

## **Employee Retirement Agreement**

The Employee Retirement Agreement (hereinafter referred to as "Agreement") is entered into effective December 18, 2013 by and between Banks Enterprises ("Company") located at 500 Main St., Atlanta, Georgia, 30123 and Allan Smith ("Employee"), 123 Medow Ln., Atlanta, Georgia, 30123 or collectively, "the Parties".

WHEREAS, Employee has been employed by the Company in various capacities and is currently holding the position of District Manager;

WHEREAS, the parties acknowledge it is in their individual and mutual best interests for Employee to retire as an employee of the Company effective December 20, 2013;

WHEREAS, the parties wish to define the terms and conditions of Employee's retirement and separation from employment with the Company;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the undersigned parties, intending to be legally bound, hereby agree as follows:

### **1. Retirement**

Employee agrees to retire from, and thereby terminate, his employment with the Company effective December 20, 2013. On the Retirement Date, Employee's employment with the Company and all further compensation, remuneration, and eligibility of Employee under Company benefit plans shall terminate, except as otherwise provided in this Agreement or by applicable law.

### **2. Employment Prior to Retirement Date**

Until the Retirement Date, Employee shall continue to be employed by the Company in the position of District Manager, and shall continue to receive base salary payments totaling \$130,000.00 per month along with all current employment benefits. Any retroactive payment in connection with the adjustment of base salary shall be paid to Employee on or before December 20, 2013.

### **3. Severance Benefits Following Retirement Date**

For the 10 year period commencing on the Retirement Date, the Company will pay to Employee, in normal payroll installments, a total sum equal to 3 years of his base salary immediately prior to the Retirement Date. The Company further agrees to reimburse the Employee's cost of continuing medical and dental insurance benefits for Employee and Employee's eligible dependents, if any, under the Comprehensive Budget Reconciliation Act of 1986 ("COBRA") for so long as Employee is eligible for and elects such continuation of benefits under COBRA, up to a maximum period of 18 months following the Retirement Date.

### **4. No Mitigation**

None of the foregoing benefits will: (a) be subject to any mitigation obligation on Employee's part; or (b) be terminated or diminished if Employee should accept other employment prior to December 20, 2013, otherwise in accordance with this Agreement.

## **5. Employee Covenants**

(a) **Unauthorized Disclosure.** The Employee shall not, during his employment with the Company and thereafter, make any Unauthorized Disclosure. For purposes of this Agreement, "Unauthorized Disclosure" shall mean disclosure by the Employee without the prior written consent of the Company to any person, other than an employee of the Company or a person to whom disclosure is reasonably necessary or appropriate in connection with the performance by the Employee of duties as an employee or as may be legally required, of any confidential information with respect to any of the Company's customers, products, methods of distribution, strategies, business and marketing plans, business policies and practices, litigation strategies or defenses, and plans for new business concepts; provided, however, that such term shall not include the use or disclosure by the Employee, without consent, of any information known generally to the public. This confidentiality covenant has no temporal, geographical or territorial restriction.

(b) **Non-Solicitation.** During the No-Raid Period described below, the Employee shall not, either directly or indirectly, alone, or in conjunction with another party, intentionally interfere with or harm, or intentionally attempt to interfere with or harm, the relationship of the Company, its subsidiaries and/or affiliates, with any person who at any time was an employee, customer or supplier of the Company, its subsidiaries and/or affiliates or otherwise had a business relationship with the Company, its subsidiaries and/or affiliates, nor shall Employee knowingly hire or cause to be hired any person who is employed by the Company. The "No-Raid Period" means the one year period following the Retirement Date.

(c) **Non-Competition.** During the one (1) year period following the Retirement Date, the Employee shall not, directly or indirectly, without the prior written consent of the Company, own, manage, operate, join, control, be employed by, consult with or participate in the ownership, management, operation or control of, or be connected with (as a stockholder, partner, or otherwise), any business, individual, partner, firm, corporation, or other entity that competes, directly or indirectly, with the Company or any division, subsidiary or affiliate of the Company ("Competing Entity").

(d) **Remedies** The Employee agrees that any breach of the terms of this Agreement would result in irreparable injury and damage to the Company for which the Company would have no adequate remedy at law. In the event of Employee violating any terms of this Agreement, the Company shall be entitled to immediately cease further payments to Employee under this Agreement. The Employee and the Company further agree that the provisions of the covenants not to compete and solicit are reasonable and that the Company would not have entered into this Agreement but for the inclusion of such covenants herein. Should a court or arbitrator determine, however, that any provision of the covenants is unreasonable, either in period of time, geographical area, or otherwise, the parties hereto agree that the covenant should be interpreted and enforced to the maximum extent which such court or arbitrator deems reasonable.

## **6. Cooperation, Non-Disparagement, and Indemnity**

Neither the Employee nor the officers of the Company shall state or otherwise publish anything about the other party which would adversely affect the reputation, image or business

relationships and goodwill of the other party in its or his market and community at large. Employee shall fully cooperate with the Company in defense of legal claims asserted against the Company and other matters requiring the testimony or input and knowledge of Employee, and the Company agrees to reimburse Employee for reasonable costs and expenses incurred as a result thereof. The Company agrees to indemnify Employee for liabilities and costs incurred by Employee by reason of his employment with the Company, on the same basis as it does in similar circumstances with other employees.

## **7. Confidentiality**

Employee agrees not to at any time talk about, write about, or otherwise publicize or disclose to any third party the terms of this Agreement or any fact concerning its negotiation, execution or implementation, except with (1) an attorney, accountant, or other advisor engaged by Employee to advise him; (2) the Internal Revenue Service or other governmental agency upon proper request and as required by law; and (3) his immediate family, providing that all such persons agree in advance to keep said information confidential and not to disclose it to others.

## **8. Release of All Claims**

(a) Release of Company by Employee In consideration of the receipt of the sums and covenants stated herein, Employee does hereby, on behalf of himself, his heirs, administrators, executors, agents, and assigns, forever release, requite, and discharge the Company and its agents, parents, subsidiaries, affiliates, divisions, officers, directors, employees, predecessors, successors, and assigns ("Released Parties"), from any and all charges, claims, demands, judgments, actions, causes of action, damages, expenses, costs, attorneys' fees, and liabilities of any kind whatsoever, whether known or unknown, vested or contingent, in law, equity or otherwise, which Employee has ever had, now has, or may hereafter have against said Released Parties for or on account of any matter, cause or thing whatsoever which has occurred prior to the date of his signing this Agreement. This release of claims includes, without limitation of the generality of the foregoing, any and all claims which are related to Employee's employment with the Company and his retirement from his position and his employment on December 20, 2013, and any and all rights which Employee has or may have had under federal, state, and local statutes, regulations or public policies, as well as the laws of contract, torts, and all other subjects; provided, however, that nothing herein shall be deemed to affect any rights of Employee under this Agreement or to any pension, employee welfare benefits, or stock options.

(b) Release of Employee by Company The Company does hereby, on behalf of itself and its agents, parents, subsidiaries, affiliates, divisions, officers, directors, employees, predecessors, successors and assigns, forever release, requite, and discharge the Employee and his heirs, administrators, executors, agents and assigns, from any and all charges, claims, demands, judgments, actions, causes of action, damages, expenses, costs, attorneys' fees, and liabilities of any kind whatsoever, whether known or unknown, vested or contingent, in law, equity or otherwise, which the Company ever had, now has, or may hereafter have against Employee for or on account of any matter, cause or thing whatsoever which has occurred prior to the date of Employee's signing this Agreement; provided, however, that nothing herein shall be deemed to release or affect any rights of the Company pursuant to this Agreement.

## **9. Complete and Absolute Defense**

This Agreement constitutes, among other things, a full and complete release of any and all claims released by either party, and it is the intention of the parties hereto that this Agreement is and shall be a complete and absolute defense to anything released hereunder. The parties expressly and knowingly waive their respective rights to assert any claims against the other which are released hereunder, and covenant not to sue the other party or Released Parties based upon any claims released hereunder. The parties further represent and warrant that no charges, claims or suits of any kind have been filed by either against the other as of the date of this Agreement.

## **10. Non-Admission**

It is understood that this Agreement is, among other things, an accommodation of the desires of each party, and the above-mentioned payments and covenants are not, and should not be construed as, an admission or acknowledgment by either party of any liability whatsoever to the other party or any other person or entity.

## **11. Return of Property**

Employee agrees that on or before his/her Retirement Date, he shall promptly return to the Company all Company documents and property in his possession or control including, but not limited to, personal computer(s) and all software, security keys and badges, price lists, supplier and customer lists, files, reports, all correspondence both internal and external (memo's, letters, quotes, etc.), business plans, budgets, designs, and any and all other property of the Company.

## **12. Knowing and Voluntary Execution**

Each of the parties hereto further states and represents that he or it has carefully read the foregoing Agreement, and knows the contents thereof, and that he or it has executed the same as his or its own free act and deed. Employee further acknowledges that he has been and is hereby advised to consult with an attorney concerning this Agreement and that he had adequate opportunity to seek the advice of legal counsel in connection with this Agreement. Employee also acknowledges that he has had the opportunity to ask questions about each and every provision of this Agreement and that he fully understands the effect of the provisions contained herein upon his legal rights.

## **13. Executed Counterparts**

This Agreement may be executed in one or more counterparts, and any executed copy of this Agreement shall be valid and have the same force and effect as the originally executed Agreement.

## **14. Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Georgia.

## **15. Modification**

No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Employee and the Company.

**16. Assignability**

Employee's obligations and agreements under this Agreement shall be binding on the Employee's heirs, executors, legal representatives and assigns and shall inure to the benefit of any successors and assigns of the Company. The Company may assign this Agreement or any of its rights or obligations arising hereunder to any party, as part of a sale of its assets or other similar change of control.

**17. Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto in respect of the subject matter hereof, and this Agreement supersedes all prior and contemporaneous agreements between the parties hereto in connection with the subject matter hereof.

**18. Effective Date**

This Agreement will become effective on December 18, 2013 following signature by the parties.

IN WITNESS WHEREOF, both the parties have hereto set his hand this December 18, 2013.

EMPLOYEE:

\_\_\_\_\_  
Allan Smith

EMPLOYER:

\_\_\_\_\_  
Banks Enterprises  
John Rogers