

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF MECKLENBURG

2012 JUL -3 PM 2: 23

SUPERIOR COURT DIVISION

12-CVS-12723

PARK STERLING BANK,

MECKLENBURG COUNTY C.S.C.

BY \_\_\_\_\_

*Plaintiff,*

v.

WALLACE & PITTMAN, PLLC,

*Defendant.*

**COMPLAINT**

COMES NOW Park Sterling Bank ("Plaintiff" or "PSB"), by and through the undersigned counsel, and complains of Wallace & Pittman, PLLC ("Defendant") as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Park Sterling Bank is a banking institution organized and existing under the laws of the State of North Carolina, with its principal place of business in Charlotte, Mecklenburg County, North Carolina.

2. Upon information and belief, Defendant Wallace & Pittman, PLLC is a professional limited liability company organized and existing under the laws of the State of North Carolina, with its principal office and place of business in Charlotte, Mecklenburg County, North Carolina.

3. This Court has personal jurisdiction over Defendant pursuant to N.C. Gen. Stat. § 1-75.4.

4. This Court has jurisdiction over the subject matter of this action pursuant to N.C. Gen. Stat. § 7A-240 and § 7A-243 because the amount in controversy exceeds \$10,000.

5. Venue is proper in this Court pursuant to N.C. Gen. Stat. § 1-79 because Defendant is located in and transacting business in Mecklenburg County, North Carolina.

## **FACTS**

6. The allegations of the preceding paragraphs of the Complaint are referenced and incorporated herein as if set forth in their entirety.

7. Defendant is a law firm that, upon information and belief, routinely handles real estate transactions. From approximately December 2008 until June 2012, Defendant was a commercial banking customer of PSB. During that time, Defendant maintained as many as three deposit accounts with PSB and utilized online banking services.

8. One such deposit account was an IOLTA Trust Account, established pursuant to an account agreement between PSB and Defendant, dated December 17, 2008, which incorporated by reference certain additional terms and conditions for the account (the "Account Agreement"). A true and correct copy of the Account Agreement with redacted confidential information and account numbers is attached hereto as **Exhibit A**.

9. PSB and Defendant are also parties to an agreement entitled "Treasury Management Products Customer Agreement," dated January 7, 2009 (the "Treasury Management Products Agreement"), which provides the terms and conditions applicable to various online banking services, including Defendant's electronic access to its accounts and use of PSB's electronic funds transfer services. A true and correct copy of the Treasury Management Products Agreement with redacted confidential information and account numbers is attached hereto as **Exhibit B**.

10. Pursuant to the Treasury Management Products Agreement, Defendant received access to a secured service that allows designated employees of Defendant to access Defendant's account information and to order funds transfers electronically, including wire transfers, from Defendant's accounts.

11. At Defendant's request, Judith Roberts, an employee of Defendant, was an authorized user with access to Defendant's accounts. Roberts was authorized to order funds transfers, including wire transfers, from Defendant's IOLTA Trust Account.

12. The Treasury Management Products Agreement provides that Defendant shall be solely responsible for protecting against unauthorized access to the secured online banking service through the use of physical security, passwords, and other security procedures.

13. Under the Treasury Management Products Agreement, Defendant has assumed the risk of using the electronic funds transfer services to send wire transfers, and has agreed to indemnify, defend, and hold PSB harmless for processing any request or executing any transfer that is received by Defendant upon proper execution of the security procedures.

14. PSB and Defendant agreed that the authenticity of payment orders issued by Defendant to PSB would be verified pursuant to security procedures that included, among other things, verification of Defendant's user name, password, pin number, and use of challenge questions. Defendant was provided information about the creation and use of user name, password, and other security measures in a Cash Management User Manual.

15. PSB offered Defendant an additional security procedure by which wire transfers would be required to be authorized by two representatives of Defendant, also known as "dual control." Defendant declined to accept this additional security procedure, opting instead to allow a single firm representative to initiate wire transfer orders.

16. The security procedure agreed to by the parties is and was a commercially reasonable method of providing security against unauthorized payment orders.

17. At approximately 2:58 PM EDT on May 9, 2012, PSB received a wire transfer order from Defendant in the amount of \$336,600.61. The wire transfer request was sent using

Defendant's legitimate user name, password, pin number, and challenge question responses and appeared to come from an authorized representative of Defendant, Judith Roberts. In addition, the wire transfer request originated from an internet protocol address used for past wire transfers received from Defendant, including a wire transfer order placed by Defendant earlier on May 9.

18. The wire transfer directed payment to a domestic beneficiary bank, JP Morgan Chase, in New York.

19. PSB accepted the wire transfer order in good faith.

20. PSB accepted the wire transfer order in compliance with the security procedures previously agreed to by Defendant and PSB.

21. PSB processed the wire transfer order through the Fedwire system, using an intermediary bank, Pacific Coast Bankers Bank to facilitate the wire transfer payment to the beneficiary bank, JP Morgan Chase. The wire transfer order was completed, and upon information and belief, the funds were paid to JP Morgan Chase in New York for the benefit of the beneficiary identified in the wire transfer order, who was listed as being located in Moscow, Russia.

22. Upon information and belief, Defendant later received on May 9 electronic confirmation of the wire transfer order. After receiving the electronic confirmation, Defendant contacted PSB and stated that the wire transfer order was not authorized.

23. Defendant later informed PSB that there had been an electronic intrusion on one or more computers at Defendant's offices. The intrusion resulted in the surreptitious placement of keylogger malware on one or more of Defendant's computers.

24. Upon information and belief, an unknown person (or persons) used the keylogger malware placed on Defendant's computer(s) to obtain Defendant's legitimate online banking

user name, password, pin number, and challenge question information. An unknown person (or persons) used the online banking information so obtained, then mimicked a legitimate internet protocol address used by Defendant for past wire transfers, and successfully placed the wire transfer order.

25. Once notified of the suspicious transaction, PSB attempted to reverse the wire transfer order and to retrieve the funds, but was unable to do so. The transferred funds were paid out of Defendant's IOLTA account on May 9, 2012.

26. On May 9, PSB provided a provisional credit to Defendant in the amount of \$336,600.61 so that Defendant could avoid an overdraft of its IOLTA Trust Account and to allow a period of time for the possible return of the wire transfer funds.

27. No funds were recovered, and PSB informed Defendant by letter dated May 29, 2012 that it would debit the amount of the wire transfer against Defendant's IOLTA Trust Account on May 31, 2012.

28. On May 30, 2012, Defendant instead filed a Complaint against PSB in Mecklenburg County entitled *Wallace & Pittman, PLLC v. Park Sterling Bank and Park Sterling Corporation*, Case No. 12-CVS-10473. Later that day, Defendant obtained a temporary restraining order that enjoined PSB from debiting any amount from Defendant's IOLTA Trust Account to pay for the wire transfer.

29. After the temporary restraining order was issued, Defendant removed the remaining funds in its IOLTA Trust Account (and other PSB accounts), either paying those funds out to third parties or transferring the funds to accounts opened at another banking institution. As of June 25, 2012, the three accounts Defendant held at PSB all had zero balances. The complaint has now been dismissed.

30. On June 25, 2012, Defendant sent a letter to PSB (dated June 21) requesting that PSB close Defendant's IOLTA Trust Account, operating account, and escrow account. PSB complied with Defendant's request, closing the accounts on June 25, 2012.

31. Defendant has refused and continues to refuse to reimburse PSB the provisional credit extended in the amount of \$336,600.61.

**FIRST COUNTERCLAIM**  
**(Breach of Contract)**

32. The allegations of the preceding paragraphs of the Complaint are referenced and incorporated herein as if set forth in their entirety.

33. The Treasury Management Products Agreement provides that Defendant shall be solely responsible for protecting against unauthorized access to the secured online banking service through the use of physical security, passwords, and other security procedures.

34. Under the Treasury Management Products Agreement, Defendant has assumed the risk of using the electronic funds transfer services to send wire transfers, and has agreed to indemnify, defend, and hold PSB harmless for processing any request or executing any transfer that is received by Defendant upon proper execution of the security procedures.

35. The Account Agreement provides that the contractual relationship between the parties is subject to Article 4A of the Uniform Commercial Code, which provides certain rules applicable to electronic funds transfers, including an allocation for risk of loss between the parties.

36. Pursuant to Article 4A, the May 9, 2012 wire transfer was effective as an order of Defendant, who is liable for any loss resulting from the transfer.

37. Pursuant to the terms of the Account Agreement and the Treasury Management Products Agreement, Defendant is liable to PSB in the amount of \$336,600.61 as payment for the May 9, 2012 wire transfer.

**SECOND COUNTERCLAIM**  
**(Conversion)**

38. The allegations of the preceding paragraphs of the Complaint are referenced and incorporated herein as if set forth in their entirety.

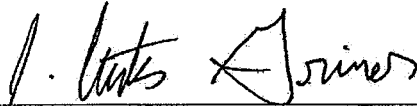
39. Defendant has removed \$336,600.61 from its IOLTA Trust Account with PSB without authorization or legal right.

40. Defendant is liable to PSB in the amount of \$336,600.61 as payment for the May 9, 2012 wire transfer.

**WHEREFORE**, Plaintiff respectfully prays that:

1. Plaintiff recover actual damages in the amount of \$336,600.61;
2. Plaintiff be awarded pre and post-judgment interest;
3. Plaintiff recover its costs, expenses, and attorneys' fees as provided by law;
4. Judgment be entered in favor of Plaintiff; and
5. Plaintiff have such additional relief as it may be entitled to under the facts and the applicable law.

This 3<sup>rd</sup> day of July, 2012.

  
John H. Cobb (N.C. Bar No. 17052)  
J. Curtis Griner (NC Bar No. 41281)  
**McGUIREWOODS LLP**  
201 North Tryon Street, Suite 3000  
Charlotte, NC 28202-2146  
T: (704) 343-2000  
F: (704) 343-2300

*Attorneys for Plaintiff Park Sterling Bank*

# **EXHIBIT A**



# Account Agreement

Date: 12/17/08

## Institution Name & Address

Park Sterling Bank  
Southpark Branch  
6816 Morrison Blvd  
Charlotte, NC 28211  
(704) 731-7800

**IMPORTANT ACCOUNT OPENING INFORMATION:** Federal law requires us to obtain sufficient information to verify your identity. You may be asked several questions and to provide one or more forms of identification to fulfill this requirement. In some instances we may use outside sources to confirm the information. The information you provide is protected by our privacy policy and federal law.

☐ If checked, this is a temporary account agreement.

Enter Non-Individual Owner Information on page 2. There is additional Owner/Signer Information space on page 2.

## Owner/Signer Information 1

Name	State Bar Foundation
Relationship to Account (Owner and/or Signer, etc.)	
Address	1043 E Morehead St Ste 300 Charlotte NC 28204
Mailing Address (if different)	
Home Phone	
Work Phone	
Mobile Phone	
E-Mail	
Birth Date	
SSN/TIN	56-1401148
Gov't Issued Photo ID (Type, Number, State, Issue Date, Exp. Date)	
Other ID (Description, Details)	
Employer's Name & Address	
Previous Financial Inst.	

## Owner/Signer Information 2

Name	James G Wallace
Relationship to Account (Owner and/or Signer, etc.)	
Address	423 Cherokee Pl Charlotte NC 28207-2303
Mailing Address (if different)	
Home Phone	
Work Phone	
Mobile Phone	
E-Mail	
Birth Date	07/29/49
SSN/TIN	242-74-6223
Gov't Issued Photo ID (Type, Number, State, Issue Date, Exp. Date)	Drivers License DL 2362287 NC-08/12/04-07/29/09
Other ID (Description, Details)	
Employer's Name & Address	Wallace Pittman & Webb
Previous Financial Inst.	

## Internal Use IOLTA Ckg

## Account Title & Address

WALLACE & PITTMAN, PLLC  
IOLTA TRUST ACCOUNT  
2101 Rexford Road  
Suite 100-B  
Charlotte NC 28211

## Ownership of Account

The specified ownership will remain the same for all accounts.

☐ Individual ☐ Joint with No Survivorship (as tenants in common)

☐ BANK JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP G.S. § 53-146.1

You understand that by establishing a joint account under the provisions of North Carolina General Statute § 53-146.1 that:

1. The bank may pay the money in the account to, or on the order of, any person named in the account unless you have agreed with the bank that withdrawals require more than one signature; and

2. Upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

You DO elect to create the right of survivorship in this account.

X \_\_\_\_\_ X \_\_\_\_\_

X \_\_\_\_\_ X \_\_\_\_\_

☐ Corporation - For Profit

☐ Corporation - Nonprofit

☐ Partnership

☐ Sole Proprietorship

☒ Limited Liability Company

## Beneficiary Designation

(Check appropriate ownership above.)

☐ BANK PAYABLE ON DEATH ACCOUNT G.S. § 53-146.2

See page 2 for beneficiary information.

You understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute § 53-146.2 that:

1. During your lifetime you may withdraw the money in the account; and

2. By written direction to the bank you, individually or jointly, may change the beneficiary or beneficiaries; and

3. Upon your death the money remaining in the account will belong to the beneficiary or beneficiaries, and the money will not be inherited by your heirs or be controlled by will.

X \_\_\_\_\_ X \_\_\_\_\_

## Personal Agency Account Designation

☐ BANK PERSONAL AGENCY ACCOUNT G.S. § 53-146.3

You understand that by establishing a personal agency account under the provisions of North Carolina General Statute § 53-146.3 that the agent named in the account may:

1. Sign checks drawn on the account; and

2. Make deposits into the account.

You also understand that upon your death the money remaining in the account will be controlled by your will or inherited by your heirs.

☐ You agree this personal agency will continue if you subsequently become incapacitated or mentally incompetent, in accordance with North Carolina General Statute § 53-146.3(b).

X \_\_\_\_\_

## Signature(s)

The undersigned authorize the financial institution to investigate credit and employment history and obtain reports from consumer reporting agency(ies) on them as individuals. Except as otherwise provided by law or other documents, each of the undersigned is authorized to make withdrawals from the account(s), provided the required number of signatures indicated below is satisfied. The undersigned personally and as, or on behalf of, the account owner(s) agree to the terms of, and acknowledge receipt of copy(ies) of, this document and the following:

☒ Terms and Conditions

☒ Privacy

☒ Electronic Fund Transfers

☒ Truth in Savings

☒ Substitute Checks

☒ Funds Availability

☒ Common Features

☐ \_\_\_\_\_

[X] 

James G Wallace

[X] 

Bryan W Pittman

[X] \_\_\_\_\_

[X] \_\_\_\_\_

[X] \_\_\_\_\_

[X] \_\_\_\_\_

Number of signatures required for withdrawal: 1

☐ Personal Agent (The last of the above signers is a Personal Agent.)

**Owner/Signer Information 3**

Name	Bryan W Pittman	
Relationship to Account (Owner and/or Signer, etc.)		
Address	600 Ennis Rd Waxhaw NC 28173-9716	
Mailing Address (if different)		
Home Phone		
Work Phone		
Mobile Phone		
E-Mail		
Birth Date	11/22/46	
SSN/TIN	E43-74-2048	
Gov't Issued Photo ID (Type, Number, State, Issue Date, Exp. Date)	Drivers License 1140711 NC-11/22/05-11/22/11	
Other ID (Description, Details)		
Employer's Name & Address	Wallace Pittman & Webb	
Previous Financial Inst.		

**Owner/Signer Information 4**

Name		
Relationship to Account (Owner and/or Signer, etc.)		
Address		
Mailing Address (if different)		
Home Phone		
Work Phone		
Mobile Phone		
E-Mail		
Birth Date		
SSN/TIN		
Gov't Issued Photo ID (Type, Number, State, Issue Date, Exp. Date)		
Other ID (Description, Details)		
Employer's Name & Address		
Previous Financial Inst.		

**Backup Withholding Certifications**

(If not a "U.S. Person," certify foreign status separately.)

TIN: 56-1401149

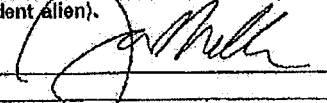
☒ Taxpayer I.D. Number (TIN) - The number shown above is my correct taxpayer identification number.

☒ Backup Withholding - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

☐ Exempt Recipients - I am an exempt recipient under the Internal Revenue Service Regulations.

I certify under penalties of perjury the statements checked in this section and that I am a U.S. person (including a U.S. resident alien).

X

 12/22/18 (Date)

**Non-Individual Owner Information**

Name	WALLACE & PITTMAN, PLLC	
EIN	54-3458109	
Phone	(704) 365-5566	
Mobile Phone		
E-Mail		
Type of Entity		
State/Country & Date of Organization		
Nature of Business		
Address	2101 Rexford Road Charlotte NC 28211	
Mailing Address (if different)		
Authorization/Resignation Date		
Previous Financial Inst.		

**Account Description | Account # | Initial Deposit/Source**

Now	5005224	<input type="checkbox"/> Cash <input type="checkbox"/> Check
		<input type="checkbox"/> Cash <input type="checkbox"/> Check
		<input type="checkbox"/> Cash <input type="checkbox"/> Check

**Services Requested**

<input type="checkbox"/> ATM	<input type="checkbox"/> Debit/Check Cards (No. Requested: _____)
<input type="checkbox"/> _____	<input type="checkbox"/> _____
<input type="checkbox"/> _____	<input type="checkbox"/> _____

**Beneficiary Name(s), Address(es), and SSN(s)**

(Check appropriate beneficiary designation on page 1.)

**Other Terms/Information**

## TERMS AND CONDITIONS OF YOUR ACCOUNT

**AGREEMENT** - This document, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your account(s) with us. Please read this carefully. If you sign the signature card or open or continue to have your account with us, you agree to these rules. You will receive a separate schedule of rates, qualifying balances, and fees if they are not included in this document. If you have any questions, please call us.

This agreement is subject to applicable federal laws and the laws of the state of North Carolina (except to the extent that this agreement can and does vary such rules or laws). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here. The purpose of this document is to:

- (1) summarize some laws that apply to common transactions;
- (2) establish rules to cover transactions or events which the law does not regulate;
- (3) establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
- (4) give you disclosures of some of our policies to which you may be entitled or in which you may be interested.

If any provision of this document is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. We may permit some variations from our standard agreement, but we must agree to any variation in writing either on the signature card for your account or in some other document.

As used in this document the words "we," "our," and "us" mean the financial institution and the words "you" and "your" mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. The headings in this document are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

**LIABILITY** - You agree, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges. You authorize us to deduct these charges directly from the account balance as accrued. You will pay any additional reasonable charges for services you request which are not covered by this agreement.

Each of you also agrees to be jointly and severally (individually) liable for any account shortage resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and can be deducted directly from the account balance whenever sufficient funds are available. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft. This includes liability for our costs to collect the default including, to the extent permitted by law, our reasonable attorneys' fees.

**DEPOSITS** - We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn "on us"). Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them. We will treat and record all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next following business day that we are open.

**WITHDRAWALS** - Unless clearly indicated otherwise on the account records, any of you, acting alone, who signs in the space designated for signatures on the signature card may withdraw or transfer all or any part of the account balance at any time. Each of you (until we receive written notice to the contrary) authorizes each other person signing the signature card to indorse any item payable to you or your order for deposit to this account or any other transaction with us. We may charge your account for a check even though payment was made before the date of the check, unless we have received written notice of the postdating in time to have a reasonable opportunity to

act. We may refuse any withdrawal or transfer request which you attempt on forms not approved by us, by any method we do not specifically permit, which is greater in number than the frequency permitted, or which is for an amount greater or less than any withdrawal limitations. Even if we honor a nonconforming request, we may treat continued abuse of the stated limitations (if any) as your act of closing the account. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations. The fact that we may honor withdrawal requests that overdraw the available account balance does not obligate us to do so later. See the funds availability policy disclosure for information about when you can withdraw funds you deposit. For those accounts for which our funds availability policy disclosure does not apply, you can ask us when you make a deposit when those funds will be available for withdrawal.

We may require not less than 7 days' notice in writing before each withdrawal from an interest-bearing account other than a time deposit, or from any other savings account as defined by Regulation D. Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your notice of penalty for early withdrawal.

**OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION** - These rules apply to this account depending on the form of ownership and beneficiary designation, if any, specified on the account records. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. **Individual Account** - Is an account in the name of one person. **Joint Account - With Survivorship** - You intend and agree that regardless of whose funds are deposited in the account, that upon your death the balance in the account will belong to the survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with right of survivorship. This agreement is governed by North Carolina General Statutes § 63-146.1. **Personal Agency Accounts** - Such an account allows you to name an agent who will have authority to make withdrawals from the account by check or otherwise and indorse checks payable to you for deposit only into the account and otherwise make deposits. In addition, you may elect to extend the authority of your agent so your agent may act notwithstanding your subsequent incapacity or mental incompetence. Your agent's authority would then end at such time as the agent receives notification from a qualified guardian or duly appointed attorney-in-fact. If you do not extend the authority of your agent, then your subsequent incapacity or mental incompetence will terminate the authority of your agent. This agreement is governed by North Carolina General Statutes § 53-146.3. **Joint Account - No Survivorship** - Is owned by two or more persons, but none of you intend (merely by opening this account) to create any right of survivorship in any other person. **Trust Account** - A beneficiary cannot withdraw unless: (1) the person creating the account dies, and (2) the beneficiary is then living. The person creating this account type reserves the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the account funds at any time. This agreement is governed by North Carolina General Statutes § 63-146.2.

**BUSINESS ACCOUNTS** - Earnings in the form of interest, dividends, or credits will be paid only on collected funds, unless otherwise provided by law or our policy. We may require the governing body of the legal entity opening the account to give us a separate authorization telling us who is authorized to act on its behalf. We will honor the authorization until we actually receive written notice of a change from the governing body of the legal entity.

**STOP PAYMENTS** - You must make any stop-payment order in the manner required by law and we must receive it in time to give us a reasonable opportunity to act on it before our stop-payment cutoff time. To be effective, your stop-payment order must precisely identify the number, date and amount of the item, and the payee.

You may stop payment on any item drawn on your account whether you sign the item or not, if you have an equal or greater right to withdraw from this account than the person who signed the item. A release of the stop-payment request may be made only by the person who initiated the stop-payment order.

Our stop-payment cutoff time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law (e.g., we paid the item in cash or we certified the item).

**TELEPHONE TRANSFERS** - A telephone transfer of funds from this account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Unless a different limitation is disclosed in writing, we restrict the number of transfers from a savings account to another account or to third parties, to a maximum of six per month (less the number of "preauthorized transfers" during the month). Other account transfer restrictions may be described elsewhere.

**AMENDMENTS AND TERMINATION** - We may change any term of this agreement. Rules governing changes in interest rates are provided separately. For other changes, we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you.

**STATEMENTS** - You must examine your statement of account with "reasonable promptness." If you discover (or reasonably should have discovered) any unauthorized signatures or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to either share the loss with us, or bear the loss entirely yourself (depending on whether we used ordinary care and, if not, whether we substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer.

You agree that the time you have to examine your statement and report to us will depend on the circumstances, but will not, in any circumstance, exceed a total of 30 days from when the statement is first sent or made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, or any other errors in your account within 60 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours. This 60-day limitation is without regard to whether we used ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section.

**ACCOUNT TRANSFER** - This account may not be transferred or assigned without our prior written consent.

**DIRECT DEPOSITS** - If, in connection with a direct deposit plan, we deposit any amount in an account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**TEMPORARY ACCOUNT AGREEMENT** - If this option is selected, this is a temporary account agreement. Each person who signs in the space designated for signatures on the signature card (except as indicated to the contrary) may transact business on this account. However, we may at some time in the future restrict or prohibit further use of this account if you fail to comply with the requirements we have imposed within a reasonable time.

**SETOFF** - We may (without prior notice and when permitted by law) set off the funds in this account against any due and payable debt you owe us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note.

This right of setoff does not apply to this account if: (a) it is an IRA or other tax-deferred retirement account, or (b) the debt is created by a consumer credit transaction under a credit card plan (but this does not affect our rights under any consensual security interest), or (c) the debtor's right of withdrawal only arises in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff.

**RESTRICTIVE LEGENDS** - We are not required to honor any restrictive legend on checks you write unless we have agreed in writing to the restriction. Examples of restrictive legends are "must be presented within 90 days" or "not valid for more than \$1,000.00."

**ACH AND WIRE TRANSFERS** - This agreement is subject to Article 4A of the Uniform Commercial Code - Fund Transfers as adopted in the state in which you have your account with us. If you originate a fund transfer for which Fedwire is used, and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. You agree to be bound by automated clearing house association rules. These rules provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code. If we do not receive such, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. If we receive a credit to an account you have with us by wire or ACH, we are not required to give you any notice of the payment order or credit.

# **EXHIBIT B**

## **Park Sterling Bank-Treasury Management Products Customer Agreement**

THIS AGREEMENT, is for Park Sterling Bank's Treasury Management Products provided by Park Sterling Bank ("Bank") for Wallace & Pittman, PLLC ("Customer"). Both parties agree that the services described and provided by Bank will be subject to the terms and conditions set forth below:

### **1. GENERAL**

The services to be provided by the Bank to the Customer, consist of access to a secured service ("Service") that permits Customer to obtain certain account information reporting, electronic funds transfer services, and other account maintenance functions, by means of a computer. These services shall collectively be known as "Treasury Management Products", but hereinafter will be referred to as the ("Products"). Products are provided by the Bank for access and use by the Customer. Jack Henry & Associates, Inc. is the sole owner and licensor for the Products and has granted the Bank the right to sublicense the Products to customers.

### **2. USE OF SERVICE/LIMITED SUBLICENSE**

Bank hereby grants to the Customer a sublicense for use of the Products on a computer(s), subject to the terms and conditions set forth in this Agreement. Customer acknowledges and agrees that the Products and Products' documentation is valuable, confidential, and proprietary property and agrees not to transfer, distribute, copy, reverse, compile, modify or alter the Products or the Products' documentation.

### **3. TERM**

This Agreement is effective from the date the Products are accessed by Customer and shall remain in force until termination. The Agreement shall be terminated upon thirty days prior written notice by either party to the other, upon termination of the relationship between the parties, if the customer fails to comply with the terms and conditions of this Agreement, or upon termination of the software license agreement between Bank and Jack Henry & Associates, Inc. The Customer agrees to return any and all written and electronic documentation related to the Products to the Bank, upon termination. The Customer shall retain no copies in any form. The provisions of this Agreement that protect the proprietary rights of Jack Henry & Associates, Inc. and the Bank will continue in force after termination.

#### **4. DISCLAIMER OF WARRANTY**

No warranties with respect to the Products are made by said Bank nor does it warrant that the Products will meet specific requirements of the Company. Neither the Bank nor Jack Henry & Associates, Inc. make any warranty of any kind, either express or implied with respect to the use of the Products. Bank and Jack Henry & Associates, Inc. disclaim any and all implied warranties of merchantability and fitness for a particular purpose. The Customer assumes the entire risk as to the quality and performance of the Products and documentation.

#### **5. LIMITATION OF LIABILITY**

a. In no event shall Bank or Jack Henry & Associates, Inc. be liable to Customer for any damages, including lost profits, lost savings or other direct, indirect, incidental, special or consequential damages arising out of the use or inability to use the Products and documentation, or for any claim by another party.

b. The Customer shall be solely responsible for protecting against unauthorized access to the Products through the use of physical security, passwords and other security procedures. The financial institution will be held harmless for processing any request received by Customer.

c. Where the Customer has access to funds transfer, which include Wire Transfer and ACH Transfer, Bank will only accept transfer requests upon proper execution of security procedures that are entirely within Customer's control. Bank may consider funds transfer requests received from Customer as having been authorized by the Customer, and the Bank shall be held harmless for executing any transfer.

d. Where the Customer elects to execute Stop Payment requests through the Products, the Bank agrees to enter the Stop Payment to its main computer system within a reasonable period of time after receiving the request. Prior to requesting a Stop Payment, the Customer should first verify that the item has not already been posted to their account. If a stopped item has already been paid prior to the Bank's entry of the request, then the Bank shall not be liable for any loss incurred by the Customer arising from the event.

## 6. FEES

There are no general access fees for the Products. However, applicable fees for certain transaction types, e.g., Stop Payments, Wire Transfers, and ACH Transactions, and Remote Deposit may apply. Any equipment provided to Customer at no cost is the property of Park Sterling Bank. The Bank reserves the right to change any pricing in the future by providing the Customer with 30 days notice.

## 7. FUNDS TRANSFER SERVICE

In addition to account information reporting, the Customer may request access to certain Funds Transfer Services as described below. Funds transfers are available during specific business hours as described in the attached schedule. Customer must specify Customer Representative authorities per transaction type. If the Customer, or any of its authorized representatives, use the Funds Transfer Services described, the following condition(s) shall apply:

**Wire Transfer**—The Customer acknowledges that the Wire Transfer feature of the Products is an alternate entry system for issuing Wire Transfer orders between the Customer and the Bank. A separate Wire Transfer Agreement between the Customer and the Bank may be required.

**ACH Transactions**—The Customer acknowledges that the ACH Transaction feature of the Products is an alternate entry system for issuing ACH transaction orders between the Customer and the Bank. A separate ACH Origination Agreement between the Customer and the Bank may be required.

## 8. STOP PAYMENT SERVICES

The Customer acknowledges that the Stop Payment feature of the Products is an alternate entry system for issuing Stop Payment Orders. When utilizing this feature, customer warrants that the information describing the check or draft, including the check or scheduled transfer date, its exact amount, the check number and payee, is correct. Customer acknowledges that the exact amount of the check or draft is required, and if the incorrect amount or any other incorrect information is provided, the Bank will not be responsible for failing to stop payment on the item. Customer agrees that the Stop Order must be received by the Bank within a reasonable time for the Bank to act on the order prior to final payment of the check, or if an ACH/EFT transfer, at least three (3) business days preceding the scheduled date of the pre-authorized ACH/EFT. A Stop Payment Order received by the Bank using this service will be accepted as if it were in written form, will be effective for six (6) months only, and will expire automatically at that time, without further notice, unless specifically renewed prior to expiration.



## 9. AVAILABILITY OF SERVICES

All services are available during specified business hours as described in the attached schedule.

## 10. MISCELLANEOUS

- a. This Agreement, together with addendums, schedules, other written agreements and applicable Bank rules and regulations represents the entire understanding of the parties. If any option of this Agreement is found to be unenforceable, all remaining portions shall remain in full force and effect.
- b. Customer agrees not to sublicense, assign or transfer this license or the Products except as expressly provided in this Agreement.
- c. This Agreement is governed by the Laws of the State of North Carolina (except where Federal law governs the copyrights and trademarks of Jack Henry & Associates, Inc. and the successors it assigns). It may not be amended or modified except by a written instrument signed by both the Customer and the Bank.

## 11. SIGNATURES

By signing this Agreement, the undersigned acknowledge that they have read and accepted the terms and conditions of this Agreement, and agree to be bound by its terms.

### ACCEPTED BY:

Customer:

By:

Name

Title

Date

*Wallace & Githman PLLC*  
*[Signature]*  
*Manager*  
*1/7/09*

### ACCEPTED BY:

Park Sterling Bank:

By:

Name

Title

Date

## AUTHORIZATION AGREEMENT FOR ACCOUNTS

### SCHEDULE A

Company hereby provides authorization for transmission of account information on the following accounts.

Company Name

Wallace & Pittman, PLLC

Company Tax ID Number

94-3458309

ACH Transactions: Yes/No

Wire Transfers: Yes/No

#### Account Information:

1. Account Number 1009281  
Account Title IOLTA
2. Account Number 1009291  
Account Title Escrow Account
3. Account Number 1009303  
Account Title Operating Account
4. Account Number \_\_\_\_\_  
Account Title \_\_\_\_\_
5. Account Number \_\_\_\_\_  
Account Title \_\_\_\_\_

Signature

Title

Date

James C. Wallace  
(Print Name)

**PARK STERLING BANK**

**AGREEMENT OF DOLLAR LIMITS**

**SCHEDULE B**

Company hereby agrees to abide by the following dollar limits for the listed transaction types. If any transaction transmitted does not have an adequate balance(s) to meet the transaction amount, the company acknowledges that the Bank is not obligated to complete the transaction as ordered.

Company Name

Wallace & Pittman, PLLC

Company Tax ID Number

94-3458309

Transaction Types:

Wire Transfers \_\_\_\_\_

ACH Transfers \_\_\_\_\_

Account #'s:

1009281

1009292

1009303

Limits:

Daily: \_\_\_\_\_

Monthly: \_\_\_\_\_

Signature

Title

Date

James G. Wallace

(Print Name)

Manager

1/7/09

**PARK STERLING BANK  
ONLINE BANKING ACCESS REQUEST  
SCHEDULE C**

Request is hereby made to Park Sterling Bank (PSB) to grant online access to the user(s) listed below by issuing online ID's and passwords.

NAME/Email	ACCOUNTS	RIGHTS
<u>Linda Jamison</u>	<u>1009281</u>	<u>Online Viewing</u>
	<u>1009291</u>	<u>Wire Transfers</u>
	<u>1009303</u>	<u>Acct Transfers</u>
<u>Betsy Ix</u>	<u>Same</u>	
<u>Judith Roberts</u>	<u>Same</u>	

**Non Signer Authorization:** I Authorize Linda Jamison, Betsy Ix, and Judith Roberts to have Online Banking Access to accounts and rights listed above: \_\_\_\_\_ (Signature must be Signer on Accounts).

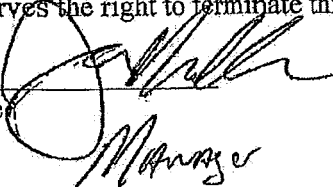
PSB may request additional information for each user(s) as identified in our CIP program (Customer Identification Policy).

You, the customer, shall be wholly responsible for activity and transactions initiated by the user named above. You agree to indemnify, defend and hold PSB and any affiliates harmless from any claims of fraudulent or unauthorized transactions initiated by the user(s) named above and will ensure that the user(s) will comply with the terms and conditions in your Online Banking Agreement with PSB.

You may revoke the user(s) access by submitting your request in writing to :Park Sterling Bank, PO Box 32727, Charlotte, NC 28232.

PSB reserves the right to terminate this access as defined in your Online Banking Agreement

Signature



Title

Date

1/7/09

**PARK STERLING BANK**

**PROCESSING SCHEDULE**

**SCHEDULE D**

All transaction(s) must be submitted to Park Sterling Bank by the cut off times noted below to allow processing on the Effective Entry date:

Stop Payments: 9:00am to 4:00pm

Wire Transfers: 9:00am to 3:00pm

ACH Transactions: 9:00am to 4:00pm

Remote Deposits: 6 pm Central deadline

Our banking days include all days except Saturdays and Sundays and the following standard holidays that are observed by Federal Reserve Bank:

New Year's Day  
Martin Luther King Jr. Day  
President's Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran's Day  
Thanksgiving Day  
Christmas Day