in any such proceeding or action.

[Signature Page Follows]

IN WITNESS WHEREOF, the Executive and a duly authorized Bank officer have executed this 2019 Supplemental Executive Retirement Plan Agreement as of the date first written above.

EXECUTIVE:	**BANK**:
/s/ William L. Hedgepeth II	/s/ Lynn H. Johnson
By: William L. Hedgepeth II	By: Lynn H. Johnson
Title: President and Chief Executive Officer	Title: COO, EVP

(Back To Top)

Section 3: EX-10.2 (EXHIBIT 10.2)

Exhibit 10.2

2019 SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN AGREEMENT

This **2019 SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN AGREEMENT** (this "**Agreement**") is entered into as of this 23rd day of September 2019, by and between Select Bank & Trust Company (the "**Bank**"), a North Carolina banking corporation, and Lynn H. Johnson, EVP and Chief Operating Officer of the Bank (the "**Executive**").

WHEREAS, the Executive has contributed substantially to the success of the Bank and the Bank desires that the Executive continue in its employ;

WHEREAS, to encourage the Executive to remain an employee, the Bank is willing to provide to the Executive supplemental retirement benefits payable from the Bank's general assets;

WHEREAS, none of the conditions or events included in the definition of the term "golden parachute payment" that is set forth in section 18(k)(4)(A)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1828(k)(4)(A)(ii)) and in Federal Deposit Insurance Corporation Rule 359.1(f)(1)(ii) (12 CFR 359.1(f)(1)(ii)) currently exists or, to the best knowledge of the Bank, is contemplated insofar as the Bank is concerned;

WHEREAS, the Bank is a participating employer in the Pentegra Defined Contribution Plan for Financial Institutions, a defined contribution retirement plan which is intended to meet the requirements of Code Section 401(k) (the "**Qualified Retirement Plan**");

WHEREAS, this Agreement is designed to supplement, for the Executive and the Executive's beneficiaries, the benefits provided in the Qualified Retirement Plan and a portion of the Executive's Social Security benefit; and

WHEREAS, the parties hereto intend this Agreement to be an unfunded arrangement maintained primarily to provide supplemental retirement benefits for the Executive (who is a key employee and member of a select group of management), and to be considered a top hat plan for purposes of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), and the Executive is fully advised of the Bank's financial status.

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 **"Annual Benefit Amount"** means an annual amount calculated on the basis of the following formula:

[(a x b%) – (c + d)]

(a) represents the Executive's Final Average Pay;

(b) represents the proportion, expressed as a percentage, of the number of years and months of service the Executive provided to the Bank divided by forty (40) years (not to exceed one hundred percent (100%));

(c) represents the Qualified Retirement Plan Offset; and

(d) represents the Social Security Offset.

1.2 "**Base Salary**" means the gross annual salary paid to the Executive relating to services performed by the Executive during a calendar year, whether or not paid to the Executive in such calendar year, not including any before-tax basic and supplemental contributions to any qualified retirement plan, Bank sponsored health and welfare plan, or the amount of any other deferrals from gross salary under any nonqualified deferred compensation plans which may be maintained by the Bank from time to time. For the avoidance of doubt, Base Salary will not include any bonus or other incentive compensation payments made to the Executive during such calendar year.

1.3 "**Beneficiary**" means each designated person, or the estate of the deceased Executive, entitled to benefits, if any, upon the death of the Executive, determined according to Article 4.

1.4 "**Beneficiary Designation Form**" means the form established from time to time by the Plan Administrator that the Executive completes, signs, and returns to the Plan Administrator to designate one or more Beneficiaries.

1.5 "**Board of Directors**" or "**Board**" means the Board of Directors of the Bank.

1.6 "**Change in Control**" shall mean the occurrence of any one of the following events, provided, for avoidance of doubt, that such occurrence must also constitute a "change in control event" within the meaning of Treasury Regulation § 1.409A-3(i)(5):

(a) *Change in ownership*: any one person, or more than one person acting as a group, accumulates ownership of the Bank's common stock constituting more than fifty percent (50%) of the total fair market value or total voting power of the Bank's common stock, or

(b) *Change in effective control*: (*x*) any one person or more than one person acting as a group acquires within a twelve (12)-month period ownership of the Bank's common stock possessing thirty percent (30%) or more of the total voting power of the Bank, as the case may be, or (*y*) a majority of the Bank's board of directors is replaced during any twelve (12)-month period by directors whose appointment or election is not endorsed in advance by a majority of the Bank's board of directors, or

(c) *Change in ownership of a substantial portion of assets*: any one person or more than one person acting as a group acquires (or has acquired in the twelve (12)-month period ending with the last acquisition by such person or group) from the Bank, as the case may be, assets having a total gross fair market value equal to or exceeding forty percent (40%) of the total gross fair market value of all of the Bank's assets immediately before the acquisition or acquisitions. For this purpose, gross fair market value means the value of the Bank's assets, or the value of the assets being disposed of, determined without regard to any liabilities associated with the assets.

1.7 "**Code**" means the Internal Revenue Code of 1986, as amended, and rules, regulations, and guidance of general application issued by the U.S. Department of the Treasury pursuant thereto.

1.8 "**Disability**" means, because of a medically determinable physical or mental impairment that can be expected to result in death or that can be expected to last for a continuous period of at least twelve (12) months, (*x*) the Executive is unable to engage in any substantial gainful activity, or (*y*) the Executive is receiving income replacement benefits for a period of at least three (3) months under a disability insurance plan of the Bank. Medical determination of disability will be made by the Plan Administrator in its sole discretion. Upon reasonable request by the Plan Administrator, Executive will submit to an examination by a physician selected and paid by the Bank for purposes of determining whether a Disability exists, and Executive will authorize the disclosure of the results of such examination by the physician to the Plan Administrator.

1.9 "**Early Termination**" means Separation from Service before Normal Retirement Age for reasons other than death, Disability, or Termination with Cause.

1.10 "**Effective Date**" means July 1, 2019.

1.11 "**Final Average Pay**" means (a) with respect to the benefits paid under section 2.1 of this Agreement, the average of the Executive's Base Salary over the sixty-month period ending on the last day of the month prior to the month in which the Executive's Retirement Date occurs; (b) with respect to the benefits paid under section 2.2 of this Agreement, the average of the Executive's Base Salary over the sixty-month period ending on the last day of the month prior to the month in which the Executive Separates from Service; or (c) with respect to the benefits paid under sections 2.3, 2.4, or 2.5 of this Agreement, the average of the Executive's Base Salary over the sixty-month period ending on the last day of the month prior to the month in which the Executive's Retirement Date occurs, but, for purposes of the calculation under this subclause (c), with respect to any years prior to the Executive's Retirement Date during which the Executive is Separated from Service, the Base Salary used to compute Final Average Pay shall be the Executive's last Base Salary paid by the Bank and increased at a rate of three percent (3%) per year for each year after the Executive's Separation from Service through the Executive's Retirement Date.

1.12 "**Good Reason**" shall have the same meaning specified in any effective employment agreement existing on the date hereof or hereafter entered into between the Executive and the Bank. If the Executive is not a party to a then-effective employment agreement containing a definition of Good Reason, Good Reason means the occurrence of any of the following events without Executive's consent: (i) a material reduction of Executive's Base Salary (except in connection with a Bank-wide decrease in executive compensation) (ii) a material diminution of Executive's authority, duties, or responsibilities, or (iii) the Bank's material breach of this Agreement. In order for Executive to resign for Good Reason, Executive must provide written notice to the Bank of the existence of the Good Reason condition within thirty (30) days of the date on which Executive discovers, or reasonably should have discovered, the existence of such Good Reason condition. Upon receipt of such notice, the Bank will have thirty (30) days during which it may remedy the Good Reason condition and not be required to provide for the benefits described in sections 2.3 or 2.5 as a result of such proposed resignation. If the Good Reason condition is not remedied within such thirty (30)-day period, Executive may resign based on the Good Reason condition specified in the notice effective immediately upon the expiration of the thirty (30)-day cure period.

1.13 “**Normal Retirement Age**” means age 67.

1.14 “**Plan Administrator**” or “**Administrator**” means the plan administrator described in Article 7.

1.15 “**Plan Year**” means a twelve-month period commencing on January 1 and ending on December 31 of each year. The initial Plan Year shall commence on the Effective Date of this Agreement.

1.16 “**Qualified Retirement Plan Offset**” means the annual benefit which could be provided based on the actuarially determined annuity value of the Executive’s vested account attributable to employer contributions under the Qualified Retirement Plan.

1.17 “**Retirement Date**” means the later of the date the Executive Separates from Service after the Executive attains Normal Retirement Age or the date the Executive attains Normal Retirement Age.

1.18 “**Section 409A**” means Section 409A of the Code, the regulations and guidance promulgated by the U.S. Department of the Treasury thereunder, and any state law of similar effect.

1.19 “**Separation from Service**” or **“Separates from Service”** means separation from service as defined in Section 409A and rules, regulations, and guidance of general application thereunder issued by the U.S. Department of the Treasury, including termination for any reason of the Executive’s service as an executive and independent contractor to the Bank and any member of a controlled group, as defined in Section 414 of the Code, other than because of a leave of absence approved by the Bank or the Executive’s death. For purposes of this Agreement, the Bank shall have sole discretion to determine any question as to the employment status of the Executive or the date of the Executive’s Separation from Service. In determining whether a Separation from Service for purposes of this Agreement has occurred, service on the board of directors of the Bank shall be disregarded to the extent allowed pursuant to Section 409A.

1.20 “**Social Security Offset**” means fifty percent (50%) of the annual primary Social Security benefit the Executive is entitled, or upon application, would be entitled, to receive under the Social Security Act as of the Executive’s Retirement Date , and which Social Security benefit the Executive does, or would, assuming proper and timely application therefor were made, in fact receive for such year pursuant to the payment procedures of the Social Security Administration then in effect. The amount of such Social Security Benefit shall be determined as of the Retirement Date under the provisions of the Social Security Act in effect at that time by assuming that (i) the Executive receives no earnings covered by the Social Security Act in any year following the Retirement Date, and (ii) the Executive received wages in excess of the Social Security taxable wage base for each year preceding the Retirement Date.

1.21 “**Termination with Cause**” and “**Cause**” shall have the same meaning specified in any effective severance or employment agreement existing on the date hereof or hereafter entered into between the Executive and the Bank. If the Executive is not a party to a then-effective severance or employment agreement containing a definition of termination with cause, Termination with Cause means the Bank terminates the Executive’s employment because of:

(a) Executive’s substantial failure to perform or material neglect of the material duties of his or her employment with the Employer, or

(b) the conviction of Executive of, or the guilty or nolo contendere plea of Executive with respect to, any crime or offense involving property of the Bank (other than a *de minimis* offense) or involving moral turpitude, or

(c) the conviction of Executive of, or the guilty or nolo contendere plea of Executive with respect to, or any crime or offense (A) constituting a felony, or (B) which has a material adverse impact on the Bank’s reputation or financial condition, or

(d) the breach by Executive of any material provision of Executive’s employment agreement with the Employer, or

(e) Executive’s dishonesty in connection with the Bank or appropriating assets or opportunities of the Bank for his or her own benefit, or

(f) violation of a generally recognized lawful material policy of the Bank, of which Executive is provided a copy or is otherwise made aware, (after written notice thereof and a reasonable opportunity to cure if the violation is an issue which reasonably is curable), or

(g) removal of the Executive from office or permanent prohibition of the Executive from participating in the Bank’s affairs by an order issued under section 8(e)(4) or (g)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1818(e)(4) or (g)(1), or

(h) the occurrence of any event that results in the Executive being excluded from coverage, or having coverage limited for the Executive as compared to other executives of the Employer, under the Employer’s blanket bond or other fidelity or insurance policy covering its directors, officers, or employees.

1.22 “Vested Annual Benefit Amount” means:

(a) that portion of the Executive’s Annual Benefit Amount that has vested in accordance with the following schedule: twenty percent (20%) of the Executive’s Annual Benefit Amount shall vest on the date the Executive attains age 63 and the remaining eighty percent (80%) shall vest on each subsequent anniversary thereafter at a rate of twenty percent (20%) per year, or

(b) in the event of: (i) a Change in Control before the Executive attains Normal Retirement Age and before the Executive Separates from Service, (ii) the Executive’s Separation from Service due to Disability before Normal Retirement Age, or (iii) the Executive’s death before Separation from Service, the Executive’s full Annual Benefit Amount without regard to the vesting schedule set forth in section 1.22(a).

Any portion of the Executive’s Annual Benefit Amount that is not vested upon the Executive’s Separation from Service shall be forfeited. For the avoidance of doubt, any portion the Executive’s Annual Benefit Amount that is forfeited in accordance with the previous sentence shall not form any part of the Executive’s Vested Annual Benefit Amount.

ARTICLE 2 RETIREMENT BENEFITS

2.1 Normal Retirement. Unless Separation from Service or a Change in Control occurs before Normal Retirement Age, when the Executive Separates from Service on or after the Executive attains Normal Retirement Age the Bank shall pay to the Executive the benefit described in this section 2.1 instead of any other benefit under this Agreement.

2.1.1 *Amount of benefit*. The benefit under this section 2.1 is the Executive’s Vested Annual Benefit Amount existing on the Executive’s Retirement Date.

2.1.2 *Payment of benefit*. The Bank shall pay the benefit under this section 2.1 to the Executive for fifteen (15) years beginning with the first day of the Plan Year immediately following the Retirement Date, provided that if the Executive is a “specified employee” (as defined in Section 409A), the Bank shall commence paying the benefit under this section 2.1 to the Executive on the first day of each Plan Year beginning with the later of: (*x*) the first day of the Plan Year immediately following the Executive’s Retirement Date, or (*y*) the seventh month after the month in which the Executive’s Retirement Date occurs.

2.2 Early Termination Benefit for Voluntary Resignation without Good Reason. Unless the Executive shall have received the benefit under section 2.5 after a Change in Control, upon Early Termination by the Executive without Good Reason the Bank shall pay to the Executive the benefit described in this section 2.2 instead of any other benefit under this Agreement.

2.2.1 *Amount of benefit*. The benefit under this section 2.2 is the Executive’s Vested Annual Benefit Amount existing on the date the Executive Separates from Service.

2.2.2 *Payment of benefit*. The Bank shall pay the benefit under this section 2.2 to the Executive for fifteen (15) years beginning with the first day of the Plan Year immediately following the Executive's Retirement Date, provided that if the Executive is a "specified employee" (as defined in Section 409A), the Bank shall commence paying the benefit under this section 2.2 to the Executive on the first day of each Plan Year beginning with the later of: (*x*) the first day of the Plan Year immediately following the Executive's Retirement Date, or (*y*) the seventh month after the month in which the Executive's Separation from Service occurs.

2.3 Early Termination Benefit for Termination without Cause or Voluntary Resignation for Good Reason. Unless the Executive shall have received the benefit under section 2.5 after a Change in Control, upon Early Termination by the Bank without Cause or by the Executive for Good Reason the Bank shall pay to the Executive the benefit described in this section 2.3 instead of any other benefit under this Agreement.

2.3.1 *Amount of benefit*. The benefit under this section 2.3 is the Executive's projected Vested Annual Benefit Amount existing on the Executive's Retirement Date.

2.3.2 *Payment of benefit*. The Bank shall pay the benefit under this section 2.3 to the Executive for fifteen (15) years beginning with the first day of the Plan Year immediately following the Executive's Retirement Date, provided that if the Executive is a "specified employee" (as defined in Section 409A), the Bank shall commence paying the benefit under this section 2.3 to the Executive on the first day of each Plan Year beginning with the later of: (*x*) the first day of the Plan Year immediately following the Executive's Retirement Date, or (*y*) the seventh month after the month in which the Executive's Retirement Date occurs.

2.4 Disability Benefit. Unless the Executive shall have received the benefit under section 2.5 after a Change in Control, upon Separation from Service due to the Executive's Disability before Normal Retirement Age the Bank shall pay to the Executive the benefit described in this section 2.4 instead of any other benefit under this Agreement.

2.4.1 *Amount of benefit*. The benefit under this section 2.4 is the present value of the Executive's projected Vested Annual Benefit Amount on the date the Separation from Service due to the Executive's Disability occurs calculated by applying a five percent (5%) discount rate.

2.4.2 *Payment of benefit*. The Bank shall pay the benefit under this section 2.4 to the Executive in a single lump sum within sixty (60) days after the date on which Separation from Service due to the Executive's Disability occurs, provided that if the Executive is a "specified employee" (as defined in Section 409A), the Bank shall pay the benefit under this section 2.4 to the Executive on the first day of the seventh month after the month in which the Separation from Service due to the Executive's Disability occurs.

2.5 Change in Control. If a Change in Control occurs both before Normal Retirement Age and before Separation from Service, and within twelve (12) months following the Change in Control, the Executive has a Separation from Service by the Bank without Cause or by the Executive for Good Reason, the Bank shall pay to the Executive the benefit described in this section 2.5 instead of any other benefit under this Agreement.

2.5.1 *Amount of benefit*. The benefit under this section 2.5 is the present value of the Executive's projected Vested Annual Benefit Amount on the date the Executive Separates from Service without Cause or for Good Reason after a Change in Control occurs calculated by applying a five percent (5%) discount rate.

2.5.2 *Payment of benefit*. Within thirty (30) days immediately following the date the Executive Separates from Service without Cause or for Good Reason after a Change in Control occurs, the Bank shall pay the benefit under this section 2.5 to the Executive in a single lump sum.

2.6 Lump-Sum Payout of Remaining Normal Retirement Benefit or Early Termination Benefit When a Change in Control Occurs. If a Change in Control occurs while the Executive is receiving the Normal Retirement benefit under section 2.1, the Bank shall pay the remaining Normal Retirement benefit under such section to the Executive in a single lump sum on the day of the Change in Control. If a Change in Control occurs after Separation from Service but while the Executive is receiving or is entitled to receive the Early Termination benefit under sections 2.2 or 2.3, the Bank shall pay the remaining Early Termination benefit under such section to the Executive in a single lump sum within thirty (30) days after the later of (*x*) the effective date of the Change in Control or (*y*) if the Executive is a "specified employee" (as defined in Section 409A), the first day of the seventh month after the month in which the Separation from Service occurs. The lump-sum payment due to the Executive as a result of a Change in Control shall be an amount equal to the present value of the amount of benefit (determined in accordance with sections 2.1.1, 2.2.1, or 2.3.1 as applicable) corresponding to the particular benefit when the Change in Control occurs applying a five percent (5%) discount rate.

2.7 Payment Reduction. Notwithstanding anything contained in this Agreement to the contrary, (i) to the extent that any payment or distribution of any type to or for Executive by the Bank or any successor to the Bank after a Change in Control, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (the "Payments") constitute "parachute payments" (within the meaning of Section 280G of the Code), such Payments will be reduced (but not below zero) if and to the extent necessary so that no Payments to be made or benefit to be provided to Executive will be subject to the excise tax imposed under Code Section 4999. If the Payments are so reduced, then unless Executive will have given prior written notice to the Bank or its successor specifying a different order by which to effectuate the reduction, the Bank or its successor will reduce or eliminate the Payments (x) by first reducing or eliminating the portion of the Payments which are not payable in cash (other than that portion of the Payments subject to clause (z) hereof), (y) then by reducing or eliminating cash payments (other than that portion of the Payments subject to clause (z) hereof) and (z) then by reducing or eliminating the portion of the Payments (whether payable in cash or not payable in cash) to which Treasury Regulation § 1.280G-1 Q/A 24(c) (or successor thereto) applies, in each case in reverse order beginning with payments or benefits which are to be paid the farthest in time. Any notice given by Executive pursuant to the preceding sentence will take precedence over the provisions of any other plan, arrangement or agreement governing his or her rights and entitlements to any benefits or compensation

2.8 Compliance with Section 409A. The Agreement is intended to comply with Section 409A. Notwithstanding anything to the contrary, this Agreement shall be interpreted, operated and administered in a manner consistent with this intention. If any provision of this Agreement would subject the Executive to additional tax or interest under Section 409A, then the parties agree that this Agreement shall be amended so as to avoid the imposition of additional tax pursuant to Section 409A, while maintaining to the maximum extent practicable the original intent of the applicable provision without requiring the Bank to incur any additional compensation expense as a result of the reformed provision. Each payment pursuant to this Agreement is a separate "payment" for purposes of Treasury Regulation § 1.409A-2(b)(2)(i). Notwithstanding anything above, in no event will the Bank be liable for any additional tax, interest or penalties that may be imposed on Executive by Section 409A or any damages for failing to comply with Section 409A.

2.9 One Benefit Only. Despite anything to the contrary in this Agreement, the Executive and Beneficiary are entitled to one benefit only under this Agreement, which shall be determined by the first event to occur that is dealt with by this Agreement. Except as provided in section 2.6 or Article 3, subsequent occurrence of events dealt with by this Agreement shall not entitle the Executive or Beneficiary to other or additional benefits under this Agreement.

ARTICLE 3 DEATH BENEFITS

3.1 Death Before Separation from Service. If the Executive dies before Separation from Service, at the Executive's death the Bank shall pay to the Executive's Beneficiary the benefit described in this section 3.1 instead of any other benefit under this Agreement.

3.1.1 *Amount of benefit*. The benefit under this section 3.1 is the present value of the Executive's projected Vested Annual Benefit Amount on the date of the Executive's death calculated by applying a five percent (5%) discount rate.

3.1.2 *Payment of benefit*. Within sixty (60) days immediately following the date of the Executive's death, the Bank shall pay the benefit under this section 3.1 to the Executive's Beneficiary in a single lump sum.

3.2 Death after Separation from Service. If the Executive dies after Separation from Service, if Separation from Service was not a Termination with Cause, and if at death the Executive was receiving the benefit under section 2.1 or was receiving or was entitled at Normal Retirement Age to receive the benefit under sections 2.2 or 2.3, at the Executive's death the Executive's Beneficiary shall be entitled to an amount in cash equal to the present value of Vested Annual Benefit Amount remaining at the Executive's death calculated by applying a five percent (5%) discount rate, unless the Change-in-Control benefit shall have been paid to the Executive under section 2.5 or unless a Change-in-Control payout shall have occurred under section 2.6. No benefit shall be paid under this Article 3 after the Change-in-Control benefit is paid under section 2.5 or after a Change-in-Control payout occurs under section 2.6. If a benefit is payable to the Executive's Beneficiary, the benefit shall be paid in a single lump sum within sixty (60) days after the Executive's death. However, no benefits under this Agreement shall be paid or payable to the Executive or the Executive's Beneficiary if this Agreement is terminated under Article 5.

ARTICLE 4 BENEFICIARIES

4.1 Beneficiary Designations. The Executive shall have the right to designate at any time a Beneficiary to receive any benefits payable under this Agreement after the Executive's death. The Beneficiary designated under this Agreement may be the same as or different from the beneficiary designation under any other benefit plan of the Bank in which the Executive participates.

4.2 Beneficiary Designation: Change. The Executive shall designate a Beneficiary by completing and signing the Beneficiary Designation Form and delivering it to the Plan Administrator or its designated agent. The Executive's Beneficiary designation shall be deemed automatically revoked if the Beneficiary predeceases the Executive or if the Executive names a spouse as Beneficiary and the marriage is subsequently dissolved. The Executive shall have the right to change a Beneficiary by completing, signing, and otherwise complying with the terms of the Beneficiary Designation Form and the Plan Administrator's rules and procedures, as in effect from time to time. Upon acceptance by the Plan Administrator of a new Beneficiary Designation Form, all Beneficiary designations previously filed shall be cancelled. The Plan Administrator shall be entitled to rely on the last Beneficiary Designation Form filed by the Executive and accepted by the Plan Administrator before the Executive's death.

4.3 Acknowledgment. No designation or change in designation of a Beneficiary shall be effective until received, accepted, and acknowledged in writing by the Plan Administrator or its designated agent.

4.4 No Beneficiary Designation. If the Executive dies without a valid beneficiary designation or if all designated Beneficiaries predecease the Executive, the Executive's spouse shall be the designated Beneficiary. If the Executive has no surviving spouse, the benefits shall be made to the personal representative of the Executive's estate.

4.5 Facility of Payment. If a benefit is payable to a minor, to a person declared incapacitated, or to a person incapable of handling the disposition of his or her property, the Bank may pay the benefit to the guardian, legal representative, or person having the care or custody of the minor, incapacitated person, or incapable person. The Bank may require proof of incapacity, minority, or guardianship as it may deem appropriate before distribution of the benefit. Distribution shall completely discharge the Bank from all liability for the benefit.

ARTICLE 5 GENERAL LIMITATIONS

5.1 Termination with Cause. Despite any contrary provision of this Agreement, the Bank will not pay any benefit under this Agreement and this Agreement will immediately terminate if Executive's Separation from Service is a Termination with Cause.

5.2 Removal. If the Executive is removed from office or permanently prohibited from participating in the Bank's affairs by an order issued under section 8(e)(4) or (g)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1818(e)(4) or (g)(1), all obligations of the Bank under this Agreement shall terminate as of the effective date of the order.

5.3 Default. Despite any contrary provision of this Agreement, if the Bank is in "default" or "in danger of default," as those terms are defined in section 3(x) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(x), all obligations under this Agreement shall terminate.

5.4 FDIC Open-Bank Assistance. All obligations under this Agreement shall terminate, except to the extent determined that continuation of the contract is necessary for the continued operation of the Bank, if the Federal Deposit Insurance Corporation enters into an agreement to provide assistance to or on behalf of the Bank under the authority contained in section 13(c) of the Federal Deposit Insurance Act. 12 U.S.C. 1823(c). Any rights of the parties that have already vested shall not be affected by such action, however.

ARTICLE 6
CLAIMS AND REVIEW PROCEDURES

6.1 Claims Procedure for other than Disability benefits. Other than with respect to a claim for Disability benefits under section 2.4 hereunder, the Bank will notify any person or entity that makes a claim for benefits under this Agreement (the "**Claimant**") in writing, within 90 days after receiving Claimant's written application for benefits, of his or her eligibility or non-eligibility for benefits under the Agreement. If the Plan Administrator determines that the Claimant is not eligible for benefits or full benefits, the notice will state (*w*) the specific reasons for denial, (*x*) a specific reference to the provisions of the Agreement on which the denial is based, (*y*) a description of any additional information or material necessary for the Claimant to perfect his or her claim, and a description of why it is needed, and (*z*) an explanation of the Agreement's claims review procedure and other appropriate information concerning steps to be taken if the Claimant wishes to have the claim reviewed.

6.1.1 *Extension*. If the Plan Administrator determines that there are special circumstances requiring additional time to make a decision, the Bank will notify the Claimant of the special circumstances and the date by which a decision is expected to be made, and may extend the time for up to an additional ninety (90) days.

6.2 Claims Procedure for Disability benefits. With respect to a claim for Disability benefits under section 2.4 hereunder, the Bank will notify the Claimant in writing (in a culturally and linguistically appropriate manner), within forty-five (45) days after receiving Claimant's written application for benefits, of his or her eligibility or non-eligibility for benefits under the Agreement. If the Plan Administrator determines that the Claimant is not eligible for partial or full benefits, the notice will state (*s*) the specific reasons for denial, (*t*) a specific reference to the provisions of the Agreement on which the denial is based, (*u*) a description of any additional information or material necessary for the Claimant to perfect his or her claim, and a description of why it is needed, (*v*) an explanation of the Agreement's claims review procedure and other appropriate information concerning steps to be taken if the Claimant wishes to have the claim reviewed, (*w*) a discussion of the decision including an explanation of the Plan Administrator's basis for disagreeing with or not following: (1) the views presented by the Claimant of health care professionals treating the Claimant and vocational professionals who evaluated the Claimant; (2) the views of medical or vocational experts whose advice was obtained on behalf of the Plan Administrator in connection with a Claimant's denial of benefits, without regard to whether the advice was relied upon in making the benefit determination; and (3) a disability determination regarding the Claimant made by the Social Security Administration, (*x*) if the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, an explanation of the clinical or scientific judgment for the denial or a statement that such an explanation will be provided free of charge upon request, (*y*) the specific internal rules, guidelines, protocols, standards or other similar criteria of the relied upon in making the adverse determination or, alternatively, a statement that such rules, guidelines, protocols, standards or other similar criteria do not exist; and (*z*) that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim for Disability benefits.

6.2.1 *Extension*. If the Plan Administrator determines that there are matters beyond the Plan Administrator's control requiring an extension of time to make a decision, the Bank will notify the Claimant, before the end of the initial forty-five (45)-day period, of the circumstances requiring the extension of time and the date by which a decision is expected to be made, and may extend the time for up to an additional thirty (30) days. If, before the end of the first thirty (30)-day extension period, the Plan Administrator determines that there are still matters beyond the Plan Administrator's control requiring an additional extension of time to make a decision, the Bank will notify the Claimant, before the end of the first thirty (30)-day extension period, of the circumstances requiring the extension of time and the date by which a decision is expected to be made, and may extend the time for up to an additional thirty (30) days. If the Plan Administrator extends the time to make a decision under this section 6.2.1, the notice of extension will specifically explain to the Claimant, (*a*) the standards on which entitlement to a benefit is based, (*b*) the unresolved issues that prevent a decision on the claim, and (*c*) the additional information needed to resolve those issues. The Claimant will then be given at least forty-five (45) days within which to provide the specified information.

6.3 **Review Procedure**. If the Claimant is determined by the Plan Administrator not to be eligible for benefits, or if the Claimant believes that he or she is entitled to greater or different benefits, the Claimant will have the opportunity to have his or her claim reviewed by the Bank by filing a petition for review with the Bank within sixty (60) days after receipt of the notice issued by the Bank. The Claimant's petition must state the specific reasons the Claimant believes entitle him or her to benefits or to greater or different benefits. Within sixty (60) days after receipt by the Bank of the petition (forty-five (45) days for claims for Disability benefits), the Plan Administrator will give the Claimant (and counsel, if any) an opportunity to (*x*) present his or her position verbally or in writing, (*y*) review the pertinent documents relevant to the Claimant's claim for benefits, and (*z*) have the claim reviewed, taking into account all comments, documents, records, and other information submitted by the Claimant relating to the claim, whether or not such information was submitted or considered in the initial benefit determination. In addition, with respect to claims for Disability benefits, before the Plan Administrator can issue a full or partial denial of benefits on review, the Plan Administrator will provide the Claimant (and counsel, if any), as soon as possible and sufficiently in advance of the end of the forty-five (45)-day review period, with (*a*) any new or additional evidence considered, relied upon, or generated by the Plan Administrator or other person making the benefit determination in connection with the claim, and (*b*) its rationale for the denial. The Plan Administrator will notify the Claimant of the Plan Administrator's decision in writing within the sixty (60)-day period (forty-five (45)-day period for Disability benefit claims), stating specifically the basis of its decision, written in a manner to be understood by the Claimant, and the specific provisions of the Agreement on which the decision is based. If, because of special circumstances (such as the need for a hearing), the sixty (60)-day period (forty-five (45)-day period for Disability benefit claims) is not sufficient, the decision may be deferred for up to another sixty (60) days or forty-five (45) days (as applicable) at the election of the Plan Administrator, but notice of this deferral will be given to the Claimant.

6.4 **Denial of Claims**. The decision of the Plan Administrator made under this Article will be final, subject only to the Executive's rights to file a lawsuit under ERISA. Failure of the Executive to follow the Claims and Review Procedures of this Article, including meeting the deadlines set forth in those procedures, will result in a complete waiver by the Executive of the claim and forfeiture of the right to bring a lawsuit to enforce the claim under ERISA or state law.

ARTICLE 7
ADMINISTRATION OF AGREEMENT

7.1 **Plan Administrator Duties**. This Agreement shall be administered by a Plan Administrator consisting of the Board of Directors, or such committee or person as the Board of Directors of the Bank shall appoint. The Executive may not be a member of the Plan Administrator. The Plan Administrator shall have the discretion and authority to (*x*) make, amend, interpret, and enforce all appropriate rules and regulations for the administration of this Agreement and (*y*) decide or resolve any and all questions that may arise, including interpretations of this Agreement.

7.2 **Agents**. In the administration of this Agreement, the Plan Administrator may employ agents and delegate to them such administrative duties as it sees fit (including acting through a duly appointed representative) and may from time to time consult with counsel, who may be counsel to the Bank.

7.3 **Binding Effect of Decisions**. The decision or action of the Plan Administrator about any question arising out of the administration, interpretation, and application of the Agreement and the rules and regulations promulgated hereunder shall be final and conclusive and binding upon all persons having any interest in the Agreement. No Executive or Beneficiary shall be deemed to have any right, vested or nonvested, regarding the continued use of any previously adopted assumptions, including but not limited to the interest rate and calculation method employed in the determination of the Annual Benefit Amount.

7.4 **Indemnity of Plan Administrator**. The Bank shall indemnify and hold harmless the members of the Plan Administrator against any and all claims, losses, damages, expenses, or liabilities arising from any action or failure to act with respect to this Agreement, except in the case of willful misconduct by the Plan Administrator or any of its members.

7.5 **Bank Information**. To enable the Plan Administrator to perform its functions, the Bank shall supply full and timely information to the Plan Administrator on all matters relating to the date and circumstances of the retirement, Disability, death, or Separation from Service of the Executive, and such other pertinent information as the Plan Administrator may reasonably require.

ARTICLE 8 MISCELLANEOUS

8.1 **Amendments and Termination**. This Agreement may be amended solely by a written agreement signed by the Bank and the Executive. This Agreement may be terminated by the Bank without the Executive’s consent as described below. Unless Article 5 provides that the Executive is not entitled to payment, the Bank must pay the present value of the Vested Annual Benefit Amount, calculated by applying a five percent (5%) discount rate, in a single lump sum to the Executive if the Bank terminates this Agreement but only if the termination and payment are carried out consistent with the terms of the Section 409A plan-termination exception to the prohibition against accelerated payment. This Agreement may be terminated within the thirty (30) days preceding or the twelve (12) months following a Change in Control. This Agreement will then be treated as terminated only if all substantially similar arrangements sponsored by the Bank are also terminated so that all participants in similar arrangements are required to receive all amounts of compensation deferred under the terminated arrangements within twelve (12) months of the date of termination of the arrangements. The lump-sum termination payment will be made to the Executive within thirty (30) days of the date on which the Bank terminates this Agreement.

8.2 **Binding Effect**. This Agreement shall bind the Executive and the Bank and their beneficiaries, survivors, executors, successors, administrators, and transferees.

8.3 **No Guarantee of Employment**. This Agreement is not an employment policy or contract. It does not give the Executive the right to remain an employee of the Bank nor does it interfere with the Bank’s right to discharge the Executive. It also does not require the Executive to remain an employee or interfere with the Executive’s right to terminate employment at any time.

8.4 **Non-Transferability**. Benefits under this Agreement may not be sold, transferred, assigned, pledged, attached, or encumbered by the Executive.

8.5 **Successors; Binding Agreement**. By an assumption agreement in form and substance satisfactory to the Executive, the Bank shall require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the Bank’s business or assets to expressly assume and agree to perform this Agreement in the same manner and to the same extent the Bank would be required to perform this Agreement had no succession occurred.

8.6 **Tax Withholding**. The Bank shall withhold any taxes that are required to be withheld from the benefits provided under this Agreement.

8.7 **Applicable Law**. The Agreement and all rights hereunder shall be governed by the laws of the State of North Carolina, except to the extent preempted by the laws of the United States of America.

8.8 **Unfunded Arrangement**. The Executive and beneficiary are general unsecured creditors of the Bank for the payment of benefits under this Agreement. The benefits represent the mere promise by the Bank to pay benefits. The rights to benefits are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, or garnishment by creditors. Any insurance on the Executive's life is a general asset of the Bank to which the Executive and beneficiary have no preferred or secured claim.

8.9 **Entire Agreement**. This Agreement constitutes the entire agreement between the Bank and the Executive concerning the subject matter. No rights are granted to the Executive under this Agreement other than those specifically set forth.

8.10 **Severability**. If any provision of this Agreement is held invalid, such invalidity shall not affect any other provision of this Agreement not held invalid, and to the full extent consistent with law each such other provision shall continue in full force and effect. If any provision of this Agreement is held invalid in part, such invalidity shall not affect the remainder of such provision not held invalid, and to the full extent consistent with law the remainder of such provision, together with all other provisions of this Agreement, shall continue in full force and effect.

8.11 **Headings**. Headings are included herein solely for convenience of reference and shall not affect the meaning or interpretation of any provision of this Agreement.

8.12 **Notices**. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed, certified or registered mail, return receipt requested, with postage prepaid, to the following addresses or to such other address as either party may designate by like notice. If to the Bank, notice shall be given to the Bank's Board of Directors, 700 W. Cumberland Street, Dunn, NC 28334, or to such other or additional person or persons as the Bank shall have designated to the Executive in writing. If to the Executive, notice shall be given to the Executive at the Executive's address appearing on the Bank's records, or to such other or additional person or persons as the Executive shall have designated to the Bank in writing.

8.13 Payment of Legal Fees. In the event any dispute shall arise between Executive and the Bank, or a successor thereto, as to the terms or interpretation of this Agreement, whether instituted by formal legal proceedings or otherwise, including any action taken by Executive to enforce the terms of sections 2.5 and 2.6, or in defending against any action taken by the Bank, the Bank shall reimburse Executive for all costs and expenses of such proceedings or actions, in the event Executive prevails in any such proceeding or action.

[Signature Page Follows]

IN WITNESS WHEREOF, the Executive and a duly authorized Bank officer have executed this 2019 Supplemental Executive Retirement Plan Agreement as of the date first written above.

EXECUTIVE:	**BANK**:
/s/ Lynn H. Johnson	/s/ William L. Hedgepeth II
By: Lynn H. Johnson	By: William L. Hedgepeth II
Title: EVP and Chief Operating Officer	Title: President and CEO

(Back To Top)